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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): June 30, 2021

BABCOCK & WILCOX ENTERPRISES, INC.

(Exact name of registrant as specified in its charter)

DELAWARE	**001-36876**	**47-2783641**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

1200 EAST MARKET STREET, SUITE 650 AKRON, OHIO	**44305**
(Address of principal executive offices)	(Zip Code)

Registrant's Telephone Number, including Area Code: (330) 753-4511

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 Symbol**	**Name of Each Exchange on which Registered**
Common stock, $0.01 par value per share	BW	New York Stock Exchange
8.125% Senior Notes due 2026	BWSN	New York Stock Exchange
7.75% Series A Cumulative Perpetual Preferred Stock	BW PRA	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreements

On June 30, 2021, Babcock & Wilcox Enterprises, Inc. (the "Company") entered into (i) that certain Revolving Credit, Guaranty and Security Agreement, with certain subsidiaries of the Company as guarantors, the lenders party thereto from time to time and PNC Bank, National Association, as administrative agent ("PNC") and swing loan lender (the "Revolving Credit Agreement"), which provides for an up to $50 million asset-based revolving credit facility (with availability subject to a borrowing base calculation), including a $15 million letter of credit sublimit and a $5 million swingline sublimit, (ii) that certain Letter of Credit Issuance and Reimbursement and Guaranty Agreement with certain subsidiaries of the Company as guarantors and PNC, as issuer, pursuant to which PNC has agreed to issue up to $110 million in letters of credit ("Letter of Credit Agreement") that is secured in part by cash collateral provided by an affiliate of MSD Partners, MSD PCOF Partners XLV, LLC ("MSD") and (iii) that certain Reimbursement, Guaranty and Security Agreement, with certain subsidiaries of the Company as guarantors, MSD, as administrative agent, and the cash collateral providers from time to time party thereto, pursuant to which the Company shall reimburse MSD and any other cash collateral provider to the extent the up to $110 million of cash collateral provided by MSD and any other cash collateral provider to secure the Letter of Credit Agreement is drawn to satisfy draws on letters of credit ("Reimbursement Agreement" and collectively with the Revolving Credit Agreement and Letter of Credit Agreement, the "Debt Documents" and the facilities thereunder, the "Debt Facilities"). The obligations of the Company under each of the Debt Facilities are guaranteed by certain existing and future domestic and foreign subsidiaries of the Company. B. Riley Financial, Inc. ("B. Riley") has provided a guaranty of payment with regard to the Company's obligations under the Reimbursement Agreement, as more particularly described below. The Company expects to use the proceeds and letter of credit availability under the Debt Facilities for working capital purposes and general corporate purposes, including to backstop certain letters of credit under the Amended and Restated Credit Agreement, dated as of May 14, 2020 (as amended, restated or otherwise modified from time to time), by and among the Company, as borrower, Bank of America, N.A., as administrative agent, the lenders and the other parties from time to time party thereto, which was paid off and terminated as of June 30, 2021.

Each of the Debt Facilities has a maturity date of June 30, 2025. The interest rates applicable under the Revolving Credit Agreement float at a rate per annum equal to either (i) a base rate plus 2.0% or (ii) 1 or 3 month reserve-adjusted LIBOR rate plus 3.0%. The interest rates applicable to the Reimbursement Agreement float at a rate per annum equal to either (i) a base rate plus 6.50% or (ii) 1 or 3 month reserve-adjusted LIBOR plus 7.50%. Under the Letter of Credit Agreement, the Company shall be required to pay letter of credit fees on outstanding letters of credit equal to (i) the applicable spread over LIBOR on the aggregate face amount of the letters of credit issued under the Revolving Credit Agreement, (ii) administrative fees of 0.75% and (iv) fronting fees of 0.25%. Under each of the Revolving Credit Agreement and the Letter of Credit Agreement, the Company shall be required to pay a facility fee equal to 0.375% per annum of the unused portion of the Revolving Credit Agreement or the Letter of Credit Agreement, respectively. The Company is permitted to prepay all or any portion of the loans under the Revolving Credit Agreement prior to maturity without premium or penalty. Prepayments under the Reimbursement Agreement shall be subject to a prepayment fee of 102.25% in the first year after closing, 102% in the second year after closing and 101.25% in the third year after closing, with no prepayment fee payable thereafter.

The Company has mandatory prepayment obligations under the Reimbursement Agreement upon the receipt of proceeds from certain dispositions or casualty or condemnation events. The Revolving Credit Agreement and Letter of Credit Agreement require mandatory prepayments to the extent of an over-advance.

The obligations under the Debt Facilities shall be secured by substantially all assets of the Company and each of the guarantors, in each case subject to intercreditor arrangements. As noted above, the obligations under the Letter of Credit Facility shall also be secured by the cash collateral provided by MSD and any other cash collateral provider thereunder.

The Debt Documents contain certain representations and warranties, affirmative covenants, negative covenants and conditions that are customarily required for similar financings. The Debt Documents require the Company to comply with certain financial maintenance covenants, including a quarterly fixed charge coverage test, a quarterly senior net leverage ratio test, a non-guarantor cash repatriation covenant, a minimum liquidity covenant and an annual cap on maintenance capital expenditures. The Debt Documents also contains customary events of default (subject, in certain instances, to specified grace periods) including, but not limited to, the failure to make payments of interest or premium, if any, on, or principal under the respective facility, the failure to comply with certain covenants and agreements specified in the applicable Debt Agreement, defaults in respect of certain other indebtedness, and certain events of insolvency. If any event of default occurs, the principal, premium, if any, interest and any other monetary obligations on all the then outstanding amounts under the Debt Documents may become due and payable immediately.

In connection with the Company's entry into the Debt Documents, B. Riley entered into that certain Guaranty Agreement in favor of MSD, in its capacity as administrative agent under the Reimbursement Agreement, for the ratable benefit of MSD, the cash collateral providers and each co-agent or sub-agent appointed by MSD from time to time (the "B. Riley Guaranty"). The B. Riley Guaranty provides for the guarantee of all of the Company's obligations under the Reimbursement Agreement. The B. Riley Guaranty is enforceable in certain circumstances, including, among others, certain events of default and the acceleration of the Company's obligations under the Reimbursement Agreement. Under a fee letter with B. Riley, the Company shall pay B. Riley $935,000 per annum in connection with the B. Riley Guaranty. The Company intends to enter into a reimbursement agreement with B. Riley governing the Company's obligation to reimburse B. Riley to the extent the B. Riley Guaranty is called upon by the agent or lenders under the Reimbursement Agreement.

The foregoing descriptions of the Debt Documents and the B. Riley Guaranty do not purport to be complete and are subject to, and qualified in their entirety by, the full texts of the documents, copies of which are filed as Exhibits 10.1, 10.2, 10.3 and 10.4, as applicable, to this Current Report on Form 8-K and are incorporated herein by reference.

Item 1.02. Termination of Material Definitive Agreement.

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference into this Item 1.02.

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

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

Item 7.01. Regulation FD Disclosure

On July 7, 2021, the Company issued a press release announcing the entry into the Debt Facilities and the other documents and related transactions discussed in Item 1.01 above. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits.

Exhibit No.	Description
10.1	Revolving Credit, Guaranty and Security Agreement, dated as of June 30, 2021, by and among the Company, certain of the Company's subsidiaries as guarantors, the lenders party thereto from time to time and PNC Bank, National Association, as administrative agent, lender and swing loan lender.
10.2	Letter of Credit Issuance and Reimbursement and Guaranty Agreement, dated as of June 30, 2021, by and among the Company, certain of the Company's subsidiaries as guarantors, and PNC Bank, National Association, as issuer.
10.3	Reimbursement, Guaranty and Security Agreement, dated as of June 30, 2021, by and among the Company, certain of the Company's subsidiaries as guarantors, MSD PCOF Partners XLV, LLC, as administrative agent and the cash collateral providers from time to time party thereto.
10.4	Guaranty Agreement, dated as of June 30, 2021, by B. Riley in favor of MSD PCOF Partners XLV, LLC, as administrative agent, for the ratable benefit of the administrative agent, the cash collateral providers and each co-agent or sub-agent appointed by the administrative agent from time to time.
99.1	Press release, dated July 7, 2021
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

Signatures

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

BABCOCK & WILCOX ENTERPRISES, INC.

July 7, 2021

By: /s/ Louis Salamone
Louis Salamone
Executive Vice President, Chief Financial Officer
and Chief Accounting Officer
(Principal Accounting Officer and Duly Authorized Representative)

Exhibit 10.1

EXECUTION VERSION

REVOLVING CREDIT, GUARANTY AND SECURITY AGREEMENT

PNC BANK, NATIONAL ASSOCIATION
(AS AGENT)

AND THE LENDERS PARTY HERETO

WITH

BABCOCK & WILCOX ENTERPRISES, INC.

(BORROWER)

CERTAIN OF SUBSIDIARIES OF BABCOCK &WILCOX ENTERPRISES, INC.

(GUARANTORS)

June 30, 2021

TABLE OF CONTENTS

LIST OF EXHIBITS AND SCHEDULES

REVOLVING CREDIT, GUARANTY AND SECURITY AGREEMENT

Revolving Credit, Guaranty and Security Agreement dated as of June 30, 2021, by and among BABCOCK &WILCOX ENTERPRISES, INC. (the "Parent"), a corporation organized under the laws of the State of Delaware (together with each Person which may hereafter be joined hereto as a borrower from time to time, collectively, the "Borrowers" and each, a "Borrower"), those Subsidiaries of Parent party hereto and named on the signature pages hereto as "Guarantors" (together with each Person which may hereafter be joined hereto as a guarantor from time to time, collectively, the "Guarantors", and each, a "Guarantor", and together with the Borrowers, collectively, the "Loan Parties" and each, a "Loan Party"), the financial institutions which are now or hereafter become parties hereto (collectively, the "Lenders" and each a "Lender"), and PNC BANK, NATIONAL ASSOCIATION ("PNC"), in its capacity as agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Agent").

IN CONSIDERATION of the mutual covenants and undertakings set forth herein, Loan Parties, Lenders and Agent hereby agree as follows:

I. DEFINITIONS.

1.1. Accounting Terms. As used in this Agreement, the Other Documents or any certificate, report or other document made or delivered pursuant to this Agreement, all accounting terms not defined in Section 1.2 hereof or elsewhere in this Agreement (or partly defined in Section 1.2 hereof to the extent not defined) shall have the respective meanings given to such terms under GAAP; provided, however that, whenever such accounting terms are used for the purposes of determining compliance with financial covenants in this Agreement, such accounting terms shall be defined in accordance with GAAP as applied in preparation of the audited financial statements of Parent and its consolidated subsidiaries for the fiscal year ended December 31, 2020. If there occurs after the Closing Date any change in GAAP that affects in any respect the calculation of any covenant set forth in this Agreement or the definition of any term defined under GAAP used in such calculations, Agent, Lenders and Loan Parties shall negotiate in good faith to amend the provisions of this Agreement that relate to the calculation of such covenants with the intent of having the respective positions of Agent, Lenders and Loan Parties after such change in GAAP conform as nearly as possible to their respective positions as of the Closing Date, provided, that, until any such amendments have been agreed upon, the covenants in this Agreement shall be calculated as if no such change in GAAP had occurred and Loan Parties shall provide additional financial statements or supplements thereto, attachments to Compliance Certificates and/or calculations regarding financial covenants as Agent may reasonably require in order to provide the appropriate financial information required hereunder with respect to Loan Parties both reflecting any applicable changes in GAAP and as necessary to demonstrate compliance with the financial covenants before giving effect to the applicable changes in GAAP. Notwithstanding the foregoing, leases (including leases entered into or renewed after the Closing Date) shall be classified and accounted for (and the interest component thereof calculated) on a basis consistent with that reflected in the audited financial statements for the fiscal year ended December 31, 2019 for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto.

1.2. General Terms. For purposes of this Agreement the following terms shall have the following meanings:

"Accountants" shall have the meaning set forth in Section 9.7 hereof.

"Acquired Indebtedness" shall mean Indebtedness of a Person whose assets or Equity Interests are acquired by a Company in a Permitted Acquisition or any other Acquisition or Investment permitted hereunder or consummated with the consent of Required Lenders; provided that such Indebtedness: (a) was in existence prior to the date of such transaction, and (b) was not incurred in connection with, or in contemplation of, such transaction.

"Acquisition" shall mean any transaction (or series of related transactions) for the purchase or other acquisition, by merger or otherwise, by any Company of (a) Equity Interests in any Person having ordinary voting power to elect at least a majority of the directors of such Person or other governing body performing similar functions for such Person (or otherwise conferring similar control over the governance and policies of such Person), or (b) all or substantially all the assets of any Person (or all or substantially all the assets constituting a business unit, division, product line or line of business of any Person), but not any other type of Investment in any Person (any such Person and/or assets and/or business unit, division, product line or line of business of any Person in any such transaction, the "target").

"Administrative Questionnaire" means the administrative questionnaire completed by each Lender in a form supplied by the Agent.

"Advance Rates" shall have the meaning set forth in Section 2.1(a)(y) hereof.

"Advances" shall mean and include the Revolving Advances, Letters of Credit, and the Swing Loans.

"Affected Lender" shall have the meaning set forth in Section 3.11 hereof.

"Affiliate" of any Person shall mean (a) any Person which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person, or (b) any Person who is a director, manager, member, managing member, general partner or officer (i) of such Person, (ii) of any Subsidiary of such Person or (iii) of any Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (x) to vote ten percent (10%) or more of the Equity Interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for any such Person, or (y) to direct or cause the direction of the management and policies of such Person whether by ownership of Equity Interests, contract or otherwise.

"Affiliate Agreements" means, collectively, the agreements listed on Schedule 1.01(a) hereto.

"Agent" shall have the meaning set forth in the preamble to this Agreement and shall include its successors and assigns.

"Agreement" shall mean this Revolving Credit, Guaranty and Security Agreement, as the same may be amended, modified, supplemented, renewed, restated, or replaced from time to time.

"Alternate Base Rate" shall mean, for any day, a rate per annum equal to the highest of (a) the Base Rate in effect on such day, (b) the sum of the Overnight Bank Funding Rate in effect on such day plus one half of one percent (0.5%), and (c) the sum of the Daily LIBOR Rate in effect on such day plus one percent (1.0%), so long as a Daily LIBOR Rate is offered, ascertainable and not unlawful. Any change in the Alternate Base Rate (or any component thereof) shall take effect at the opening of business on the day such change occurs.

"Alternate Source" shall have the meaning set forth in the definition of Overnight Bank Funding Rate.

"Anti-Corruption Laws" shall mean the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, and any other similar anti-corruption laws or regulations administered or enforced in any jurisdiction in which the Borrower or any of its Subsidiaries conduct business.

"Anti-Terrorism Laws" means any Law in force or hereinafter enacted related to terrorism, money laundering, or economic sanctions, including Executive Order No. 13224, the USA PATRIOT Act, the International Emergency Economic Powers Act, 50 U.S.C. 1701, et. seq., the Trading with the Enemy Act, 50 U.S.C. App. 1, et. seq., 18 U.S.C. § 2332d, and 18 U.S.C. § 2339B, and any regulations or directives promulgated under these provisions.

"Applicable Law" shall mean all Laws applicable to the Person, conduct, transaction, covenant, Other Document or contract in question, all provisions of all applicable state, federal and foreign constitutions, statutes, rules, regulations, treaties, directives and orders of any Governmental Body, and all orders, judgments and decrees of all courts and arbitrators.

"Applicable Margin" shall mean, with respect to each Revolving Advance and Swing Loan, and also with respect to Letter of Credit Commitment Fees, the applicable percentage as follows:

Domestic Rate Revolving Advances	LIBOR Rate Revolving Advances	Swing Loans	Letters of Credit
2.00%	3.00%	2.00%	3.00%

"Application Date" shall have the meaning set forth in Section 2.8(b) hereof.

"Appraisal Costs" shall have the meaning set forth in Section 3.4(c) hereof.

"Approvals" shall have the meaning set forth in Section 5.7(b) hereof.

"Approved Electronic Communication" shall mean each notice, demand, communication, information, document and other material transmitted, posted or otherwise made or communicated by e-mail, E-Fax, the Credit Management Module of PNC's PINACLE® system, or any other equivalent electronic service agreed to by Agent, whether owned, operated or hosted by Agent, any Lender, any of their Affiliates or any other Person, that any party is obligated to, or otherwise chooses to, provide to Agent pursuant to this Agreement or any Other Document, including any financial statement, financial and other report, notice, request, certificate and other information material; provided that Approved Electronic Communications shall not include any notice, demand, communication, information, document or other material that Agent specifically instructs a Person to deliver in physical form.

"Approved LC Foreign Currencies" shall mean (x) Canadian Dollars, British Pounds Sterling, Danish Kroner, and Euros (collectively, the "Approved Anticipated LC Foreign Currencies") and (y) such other currencies other than Dollars and other than the Approved Anticipated LC Foreign Currencies as Issuer shall approve in its sole discretion from time to time (any such other approved currencies, the "Approved Additional LC Foreign Currencies").

"Approved Fund" shall mean any Fund that is administered, advised, managed, underwritten, or sub-advised by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers, advises, manages, underwrites, or sub-advises a Lender.

"Approved Supply Chain Customer" shall mean each Customer of any Company participating in an Approved Supply Chain Financing.

"Approved Supply Chain Financing" shall mean each Supply Chain Financing offered by a Customer of any Company and in which such Customer has requested that such Company participate: (x) which has been approved in writing by Agent (acting in its Permitted Discretion) as to the applicable Customer, the applicable bank or other financial institution, and the terms of such Supply Chain Financing and (y) in the case of any such Approved Supply Chain Financing that will involve any Disposition of Receivables by any Loan Party, with respect to which Agent and the applicable bank or other financial institution shall have entered into a Supply Chain Lien Agreement acceptable to Agent in its Permitted Discretion.

"Available Amount" shall mean, as of any date of determination, the amount equal to:

(a) the sum of (without duplication): (i) $105,000,000 plus (ii) the Net Cash Proceeds of any issuances of Equity Interests (other than Disqualified Equity Interests and Specified Equity Contributions) by Parent made after the Closing Date plus (iii) the Net Cash Proceeds of any issuances of Permitted Indebtedness pursuant to clause (h) of the definition of that Term made after the Closing Date, minus

(b) the sum of (without duplication): (i) all Permitted Acquisitions made after the Closing Date but prior to such date of determination under and/or in reliance on clause (d) of the definition of such term, (ii) all Permitted Investments made after the Closing Date but prior to such date of determination under and/or in reliance on clause (e) of the definition of Permitted Intercompany Advances and clause (g) of the definition of Permitted Investments, and (e) all Permitted Investments made after the Closing Date but prior to such date of determination under and/or in reliance on clause (j) of the definition of Permitted Investments (provided that, to avoid any "double counting", the amount of any Permitted Acquisition made by any Non-Loan Party under/in reliance on clause(d) of the definition of such term or any Permitted Investment made by any Non-Loan Party under/in reliance on clause (j) of such term shall be deemed, for purposes of the calculation of the Available Amount, to be net of the amount of any proceeds of any Permitted Intercompany Advance that is made under and/or in reliance on clause (e) of such term to such Non-Loan Party for the purpose of (and actually used for the purpose of) funding any portion of such Permitted Acquisition or Permitted Investment), plus

(c) sum of (without duplication): (i) all repayments of principal actually paid in cash by any Non-Loan Parties after the Closing Date but prior to such date of determination in respect of any Permitted Intercompany Advances made by Loan Parties to Non-Loan Parties after the Closing Date but prior to such date of determination under and/or in reliance on clause (e) of the definition of Permitted Intercompany Advances and clause (g) of the definition of Permitted Investments, (ii) all repayments of principal actually paid in cash by any Joint Ventures after the Closing Date but prior to such date of determination in respect of any Permitted Investments constituting loans or advances made by Loan Parties to Joint Ventures after the Closing Date but prior to such date of determination under and/or in reliance on clause (j) of the definition of Permitted Investments, and (iii) all dividends, distributions, and returns of capital actually paid in cash by any Joint Ventures after the Closing Date but prior to such date of determination in respect of any Permitted Investments (to the extent not constituting loans or advances) made by Loan Parties to Joint Ventures after the Closing Date but prior to such date of determination under and/or in reliance on clause (j) of the definition of Permitted Investments.

"Average Undrawn Availability" shall mean, as of any date of determination, the sum of Undrawn Availability for the Average Undrawn Availability Period ending on such date, divided by the number of days in such Average Undrawn Availability Period.

"Average Undrawn Availability Period" shall mean a period of thirty (30) consecutive days.

"B. Riley Fee Letter" shall mean that certain Fee Letter, dated as of the Closing Date, among the Loan Parties and B. Riley Financial, Inc., as it may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"B. Riley Guarantee" shall mean that certain Guaranty Agreement, made on the Closing Date by B. Riley Financial, Inc. in favor of Reimbursement/Cash Collateral Facility Agent and the "Cash Collateral Providers" under the Reimbursement/Cash Collateral Facility, as it may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"B. Riley Guarantee Reimbursement Agreement" shall mean that certain Reimbursement Agreement, to be entered into after the Closing Date by the Loan Parties in favor of B. Riley Financial, Inc., as it may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy," as in effect from time to time, or any successor statute.

"Base Rate" shall mean the base commercial lending rate of PNC as publicly announced to be in effect from time to time, such rate to be adjusted automatically, without notice, on the effective date of any change in such rate. This rate of interest is determined from time to time by PNC as a means of pricing some loans to its customers and is neither tied to any external rate of interest or index nor does it necessarily reflect the lowest rate of interest actually charged by PNC to any particular class or category of customers of PNC.

"Beneficial Owner" shall mean, for each Loan Party, each of the following: (a) each individual, if any, who, directly or indirectly, owns 25% or more of such Loan Party's Equity Interests; and (b) a single individual with significant responsibility to control, manage, or direct such Loan Party.

"Benefited Lender" shall have the meaning set forth in Section 2.6(e) hereof.

"Blocked Account Bank" shall have the meaning set forth in Section 4.8(h) hereof.

"Blocked Accounts" shall have the meaning set forth in Section 4.8(h) hereof.

"Borrower" or "Borrowers" shall have the meaning set forth in the preamble to this Agreement and shall include the successors and permitted assigns of each applicable Person.

"Borrowers' Account" shall have the meaning set forth in Section 2.10 hereof.

"Borrowing Agent" shall mean the Parent.

"Borrowing Base Certificate" shall mean a certificate in substantially the form of Exhibit 1.2(a) hereto duly executed by the Chief Executive Officer, Chief Financial Officer, Treasurer or Controller of the Borrowing Agent and delivered to Agent, appropriately completed, by which such officer shall certify to Agent the Formula Amount and calculation thereof as of the date of such certificate.

"Borrowing Base Entity" shall mean each Loan Party that is a North American Loan Party.

"Business Day" shall mean any day other than Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by Law to be closed for business in East Brunswick, New Jersey, and, if the applicable Business Day relates to any LIBOR Rate Loans, such day must also be a day on which dealings are carried on in the London interbank market.

"Canadian Dollar" and the sign "CDN$" shall mean lawful money of Canada.

"Capital Expenditures" shall mean expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements (or of any replacements or substitutions thereof or additions thereto) which have a useful life of more than one year and which, in accordance with GAAP, would be classified as capital expenditures (but excluding any Permitted Acquisition or other Acquisition made in accordance with the terms hereof). Capital Expenditures for any period shall include the principal portion of Capitalized Lease Obligations paid in such period.

"Capitalized Lease Obligation" shall mean any Indebtedness of any Company represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP. Notwithstanding the foregoing, leases that were treated as operating leases before giving effect to Accounting Standards Codification Topic 842 shall continue to be treated as operating leases.

"Captive Insurance Subsidiaries" means, collectively or individually as of any date of determination, those regulated Subsidiaries of Parent primarily engaged in the business of providing insurance and insurance-related services to Parent, its other Subsidiaries and certain other Persons.

"Cash Dominion Period" shall mean each period (following the Closing Date) commencing on the date when any Cash Dominion Trigger shall occur and continuing thereafter until and through the applicable Cash Dominion Suspension Date.

"Cash Dominion Trigger" shall mean any of the following: (x) the occurrence on any day of any Event of Default, or (z) at the close of business on any applicable Business Day, Borrowers shall have had Undrawn Availability in an amount less than the amount that is fifteen percent (15%) of Maximum Revolving Advance Amount at the close of business on five (5) consecutive Business Days.

"Cash Dominion Suspension Date" shall mean, as to any Cash Dominion Period, the first day following the date of the occurrence of any Cash Dominion Trigger on which all of the following conditions (the "Cash Dominion Suspension Conditions") have been satisfied: (x) no Event of Default shall have occurred and be outstanding, and (y) at the close of business on any applicable Business Day, Borrowers shall have had Undrawn Availability in an amount equal to or greater than the amount that is fifteen percent (15%) of Maximum Revolving Advance Amount at the close of business on 30 consecutive days; provided that, no more than two (2) Cash Dominion Suspension Dates terminating associated Cash Dominion Periods may occur during any rolling period of 12 consecutive months (and, for the avoidance of doubt, in the event that any Cash Dominion Suspension Date is prevented from occurring when it otherwise would occur under this definition solely due to the foregoing provisions of this proviso, then such Cash Dominion Suspension Date shall be deferred to and shall occur on the next date thereafter when all the Cash Dominion Suspension Conditions under this definition have been satisfied and the occurrence of such Cash Dominion Suspension Date would not violate the provisions of this proviso).

"Cash Equivalents" shall mean (a) marketable direct obligations or securities issued by, or fully guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof in each case maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's, (c) commercial paper that, at the time of acquisition, has a rating of at least A-1 or AAA from S&P or at least P-1 or Aaa from Moody's and, in each case, having a term of not more than one year, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within one year from the date of acquisition thereof issued by (i) any Lender or any branch or agency of any Lender or (ii) any bank organized under the laws of the United States or any state thereof or the District of Columbia or any foreign bank or any branch or agency of any of the foregoing having at the date of acquisition thereof combined capital and surplus of not less than $500,000,000 or a minimum rating at the time of investment of A-3 by S&P or P-3 by Moody's, (e) deposit accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank either (i) that are fully collateralized or (ii) satisfying the requirements of clause (d)(ii) of this definition or recognized securities dealer having combined capital and surplus of not less than $500,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, (h) obligations issued or fully guaranteed by the government or by a governmental agency of Canada, Japan, Australia, Switzerland, the United Kingdom or a country belonging to the European Union, in each case maturing within one year from the date of acquisition thereof, but only so long as the country credit rating of any such country issuing or guaranteeing (or whose governmental agency issues or guarantees) any obligation of the type specified in this clause (h) above shall be AA or higher by S&P or an equivalent rating or higher by another generally recognized rating agency providing country credit ratings, (i) municipal issued debt securities, including notes and bonds that, at the time of acquisition, has a rating of at least A-1 or AAA from S&P or at least P-1 or Aaa from Moody's, and in each case having a term of not more than one year, (j) (i) shares of any money market fund that has net assets of not less than $500,000,000 and satisfies the requirements of rule 2a-7 under the Investment Company Act of 1940 and (ii) shares of any offshore money market fund that has net assets of not less than $500,000,000 and a $1 net asset mandate, and (l) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (i) above.

"Cash Interest Expense" means, with respect to any Person for any period, the Interest Expense of such Person for such period less, to the extent included in the calculation of Interest Expense of such Person for such period, (a) the amount of debt discount and debt issuance costs amortized, (b) charges relating to write-ups or write-downs in the book or carrying value of existing Financial Covenant Debt, and (c) interest payable in evidences of Indebtedness or by addition to the principal of the related Indebtedness.

"Cash Management Liabilities" shall mean the indebtedness, obligations, and liabilities of any Loan Party or any of their respective Subsidiaries to the provider of any Cash Management Products and Services (including all obligations and liabilities owing to such provider in respect of any returned items deposited with such provider) (including any applicable Post-Petition Obligations). For purposes of this Agreement and all of the Other Documents, all Cash Management Liabilities of any Loan Party owing to any of the Secured Parties shall be "Obligations" hereunder and under the Other Documents, and the Liens securing such Cash Management Liabilities shall be pari passu with the Liens securing all other Obligations under this Agreement and the Other Documents, subject to the express provisions of Section 11.5 hereof.

"Cash Management Products and Services" shall mean agreements or other arrangements under which Agent or any Lender or any Affiliate of Agent or a Lender provides any of the following products or services to any Loan Party and/or any of their respective Subsidiaries: (a) credit cards; (b) credit card processing services; (c) debit cards and stored value cards; (d) commercial cards; (e) ACH transactions; and (f) cash management and treasury management services and products, including without limitation controlled disbursement accounts or services, lockboxes, automated clearinghouse transactions, overdrafts, interstate depository network services.

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

"CFTC" shall mean the Commodity Futures Trading Commission.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601 et seq.

"Certificate of Beneficial Ownership" shall mean, for each Loan Party, a certificate in form and substance acceptable to Agent (as amended or modified by Agent from time to time in its sole discretion), certifying, among other things, the Beneficial Owner of such Loan Party.

"Change in Law" shall mean the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Applicable Law; (b) any change in any Applicable Law or in the administration, implementation, interpretation or application thereof by any Governmental Body; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Body; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of Applicable Law) and (y) all requests, rules, regulations, guidelines, interpretations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (whether or not having the force of Law), in each case pursuant to Basel III, shall in each case be deemed to be a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

"Change of Control" shall mean:

(a) the failure of Parent to (x) own and control, directly or indirectly, all voting rights with respect to 100% of the Voting Equity Interest, and also each of the non-voting classes of Equity Interests, of each Borrowing Base Entity and each other Collateral Jurisdiction Subsidiary or (y) otherwise Control each Borrowing Base Entity and each other Collateral Jurisdiction Subsidiary,

(b) the occurrence of any event (whether in one or more transactions) which results in any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding (i) any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan and (ii) underwriters in the course of their distribution of Voting Equity Interest in an underwritten registered public offering provided such underwriters shall not hold such Equity Interest for longer than five Business Days) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of more than 30%, on a fully-diluted basis, of the Voting Equity Interest of Parent; provided that it shall not be deemed to be a Change of Control under this clause (b) if B. Riley FBR, Inc. or a related "person" or "group" acceptable to Agent and the Required Lenders becomes the beneficial owner of more than 30% of such Voting Equity Interest of Parent, or

(c) during any period of twelve consecutive calendar months, a majority of the members of the board of directors or other equivalent governing body of Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

"CIP Regulations" shall have the meaning set forth in Section 14.12 hereof.

"Claims" shall have the meaning given to such term in Section 16.5 hereof.

"Closing Date" shall mean later of (x) the date of this Agreement and (y) the date upon which all of the conditions precedent in Section 8.1 shall have been satisfied (or waived in accordance with the terms hereof).

"Code" shall mean the Internal Revenue Code of 1986, as the same may be amended, modified, or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

"Collateral" shall mean and include all right, title and interest of each Loan Party in all of the following property and assets of such Loan Party, in each case whether now existing or hereafter arising or created and whether now owned or hereafter acquired and wherever located:

(d) all Receivables and all supporting obligations relating thereto;

(e) all equipment and fixtures;

(f) all general intangibles (including all payment intangibles and all software) and all supporting obligations related thereto;

(g) all Inventory;

(h) all Subsidiary Equity Interest, securities, Investment Property and financial assets;

(i) all Material Real Property;

(j) [RESERVED];

(k) all contract rights, rights of payment which have been earned under a contract rights, chattel paper (including electronic chattel paper and tangible chattel paper), commercial tort claims (whether now existing or hereafter arising); documents (including all warehouse receipts and bills of lading), deposit accounts, goods, instruments (including promissory notes), letters of credit (whether or not the respective letter of credit is evidenced by a writing) and letter-of-credit rights, cash, certificates of deposit, insurance proceeds (including hazard, flood and credit insurance), security agreements, eminent domain proceeds, condemnation proceeds, tort claim proceeds and all supporting obligations;

(l) all ledger sheets, ledger cards, files, correspondence, records, books of account, business papers, computers, computer software (owned by any Loan Party or in which it has an interest), computer programs, tapes, disks and documents, including all of such property relating to the property described in clauses (a) through and including (h) of this definition; and

(m) all commercial tort claims in which a security interest is granted by a Loan Party pursuant to Section 4.1; and

(n) all proceeds and products of the property described in clauses (a) through and including (i) of this definition, in whatever form.

It is the intention of the parties that if Agent shall fail to have a perfected Lien in any particular property or assets of any Loan Party for any reason whatsoever, but the provisions of this Agreement and/or of the Other Documents, together with all financing statements and other public filings relating to Liens filed or recorded by Agent against Loan Parties, would be sufficient to create a perfected Lien in any property or assets that such Loan Party may receive upon the sale, lease, license, exchange, transfer or disposition of such particular property or assets, then all such "proceeds" of such particular property or assets shall be included in the Collateral as original collateral that is the subject of a direct and original grant of a security interest as provided for herein and in the Other Documents (and not merely as proceeds (as defined in Article 9 of the Uniform Commercial Code) in which a security interest is created or arises solely pursuant to Section 9-315 of the Uniform Commercial Code).

Notwithstanding the foregoing, Collateral shall not include any Excluded Property.

"Collateral Jurisdiction Subsidiary" shall mean any Company that is organized or incorporated under the laws of (i) the United States, any state thereof, or the District of Columbia, (ii) Canada or any province or territory thereof, (iii) any jurisdiction in the United Kingdom, or (iv) Luxembourg.

"Commitments" shall mean, collectively, the Revolving Commitments.

"Commitment Transfer Supplement" shall mean a document in the form of Exhibit 16.3 hereto, properly completed and otherwise in form and substance satisfactory to Agent by which the Purchasing Lender purchases and assumes a portion of the obligation of Lenders to make Advances under this Agreement.

"Companies" shall mean, collectively, Parent and each of its Subsidiaries, and "Company" shall mean each and any of them.

"Compliance Certificate" shall mean a compliance certificate substantially in the form of Exhibit 1.2(b) hereto to be signed by the Chief Executive Officer, Chief Financial Officer, Treasurer or Controller of Borrowing Agent.

"Consents" shall mean all filings and all licenses, permits, consents, approvals, authorizations, qualifications and orders of Governmental Bodies and other third parties, domestic or foreign, necessary to carry on any Company's business or necessary (including to avoid a conflict or breach under any agreement, instrument, other document, license, permit or other authorization) for the execution, delivery or performance of this Agreement, the Other Documents, the Related L/C Facility Documents, or the Reimbursement/Cash Collateral Facility Documents, including any Consents required under all applicable federal, state or other Applicable Law.

"Consigned Inventory" shall mean Inventory of any Loan Party that is in the possession of another Person on a consignment, sale or return, or other basis that does not constitute a final sale and acceptance of such Inventory.

"Consolidated Net Income" means, for any period, the net income (or loss) of Loan Parties on a Consolidated Basis for such period determined in accordance with GAAP.

"Consolidated Tangible Assets" means, as of any date of determination, the difference of (a) the consolidated total assets of the Borrower and its Subsidiaries as of such date, determined in accordance with GAAP, minus (b) all Intangible Assets of the Borrower and its Subsidiaries on a consolidated basis as of such date.

"Consortium" means any joint venture, consortium or other similar arrangement that is not a separate legal entity entered into by Parent or any of its Subsidiaries and one or more third parties, provided that no Loan Party shall, whether pursuant to the Constituent Documents of such joint venture or otherwise, be under any Contractual Obligation to make Investments or incur Guaranty Obligations after the Closing Date, or, if later, at the time of, or at any time after, the initial formation of such joint venture, consortium or similar arrangement that would be in violation of any provision of this Agreement.

"Contract Rate" shall have the meaning set forth in Section 3.1 hereof.

"Contractual Obligation" shall mean, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise.

"Controlling" and "Controlled" have meanings correlative thereto.

"Control Agreement" shall mean a deposit account control agreement or securities account control agreement or commodities account control agreement or blocked account agreement, as applicable, entered into by any one or more Loan Parties, an applicable bank or other depository institution or securities intermediary or commodity intermediary, Reimbursement/Cash Collateral Facility Agent and Agent that is sufficient to provide Agent with "control" (for purposes of Articles 8 and/or Article 9 of the Uniform Commercial Code, as applicable) over the deposit account(s) or securities accounts(s) (and/or the investment property and/or financial assets maintained therein or credited thereto) or commodity account(s) (and/or the commodity contracts carried therein) subject thereto maintained with such applicable bank or other depository institution or securities intermediary or commodity intermediary, and otherwise in form and substance reasonably acceptable to Agent in its Permitted Discretion.

"Controlled Group" shall mean, at any time, each Company and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with any Company, are treated as a single employer under Section 414 of the Code.

"Controlled Investment Affiliate" shall mean, with respect to any Person (for this definition, the "sponsor"), any other Person that is (a) controlled by, or is under common control with, such sponsor and (b) engaged solely in the business of making equity or debt investments in the ordinary course of business. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"Covered Entity" shall mean (a) each Loan Party, each of each Loan Party's Subsidiaries and all pledgors of Collateral and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the direct or indirect (x) ownership of, or power to vote, 25% or more of the issued and outstanding Equity Interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of Equity Interests, contract or otherwise.

"Cure Period" shall have the meaning set forth in Section 6.5(d) hereof.

"Cure Right" shall have the meaning set forth in Section 6.5(d) hereof.

"Customer" shall mean and include the account debtor with respect to any Receivable and/or the prospective purchaser of goods, services or both with respect to any contract or contract right, and/or any party who enters into or proposes to enter into any contract or other arrangement with any Company, pursuant to which such Company is to deliver any personal property or perform any services.

"Customs" shall have the meaning set forth in Section 2.13(b) hereof.

"Daily LIBOR Rate" shall mean, for any day, the rate per annum determined by Agent by dividing (x) the Published Rate by (y) a number equal to 1.00 minus the Reserve Percentage; provided, however, that if the Daily LIBOR Rate determined as provided above would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Debt Payments" shall mean for any Person for any period, in each case: (a) the Cash Interest Expense of such Person for such period, plus (b) all amortization payments and other payments in respect of principal with respect of any Indebtedness for borrowed money (excluding the Advances hereunder) paid or payable in cash by such Person during such period, plus (c) without duplication of any amounts under the foregoing clauses (a) and (b), all payments in respect of Capitalized Lease Obligations paid or payable in cash by such Person during such period, plus (d) all payments paid or payable in cash with respect to any Pension Benefit Plan (including any Multiemployer Plan) or Multiple Employer Plan (or with respect to any similar defined benefit employee pension plans or employee retirement plans (including any such similar multi-employer plans or multiple-employer plans or any statutory pension or employee retirement scheme or funds) under the laws of any other jurisdiction in which any Company is organized or formed) by such Person during such period, plus (e) all amounts paid or payable in cash by such person under the B. Riley Guaranty Fee Letter during such period. For the avoidance of doubt, the term "Debt Payments" shall not include any payments with respect to (a) Performance Guarantees and (b) Indebtedness of the Borrower or any Subsidiary of the Borrower that is owed to the Borrower or any Subsidiary of the Borrower.

"Default" shall mean an event, circumstance or condition which, with the giving of notice or passage of time or both, would constitute an Event of Default.

"Default Rate" shall have the meaning set forth in Section 3.1 hereof.

"Defaulting Lender" shall mean any Lender that: (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Revolving Commitment Percentage of any Advances which such Lender is obligated to fund hereunder, (ii) if applicable, fund any portion of its Participation Commitment in any Letters of Credit or Swing Loans, or (iii) pay over to Agent, Issuer, the Swing Loan Lender or any Lender any other amount required to be paid by it hereunder, unless, in the case of clause (i), such Lender notifies Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including a particular Default or Event of Default, if any) has not been satisfied; (b) has notified Borrowers or Agent in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including a particular Default or Event of Default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within two Business Days after request by Agent, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Advances and, if applicable, participations in then outstanding Letters of Credit and Swing Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon Agent's receipt of such certification in form and substance satisfactory to Agent; (d) has become the subject of an Insolvency Event; or (e) has failed at any time to comply with the provisions of Section 2.6(e) hereof with respect to purchasing participations from the other Lenders, whereby such Lender's share of any payment received, whether by setoff or otherwise, is in excess of its pro rata share of such payments due and payable to all of Lenders.

"Deferred PBGC Payments" means pension payments deferred by the Parent with the consent of the Internal Revenue Service and PBGC pursuant to the Pension Funding Waivers in an amount no greater than $18,000,000.

"Depository Accounts" shall have the meaning set forth in Section 4.8(h) hereof.

"Designated Lender" shall have the meaning set forth in Section 16.2(d) hereof.

"Disposition" shall mean any sale, conveyance, transfer, license, lease, or other disposition (including any sale and leaseback transaction) of any assets or property (or any interests in any such assets or property) by any Person, including any sale, conveyance, assignment, transfer, factoring or other disposition, with or without recourse and whether before, at, or after maturity, of any notes or Receivables or any rights or claims associated therewith, or in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Equity Interests or Equity Interests Equivalent, and "Dispose" shall have a cognate meaning (it being acknowledged and agreed that the collection of Receivables in the Ordinary Course of Business does not constitute a Disposition).

"Disqualified Equity Interests" shall mean any Equity Interests which, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are exchangeable), or upon the happening of any event or condition, (a) mature or are mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or are redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is six (6) months prior to the last day of the Term (excluding any provisions requiring redemption upon a "change of control" or similar event; provided that such "change of control" or similar event results in the Payment in Full of the Obligations), (b) provide for regularly scheduled cash payments of dividends or distributions with respect thereto and/or the accrual and/or payment of dividends or distributions payable in cash at a stated percentage/rate and/or in a stated amount and/or amount determined by a stated formula, in any such case prior to the time that the Obligations are Paid in Full, unless, in any such case, the actual payment in cash (not including any accrual without cash payment and/or payment in kind) of such dividends or distributions is subject to the discretion of the Board of Directors (or similar governing person/body) of the Person issuing such Equity Interests (provided that, for the avoidance of doubt, any requirement that any and/or all such dividends or distributions be paid in cash prior to any other dividends or distributions being paid with respect to any other class or series of Equity Interests of such Person shall not, by itself, result in any Equity Interests constituting Disqualified Equity Interest under this clause (b)), or (c) are convertible into or exchangeable for (i) debt securities or (ii) any Equity Interests referred to in (a) or (b) above, in each case, at any time on or prior to the date that is six (6) months prior to the last day of the Term.

"Document" shall have the meaning given to the term "document" in the Uniform Commercial Code.

"Dollar" and the sign "$" shall mean lawful money of the United States of America.

"Dollar Equivalent" means at any time (i) as to any amount denominated in Dollars, the amount thereof at such time, and (ii) as to any amount denominated in any other currency, the equivalent amount in Dollars calculated by the Agent in good faith at such time using the Exchange Rate in effect on the day of determination.

"Dollar Equivalent Drawing Amount" shall have the meaning set forth in Section 2.14(b) hereof.

"Domestic Loan Parties" shall mean, collectively, Borrower and each Domestic Subsidiary of Parent that is also a Loan Party.

"Domestic Rate Loan" shall mean any Advance that bears interest based upon the Alternate Base Rate.

"Domestic Subsidiary" shall mean any Subsidiary of any Person that is organized or incorporated in the United States, any State or territory thereof, or the District of Columbia.

"Drawing Date" shall have the meaning set forth in Section 2.14(b) hereof.

"Early Termination Date" shall have the meaning set forth in Section 13.1 hereof.

"EBITDA" means, for any period,

(a) Consolidated Net Income for such period;

plus

(b) the sum of, in each case (other than clauses (xi) and (xii) below) to the extent deducted in the calculation of (or, in the case of clause (vii), otherwise reducing) such Consolidated Net Income but without duplication,

(i) any provision for income taxes,

(ii) Interest Expense,

(iii) depreciation expense,

(iv) amortization of intangibles or financing or acquisition costs,

(v) all non-cash charges (including impairment of intangible assets and goodwill) and non-cash losses for such period, including non-cash employee compensation pursuant to any equity-based compensation plan (excluding any non-cash item to the extent it represents an accrual of, or reserve for, cash disbursements for any period ending prior to the last day of the Term) including, for the avoidance of doubt, any non-cash charges or expenses relating to pension or benefits plans of the Loan Parties and their Subsidiaries, including mark-to-market adjustments;

(vi) unrealized foreign exchange losses of Parent and its Subsidiaries resulting from the impact of foreign currency changes on the valuation of assets and liabilities;

(vii) fees, costs, and expenses with respect to the Transactions paid from and after July 1, 2021 through December 31, 2021 in an amount not to exceed $5,000,000 in the aggregate;

(viii) non-recurring charges incurred by the Borrower or its Subsidiaries (other than those provided for in clause (vii)) in respect of business restructurings to the extent disclosed in writing (and in detail and with support reasonably acceptable) to Agent, provided that the aggregate amount added back to Consolidated Net Income pursuant to this clause (viii) with respect to any such charges shall not exceed (x) $10,000,000 with respect to any such charges incurred from July 1, 2021 through June 30, 2022, or (y) $5,000,000 with respect to any such charges incurred during each successive twelve-month July-to-June period thereafter;

(ix) all professional advisory fees and expenses (other than those provided for in clause (vii)) to the extent disclosed in writing (and in detail and with support reasonably acceptable) to Agent, provided that (x) the aggregate amount added back to Consolidated Net Income pursuant to this clause (ix) with respect to any such charges incurred the period commencing on July 1, 2021 through December 31, 2021 shall not exceed $10,000,000 in the aggregate, (y) the aggregate amount added back to Consolidated Net Income pursuant to this clause (ix) with respect to any such charges incurred the period commencing on January 1, 2022 through December 31, 2022 shall not exceed $7,5000,000 in the aggregate, and (z) no amount shall be added back to Consolidated Net Income pursuant to the clause (ix) with respect to any such charges incurred after December 31, 2022;

(x) any aggregate net loss from the sale, exchange or other disposition of business units by the Borrower or its Subsidiaries,

(xi) any expenses or charge for such period to the extent covered by, and solely to the extent actually reimbursed in cash by, insurance (to the extent not otherwise included in Consolidated Net Income);

(xii) pro forma "run rate" cost savings, operating expense reductions, operating synergies, and operating improvements, cost savings initiatives and other similar initiatives and actions resulting from or relating to or taken in connection with any Acquisition consummated in accordance with the terms of this Agreement, in each case, reasonably identifiable and factually supportable and projected by the Borrower, in good faith, to result from actions taken or with respect to which substantial steps have been taken within eighteen (18) months after the end of such Acquisition or Investment, mergers and other business combinations, Dispositions, cost savings initiatives and other similar initiatives and actions (calculated on a pro forma basis as though such cost savings, operating expense reductions, operating synergies and operative improvements were realizing during the entirety of such period), net of the amount of actual benefits realized during such period from such actions (all such adjustments, the "Cost Savings Adjustments") but only if and to the extent that Agent in its Permitted Discretion shall be satisfied with the projections and supporting data regarding such proposed Cost Saving Adjustments and shall approve the proposed amount of such Cost Saving Projections; provided that no Cost Savings Adjustments shall be added back pursuant to this clause (xii) to the extent duplicative of any expenses or charges otherwise added back to EBITDA, whether through a pro forma adjustment or otherwise, for such period; provided, further, that without limiting the generality of Agent's discretion under this clause (xii), the aggregate amount of Cost Savings Adjustments added back pursuant to this clause (xii) for any four consecutive fiscal quarter period shall not exceed twenty percent (20%) of EBITDA for such period (calculated prior to giving effect to the addback of such Cost Savings Adjustments);

provided, that, to the extent that all or any portion of the income or gains of any Person is deducted pursuant to any of clauses (c)(iv) and (v) below for a given period, any amounts set forth in any of the preceding clauses (b)(i) through (b)(xii) that are attributable to such Person shall not be included for purposes of this clause (b) for such period,

minus

(c) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income but without duplication,

(i) any credit for income tax,

(ii) non-cash interest income,

(iii) any other non-cash gains or other items which have been added in determining Consolidated Net Income (other than any such gain or other item that has been deducted in determining EBITDA for a prior period) including, for the avoidance of doubt, any non-cash gains relating to pension or benefits plans of the Loan Parties and their Subsidiaries, including mark-to-market adjustments,

(iv) the income of any Subsidiary or Joint Venture to the extent that the declaration or payment of dividends or similar distributions or transfers or loans by such Subsidiary or Joint Venture, as applicable, of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, statute, rule or governmental regulation applicable to such Subsidiary or Joint Venture, as applicable,

(v) the income of any Person (other than a Subsidiary) in which any other Person (other than the Borrower or a Wholly-Owned Subsidiary or any director holding qualifying shares in accordance with applicable law) has an interest, except to the extent of the amount of dividends or other distributions or transfers or loans actually paid to the Borrower or a Wholly-Owned Subsidiary by such Person during such period,

(vi) any aggregate net gain from the sale, exchange or other disposition of business units by the Borrower or its Subsidiaries,

(vii) unrealized foreign exchange gains of the Borrower and its Subsidiaries resulting from the impact of foreign currency changes on the valuation of assets and liabilities, and

(viii) any income on account of any settlement of or payment in respect of any property or casualty insurance claim of Parent or any Subsidiary or professional liability insurance claims of Parent or any Subsidiary or any taking or condemnation proceeding relating to any asset of the Borrower or any Subsidiary.

For any period of measurement that includes any Permitted Acquisition or any sale, exchange or disposition of any Subsidiary or business unit of the Borrower or any Subsidiary, EBITDA (and the relevant elements thereof) shall be computed on a *pro forma* basis for each such transaction as if it occurred on the first day of the period of measurement thereof, so long as the Borrower provides to the Agent reasonably acceptable to Agent in its reasonable discretion reconciliations and other detailed information relating to adjustments to the relevant financial statements (including copies of financial statements of the acquired Person or assets in any Permitted Acquisition) used in computing EBITDA (and the relevant elements thereof) sufficient to demonstrate such *pro forma* calculations in reasonable detail.

For certain purposes hereunder where pre-Closing Date EBITDA is necessary, EBITDA for Loan Parties on a Consolidated Basis shall be deemed to be (i) $15,020,746, $7,989,027, $16,309,570 and $25,355,808, respectively for the single fiscal quarters ended June 30, 2021, March 31, 2021, December 31, 2020 and September 30, 2020; provided, that, upon delivery of the quarterly financial statements and Compliance Certificate for the fiscal quarter ended June 30, 2021, EBITDA for Loan Parties on a Consolidated Basis for the fiscal quarter ended June 30, 2021 shall be determined based upon such financial statements and Compliance Certificate.

"Effective Date" shall mean the date indicated in a document or agreement to be the date on which such document or agreement becomes effective, or, if there is no such indication, the date of execution of such document or agreement.

"Effective Federal Funds Rate" means for any day the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1% announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Effective Federal Funds Rate" as of the date of this Agreement; provided that if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the "Effective Federal Funds Rate" for such day shall be the Effective Federal Funds Rate for the last day on which such rate was announced. Notwithstanding the foregoing, if the Effective Federal Funds Rate as determined under any method above would be less than zero percent (0.00%), such rate shall be deemed to be zero percent (0.00%) for purposes of this Agreement.

"Eligibility Date" shall mean, with respect to each Loan Party and each Swap, the date on which this Agreement or any Other Document becomes effective with respect to such Swap (for the avoidance of doubt, the Eligibility Date shall be the Effective Date of such Swap if this Agreement or any Other Document is then in effect with respect to such Loan Party, and otherwise it shall be the Effective Date of this Agreement and/or such Other Document(s) to which such Loan Party is a party).

"Eligible Cash" shall mean cash denominated in Dollars belonging to one or more Loan Parties that is held in a blocked deposit account or securities account maintained with Agent or an Affiliate of Agent designated by Loan Parties to Agent in writing (which may be done by email) as an account that will be used solely for the purpose of holding Eligible Cash and which, if Agent shall so request in its sole discretion, which is subject to a Control Agreement which provides that Agent shall, at all time, have the sole control over and right to give instructions with respect to the withdrawal of funds and/or disposition of investment property and financial assets from and other matters with respect to such account (any such account so designated, an "Eligible Cash Account"). As of the Closing Date, Loan Parties have not designated any account as an Eligible Cash Account.

"Eligible Contract Participant" shall mean an "eligible contract participant" as defined in the CEA and regulations thereunder.

"Eligible Inventory" shall mean and include Inventory of a Borrowing Base Entity consisting of finished goods, valued at the lower of cost or market value, determined on a first-in-first-out basis, which Agent, in its Permitted Discretion, shall not deem ineligible Inventory based on such considerations as Agent may from time to time deem appropriate. In addition, Inventory shall not be Eligible Inventory if it:

(a) consists of work in process, raw materials, or packaging;

(b) is, as determined in Agent's Permitted Discretion, obsolete, slow moving or unmerchantable;

(c) is not subject to a perfected, first priority Lien in favor of Agent or is subject to any other Liens (other than a Permitted Encumbrance of the type described in any of clause (a), (b), (e), or (f) of the definition of Permitted Encumbrance);

(d) does not conform to all standards imposed by any Governmental Body which has regulatory authority over such goods or the use or sale thereof;

(e) constitutes Consigned Inventory;

(f) is the subject of an Intellectual Property Claim;

(g) is subject to a License Agreement that limits, conditions or restricts the applicable Borrowing Base Entity's or Agent's right to sell or otherwise dispose of such Inventory, unless Agent is a party to a Licensor/Agent Agreement with the Licensor under such License Agreement (or Agent shall agree otherwise in its sole discretion after establishing Reserves against the Formula Amount with respect thereto as Agent shall deem appropriate in its sole discretion);

(h) is located in any jurisdiction other than the United States or a province or territory of Canada that has adopted the Personal Property Security Act or at a location that is not otherwise in compliance with this Agreement;

(i) is Foreign In-Transit Inventory or in-transit within the United States (provided that this clause (i) shall not apply with respect to any Inventory that is in-transit within the United States from one location of Loan Parties to another location of Loan Parties so long as such Inventory is being transported either (x) by Loan Parties using their own rolling stock or (y) by a common carrier on behalf of Loan Parties and a Borrowing Base Entity has taken title to such Inventory, such Borrowing Base Entity is listed as the shipper on the documents of title with respect to such Inventory, and such Inventory is covered by Loan Parties' property and casualty insurance policies conforming to the requirements hereunder);

(j) is situated at a location not owned by Loan Parties or owned by Loan Parties but subject to any senior mortgage (other than a mortgage in favor of Agent or Reimbursement/Cash Collateral Agent) or is in the possession or under the control of a Person other than a Loan Party unless applicable Landlord/Bailee has executed in favor of Agent a Lien Waiver Agreement (or Agent shall agree otherwise in its sole discretion after establishing Reserves against the Formula Amount with respect thereto in an amount equal to three (3) months' rent on any such location that is not owned by Loan Parties or as Agent shall otherwise deem appropriate in its Permitted Discretion with regard to any location owned by the Loan Parties); or

(k) if the sale of such Inventory would result in an ineligible Receivable.

"Eligible Line of Business" shall have the meaning set forth in Section 5.20(a) hereof.

"Eligible Receivables" shall mean and include, each Receivable of a Borrowing Base Entity denominated in Dollars or Canadian Dollars arising in the Ordinary Course of Business and which Agent, in its Permitted Discretion, shall deem to be an Eligible Receivable, based on such considerations as Agent may from time to time deem appropriate. In addition, no Receivable shall be an Eligible Receivable if:

(a) such Receivable arises out of a sale made by any Borrowing Base Entity to an Affiliate of any Company or to a Person controlled by an Affiliate of any Company;

(b) it is subject to a factoring arrangement;

(c) arises out of contract or arrangement between the applicable Borrowing Base Entity and Customer where Borrowing Base Entity's performance under such contract or arrangement is supported by a Performance Guarantee or is subject to any Permitted Encumbrance of the type described in clause (c) of that definition,

(d) such Receivable is due or unpaid more than 90 days after the original invoice date or 60 days after the original due date; provided that, notwithstanding the foregoing, at any time following the completion of the first Field Examination conducted after the Closing Date by Agent, upon request of Borrowers, Agent may, in its Permitted Discretion and on a Customer-by-Customer basis, allow Receivables owing from a Customer to which Borrowing Base Entities provide extended payment terms in the Ordinary Course of Business consistent with Borrowing Base Entities' past business practices to remain Eligible Receivables notwithstanding the otherwise applicable provisions of this clause (d) so long as each such Receivable is not due or unpaid more than 120 days after the original invoice date or 60 days after the original due date;

(e) such Receivable is due from a Customer with respect to which 50% or more of the Receivables owing from such Customers to Borrowing Base Entities are not deemed Eligible Receivables hereunder as a result of the application of the provisions of clause (d) of this definition;

(f) such Receivable is not subject to Agent's first priority perfected Lien or is subject to any other Liens (other than a Permitted Encumbrance of the type described in any of clause (a), (b), or (e) of the definition of Permitted Encumbrance);

(g) any covenant, representation or warranty set forth in this Agreement with respect to such Receivable has been breached;

(h) such Receivable is due from a Customer with respect to which an Insolvency Event shall have occurred;

(i) the sale giving rise to such Receivable is to a Customer outside the United States of America or Canada, unless such sale is on letter of credit, guaranty or acceptance terms, in each case acceptable to Agent in its Permitted Discretion (including approval by Agent of the bank or financial institution issuing such Letter of Credit in accordance with Agent's institutional procedures);

(j) the sale giving rise to such Receivable is on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or any other repurchase or return basis or is evidenced by chattel paper;

(k) Agent believes, in its Permitted Discretion, that collection of such Receivable is insecure or that such Receivable may not be paid by reason of the Customer's financial inability to pay;

(l) such Receivable is due from a Customer which is (x) the United States of America or any state or territory within the United States, or any department, agency or instrumentality of any of them, unless the applicable Borrowing Base Entity assigns its right to payment of such Receivable to Agent pursuant to the Assignment of Claims Act of 1940, as amended (31 U.S.C. Sub-Section 3727 et seq. and 41 U.S.C. Sub-Section 15 et seq.) and/or has otherwise complied with all other applicable United States federal or state statutes or ordinances, or (y) the federal government of Canada or any province or territory of Canada, or any department, agency or instrumentality of any of them, unless the applicable Borrowing Base Entity assigns its right to payment of such Receivable to Agent pursuant to all applicable Canadian federal and/or provincial/territorial statutes or ordinances;

(m) the goods giving rise to such Receivable have not been delivered to and accepted by the Customer, the services giving rise to such Receivable have not been performed by the applicable Borrowing Base Entity and accepted by the Customer or such Receivable otherwise does not represent a final sale;

(n) the Receivable is subject to any offset, deduction, defense, dispute, credits or counterclaim or the Receivable is contingent in any respect or for any reason (including if the Customer is also a creditor or supplier of a Company) (but such Receivable shall only be ineligible to the extent of such offset, deduction, defense, counterclaim or contingency);

(o) the applicable Borrowing Base Entity has made any agreement with any Customer for any deduction therefrom, except for discounts or allowances made in the Ordinary Course of Business for prompt payment, all of which discounts or allowances are reflected in the calculation of the face value of each respective invoice related thereto;

(p) any return, rejection or repossession of the merchandise the sale of which gave rise to such Receivable has occurred or the rendition of services giving rise to such Receivable has been disputed;

(q) such Receivable is not payable to a Borrowing Base Entity;

(r) such Receivable is a Supply Chain Purchased Receivable (provided that, any Receivable owing from any Approved Supply Chain Customer included in the Formula Amount prior to the time such Receivable becomes a Supply Chain Purchased Receivable shall be reported by Borrowers on any Borrowing Base Certificate and included in the Formula Amount only to the extent of the purchase price that would be payable by the applicable Supply Chain Receivables Buyer with respect to such Receivable under the applicable Supply Chain Agreement (taking into account any applicable discount applicable to such purchase price provided for under the Supply Chain Agreement that is not already reflected on the face of the invoice for such Receivable));

(s) such Receivable is not evidenced by an invoice or other documentary evidence satisfactory to Agent; or

(t) such Receivable is not otherwise satisfactory to Agent as determined by Agent in its Permitted Discretion.

"Embargoed Property" means any property (a) in which a Sanctioned Person holds an interest; (b) beneficially owned, directly or indirectly, by a Sanctioned Person; (c) that is due to or from a Sanctioned Person; (d) that is located in a Sanctioned Jurisdiction; or (e) that would otherwise cause any actual or possible violation by the Lenders or Agent of any applicable Anti-Terrorism Law if the Lenders were to obtain an encumbrance on, lien on, pledge of or security interest in such property or provide services in consideration of such property.

"Environmental Complaint" shall have the meaning set forth in Section 9.3(b) hereof.

"Environmental Laws" shall mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation Laws relating to the protection of the environment, human health and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state, international and local governmental agencies and authorities with respect thereto.

"Equity Interests" shall mean, with respect to any Person, any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, member interests, participation or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act), including in each case all of the following rights relating to such Equity Interests, whether arising under the Organizational Documents of the Person issuing such Equity Interests (the "issuer") or under the applicable Laws of such issuer's jurisdiction of organization relating to the formation, existence and governance of corporations, limited liability companies or partnerships or business trusts or other legal entities, as the case may be (all of the following rights, as to any applicable Equity Interests, the "Related Equity Interest Rights"): (i) all economic rights (including all rights to receive dividends and distributions) relating to such Equity Interests; (ii) all voting rights and rights to consent to any particular action(s) by the applicable issuer; (iii) all management rights with respect to such issuer; (iv) in the case of any Equity Interests consisting of a general partner interest in a partnership, all powers and rights as a general partner with respect to the management, operations and control of the business and affairs of the applicable issuer; (v) in the case of any Equity Interests consisting of the membership/limited liability company interests of a managing member in a limited liability company, all powers and rights as a managing member with respect to the management, operations and control of the business and affairs of the applicable issuer; (vi) all rights to designate or appoint or vote for or remove any officers, directors, manager(s), general partner(s) or managing member(s) of such issuer and/or any members of any board of members/managers/partners/directors that may at any time have any rights to manage and direct the business and affairs of the applicable issuer under its Organizational Documents as in effect from time to time or under Applicable Law; (vii) all rights to amend the Organizational Documents of such issuer, (viii) in the case of any Equity Interests in a partnership or limited liability company, the status of the holder of such Equity Interests as a "partner", general or limited, or "member" (as applicable) under the applicable Organizational Documents and/or Applicable Law; and (ix) all certificates evidencing such Equity Interests.

"Equity Interest Equivalents" means all securities convertible into or exchangeable for Equity Interests and all warrants, options or other rights to purchase or subscribe for any Equity Interests, whether or not presently convertible, exchangeable or exercisable.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended or supplemented from time to time and the rules and regulations promulgated thereunder.

"Erroneous Payment" has the meaning assigned to it in Section 14.14(a).

"Erroneous Payment Deficiency Assignment" has the meaning assigned to it in Section 14.14(d).

"Erroneous Payment Impacted Class" has the meaning assigned to it in Section 14.14(d).

"Erroneous Payment Return Deficiency" has the meaning assigned to it in Section 14.14(d).

"Erroneous Payment Subrogation Rights" has the meaning assigned to it in Section 14.14(d).

"Event of Default" shall have the meaning set forth in Article X hereof.

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

"Exchange Rate" shall mean, with respect to any calculation of the Dollar Equivalent of any amount denominated in any currency other than Dollars on any date of determination (including the Maximum Undrawn Amount of any Foreign Currency Letter of Credit outstanding on such date of determination), the prevailing spot rate of exchange for the conversion of such other currency into Dollars as determined by Agent's foreign exchange department (in the exercise of its ordinary business practices regarding foreign currency exchange for customers of the Agent similarly situated to Borrowers) as of the close of business for Agent's foreign exchange department on the Business Day immediately preceding such date of determination; provided that, notwithstanding the foregoing, in the context of (x) any actual conversion by Agent or any Lender of any funds received by Agent or any Lender (whether as a payment made by any Loan Party or the proceeds of any Collateral (including any collections on any Receivable received by Agent or any Lender)) from one currency to another for the purpose of applying such funds to the Obligations in accordance with the terms of this Agreement, "Exchange Rate" means the spot-buying or spot-selling (as the case may be) rate of exchange at which Agent or such Lender is actually able to exchange the one currency for the other in the exercise of its ordinary business practices regarding foreign currency exchange at the time of such actual conversion, or (y) any actual conversion by Agent or any Lender of the proceeds of any Revolving Advance or Participation Advance made in Dollars for purposes of satisfying any Reimbursement Obligation to Issuer and/or repayment of any Letter of Credit Borrowing in connection with any Foreign Currency Letter of Credit (and/or the determination of the Dollar Equivalent amount of such Reimbursement Obligation and/or any Letter of Credit Borrowing with respect to such Reimbursement Obligation and/or the determination of the amount in Dollars of any Revolving Advance and/or Participation Advance needed/necessary/to be advanced to satisfy any such Reimbursement Obligation and/or Letter of Credit Borrowing), "Exchange Rate" means the spot-buying or spot-selling (as the case may be) rate of exchange at which Agent or such Lender is actually able to exchange Dollars for the currency in which such Foreign Currency Letter of Credit is denominated in the exercise of its ordinary business practices regarding foreign currency exchange at the time of the actual satisfaction of such Reimbursement Obligation and/or Letter of Credit Borrowing and/or of the making of the applicable Revolving Advance and/or Participation Advance to satisfy such Reimbursement Obligation and/or Letter of Credit Borrowing, as applicable.

"Excluded Deposit Account" means (a) any deposit account that is used solely for payment of taxes, payroll, bonuses, other compensation and related expenses, in each case, for employees or former employees, (b) fiduciary or trust accounts, (c) zero-balance accounts, so long as the balance in such account is zero at the end of each Business Day and (d) any other deposit account with an average daily balance on deposit not exceeding $100,000 individually or $500,000 in the aggregate for all such accounts excluded pursuant to this clause (d).

"Excluded Hedge Liability or Liabilities" shall mean, with respect to each Loan Party, each of its Swap Obligations if, and only to the extent that, all or any portion of this Agreement or any Other Document that relates to such Swap Obligation is or becomes illegal under the CEA, or any rule, regulation or order of the CFTC, solely by virtue of such Loan Party's failure to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap. Notwithstanding anything to the contrary contained in the foregoing or any other provision of this Agreement or any Other Document, the foregoing is subject to the following provisos: (a) if a Swap Obligation arises under a master agreement governing more than one Swap, this definition 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 under the CEA, or any rule, regulations or order of the CFTC, solely as a result of the failure by such Loan Party for any reason to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap; (b) if a guarantee of a Swap Obligation would cause such obligation to be an Excluded Hedge Liability but the grant of a security interest would not cause such obligation to be an Excluded Hedge Liability, such Swap Obligation shall constitute an Excluded Hedge Liability for purposes of the guaranty but not for purposes of the grant of the security interest; and (c) if there is more than one Loan Party executing this Agreement or the Other Documents and a Swap Obligation would be an Excluded Hedge Liability with respect to one or more of such Loan Parties, but not all of them, the definition of "Excluded Hedge Liability or Liabilities" with respect to each such Loan Party shall only be deemed applicable to (i) the particular Swap Obligations that constitute Excluded Hedge Liabilities with respect to such Loan Party, and (ii) the particular Loan Party with respect to which such Swap Obligations constitute Excluded Hedge Liabilities.

"Excluded Property" shall mean (i) any asset of any Loan Party that shall be deemed environmental waste or an environmental hazard under any Applicable Law, (ii) any real property other than Material Real Property, (iii) any lease, license, contract or agreement to which any Loan Party is a party, and any of its rights or interests thereunder, if and to the extent that a security interest therein is prohibited by or in violation of (x) any Applicable Law, or (y) a term, provision or condition of any such lease, license, contract or agreement (unless in each case, such Applicable Law, term, provision or condition would be rendered ineffective with respect to the creation of such security interest pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law or principles of equity), provided, however, that the foregoing shall cease to be treated as "Excluded Property" (and shall constitute Collateral) immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, such security interest shall attach immediately to any portion of such lease, license, contract or agreement not subject to the prohibitions specified in (x) or (y) above, and provided, further the foregoing exclusion shall in no way be construed any time so as to limit, impair or otherwise affect Agent's unconditional continuing security interest in and liens upon, and Excluded Property shall not include, any rights or interests of a Loan Party in or to the proceeds of, or any monies due or to become due under, any such license, contract or agreement, (iv) cash used to cash collateralize existing letters of credit under the Existing BAML Credit Facility during the period of time such cash is used as cash collateral, (v) any intent-to-use United States trademark applications for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051(c) or 15 U.S.C. § 1051(d), respectively, or if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a) or examined and accepted, respectively, by the United States Patent and Trademark Office, provided that that the foregoing (and all goodwill of the businesses of the applicable Loan Parties associated therewith) shall cease to be treated as "Excluded Property" (and shall constitute Collateral) immediately upon such amendment filing and acceptance, and provided, further the foregoing exclusion shall in no way be construed at any time as to limit, impair or otherwise affect Agent's unconditional continuing security interest in and liens upon, and Excluded Property shall not include, any rights or interests of a Loan Party in or to the proceeds of, or any Receivables due or to become due in connection with, any such intent-to-use United States trademark applications (and all goodwill of the businesses of the applicable Loan Parties associated therewith), (vi) any property to the extent that such grant of a security interest is prohibited by a Governmental Body, or requires a consent not obtained of any Governmental Body; (vii) assets subject to capital leases and/or purchase money financing to the extent such capital leases and/or purchase money financing are permitted to be outstanding pursuant to this Agreement and to the extent that the operative lease and/or financing documents for such capital leases and/or purchase money financing prohibit the granting and/or existing of Liens in favor of Agent on such assets (but assets described in this clause (vii) shall only be Excluded Property until such time as such capital lease and/or purchase money financing is paid in full, at which time such assets shall automatically become part of the Collateral and subject to the security interests created in favor of Agent hereunder and under the Other Documents), and (viii) vehicles, trailers and other goods subject to certificate of title laws in any applicable jurisdiction(s) that do not constitute rolling stock.

"Excluded Taxes" shall mean the following Taxes imposed on or with respect to Agent, any Lender, Participant, Swing Loan Lender, or Issuer or required to be deducted or withheld from any payment to be made by or on account of any Obligations of any Company to any Lender, Swing Loan Lender, or Issuer, (a) taxes imposed on or measured by its overall net income (however denominated), branch profits tax, and franchise taxes imposed on it (in lieu of net income taxes), in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office or, in the case of any Lender, Participant, Swing Loan Lender or Issuer, in which its applicable lending office is located, or (ii) that are Other Connection Taxes, (b) in the case of a Foreign Lender or Participant, any U.S. federal withholding tax that is imposed on amounts payable to such Foreign Lender or Participant at the time such Foreign Lender or Participant becomes a party hereto (other than pursuant to an assignment made pursuant to Section 3.11) or, in the case of a Foreign Lender, designates a new lending office, except to the extent that such Foreign Lender or Participant (or its assignor or seller of a participation, if any) was entitled, at the time of designation of a new lending office in the case of such Lender (or assignment or sale of a participation), to receive additional amounts with respect to such withholding tax pursuant to Section 3.10(a) hereof, (c) any withholding tax attributable to any Foreign Lender's failure to comply with Section 3.10(e) hereof or (d) any withholding Taxes imposed under FATCA.

"Existing BAML Credit Facility" shall mean, collectively if applicable, the credit facility or facilities made available to Parent under that certain Amended and Restated Credit Agreement dated as of May 14, 2020, as amended, among Parent, as borrower, the lenders party thereto, and Bank of America, N.A., as administrative agent.

"Existing BAML Credit Facility Payoff Letter" shall have the meaning set forth in Section 8.1(j) hereof.

"Facility Fee" shall have the meaning set forth in Section 3.3(b) hereof.

"Fair Market Value" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party; provided that, for any determination of Fair Market Value in connection with an Disposition to be made pursuant to clause (o) of the definition of Permitted Dispositions in which the estimated fair market value of the properties disposed of in such Disposition exceeds $10,000,000, Loan Parties shall provide evidence reasonably satisfactory to Agent with respect to the calculation of such Fair Market Value.

"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 thereunder 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 Bodies entered into in connection with the implementation of such Sections of the Code.

"Federal Funds Effective Rate" shall mean, for any day, the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1%) calculated by the Federal Reserve Bank of New York (or any successor), based on such day's federal funds transactions by depositary institutions, as determined in such manner as such Federal Reserve Bank (or any successor) shall set forth on its public website from time to time, and as published on the next succeeding Business Day by such Federal Reserve Bank as the "Federal Funds Effective Rate"; provided that if such Federal Reserve Bank (or its successor) does not publish such rate on any day, the "Federal Funds Effective Rate" for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.

"Field Examination" shall mean, with respect to (x) any Loan Party, (y) any Subsidiary or Person acquired (or to be acquired) by any Loan Party that is required to become a Loan Party under the provisions of Section 7.12 hereof, or (z) any assets of any Person or line or business or division of a Peron acquired (or to be acquired) by any Loan Party (or Person that is required to become a Loan Party under the provisions of Section 7.12 hereof), a customary asset-based lender's field examination and audit of such Person and its business and assets and/or such assets conducted by Agent and its employees and/or any third party retained by Agent for such purpose providing a scope and detail acceptable to Agent in its Permitted Discretion.

"Field Examination Fees and Costs" shall have the meaning set forth in Section 3.4(b) hereof.

"Financial Covenant Debt" shall mean, for any Person, without duplication, Indebtedness of the type specified in clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (k), (l), and (m) (to the extent due and payable), in each case of the definition of "Indebtedness", and shall also include PBGC Secured Obligations to the extent in excess of $17,300,000, and, with respect to the Companies, also including (without duplication) the aggregate amount of the "Cash Collateral Advances" and the "Delayed Draw Term Loans" outstanding under the Reimbursement/Cash Collateral Facility Agreement. For the avoidance of doubt, the term "Financial Covenant Debt" shall not include (a) reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees and (b) Indebtedness of the Borrower or any Subsidiary of the Borrower that is owed to the Borrower or any Subsidiary of the Borrower.

"First-Tier Foreign Subsidiary" shall mean a Foreign Subsidiary whose Equity Interest is wholly owned directly by one or more Loan Parties.

"Fixed Charge Coverage Ratio" shall mean, with respect to Loan Parties on a Consolidated Basis for any applicable fiscal measurement period, the ratio of (a) the result of (i) EBITDA for such period, minus (ii) Unfunded Capital Expenditures made during such period, minus (iii) distributions and dividends (including any Permitted Tax Distributions and Permitted Restricted Payments described in clauses (f) and (g) of the definition of such term (but for the avoidance of doubt, not including any Permitted Restricted Payments described in clause (h) of the definition of such term)) made during such period, minus (iv) cash taxes paid during such period, to (b) the amount of all Debt Payments for such period.

"Flood Laws" shall mean all Applicable Laws relating to policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and other Applicable Laws related thereto.

"Flood Requirement Standards" means, with respect to any parcel of owned Real Property to be subject to a Mortgage, (a) the delivery to Agent of a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each such parcel of owned real property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the applicable Loan Party relating to such parcel of owned Real Property), (b) maintenance, if available, of fully paid flood hazard insurance on all such owned Real Property that is located in a special flood hazard area from such providers and on such terms and in such amounts as required by Flood Disaster Protection Act, The National Flood Insurance Reform Act of 1994 or as otherwise reasonably required by Agent and (c) delivery to Agent of evidence of such compliance in form and substance reasonably acceptable to Agent.

"Foreign Currency Hedge" shall mean any foreign exchange transaction, including spot and forward foreign currency purchases and sales, listed or over-the-counter options on foreign currencies, non-deliverable forwards and options, foreign currency swap agreements, currency exchange rate price hedging arrangements, and any other similar transaction providing for the purchase of one currency in exchange for the sale of another currency entered into by any Loan Party and/or any of their respective Subsidiaries.

"Foreign Currency Hedge Liabilities" shall mean the indebtedness, obligations, and liabilities of the Loan Parties and their Subsidiaries owing to the provider of a Foreign Currency Hedge (including any applicable Post-Petition Obligations). For purposes of this Agreement and all of the Other Documents, all Foreign Currency Hedge Liabilities of any Loan Party or Subsidiary that is party to any Lender-Provided Foreign Currency Hedge shall, for purposes of this Agreement and all of the Other Documents, be "Obligations" of such Person and of each other Loan Party, be guaranteed obligations under any Guaranty and secured obligations under any Guarantor Security Agreement, as applicable, and otherwise treated as Obligations for purposes of the Other Documents, except to the extent constituting Excluded Hedge Liabilities of such Person. The Liens securing the Foreign Currency Hedge Liabilities shall be pari passu with the Liens securing all other Obligations under this Agreement and the Other Documents, subject to the express provisions of Section 11.5 hereof.

"Foreign Currency Letter of Credit" shall have the meaning set forth in Section 2.11(a) hereof.

"Foreign In-Transit Inventory" shall mean Inventory of a Borrower that is in transit from a location outside the United States to any location within the United States of such Borrower or a Customer of such Borrower.

"Foreign Lender" shall mean any Lender that is organized under the Laws of a jurisdiction other than that in which Loan Parties are resident for tax purposes. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Subsidiary" shall mean any Subsidiary of any Person that is not organized or incorporated in the United States, any state or territory thereof, or the District of Columbia; provided that, any Subsidiary of Parent that is a Loan Party shall not, except as otherwise expressly provided for herein or in any Other Document, constitute a Foreign Subsidiary.

"Formula Amount" shall have the meaning set forth in Section 2.1(a) hereof.

"Fund" shall mean any Person that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" shall mean generally accepted accounting principles in the United States of America in effect from time to time.

"Governmental Acts" shall mean any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Body.

"Governmental Body" shall mean any nation or government, any state or other political subdivision thereof or any entity, authority, agency, division or department exercising the executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to a government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

"Guaranteed Obligations" shall have the meaning set forth in Section 17.1 hereof.

"Guarantor" shall have the meaning set forth in the preamble to this Agreement and shall extend to each Person which may hereafter guarantee payment or performance of the whole or any part of the Obligations, and shall also extend to all successors and permitted and assigns of such Persons, and "Guarantors" shall mean collectively all such Persons.

"Guarantor Security Agreement" shall mean any security agreement executed by any Guarantor in favor of Agent securing the Obligations or the Guaranty of such Guarantor, in form and substance satisfactory to Agent, including with respect to Guarantors that are parties hereto, the provisions of Article IV of this Agreement; as each may be amended, modified, supplemented, renewed, restated, or replaced from time to time.

"Guaranty" shall mean any guaranty of the Obligations executed by a Guarantor in favor of Agent for its benefit and for the ratable benefit of Lenders, in form and substance satisfactory to Agent, including, with respect to Guarantors that are parties hereto, the provisions of Article XVII hereof.

"Guaranty Obligation" means, as applied to any Person, without duplication, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Indebtedness of another Person, if the purpose of such Person in incurring such liability is to provide assurance to the obligee of such Indebtedness that such Indebtedness will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of Indebtedness of another Person and (b) any liability of such Person for Indebtedness of another Person through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such Indebtedness or any security therefor, or to provide funds for the payment or discharge of such Indebtedness (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another Person, (iii) to make take-or-pay or similar payments, regardless of non-performance by any other party or parties to an agreement, (iv) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss or (v) to supply funds to, or in any other manner invest in, such other Person (including to pay for property or services irrespective of whether such property is received or such services are rendered), if (and only if) in the case of any agreement described under clause (b)(i), (ii), (iii), (iv) or (v) above the primary purpose or intent thereof is to provide assurance to the obligee of Indebtedness of any other Person that such Indebtedness will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof. The amount of any Guaranty Obligation shall be equal to the amount of the Indebtedness so guaranteed or otherwise supported or, if such amount is not stated or otherwise determinable, the maximum reasonable anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. For the avoidance of doubt, the term "Guaranty Obligation" shall not include reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees.

"Hazardous Discharge" shall have the meaning set forth in Section 9.3(b) hereof.

"Hazardous Materials" shall mean any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, Hazardous Wastes, hazardous or Toxic Substances or related materials as defined in or subject to regulation under Environmental Laws.

"Hazardous Wastes" shall mean all waste materials subject to regulation under CERCLA, RCRA or applicable state law, and any other applicable Federal and state laws now in force or hereafter enacted relating to hazardous waste disposal.

"Hedge Liabilities" shall mean collectively, the Foreign Currency Hedge Liabilities and the Interest Rate Hedge Liabilities.

"Indebtedness" shall mean, without duplication, as to any Person at any time, any and all indebtedness, obligations or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) of such Person for or in respect of: (a) borrowed money; (b) amounts received under or liabilities in respect of any note purchase or acceptance credit facility, and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments; (c) all matured reimbursement obligations with respect to letters of credit, bankers' acceptances, surety bonds, performance bonds, bank guarantees, and other similar obligations; (d) all other obligations with respect to letters of credit, bankers' acceptances, surety bonds, performance bonds, bank guarantees and other similar obligations, whether or not matured, other than unmatured or undrawn, as applicable, obligations with respect to Performance Guarantees, (e) all indebtedness for the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business that are not overdue by more than 90 days or are being disputed in good faith, (f) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement (other than operating leases) with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (g) all Capitalized Lease Obligations of such Person, (h) all Guaranty Obligations of such Person, (i) all Disqualified Equity Interests (and all obligations and liabilities of such Person with respect thereto), (j) obligations under any Interest Rate Hedge, Foreign Currency Hedge, or other interest rate management device, foreign currency exchange agreement, currency swap agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement; (k) any other advances of credit made to or on behalf of such Person or other transaction (including forward sale or purchase agreements and conditional sales agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements including to finance the purchase price of property or services; (l) all indebtedness, obligations or liabilities secured by a Lien on any asset of such Person, whether or not such indebtedness, obligations or liabilities are otherwise an obligation of such Person; (m) all obligations of such Person for "earnouts" (to the extent due and payable), purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts; (n) off-balance sheet liabilities and/or pension plan liabilities of such Person; (o) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business;.

"Indemnified Taxes" shall mean Taxes other than Excluded Taxes.

"Ineligible Security(ies)" shall mean any security which may not be underwritten or dealt in by member banks of the Federal Reserve System under Section 16 of the Banking Act of 1933 (12 U.S.C. Section 24, Seventh), as amended.

"Initial Field Exam" shall mean the initial Field Examination with respect to Loan Parties performed for Agent by Hilco prior to the Closing Date.

"Initial Inventory Appraisal" shall mean shall mean the initial Field Examination with respect to Loan Parties performed for Agent by Hilco prior to the Closing Date.

"Insolvency Event" shall mean, with respect to any Person, including without limitation any Lender, such Person or such Person's direct or indirect parent company (a) becomes the subject of an Insolvency Proceeding (including any proceeding under the Bankruptcy Code), or regulatory restrictions, (b) has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it or has called a meeting of its creditors, (c) admits in writing its inability, or be generally unable, to pay its debts as they become due or ceases operations of its present business, (d) with respect to a Lender, such Lender is unable to perform hereunder due to the application of Applicable Law, or (e) in the good faith determination of Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment of a type described in clauses (a) or (b), provided that an Insolvency Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person or such Person's direct or indirect parent company by a Governmental Body or instrumentality thereof if, and only if, such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Body or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Insolvency Law" shall mean as applicable, (a) the Bankruptcy Code and (b) any other federal, state, provincial or foreign Law regarding insolvency or bankruptcy or for the relief or reorganization or administration or receivership or liquidation of debtors and/or their assets or liabilities or affecting creditors' rights generally.

"Insolvency Proceeding" shall mean (a) any voluntary or involuntary case, receivership, administration, liquidation, or other similar case or proceedings under any Insolvency Law (whether or not of an interim nature) with respect to any Person or with respect to a material portion of its assets, (b) any liquidation, dissolution, or winding up of any Person whether voluntary or involuntary and whether or not involving any Insolvency Law or (c) any assignment for the benefit of any creditors or any other marshaling of assets or liabilities of any Person.

"Intellectual Property" shall mean property constituting a patent, copyright, trademark (or any application in respect of the foregoing), service mark, trade name, mask work, trade secrets, design right, assumed name or other intellectual property right arising under Applicable Law.

"Intellectual Property Collateral" shall mean all Collateral constituting Intellectual Property.

"Intellectual Property Claim" shall mean the assertion, by any means, by any Person of a claim that any Company's ownership, use, marketing, sale or distribution of any Inventory, equipment, Intellectual Property or other property or asset is violative of any ownership of or right to use any Intellectual Property of such Person.

"Intercompany Subordinated Debt Payment" means any payment or prepayment, whether required or optional, of principal, interest or other charges on or with respect to any Subordinated Debt of the Borrower or any Subsidiary of the Borrower, so long as (a) such Subordinated Debt is owed to the Borrower or a Subsidiary of the Borrower and (b) no Event of Default shall have occurred and be continuing.

"Intercreditor Agreement" shall mean that certain Intercreditor Agreement dated as of the Closing Date among Agent, PNC as the issuer under the Related L/C Facility Credit Agreement, and the Reimbursement/Cash Collateral Agent and acknowledged by Loan Parties, as such agreement may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Interest Expense" shall mean, for any Person for any period, total interest expense of such Person for such period, as determined in accordance with GAAP and including, in any event (without duplication for any period or any amount included in any prior period), (a) net costs under Interest Rate Hedges for such period, (b) all interest payments in respect of the Advances or any other Indebtedness for borrowed money paid or payable in cash by such Person during such period, (c) any commitment fee (including, in the case of Parent and its Subsidiaries, the Facility Fees hereunder) accrued, accreted or paid by such Person during such period, (d) any fees and other obligations (other than reimbursement obligations), including any fronting fees, with respect to letters of credit (including, in the case of Parent and its Subsidiaries, the Letter of Credit Fees hereunder and the Related L/C Facility Letter of Credit Fees) and bankers' acceptances (whether or not matured) accrued, accreted or paid by such Person for such period, (e) any facility fee accrued, accreted or paid by such Person during such period, (f) fees and costs for Performance Guarantees (including, for the avoidance of doubt, bilateral bank guarantees and surety bonds) accrued, accreted or paid by such Person during such period and (g) any fees, commissions, and charges not described in the foregoing clauses (a) through (f) paid or payable in cash hereunder or under the Related L/C Facility or under the Reimbursement/Cash Collateral Facility by such Person during such period. For purposes of the foregoing, interest expense shall (i) be determined after giving effect to any net payments made or received by Parent and its Subsidiaries with respect to Interest Rate Hedges, (ii) exclude interest expense accrued, accreted or paid by Parent and its Subsidiaries to each other, and (iii) exclude credits to interest expense resulting from capitalization of interest related to amounts that would be reflected as additions to property, plant or equipment on a consolidated balance sheet of Parent and its Subsidiaries prepared in conformity with GAAP.

"Interest Period" shall mean the period provided for any LIBOR Rate Loan pursuant to Section 2.2(b) hereof.

"Interest Rate Hedge" shall mean an interest rate exchange, collar, cap, swap, floor, adjustable strike cap, adjustable strike corridor, cross-currency swap or similar agreements entered into by any Loan Party or its Subsidiaries in order to provide protection to, or minimize the impact upon, such Loan Party and/or its Subsidiaries of increasing floating rates of interest applicable to Indebtedness.

"Interest Rate Hedge Liabilities" shall mean the indebtedness, obligations, and liabilities owing to the provider of any Interest Rate Hedge (including any applicable Post-Petition Obligations). For purposes of this Agreement and all of the Other Documents, all Interest Rate Hedge Liabilities of any Loan Party or Subsidiary that is party to any Lender-Provided Interest Rate Hedge shall be "Obligations" hereunder and under the Other Documents, except to the extent constituting Excluded Hedge Liabilities of such Person, and the Liens securing such Interest Rate Hedge Liabilities shall be pari passu with the Liens securing all other Obligations under this Agreement and the Other Documents, subject to the express provisions of Section 11.5 hereof.

"Inventory" shall mean and include as to each Person all of such Person's inventory (as defined in Article 9 of the Uniform Commercial Code) and all of such Person's goods, merchandise and other personal property, wherever located, to be furnished under any consignment arrangement, contract of service or held for sale or lease, all raw materials, work in process, finished goods and materials and supplies of any kind, nature or description which are or might be used or consumed in such Person's business or used in selling or furnishing such goods, merchandise and other personal property, and all Documents of such Person.

"Inventory Advance Rate" shall have the meaning set forth in Section 2.1(a)(y) hereof.

"Inventory Appraisal" shall mean, with respect to (x) any Borrowing Base Entity, (y) any Subsidiary or Person acquired (or to be acquired) by any Borrowing Base Entity that is going to become a Borrowing Base Entity under the provisions hereof, or (z) any assets of any Person or line or business or division of a Peron acquired (or to be acquired) by any Borrowing Base Entity (or Person that is going to become a Borrowing Base Entity under the provisions hereof), an appraisal of the value of such Person's Inventory, including the net orderly liquidation value thereof, performed by an independent appraiser of nationally-recognized reputable standing selected by Agent in its Permitted Discretion and providing a scope and detail acceptable to Agent in its Permitted Discretion.

"Inventory NOLV Advance Rate" shall have the meaning set forth in Section 2.1(a)(y) hereof.

"Investment" means, as to any Person, (a) any purchase or similar acquisition by such Person of (i) any Security issued by, (ii) a beneficial interest in any Security issued by, or (iii) any other equity ownership interest in, any other Person, (b) any purchase by such Person of all or substantially all of the assets of a business conducted by any other Person, or all or substantially all of the assets constituting what is known to the Borrower to be the business of a division, branch or other unit operation of any other Person, (c) any loan, advance (other than deposits with financial institutions available for withdrawal on demand, prepaid expenses, accounts receivable and similar items made or incurred in the ordinary course of business) or capital contribution by such Person to any other Person, including all Indebtedness of any other Person to such Person arising from a sale of property by such Person other than in the ordinary course of its business and (d) any Guaranty Obligation incurred by such Person in respect of Indebtedness of any other Person. For the avoidance of doubt, the term "Investment" shall not include reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees.

"Investment Property" shall mean and include, with respect to any Person, all of such Person's now owned or hereafter acquired securities (whether certificated or uncertificated), securities entitlements, securities accounts, commodities contracts and commodities accounts, and any other asset or right that would constitute "investment property" under the Uniform Commercial Code.

"Issuer" shall mean (a) Agent in its capacity as issuer of Letters of Credit under this Agreement and (b) any other Lender which Agent in its discretion shall designate as an Issuer of and cause to issue any particular Letter of Credit under this Agreement in place of Agent as issuer.

"Joint Venture" means any Person (a) in which Parent, directly or indirectly, owns any Equity Interests or Equity Interests of such Person and (b) that is not a Subsidiary of the Borrower, provided that (i) Agent, on behalf of the Secured Parties, has a valid, perfected, first priority security interest in the Equity Interests and Equity Interests Equivalents in such joint venture owned directly by any Loan Party except where (x) the Constituent Documents of such joint venture prohibit such a security interest to be granted to the Administrative Agent or (y) such joint venture has incurred Indebtedness the terms of which either (A) require security interests in such Equity Interests and Equity Interests Equivalents to be granted to secure such Indebtedness or (B) prohibit such a security interest to be granted to Agent, and (ii) no Loan Party shall, whether pursuant to the Organizational Documents of such joint venture or otherwise, be under any obligation to make Investments or incur Guaranty Obligations after the Closing Date, or, if later, at the time of, or at any time after, the initial formation of such joint venture, that would be in violation of any provision of this Agreement.

"Landlord/Bailee" shall mean any Person (including any applicable landlord, warehouseman, logistics services provider, bailee, processor, or mortgagee) who (x) owns, operates, or occupies, or holds a senior mortgage with respect to, premises at which any Collateral may be located from time to time or (y) is otherwise in possession of or has control of or over any Collateral from time to time.

"Law(s)" shall mean any law(s) (including common law and equitable principles), constitution, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, code, release, ruling, order, executive order, injunction, writ, decree, bond judgment authorization or approval, lien or award of or any settlement arrangement, by agreement, consent or otherwise, with any Governmental Body, foreign or domestic.

"Leasehold Interests" shall mean all of each Loan Party's right, title and interest in and to, and as lessee of, the premises identified as leased Real Property on Schedule 4.4 hereto.

"Lender" and "Lenders" shall have the meanings given to such terms in the preamble to this Agreement and shall include all of the transferees, successor, and permitted assigns of each such Person in its capacity as a Lender under this Agreement. For purposes of any provision of this Agreement or any Other Document which provides for the granting of a security interest or other Lien to Agent for the benefit of Lenders as security for the Obligations, "Lenders" shall include any Affiliate of a Lender to which such Obligation (specifically including any Hedge Liabilities and any Cash Management Liabilities) is owed.

"Lender-Provided Foreign Currency Hedge" shall mean a Foreign Currency Hedge which is provided by any Lender or Agent, or any Affiliate of any Lender or Agent, and with respect to which such provider confirms to Agent in writing prior to the execution thereof that it: (a) is documented in a standard International Swap Dealers Association, Inc. Master Agreement or another reasonable and customary manner; (b) provides for the method of calculating the reimbursable amount of the provider's credit exposure in a reasonable and customary manner; and (c) is entered into for hedging (rather than speculative) purposes.

"Lender-Provided Interest Rate Hedge" shall mean an Interest Rate Hedge which is provided by any Lender or Agent, or any Affiliate of any Lender or Agent, and with respect to which such provider confirms to Agent in writing prior to the execution thereof that it: (a) is documented in a standard International Swap Dealers Association, Inc. Master Agreement or another reasonable and customary manner; (b) provides for the method of calculating the reimbursable amount of the provider's credit exposure in a reasonable and customary manner; and (c) is entered into for hedging (rather than speculative) purposes.

"Letter of Credit Application" shall have the meaning set forth in Section 2.12(a) hereof.

"Letter of Credit Borrowing" shall have the meaning set forth in Section 2.14(d) hereof.

"Letter of Credit Commitment Fees" shall have the meaning set forth in Section 3.2(a) hereof.

"Letter of Credit Default Rate" shall have the meaning set forth in Section 3.2(a) hereof.

"Letter of Credit Fees" shall have the meaning set forth in Section 3.2(a) hereof.

"Letter of Credit Issuer Fees" shall have the meaning set forth in Section 3.2(a) hereof.

"Letter of Credit Sublimit" shall mean $15,000,000.

"Letters of Credit" shall have the meaning set forth in Section 2.11 hereof.

"LIBOR Alternate Source" shall have the meaning set forth in the definition of "LIBOR Rate".

"LIBOR Rate" shall mean for any LIBOR Rate Loan for the then current Interest Period relating thereto, the interest rate per annum determined by Agent by dividing (the resulting quotient rounded upwards, if necessary, to the nearest 1/100th of 1% per annum) (a) the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by Agent as an authorized information vendor for the purpose of displaying rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market (a "LIBOR Alternate Source"), at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period as the London interbank offered rate for U.S. Dollars for an amount comparable to such LIBOR Rate Loan and having a borrowing date and a maturity comparable to such Interest Period (or (x) if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any LIBOR Alternate Source, a comparable replacement rate determined by Agent at such time (which determination shall be conclusive absent manifest error), (y) if the LIBOR Rate is unascertainable as set forth in Section 3.8.2(i) hereof, a comparable replacement rate determined in accordance with Section 3.8.2 hereof), by (b) a number equal to 1.00 minus the Reserve Percentage; provided, however, that if the LIBOR Rate determined as provided above would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. The LIBOR Rate shall be adjusted with respect to any LIBOR Rate Loan that is outstanding on the effective date of any change in the Reserve Percentage as of such effective date. Agent shall give reasonably prompt notice to the Borrowing Agent of the LIBOR Rate as determined or adjusted in accordance herewith, which determination shall be conclusive absent manifest error.

"LIBOR Rate Loan" shall mean any Advance that bears interest based on the LIBOR Rate.

"License Agreement" shall mean any agreement between any Company and a Licensor pursuant to which such Company is authorized to use any Intellectual Property in connection with the manufacturing, marketing, sale or other distribution of any Inventory of such Company or otherwise in connection with such Company's business operations.

"Licensor" shall mean any Person from whom any Company obtains the right to use (whether on an exclusive or non-exclusive basis) any Intellectual Property in connection with such Company's manufacture, marketing, sale or other distribution of any Inventory or otherwise in connection with such Company's business operations.

"Licensor/Agent Agreement" shall mean an agreement between Agent and a Licensor, in form and substance satisfactory to Agent, by which Agent is given the right, vis-a-vis such Licensor, to enforce Agent's Liens with respect to and to dispose of any Loan Party's Inventory with the benefit of any Intellectual Property applicable thereto, irrespective of such Loan Party's default under any License Agreement with such Licensor.

"Lien" shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, security interest, lien (whether statutory or otherwise), claim or encumbrance, or preference, priority or other security agreement or preferential arrangement held or asserted in respect of any asset of any kind or nature whatsoever including any conditional sale or other title retention agreement, any lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction.

"Lien Waiver Agreement" means an agreement between Agent and a Landlord/Bailee, in form and substance satisfactory to Agent in its Permitted Discretion, by which such Person shall agree to a customary waiver and/or subordination and enforcement standstill as to any liens (statutory, contractual, or otherwise) which such Person may now have or hereafter obtain in any Collateral and agree to provide Agent with customary access rights to such premises and the Collateral located on such premises in order for Agent exercise its rights as a secured creditor with respect to such Collateral.

"Line Cap" shall mean, as of any date, the amount in Dollars equal to the lesser of (i) the Maximum Revolving Advance Amount as in effect at such time less the Dollar Equivalent of Reserves established hereunder against the Maximum Revolving Advance Amount as in effect at such time, or (ii) the Formula Amount on such date calculated with giving effect to or making any deduction therefrom with respect to clause (iv) of Section 2.1(a)(y) hereof.

"Liquidity" shall mean, as of any date, the aggregate amount equal to the sum of (x) Undrawn Availability as of such date and (y) unrestricted cash and Cash Equivalents on the consolidated balance sheet of Loan Parties on a Consolidated Basis as of such date.

"LLC Division" shall mean, in the event a Company is a limited liability company, (a) the division of any such Company into two or more newly formed limited liability companies (whether or not such Company is a surviving entity following any such division) pursuant to Section 18-217 of the Delaware Limited Liability Company Act or any similar provision under any similar act governing limited liability companies organized under the laws of any other State or Commonwealth or of the District of Columbia, or (b) the adoption of a plan contemplating, or the filing of any certificate with any applicable Governmental Body that results or may result in, any such division.

"Loan Party" and "Loan Parties" shall have the meanings set forth in the preamble to this Agreement and shall include their successors and permitted assigns.

"Loan Parties on a Consolidated Basis" shall mean the consolidation in accordance with GAAP of the accounts or other items of Parent and its Subsidiaries.

"Material Adverse Effect" shall mean a material adverse effect on (a) the condition (financial or otherwise), results of operations, assets, business or properties of Loan Parties taken as a whole, (b) the ability of the Loan Parties, taken as a whole to duly and punctually pay or perform the Obligations in accordance with the terms thereof, (c) the value of the Collateral, or Agent's Liens on the Collateral or the priority of any such Lien or (d) the practical realization of the benefits of Agent's and each Lender's rights and remedies under this Agreement and the Other Documents.

"Material Contract" shall mean any contract, agreement, instrument, permit, lease or license, written or oral, of any Company, which is material to any Company's business or which the failure to comply with could reasonably be expected to result in a Material Adverse Effect.

"Material Real Property" means, any parcel of real property located in the United States and owned by any Loan Party that has a Fair Market Value in excess of $1,000,000; provided that Agent may agree, in its sole discretion, to exclude from this definition any parcel of real property (and/or the buildings and contents therein) that is located in a special flood hazard area as designated by any federal Governmental Body.

"Maximum Revolving Advance Amount" shall mean $50,000,000.

"Maximum Swing Loan Advance Amount" shall mean $5,000,000.

"Maximum Undrawn Amount" shall mean, with respect to any outstanding Letter of Credit as of any date, the amount of such Letter of Credit that is or may become available to be drawn, including all automatic increases provided for in such Letter of Credit, whether or not any such automatic increase has become effective.

"Modified Commitment Transfer Supplement" shall have the meaning set forth in Section 16.3(d) hereof.

"MIRE Event" means any increase, extension or renewal of any Commitment, or the addition of any new commitment hereunder.

"Mortgage" shall mean, as to each Material Real Property, a mortgage or deed of trust (and any related assignment of leases and rents and other security documents) pursuant to which a Lien in favor of Agent (or any representative or trustee designated by and acting for Agent) for the benefit of the Secured Parties to secure the Obligations shall be granted, such mortgage/deed of trust (and other assignment and related documents) to be in form and substance reasonably acceptable to Agent (in each case any such mortgage/deed of trust, assignment or other document may be amended, modified, supplemented, renewed, restated or replaced from time to time).

"Multiemployer Plan" shall mean a "multiemployer plan" as defined in Section 3(37) or 4001(a)(3) of ERISA to which contributions are required or, within the preceding five plan years, were required by any Company or any member of the Controlled Group.

"Multiple Employer Plan" shall mean a Plan which has two or more contributing sponsors (including any Company or any member of the Controlled Group) at least two of whom are not under common control, as such a plan is described in Section 4063 or 4064 of ERISA.

"Net Cash Proceeds" shall mean:

(a) with respect to any Disposition of any Collateral of any Company, the cash proceeds received by Companies (including cash proceeds subsequently received (as and when received) in respect of non-cash consideration initially received) net of (i) selling expenses (including reasonable brokers' fees or commissions, legal, accounting and other professional and transactional fees, and any Taxes paid or payable in connection with such Disposition); (ii) amounts provided as a reserve, in accordance with GAAP, against (x) any liabilities under any indemnification obligations associated with such Disposition or (y) any other liabilities retained by Companies associated with the properties sold in such Disposition (provided that, to the extent and at the time any such amounts are released from such reserves, such amounts shall constitute Net Cash Proceeds); and (iii) the principal amount, premium or penalty, if any, interest, and other amounts on any Indebtedness for borrowed money (other than any such Indebtedness assumed by the purchaser of such properties) which is secured by a Lien on the properties sold in such Disposition (so long as such Lien was a Permitted Encumbrance at the time of such Disposition) and which is repaid with such proceeds, and

(b) with respect to any issuance of Indebtedness or any issuance of Equity Interests by any Company, the cash proceeds received by Companies in respect thereof, net of customary fees, commissions, costs and other expenses incurred in connection therewith.

"Net Orderly Liquidation Value" or "NOLV" means, with respect to any Inventory, the net appraised orderly liquidation value (expressed as a percentage) of such Inventory, as determined from time to time by Agent in its Permitted Discretion by reference to the most recent Inventory Appraisal obtained by Agent; provided that, it is understood and agreed by all parties hereto that such net orderly liquidation value percentage may vary (x) according to the business lines of the Borrowing Base Entities' businesses, and/or (y) from month to month and/or by other seasonal variations, in each case (x) or (y) based on the applicable appraiser's assessment as set forth in such Inventory Appraisal as to any such variations by business line or seasonality.

"Non-Defaulting Lender" shall mean, at any time, any Revolving Lender that is not a Defaulting Lender at such time.

"Non-Loan Party" shall mean any Company that is not a Loan Party.

"Non-Qualifying Party" shall mean any Loan Party that on the Eligibility Date fails for any reason to qualify as an Eligible Contract Participant.

"Non-Recourse Indebtedness" means Indebtedness of any one or more Non-Loan Parties (a) that is on terms and conditions reasonably satisfactory to Agent, (b) consists solely of an asset-based working capital facility to support the working capital needs of the applicable Non-Loan Parties, (c) that is not, in whole or in part, Indebtedness of any Loan Party (and for which no Loan Party has created, maintained or assumed any Guaranty Obligation) and for which no holder thereof has or could have upon the occurrence of any contingency, any recourse against any Loan Party or the assets thereof, (d) owing to an unaffiliated third-party (which for the avoidance of doubt does not include the Parent, any Subsidiary thereof, any other Loan Party, any Joint Venture (or owner of any interest therein) or any Affiliate of any of them) and (e) the source of repayment for which is expressly limited to the assets and/or cash flows of such Non-Loan Party and/or the Equity Interests and Equity Interests Equivalents of such Non-Loan Party.

"North American Loan Party" shall mean any Loan Party that is organized or incorporated under the laws of (x) the United States, any state thereof, or the District of Columbia or (y) Canada or any province or territory thereof other than Quebec (unless, as to any such Loan Party organized or incorporated under the laws of Quebec, Agent shall agree in its Permitted Discretion that such Loan Party shall be treated as a North American Loan Party).

"Notes" shall mean collectively, the Term Notes, the Revolving Credit Note and the Swing Loan Note.

"Obligations" shall mean and include:

(A) any and all loans (including without limitation, all Advances and Swing Loans), advances, debts, liabilities, obligations (including without limitation all reimbursement obligations and cash collateralization obligations with respect to Letters of Credit issued hereunder), covenants and duties owing by any Loan Party or any Subsidiary of any Loan Party] under this Agreement or any Other Document (and any as the same may be amended, modified, supplemented, increased, renewed, restated, or replaced from time to time), to Issuer, Swing Loan Lender, Lenders or Agent (or to any other direct or indirect subsidiary or Affiliate of Issuer, Swing Loan Lender, any Lender or Agent) or any other Secured Party of any kind or nature, present or future (including as to all of the foregoing (and specifically including as to any Cash Management Liabilities or Hedge Liabilities): (i) any interest or other amounts accruing thereon, (ii) any fees accruing thereon or under or in connection with this Agreement or any Other Document (and any as the same may be amended, modified, supplemented, increased, renewed, restated, or replaced from time to time), (iii) any costs and expenses of any Person payable/reimbursable by any Loan Party or Subsidiary of any Loan Party under this Agreement or any Other Document (and any as the same may be amended, modified, supplemented, increased, renewed, restated, or replaced from time to time), and (iv) any indemnification obligations or other amounts or charges payable by any Loan Party or Subsidiary of any Loan Party under this Agreement or any Other Document (and any as the same may be amended, modified, supplemented, increased, renewed, restated, or replaced from time to time), in each such case arising or payable after maturity, or after the filing or commencement of any Insolvency Proceeding relating to any Loan Party or Subsidiary of any Loan Party, whether or not a claim for post-Insolvency Proceeding interest, fees, payment/reimbursement obligations for costs and expenses, indemnification, or other amounts or charges is allowable or allowed in such Insolvency Proceeding (all collectively under this parenthetical, the "Post-Petition Obligations"), whether direct or indirect (including those acquired by assignment or participation), absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, contractual or tortious, liquidated or unliquidated, regardless of how such indebtedness or liabilities arise including all costs and expenses of Agent, Issuer, Swing Loan Lender, any Lender, or any other Secured Party incurred in the documentation, negotiation, modification, enforcement, collection or otherwise in connection with any of the foregoing, including but not limited to reasonable attorneys' fees and expenses and all obligations of any Loan Party or Subsidiary of any Loan Party to Agent, Issuer, Swing Loan Lender, any Lender, or any other Secured Party to perform acts or refrain from taking any action, and specifically including without limitation (i) all Hedge Liabilities and (ii) all Cash Management Liabilities, and

(B) all Related L/C Facility Obligations.

Notwithstanding anything to the contrary contained in the foregoing, the Obligations shall not include any Excluded Hedge Liabilities.

"Obligations Receipts" shall have the meaning set forth in Section 11.5(a) hereof.

"Ordinary Course of Business" shall mean, with respect to any Company, the ordinary course of such Company's business as conducted on the Closing Date and any reasonable extension thereof (or in the case of any Person that is formed and/or becomes a Company after the Closing Date, as conducted as of the date such Person in formed and/or becomes a Company).

"Organizational Documents" shall mean, with respect to any Person, any charter, articles or certificate of incorporation, certificate of organization, registration or formation, certificate of partnership or limited partnership, bylaws, operating agreement, limited liability company agreement, or partnership agreement of such Person and any and all other applicable documents relating to such Person's formation, organization or entity governance matters (including any shareholders' or equity holders' agreement or voting trust agreement) and specifically includes, without limitation, any certificates of designation for preferred stock or other forms of preferred equity.

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

"Other Documents" shall mean the Perfection Certificates, any Guaranty, any Guarantor Security Agreement, the Intercreditor Agreement, each Letter of Credit Application, any Pledge Agreement, any Mortgage, any Lender-Provided Interest Rate Hedge, any Lender-Provided Foreign Currency Hedge, any documents and agreements giving rise to Cash Management Liabilities, the Intercreditor Agreement, and any and all other agreements, instruments and documents, including intercreditor agreements, guaranties, pledges, powers of attorney, consents, and all other agreements, documents and instruments heretofore, now or hereafter executed by any Loan Party and/or delivered to Agent or any Lender in respect of the transactions contemplated by this Agreement, in each case together with all amendments, modifications, supplements, extensions, renewals, substitutions, restatements and replacements thereto and thereof.

"Other Taxes" shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any Other Document or from the execution, delivery, performance or enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any Other Document, except any such taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.11).

"Out-of-Formula Loans" shall have the meaning set forth in Section 16.2(e) hereof.

"Overnight Bank Funding Rate" shall mean, for any day, the rate per annum (based on a year of 360 days and actual days elapsed) comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S. managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York, as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by such Federal Reserve Bank (or by such other recognized electronic source (such as Bloomberg) selected by Agent for the purpose of displaying such rate) (an "Alternate Source"); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by Agent at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as set forth above would be less than zero, then such rate shall be deemed to be zero for purposes of this Agreement. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to the Borrowers.

"Participant" shall mean each Person who shall be granted the right by any Lender to participate in any of the Advances and who shall have entered into a participation agreement in form and substance satisfactory to such Lender.

"Participant Register" shall have the meaning set forth in Section 16.3(b) hereof.

"Participation Advance" shall have the meaning set forth in Section 2.14(d) hereof.

"Participation Commitment" shall mean the obligation hereunder of each Revolving Lender to buy a participation equal to its Revolving Commitment Percentage (subject to any reallocation pursuant to Section 2.22(b)(iii) hereof) in the Swing Loans made by Swing Loan Lender hereunder as provided for in Section 2.4(c) hereof and in the Letters of Credit issued hereunder as provided for in Section 2.14(a) hereof.

"Payment Conditions" shall mean, on any applicable date of determination with respect to any proposed transaction (including any proposed series of related transactions) as to which satisfaction of such Payment Conditions is a requirement under this Agreement:

(a) in each and every case, no Default or Event of Default shall exist or shall have occurred and be continuing on such date, or would occur after giving effect to such proposed transaction (and any Indebtedness (including if applicable any Revolving Advance) being incurred or requested and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction),

(b) in each and every case, Loan Parties shall be in pro forma compliance with each of the covenants set forth in Section 6.5 hereof as of and for the four quarter fiscal measurement period ending as of the last day of the most recently ended fiscal quarter of Parent and its Subsidiaries for which the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to such fiscal quarter have been delivered to Agent, with each such pro forma calculation of the applicable financial covenant ratio with respect to such covenant being made as though such proposed transaction (and any Indebtedness (including if applicable any Revolving Advance) being incurred or requested and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction) had been consummated on the last day in such fiscal quarter,

(c) if the proposed transaction is a proposed Acquisition, then either (x) no Revolving Advance will be outstanding either immediately prior to or after giving pro forma effect to such transaction, or (y) any target entity being acquired will become a Loan Party and grant Liens on all of its Collateral to secure the Obligations (either because such target entity is required to do so under the provisions of Section 6.12 or because Loan Parties shall voluntarily elect for such target entity to be joined hereto as a Loan Party as though the provisions of Section 6.12 did apply) and/or any assets being acquired will be owned by a Subsidiary of Parent that is or will become a Loan Party that has granted Liens on all of its Collateral,

(d) if the proposed transaction is a proposed Investment (other than an Acquisition) that is being made in reliance on the Available Amount (e.g., (i) a Permitted Intercompany Advance made pursuant to both clause (e) of the definition of Permitted Intercompany Advances and clause (g) of the definition of Permitted Investment or (ii) a Permitted Investment under clause (j) of the definition of such term), then no Revolving Advance will be outstanding either immediately prior to or after giving pro forma effect to such transaction,

(e) if the proposed transaction is a proposed prepayment of Indebtedness (provided that, notwithstanding anything to the contrary otherwise provided for herein, nothing in this definition of Payment Conditions shall apply to any proposed Related L/C Facility CC Replacement Transaction, which shall be governed only by the provisions of Section 7.17(c)), no Revolving Advance will be outstanding either immediately prior to or after giving pro forma effect to such transaction,

(f) in each and every case (other than an Investment of a type described in clause (d) of this definition above), either (x) no Revolving Advance may be requested (nor may any proceeds of any Revolving Advance made on or about the day of any such transaction be used) to fund any portion of the proposed transaction (provided that this clause (x) shall not be applicable/available as an option in the case of any proposed Acquisition unless the provisions of subclause (y) of clause (c) of this definition shall be satisfied with respect thereto or any proposed prepayment of Indebtedness), or (y) either of the following two conditions shall be complied with:

(i) after giving pro forma effect to such proposed transaction (and to any Revolving Advances being requested concurrently/substantially contemporaneously with the closing and consummation on such transaction), with such pro forma calculation being made in each case as though such proposed transaction (and to any Revolving Advances being requested concurrently/substantially contemporaneously with the closing and consummation on such transaction) had been consummated and funded on the first day of the applicable Average Undrawn Availability Period, Borrowers shall have both Availability on such date and Average Undrawn Availability for the Average Undrawn Availability Period ending on such date of not less than $20,000,000, or

(ii) both (A) after giving pro forma effect to such proposed transaction (and to any Revolving Advances being requested and/or other Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction), with such pro forma calculation being made in each case as though such proposed transaction (and to any Revolving Advances being requested and/or other Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction) had been consummated and funded on the first day of the applicable Average Undrawn Availability Period, Borrowers shall have both Availability on such date and Average Undrawn Availability for the Average Undrawn Availability Period ending on such date of not less than $12,500,000, and (B) Loan Parties on a Consolidated Basis shall have a pro forma Fixed Charge Coverage Ratio of 1.10 to 1.00 calculated as of and for the four quarter fiscal measurement period ending as of the last day of the most recently ended fiscal quarter of Parent and its Subsidiaries for which the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to such fiscal quarter have been delivered to Agent, with such pro forma calculation of the Fixed Charge Coverage Ratio of Loan Parties on a Consolidated Basis being made as though such proposed transaction (and any Indebtedness (including if applicable any Revolving Advance) being incurred or requested and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction) had been consummated on the last day in such fiscal quarter,

(g) if the proposed transaction is a proposed Acquisition, then as of and for the four quarter fiscal measurement period ending as of the last day of the most recently ended fiscal quarter of Parent and its Subsidiaries for which the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to such fiscal quarter have been delivered to Agent (for purposes of this clause (g), the "subject quarter"), Loan Parties on a Consolidated Basis would have a pro forma Senior Net Leverage Ratio (with such pro forma calculation of the applicable financial covenant ratio with respect to such covenant being made as though such proposed transaction (and any Indebtedness being requested and/or incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction) had been consummated on the last day in the subject quarter) either (x) of not greater than 1.62 to 1.00 or (y) of not greater than the Senior Net Leverage Ratio of Loan Parties on a Consolidated Basis as in effect immediately prior to the applicable Acquisition,

(h) if the proposed transaction is (i) any Permitted Acquisition described in clause (d) of the definition of such term, (ii) any Permitted Intercompany Advance made pursuant to both clause (e) of the definition of Permitted Intercompany Advances and clause (g) of the definition of Permitted Investments , or (iii) a Permitted Investment under clause (j) of the definition of such term, unrestricted cash and Cash Equivalents on the consolidated balance sheet of Loan Parties on a Consolidated Basis, after giving pro forma effect to such proposed transaction, shall not be less than $30,000,000;

(i) if the proposed transaction is the incurrence of any Permitted Indebtedness under clause (h) of the definition of such term, then as of and for the four quarter fiscal measurement period ending as of the last day of the most recently ended fiscal quarter of Parent and its Subsidiaries for which the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to such fiscal quarter have been delivered to Agent, Loan Parties on a Consolidated Basis would have a pro forma Total Net Leverage Ratio (with such pro forma calculation of the applicable financial covenant ratio with respect to such covenant being made as though such proposed transaction (and any Indebtedness (including if applicable any Revolving Advance) being incurred or requested and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction) had been consummated on the last day in the such fiscal quarter) not greater than 4.00 to 1.00,

(j) if the proposed transaction is a payment of any Permitted Restricted Payments under clause (g), then as of and for the four quarter fiscal measurement period ending as of the last day of the most recently ended fiscal quarter of Parent and its Subsidiaries for which the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to such fiscal quarter have been delivered to Agent, Loan Parties on a Consolidated Basis would have a pro forma Senior Net Leverage Ratio (with such pro forma calculation of the applicable financial covenant ratio with respect to such covenant being made as though such proposed transaction (and any Indebtedness (and any Indebtedness (including if applicable any Revolving Advance) being incurred or requested and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction) has been consummated on the last day in the fiscal quarter) not greater than (i) 2.50 to 1.00, to the extent tested on or prior to September 30, 2021, and (ii) 1.50 to 1.00 thereafter, and

(k) on the date of but prior to the consummation of the proposed transaction, Loan Parties shall deliver to Agent a certificate of a Responsible Officer of Parent giving notice of the occurrence of the proposed transaction, identifying the specific provision of/basket under this Agreement under which the proposed transaction is permitted, and certifying that all of the conditions required under this definition and otherwise under this Agreement for the consummation of such proposed transaction have been satisfied (and including calculations, with supporting data, demonstrating the satisfaction of any conditions based on Borrower's Availability or any financial performance ratio and, if applicable, evidence regarding the unrestricted cash and Cash Equivalents on the consolidated balance sheet of Loan Parties on a Consolidated Basis as of the date of and after giving pro forma effect to such transaction as necessary for satisfaction of any condition);

provided that, with respect to any proposed transaction that is proposed to be entered into and/or closed and consummated and/or made prior to the date that Loan Parties shall have delivered the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to the fiscal quarter ending June 30, 2021, to the extent that Loan Parties are required under the provisions of this definition to be in pro forma compliance with the Fixed Charge Covenant provided for under Section 6.5(a) for the most recently ended fiscal quarter prior to the proposed date for such transaction, Loan Parties shall be deemed to have satisfied such condition if Loan Parties on a Consolidated Basis shall have a pro forma Fixed Charge Coverage Ratio, calculated as of and for the twelve month fiscal measurement period ending as of May 30, 2021, not less than the actual Fixed Charge Coverage Ratio calculated for Loan Parties on a Consolidated Basis on an actual basis as though such proposed transaction (and any Revolving Advances being requested to fund any portion of such transaction) had been consummated on the last day in such fiscal quarter

"Payment in Full" or "Paid in Full" means, as to the Obligations:

(i) the termination of all commitments of the Lenders and Issuer to extend credit under this Agreement,

(ii) the payment in full in cash/immediately available funds of all of the Obligations (including Post-Petition Obligations) owing at the applicable time (not including (1) contingent indemnification obligations as to which no claim or demand has been made, (2) Obligations with respect to any Letters of Credit or Related L/C Facility Letters of Credit, and (3) Cash Management Liabilities under the Cash Management Products and Services and Hedge Liabilities under Lender-Provided Interest Rate Hedges and Lender-Provided Foreign Currency Hedges),

(iii) without duplication of any amount paid under clause (ii) of this definition above, the payment in full in cash/immediately available funds of all of the Obligations relating to Letters of Credit and Related L/C Facility Letters of Credit then owing (including any Letter of Credit Fees, Related L/C Facility Letter of Credit Fees, and Related L/C Facility Fees accrued but unpaid at the applicable time) and either (x) the expiration in accordance with their terms, drawing in full upon, and/or return and termination/cancellation (with the consent of the applicable beneficiary) of all Letters of Credit issued hereunder and/or (y) cash collateralization of all Obligations consisting of outstanding Letters of Credit as provided for in Section 3.2(b) hereof,

(iv) without duplication of any amount paid under clause (ii) of this definition above, the indefeasible payment in full in cash/immediately available funds of all of the Cash Management Liabilities under the Cash Management Products and Services and Hedge Liabilities under Lender-Provided Interest Rate Hedges and Lender-Provided Foreign Currency Hedges then owing (including any amounts payable in connection with any termination of any Lender-Provided Interest Rate Hedges and/or Lender-Provided Foreign Currency Hedges occurring substantially contemporaneously with such Payment in Full) and either (x) the termination of all Cash Management Products and Services, Lender-Provided Interest Rate Hedges, and Lender-Provided Foreign Currency Hedges and/or (y) cash collateralization of all continuing Cash Management Products and Services, Lender-Provided Interest Rate Hedges, and Lender-Provided Foreign Currency Hedges (in each case in an amount and in the manner required by the applicable Cash Management Products and Services, Lender-Provided Interest Rate Hedge, or Lender-Provided Foreign Currency Hedge (or, if not so required, in the amount equal to 100% of Agent's reasonable estimation of maximum amount that could reasonably be expected to become due and owing to the applicable Secured Party under such Cash Management Products and Services, Lender-Provided Interest Rate Hedge, or Lender-Provided Foreign Currency Hedge prior to the maturity/expiration thereof)). and

(v) Payment in Full (as defined in the Related L/C Facility Agreement) of the Related L/C Facility Agreement.

"Payment Office" shall mean initially Two Tower Center Boulevard, East Brunswick, New Jersey 08816; thereafter, such other office of Agent, if any, which it may designate by notice to Borrowing Agent and to each Lender to be the Payment Office.

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor.

"Pension Benefit Plan" shall mean at any time any "employee pension benefit plan" as defined in Section 3(2) of ERISA (including a Multiple Employer Plan, but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Sections 412, 430 or 436 of the Code and either (i) is maintained or to which contributions are required by Company or any member of the Controlled Group or (ii) has at any time within the preceding five years been maintained or to which contributions have been required by Company or any entity which was at such time a member of the Controlled Group.

"Pension Funding Waiver" shall mean the waiver of the minimum funding standard under Section 412 of the Code by the Internal Revenue Service and the PBGC with respect to a Pension Plan for the 2018 plan year and/or the 2019 plan year.

"Perfection Certificate" shall mean the information questionnaire and the responses thereto provided by each Loan Party and delivered to Agent.

"Performance Guarantee" of any Person means (a) any letter of credit, bankers' acceptance, surety bond, performance bond, bank guarantee or other similar obligation issued for the account of such Person to support only trade payables or nonfinancial performance obligations of such Person, (b) any letter of credit, bankers' acceptance, surety bond, performance bond, bank guarantee or other similar obligation issued for the account of such Person to support any letter of credit, bankers' acceptance, surety bond, performance bond, bank guarantee or other similar obligation issued for the account of a Subsidiary, a Joint Venture or a Consortium of such Person to support only trade payables or non-financial performance obligations of such Subsidiary, Joint Venture or Consortium, and (c) any parent company guarantee or other direct or indirect liability, contingent or otherwise, of such Person with respect to trade payables or non-financial performance obligations of a Subsidiary, a Joint Venture or a Consortium of such Person, if the purpose of such Person in incurring such liability is to provide assurance to the obligee that such contractual obligation will be performed, or that any agreement relating thereto will be complied with.

"Permitted Acquisitions" shall mean any Acquisition so long as and to the extent that:

(a) after giving pro forma effect to such Acquisition (and any Indebtedness (including if applicable any Revolving Advance) being incurred or requested and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction), the Payment Conditions with respect thereto shall have been satisfied;

(b) either (x) the target (for purposes of this definition of Permitted Acquisition, "target" shall have the meaning given to such term in the definition of "Acquisition") shall have either a positive EBITDA or a negative EBITDA of not less than $2,000,000 for target and any Subsidiaries on a Consolidated Basis in accordance with GAAP measured for the trailing twelve (12) fiscal month measurement period ending as of the most recently ended fiscal quarter of such target for which audited or management-prepared financial statements are available or (y) Loan Parties shall provide projected statements of income, stockholders' equity, and cash flow and projects balance sheets (on a quarterly basis) for Loan Parties on a Consolidated Basis (including the target and any Subsidiaries) for the 8 fiscal quarter period following fiscal quarter in which the proposed Acquisition will occur demonstrating that the proposed Acquisition will be accretive to the EBITDA of Loan Parties on a Consolidated Basis and such projections shall be in form and substance reasonably acceptable to Agent;

(c) with respect to any Acquisition consisting of or including an acquisition of the Equity Interests of any Person(s), if any Person(s) being acquired will be a Collateral Jurisdiction Subsidiary, each such Person (x) shall be (after giving effect to such Acquisition) a Wholly-Owned Subsidiary and (y) shall become a Loan Party under this Agreement (and such Person and the other Loan Parties shall comply with all the requirements of Section 6.12 hereof with respect to such Person);

(d) with respect to any Acquisition consisting of or including either (x) an acquisition of the Equity Interest(s) of any Person(s) that will not be a Collateral Jurisdiction Subsidiary and/or (y) any assets that will not, after giving effect to such Acquisition (and, if applicable, to the provisions of clause (c) of this definition), be owned by a Loan Party, the total consideration with respect thereto, including the purchase price and liabilities assumed (including, without limitation, all Acquired Indebtedness, Indebtedness under Permitted Seller Notes, and Permitted Earnouts), shall not exceed the Available Amount as of the date of the closing and consummation of such Acquisition;

(d) the target shall be engaged in the conduct of an Eligible Line of Business;

(e) the board of directors (or other comparable governing body) of the target being acquired shall have duly approved the transaction;

(f) at least fifteen (15) Business Days prior to the anticipated closing date of any proposed acquisition with total consideration of more than $10,000,000, Loan Parties shall have delivered to Agent: (i) written notice of the proposed Acquisition and a summary of the material terms thereof as anticipated as of the date of such notice, and (ii) to the extent available, financial statements of the acquired entity for the two most recent fiscal years then ended, in form and substance reasonably acceptable to Agent;

(g) if the total consideration, including the purchase price and liabilities assumed (including, without limitation, all Acquired Indebtedness, Indebtedness under Permitted Seller Notes and Permitted Earnouts), of any such acquisition shall exceed $25,000,000, Borrowing Agent shall have delivered to Agent a quality of earnings report performed by a third party firm reasonably acceptable to Agent;

(h) not later than five (5) Business Days prior to the anticipated closing date of the proposed Acquisition with total consideration of more than $10,000,000, Borrowing Agent has provided Agent with copies of the most recent drafts of the acquisition agreement and other material agreements, documents and instruments related to the proposed acquisition, including, without limitation, any related management, non-compete, employment, option or other material agreements (including all annexes, exhibits, schedules, and disclosure letters with respect thereto, the "Acquisition Documents"), and, in any event, no later than the closing and consummation of such Acquisition, Borrowing Agent shall provide Agent with true, correct and complete copies of the Acquisition Documents, in each case duly authorized, executed and delivered by the parties thereto to such Acquisition Documents; and

(i) no assets acquired in any such Acquisition and/or of any Person acquired in any such Acquisition shall be included in the Formula Amount for any purpose hereunder (including any determination of compliance with the Payment Conditions under clause (a) of this definition above) unless and until such time as such assets shall be owned by and/or such Person shall have become a Borrowing Base Entity (provided that, for purposes of determining compliance with the Payment Conditions under clause (a) of this definition above, if such assets are being acquired by a Subsidiary that is already a Borrowing Base Entity or such Person being acquired will become a Borrowing Base Entity immediately upon consummation of such Acquisition, pro forma effect shall be given to such facts), nor until Agent has received a Field Examination with respect to such assets and an Inventory Appraisal with respect to the Inventory included in such assets, in form and substance, and with results, acceptable to Agent in its Permitted Discretion; provided that, upon Borrowers' written request, Agent shall complete such Field Examination and obtain such Inventory Appraisal as promptly as is commercially reasonable following the earlier of (x) the consummation of such Acquisition, or (y) the time Borrowers shall obtain from any Person to be acquired and/or whose assets are being acquired sufficient access for Agent to commence such Field Examination and Inventory Appraisal, and provided further that, notwithstanding anything to the contrary in Sections 3.4(b), 3.4(c) and 16.9 hereof, Borrowers shall be liable for the Field Examination Fees and Costs and Appraisal Costs of any such Field Examination or Inventory Appraisal conducted under this paragraph, and such Field Examination Fees and Costs and Appraisal Costs shall not be subject to (and shall not be included in) any generally applicable limitations on the number of Field Examinations and Appraisals, or the Borrowers' liability for Field Examination Fees and Costs and Appraisal Costs under this Agreement.

"Permitted Assignees" shall mean: (a) Agent, any Lender or any of their direct or indirect Affiliates; (b) [reserved]; (c) any Approved Fund; and (d) any Fund to whom Agent or any Lender assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Agent's or Lender's rights in and to a material portion of such Agent's or Lender's portfolio of asset-based or commercial credit facilities and shall exclude any natural person and the Loan Parties and any of their Affiliates.

"Permitted Discretion" shall mean a determination made in good faith and in the exercise (from the perspective of a secured asset-based lender) of commercially reasonable business judgment.

"Permitted Dispositions" shall mean:

(a) the sale, lease, license, exchange, transfer or other disposition of equipment that is substantially worn, damaged or obsolete or no longer used or useful in the Ordinary Course of Business of the Loan Parties or their Subsidiaries or replaced in the Ordinary Course of Business, and leases or subleases of Real Property (not including any sale-leasebacks) that is not useful in the conduct of the business of the Loan Parties or their Subsidiaries;

(b) sales of Inventory in the Ordinary Course of Business;

(c) the use or transfer of money or Cash Equivalents in a manner that is not otherwise prohibited by the terms of this Agreement or any of the Other Documents;

(d) the licensing of patents, trademarks, copyrights, and other Intellectual Property rights in the Ordinary Course of Business (but in the case of any Intellectual Property that is material to the ongoing businesses of any one or more of the Companies, only licenses on a non-exclusive basis shall be permitted);

(e) the granting of Permitted Encumbrances;

(f) any involuntary loss, damage or destruction of property;

(g) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property (or, as long as no Event of Default exists or would result therefrom, deed in lieu thereof);

(h) the leasing or subleasing (not including any sale-leasebacks) of assets other than as described in clause (a) of this definition of any Loan Party or its Subsidiaries in the Ordinary Course of Business or as otherwise not prohibited by this Agreement or any Mortgage;

(i) (x) the sale or issuance of Equity Interests (other than Disqualified Equity Interests) of Parent, (y) the sale or issuance of Equity Interests (other than Disqualified Equity Interests) of any Wholly-Owned Subsidiary of a Loan Party that is itself a Loan Party to such Loan Party and (z) the sale or issuance of Equity Interests (other than Disqualified Equity Interests) of any Non-Loan Party to any Loan Party or (unless such Non-Loan Party is the direct Subsidiary of any one or more Loan Parties) to any Non-Loan Party;

(j) the lapse or abandonment of registered or applied for patents, trademarks, copyrights and other Intellectual Property owned by any Loan Party or its Subsidiaries that is, in the reasonable good faith judgement of such Loan Party, immaterial to the business of such Loan Party or such Subsidiary, or no longer economically practicable or commercially desirable to maintain or used or useful in the respective business of such Loan Party or such Subsidiary;

(k) the making of Restricted Payments that are expressly permitted to be made pursuant to this Agreement;

(l) the making of Permitted Investments;

(m) subject to the provisions of Section 7.9(b) hereof, the sale, lease, license, exchange, transfer or other disposition of assets (i) from any Company to a Loan Party, (ii) any Loan Party to another Loan Party and (iii) from any Company that is not a Loan Party to any other Company that is not a Loan Party, in each case, to the extent made in accordance with Section 7.10 hereof,

(n) as long as no Default exists or would result therefrom, any other Disposition (not including any Disposition of any Inventory or Receivables of Loan Parties, except in connection with a Disposition of all of the Equity Interests of or substantially all of the assets of any Subsidiary) for Fair Market Value and where no less than 100% of the consideration received therefor is cash or Cash Equivalents (including, for purposes of this clause (n), any potential earnouts payable to any applicable Company in cash); provided however that, the Fair Market Value of all assets Disposed of pursuant in and in reliance on this clause (n) shall not exceed $20,000,000 in the aggregate;

(o) any single transaction or series of related transactions (not including any Disposition of any Inventory or Receivables of Loan Parties, except in connection with a Disposition of all of the Equity Interests of or substantially all of the assets of any Subsidiary that would not, after giving effect thereto, result in any mandatory prepayment being required under Section 2.20(b)(i) hereof) so long as neither such single transaction nor such series of related transactions involves assets having a Fair Market Value of more than $5,000,000;

(p) sale and leaseback transactions (i) of the Lancaster manufacturing facility and (ii) of the Volund Esjberg assembly facility;

(q) as long as no Default or Event of Default exists or would result therefrom, discounts, adjustments, settlements and compromises of Receivables and contract claims in the Ordinary Course of Business;

(r) Dispositions of non-core assets acquired in any Acquisition (not including any Disposition of any Inventory or Receivables of Loan Parties, except in connection with a Disposition of all of the Equity Interests of or substantially all of the assets of any Subsidiary) made in accordance with the terms of this Agreement, which assets have a Fair Market Value of no greater than 25% of the EBITDA of the acquired Person for the previous four fiscal quarters, made no later than the first anniversary of the closing and consummation with respect to such Acquisition; and

(s) Sales of Receivables pursuant to Approved Supply Chain Financings so long as the Net Cash Proceeds with respect to all such sales shall not exceed $12,500,000 in the aggregate in any fiscal year (provided that, (x) no Company shall enter into any Supply Chain Agreement which provides that any sale of any Receivable pursuant thereto will be effective prior to the time and the full purchase price therefore (as determined under such Supply Chain Agreement) has been paid by the applicable Supply Chain Receivables Buyer to or for the benefit of such Company and (y) at all times when any Approved Supply Chain Financing is in effect with respect to any Loan Party, such Loan Party shall cause all payments of any kind or nature due and payable to such Loan Party under such Supply Chain Financing to be remitted by the applicable Supply Chain Receivables Buyer directly to a Blocked Account or Depositary Account (and each Loan Party shall so direct each Supply Chain Receivables Buyer);

provided that, for the avoidance of doubt, in the event that, after giving effect to any Disposition otherwise permitted under this definition, any mandatory prepayment would be required under Section 2.20(b)(i) hereto, no such Disposition shall constitute a Permitted Disposition hereunder unless (i) the Net Cash Proceeds of such Disposition shall be at least equal to the amount of any such mandatory prepayment and (ii) Loan Parties shall cause Net Cash Proceeds of such Dispositions in an amount equal to the amount of any such mandatory prepayment to be remitted by the applicable purchaser/transferee/assignee directly to Agent for application to and satisfaction of such mandatory prepayment.

"Permitted Earnouts" shall mean, with respect to a Company, any unsecured obligations of such Company arising from a Permitted Acquisition (or other Acquisition permitted hereunder or consummated with the consent of Required Lenders) which are payable to the seller based on the achievement of specified financial results over time and, if payable by any Loan Party, are subject to subordination terms (or a subordination agreement in favor of Agent) in favor of the Obligations reasonably acceptable to Agent.

"Permitted Encumbrances" shall mean:

(a) Liens in favor of Agent, for the benefit of Secured Parties securing the Obligations;

(b) Liens for taxes, assessments or other governmental charges not delinquent or being Properly Contested;

(c) deposits or pledges of cash, and customary liens on "bonded receivables" in connection with surety, appeal, customs or performance bonds or other similar instruments, made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other types of social security benefits, taxes, assessments, statutory obligations or other similar charges or to secure the performance of bids, tenders, sales, leases, contracts (other than for the repayment of borrowed money) or in connection with surety, appeal, customs or performance bonds or other similar instruments;

(d) deposits or pledges of cash relating to escrows established in connection with the purchase or sale of property otherwise permitted hereunder and the amounts secured thereby shall not exceed the aggregate consideration in connection with such purchase or sale (whether established for an adjustment in purchase price or liabilities, to secure indemnities, or otherwise);

(e) Liens arising by virtue of the rendition, entry or issuance against any Company or any Subsidiary, or any property of any Company or any Subsidiary, of any judgment, writ, order, or decree to the extent the rendition, entry, issuance or continued existence of such judgment, writ, order or decree (or any event or circumstance relating thereto) has not resulted in the occurrence of an Event of Default under Section 10.6 hereof;

(f) inchoate, statutory or construction liens and liens of landlords', suppliers, mechanics, carriers, materialmen, warehousemen, producers, operators or workmen and or other like Liens arising by statute and in the Ordinary Course of Business with respect to obligations which are not due or which are being Properly Contested;

(g) purchase money Liens in real property, improvements thereto or equipment (including any item of equipment purchased in connection with a particular construction project that the Borrower or a Subsidiary expects to sell to its customer with respect to such project and that, pending such sale, is classified as inventory) hereafter acquired (or, in the case of improvements, constructed) or the interests of lessors under Capital Leases hereafter entered into to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the asset purchased or acquired or improved and the proceeds thereof, (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired or any Refinancing Indebtedness in respect thereof, and (iii) the initial principal amount (including the portion of any Capital Lease Obligation attributable to principal) of such Indebtedness secured thereby does not exceed the lesser of the cost or Fair Market Value of such real property, improvements or equipment at the time of such acquisition or construction of the asset that is the subject of such Lien at the time such Indebtedness is entered into;

(h) (i) Liens securing reimbursement obligations of any Foreign Subsidiary in respect of Performance Guarantees (including any obligation to make payments in connection with such performance, but excluding obligations for the payment of borrowed money) issued by a Person that is not the Borrower or an Affiliate of the Borrower; provided such Liens shall be limited to (1) any contract as to which such Performance Guarantee provides credit support, (2) any accounts receivable arising out of such contract and (3) the deposit account into which such accounts receivable are deposited (the property described in clauses (1) through (3), collectively, the "Performance Guarantee Collateral") and (ii) Liens on cash or Cash Equivalents securing outstanding reimbursement obligations in respect of Performance Guarantees and other similar obligations (including any obligation to make payments in connection with such performance, but excluding obligations for the payment of borrowed money); provided that, in each case, the aggregate outstanding amount of all such obligations and liabilities secured by such Liens shall not exceed $10,000,000;

(i) easements, rights-of-way, zoning restrictions, minor defects or irregularities in title and other charges or encumbrances with respect to any Company's Real Property, in each case, which were not incurred in connection with the borrowing of money or the obtaining of advances or credit, which do not in the aggregate materially detract from Agent's or Lenders' rights in and to such Real Property or the value of such Real Property which do not materially impair the use thereof in the operation of any Company's business or otherwise interfere in any material respect with the Ordinary Course of Business of Companies and their Subsidiaries;

(j) the interests of lessors (and sublessors) (and interests in the title of such lessors (and sublessors)) under operating leases (including operating leases with respect to Real Property) and non-exclusive licensors (and interests in the title of such licensors) under license agreements, and any financing statements filed with respect to any such interests of lessors (or sublessors);

(k) Liens that are replacements of Permitted Encumbrances to the extent that the original Indebtedness is the subject of permitted Refinancing Indebtedness and so long as the replacement Liens only encumber those assets that secured the original Indebtedness (or the assets of the parties whose assets secured the original Indebtedness);

(l) rights of setoff or bankers' liens upon deposits of funds and Cash Equivalents in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of bank accounts of the Loan Parties and their Subsidiaries in the Ordinary Course of Business (not incurred in connection with the borrowing of money or the obtaining of advances or credit), including any such involving pooled accounts and netting arrangements;

(m) Liens granted in the Ordinary Course of Business on the unearned portion of insurance premiums securing the financing of insurance premiums;

(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) options, put and call arrangements, rights of first refusal and similar rights (i) relating to Investments in Subsidiaries and Joint Ventures or (ii) provided for in contracts or agreements entered into in the ordinary course of business;

(p) Liens set forth on Schedule 7.2 hereto; provided that such Liens shall secure only the Indebtedness or other obligations which they secure on the Closing Date (and any Refinancing Indebtedness in respect thereof permitted hereunder) and shall not subsequently apply to any other property or assets of any Company other than the property and assets of those Companies to which they apply as of the Closing Date;

(q) (i) Liens in favor of the Pension Benefit Guaranty Corporation securing the "Obligations" as defined in that certain Pledge and Security Agreement, dated as of November 20, 2020, made by Parent and certain of its Subsidiaries in favor of the Pension Benefit Guaranty Corporation (acting on behalf of The Retirement Plan for Employees of Babcock & Wilcox Commercial Operations) (collectively, the "PBGC Secured Obligations") and (ii) other Liens (excluding "all assets" or "blanket" Liens with respect to any Loan Party) not otherwise permitted under this definition securing obligations or other liabilities (other than Indebtedness for borrowed money) of the Parent or its Subsidiaries; provided that the aggregate outstanding amount of the all such obligations and liabilities secured by such Liens under (1) clause (q)(ii) shall not exceed $2,500,000 at any time and (2) under this clause (q) shall not exceed $20,000,000 at any time;

(r) Liens in favor of the Reimbursement/Cash Collateral Agent securing the Reimbursement/Cash Collateral Facility Obligations, so long as such Liens are in accordance with and subject to the Intercreditor Agreement;

(s) Liens on cash collateral in the amount of the "BoA Cash Collateral Amount" (as defined in the Existing BAML Credit Facility Payoff Letter) provided under/pursuant to the Existing BAML Credit Facility Payoff Letter securing the "Bank of America L/Cs" (as defined in the Existing BAML Credit Facility Payoff Letter);

(s) Liens in favor of Companies' customers encumbering Inventory and other goods (and other property related thereto but specifically excluding any proceeds of such Inventory or goods (or any related property) or other Receivables of any Company) that are located on and/or installed (or in the process of being installed) in or on the premises of Companies' customers in connection with project contracts between any one or more of the Companies and such customers securing obligations and other liabilities of Borrowers to such customers (other than Indebtedness) pursuant to such contracts to the extent such Liens are granted or created in the Ordinary Course of Business and are consistent with past business practices of the Companies;

(u) (x) Liens on the assets of, and/or Equity Interests and Equity Interests Equivalents of, any Non-Loan Parties securing any Non-Recourse Indebtedness permitted under clause (e) of the definition of Permitted Indebtedness; provided that no such Lien shall encumber the assets of any Loan Party (other than, in the case of any such Non-Recourse Indebtedness incurred by any particular one or more such Non-Loan Parties, any Equity Interests and Equity Interests Equivalents of such Non-Loan Parties securing the Non-Recourse Indebtedness with respect to which such Non-Loan Parties are obligated/liable), and (B) Liens on the Equity Interests and Equity Interests Equivalents of any Joint Venture securing any Indebtedness with respect to which such Joint Venture is obligated/liable; and

(t) Liens (excluding Liens on Inventory or Receivables or the proceeds thereof of any Loan Party or any "all assets" or "blanket" Liens with respect to any Loan Party) securing any Acquired Indebtedness so long as, in any such case, such Liens attach only to (x) the assets of the Company or Companies that were obligated with respect to such Acquired Indebtedness immediately prior to the applicable Acquisition and (y) assets of the scope/type securing such Acquired Indebtedness immediately prior to the applicable Acquisition.

Notwithstanding the foregoing or anything to the contrary contained in herein or in any Other Document, (x) no Loan Party or Subsidiary shall pledge, cause to be pledged, or permit the pledge of, or otherwise grant any Lien on, any asset owned by any Loan Party or any other Domestic Subsidiary as credit support in favor of, or for the benefit of, any Non-Loan Party or to secured any Indebtedness of any Non-Loan Party other than in connection with the Reimbursement/Cash Collateral Facility Obligations, and (y) no Loan Party or Subsidiary shall pledge, cause to be pledged, or permit the pledge of, or otherwise grant any Lien on, any asset owned by any Company to secure, as credit support in favor of, or for the benefit of, the Unsecured Notes or any obligations, liabilities, or Indebtedness of any kind or nature under the B. Riley Guarantee Reimbursement Agreement.

"Permitted Indebtedness" shall mean:

(a) the Obligations;

(b) Indebtedness as of the Closing Date set forth on Schedule 7.8 hereto and any Refinancing Indebtedness in respect of such Indebtedness;

(c) Permitted Purchase Money Indebtedness (including Permitted Purchase Money Indebtedness that is also Acquired Indebtedness (up to the limitations specified in the definition of Permitted Purchase Money Indebtedness) and any Refinancing Indebtedness in respect of such Indebtedness;

(d) Endorsement of instruments or other payment items for deposit;

(e) Non-Recourse Indebtedness of any Non-Loan Parties so long as (A) at the time such Indebtedness is incurred and after giving pro forma effect thereto, (x) no Default or Event of Default shall be outstanding and (y) Loan Parties shall be in pro forma compliance with each of the covenants set forth in Section 6.5 hereof as of and for the four quarter fiscal measurement period ending as of the last day of the most recently ended fiscal quarter of Parent and its Subsidiaries for which the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to such fiscal quarter have been delivered to Agent, with each such pro forma calculation of the applicable financial covenant ratio with respect to such covenant being made as though such proposed Indebtedness had been incurred on the last day in such fiscal quarter and (B) the maximum potential principal amount with respect to all such Non-Recourse Indebtedness outstanding at any one time (including the unused portion of any revolving credit or other commitments of the lenders/financing parties providing such Non-Recourse Indebtedness) shall not exceed $25,000,000 in the aggregate;

(f) Indebtedness in respect of matured or drawn Performance Guarantees in the nature of letters of credit, bankers acceptances, bank guarantees or other similar obligations, but only so long as such Indebtedness is reimbursed or extinguished within 5 Business Days of being matured or drawn;

(g) Indebtedness in respect of matured or drawn Performance Guarantees in the nature of surety bonds, performance bonds and other similar obligations, in each case that would appear as indebtedness on a consolidated balance sheet of the Borrower prepared in accordance with GAAP, in an aggregate amount not to exceed $20,000,000 at any time outstanding (excluding, for purposes of this dollar cap, any such Indebtedness which is being Properly Contested);

(h) unsecured Indebtedness (x) of Parent pursuant to the Unsecured Notes outstanding as of the Closing Date in an aggregate principal amount not to exceed the aggregate principal amount thereof outstanding as of the Closing Date, and (y) additional unsecured Indebtedness of any one or more Loan Parties (including but not limited to any additional Unsecured Notes issued following the Closing Date) so long as: (i) at the time such additional Indebtedness under this subclause (y) is incurred, after giving pro forma effect to such Indebtedness (and any other transactions (including any Acquisition and/or Investment being consummated with the proceeds thereof) being closed and consummated concurrently/substantially contemporaneously with such incurrence), the Payment Conditions with respect thereto shall have been satisfied and (ii) such additional Indebtedness under this subclause (y): (A) shall not mature prior to the date that is 180 days after the last day of the Term as in effect at the time such additional Indebtedness is incurred, and (B) the documents governing and/or evidencing such additional Indebtedness shall not (1) contain any financial covenants or (2) be materially less favorable to Loan Parties than the terms and conditions of the Unsecured Notes Indenture as in effect on the Closing Date;

(i) Acquired Indebtedness (excluding any Acquired Indebtedness that is Permitted Purchase Money Indebtedness permitted pursuant to clause (c) hereof) and any Refinancing Indebtedness in respect of such Acquired Indebtedness in an aggregate principal amount not to exceed $25,000,000 at any time outstanding, so long as (x) no Company that was not obligated with respect to such Acquired Indebtedness immediately prior to the applicable Acquisition shall in any way (including pursuant to any Guaranty Obligation) be liable or obligated with respect thereto, and (y) no Liens shall attach to any assets or property of any kind of any Company that was not obligated with respect to such Acquired Indebtedness immediately prior to the applicable Acquisition ;

(j) unsecured Indebtedness consisting of (x) standard “working capital adjustment” provisions or similar provisions arising in connection with Permitted Acquisitions, (y) under Permitted Seller Notes and Permitted Earnouts arising in connection with Permitted Acquisitions, and (z) under non-compete payment obligations arising in connection with Permitted Acquisitions, provided that, such Indebtedness shall at all times be unsecured (other than, in the case of clause (x), pursuant to any escrow arrangement or holdback arrangement under the applicable purchase agreement);

(k) Indebtedness owed to any Person providing property, casualty, liability or other insurance to any Company, 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 (including premiums) of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year;

(l) Indebtedness consisting of Interest Rate Hedges and Foreign Currency Hedges (including, without limiting the generality of clause (a) above, Hedging Liabilities) that is incurred for the bona fide purpose of hedging the interest rate, commodity or foreign currency risks associated with the operations of the Companies and not for speculative purposes;

(m) Cash Management Liabilities; and

(n) Indebtedness of any Company or its Subsidiaries in respect of Permitted Intercompany Advances;

(o) Indebtedness under the Reimbursement/Cash Collateral Facility in a maximum amount not to exceed the "Maximum Priority Term Loan Debt" as defined in the Intercreditor Agreement;

(p) Indebtedness under the B. Riley Guarantee Reimbursement Agreement,

(q) Indebtedness with respect to the "Existing Letters of Credit" as defined under the Existing BAML Credit Facility Payoff Letter, and

(r) Indebtedness secured by the Liens permitted in clause (q) of the definition of Permitted Encumbrances.

"Permitted Intercompany Advances" shall mean:

(a) any loans and/or advances made by a Loan Party to another Loan Party or any Guaranty Obligations incurred by a Loan Party with respect to Permitted Indebtedness of another Loan Party;

(b) any loans and/or advances made by a Non-Loan Party to another Non-Loan Party or any Guaranty Obligations incurred by a Non-Loan Party with respect to Permitted Indebtedness of another Non-Loan Party;

(c) any loans and/or advances made by a Non-Loan Party to a Loan Party, provided that any such loans and/or advances must be Subordinated Debt or any Guaranty Obligations incurred by a Non-Loan Party with respect to Permitted Indebtedness of a Loan Party, provided that any reimbursement or contribution obligations of the Loan Party with respect thereto must be subordinated in favor of the Obligations; and

(d) any loans and/or advances made by a Loan Party to a Non-Loan Party so long as the aggregate amount of all such loans and/or advances made in any fiscal year, together with the aggregate amount of all loans, advances, and other Investments made in such fiscal year pursuant to clause (i) of the definition of Permitted Investments, does not exceed an amount for any fiscal year of the lesser of (x) $15,000,000 or (y) 25% of the EBITDA for Loan Parties on a Consolidated Basis for the fiscal year immediately preceding such fiscal year; provided that, notwithstanding anything to the contrary provided for in the foregoing, no such Investment may be made under/in reliance on this clause (d) unless, after giving pro forma effect to any such loan and/or advance (and any Indebtedness being incurred or requested and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction), the Payment Conditions with respect thereto shall have been satisfied;

(e) any loans and/or advances made by a Loan Party to a Non-Loan Party so long as the amount of each such loan/advance does not exceed the Available Amount as of the date such loan/advance is made, provided that, notwithstanding anything to the contrary provided for in the foregoing, no such Investment may be made under/in reliance on this clause (e) unless, after giving pro forma effect to any such Investment (and any Indebtedness being incurred or requested and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction), the Payment Conditions with respect thereto shall have been satisfied; and

(f) any loans and/or advances and/or Guaranty Obligations existing as of the Closing Date set forth on Schedule 7.8 hereto and any Refinancing Indebtedness in respect of such Indebtedness.

"Permitted Investments" shall mean:

(a) Investments in cash and Cash Equivalents;

(b) Investments in negotiable instruments deposited or to be deposited for collection in the Ordinary Course of Business;

(c) the extension of trade credit by a Company to a Customer in the Ordinary Course of Business in connection with a sale of Inventory or rendition of services, in each case on open account terms, and related Investments in accounts, contract rights and chattel paper (each as defined in the UCC), notes receivable and similar items arising or acquired from such sales and renditions;

(d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the Ordinary Course of Business or owing to any Loan Party or any of its Subsidiaries in any Insolvency Proceeding involving a Customer or upon the foreclosure or enforcement of any Lien in favor of a Company;

(e) Investments owned by any Company on the Closing Date and set forth on Schedule 7.4 hereto;

(f) Guaranty Obligations permitted under the definition of Permitted Indebtedness;

(g) Permitted Intercompany Advances, so long as, at the request of Agent, (i) the applicable loan or advance is evidenced by a promissory note on terms and conditions (including terms subordinating payment of any Indebtedness evidenced by such note owing from any Loan Party to the prior Payment in Full of all of the Obligations) acceptable to Agent in its Permitted Discretion and (ii) if any Indebtedness thereunder is owing to any Loan Party, the original of such note has been delivered to Agent either endorsed in blank or together with an undated instrument of transfer executed in blank by the applicable the Loan Parties that are the payees on such note;

(h) Permitted Acquisitions;

(i) Investments in Joint Ventures so long as the aggregate amount of all such Investments made in any fiscal year, together with the aggregate amount of all Permitted Intercompany Advances made in such fiscal year pursuant to clause (d) of the definition of Permitted Intercompany Advances and clause (g) this the definition of Permitted Investments, does not exceed an amount for any fiscal year in excess of the lesser of (x) $20,000,000 or (y) 25% of the EBITDA for Loan Parties on a Consolidated Basis for the fiscal year immediately preceding such fiscal year; provided that, notwithstanding anything to the contrary provided for in the foregoing, no such Investment may be made under/in reliance on this clause (i) unless, after giving pro forma effect to any such Investment (and any Indebtedness being incurred or requested and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction), the Payment Conditions with respect thereto shall have been satisfied;

(j) Investments in Joint Ventures so long as the amount of each such Investment does not exceed the Available Amount as of the date such loan/advance is made; provided that, notwithstanding anything to the contrary provided for in the foregoing, no such Investment may be made under/in reliance on this clause (j) unless, after giving pro forma effect to any such Investment (and any Indebtedness being incurred or requested and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction), the Payment Conditions with respect thereto shall have been satisfied;

(k) Investments in the form of capital contributions and the acquisition of Equity Interests made by any Loan Party in any other Loan Party (other than Parent);

(l) [Reserved];

(m) deposits of cash made in the Ordinary Course of Business to secure performance of operating leases;

(n) loans and advances to employees and officers of Parent or any of its Subsidiaries (or guaranties of loans and advances made by a third party to employees of Parent or any of its Subsidiaries) in the Ordinary Course of Business for any other business purpose and in an aggregate amount not to exceed $3,000,000 at any one time;

(o) Investments resulting from entering into (i) Interest Rate Hedges and Foreign Currency Hedges incurred for the bona fide purpose of hedging the interest rate, commodity or foreign currency risks associated with the operations of the Companies and not for speculative purposes or Cash Management Products and Services, or (ii) agreements relative to Indebtedness that is permitted under clause (i) of the definition of Permitted Indebtedness;

(p) Investments in the nature of, and arising directly as a result of, consideration received in connection with any Permitted Disposition;

(q) Investments held by a Person acquired in 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;

(r) any Investment by way of (i) merger, consolidation, reorganization or recapitalization, (ii) reclassification of Equity Interests; or (iii) transfer of assets, in each case solely to the extent permitted by Section 7.1 hereof; and

(s) to the extent constituting an Investment, any Restricted Payment to the extent permitted by Section 7.7 hereof.

"Permitted Purchase Money Indebtedness" shall mean (x) as of any date of determination, Purchase Money Indebtedness (other than the Obligations, but including Capitalized Lease Obligations, but excluding any Purchase Money Indebtedness that is also Acquired Indebtedness) incurred after the Closing Date in an aggregate principal amount of all such Indebtedness permitted by this clause (x) at any one time outstanding not to exceed $15,000,000 and (y) Purchase Money Indebtedness that is Acquired Indebtedness to the extent permitted under clause (i) of the definition of Indebtedness.

"Permitted Restricted Payments" shall mean, so long as, in the case of any such Restricted Payment other than any Restricted Payment pursuant to clause (a)(i) below or clause (c), (d), or (e) below, no Default or any Event of Default shall have occurred and remain outstanding at the time of the payment thereof, or would occur after giving pro forma effect to the payment thereof (and any Indebtedness (including if applicable any Revolving Advance) being incurred or requested and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction):

(a) (i) distributions and dividends payable by any Company to any other Company (other than Parent), (ii) distributions and dividends payable by any Company to Parent in connection with and as an intermediate step in any series of substantially contemporaneous transactions ultimately resulting in an Investment that is a Permitted Investment, and (iii) distributions and dividends payable by any Company to Parent to fund (x) any Restricted Payment by Parent but only if and to the extent such Restricted Payment by Parent is a Permitted Restricted Payment hereunder or (y) any payment by Parent with respect to any Permitted Indebtedness with respect to which Parent is liable/obligated, but in each case under this subclause (y) only if and to the extent that (A) such payment by Parent in respect of such Permitted Indebtedness is not otherwise prohibited under this Agreement and (B) no Revolving Advance may be requested (nor may any proceeds of any Revolving Advance made on or about the day of any such transaction be used) to fund any portion of any such Restricted Payment under this subclause (y);

(b) distributions and dividends by any Subsidiary that is not a Wholly-Owned Subsidiary to any other direct or indirect holders of Equity Interests in such Subsidiary to the extent (i) such distributions and dividends are made simultaneously and on a *pro rata* (or on a basis more favorable to the Borrower or such Guarantor) basis among all the holders of the Equity Interests in such Subsidiary;

(c) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Stock or Stock Equivalents of the Borrower or any of its Subsidiaries (other than Specified Equity Contributions) that is deemed to occur upon the cashless exercise of stock options or warrants;

(d) distributions and dividends to Parent, to pay professional fees, franchise taxes and other Ordinary Course of Business operating expenses (excluding salaries and other employee compensation) incurred by Parent solely in its capacity as parent corporation of Companies;

(e) for so long as any Company (other than Parent) is a member of a consolidated, combined, unitary or similar type income tax group of which Parent is the common parent and files a consolidated federal income tax return in which Parent is the common parent (or, by reason of being a disregarded entity for U.S. federal income tax purposes, its income is included in such consolidated federal income tax return), distributions to Parent as will permit Parent to pay U.S. federal, state and local income taxes then due and payable, provided that the amount of any such distribution shall not exceed the amount of such taxes that are attributable to the income of such Company and its Subsidiaries (the "Permitted Tax Distributions");

(f) any Company may repurchase, redemption or other acquisition or retirement for value of any Equity Interests or Equity Interest Equivalents of Parent or any Subsidiary held by any current or former officer, director or employee pursuant to any equity-based compensation plan, equity subscription agreement, stock option agreement, shareholders' agreement or similar agreement in an aggregate amount not to exceed $4,250,000 in any fiscal year, but only if and to the extent that no Revolving Advance may be requested (nor may any proceeds of any Revolving Advance made on or about the day of any such transaction be used) to fund any portion of any such Restricted Payment under this clause (f);

(g) Parent may pay regularly scheduled cash dividends and distributions with respect to any preferred Equity Interests of Parent that do not constitute Disqualified Equity Interests at a rate not to exceed 9.00% per annum of the liquidation preference of such preferred Equity Interests so long as, after giving pro forma effect to any such payments (and to any Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with such payments), the Payment Conditions with respect thereto shall have been satisfied; and

(h) payment of fees and other amounts, including amounts in lieu of interest waived hereunder, to B. Riley pursuant to the B. Riley Fee Letter which may be made in Stock, Stock Equivalents, Cash or Cash Equivalents but only if and to the extent that no Revolving Advance may be requested (nor may any proceeds of any Revolving Advance made on or about the day of any such transaction be used) to fund any portion of any such Restricted Payment under this clause (h);

"Permitted Seller Notes" shall mean, with respect to a Company, any unsecured obligations of such Company consisting of a deferred purchase price payment or other deferred consideration (excluding any standard "working capital adjustment" provisions or similar provisions) payable by such Company in connection with a Permitted Acquisition (or other Acquisition consummated with the consent of Required Lenders), whether evidenced by a promissory note, by the terms of the applicable acquisition purchase or merger agreement, or otherwise, in an aggregate principal amount of all such Indebtedness permitted by this clause (x) at any one time outstanding not to exceed $25,000,000, and which are subject to subordination terms (or a subordination agreement in favor of Agent) in favor of the Obligations reasonably acceptable to Agent and either (x) do not provide for any payments of principal thereunder prior to the date that is 90 days after the last day of the Term as in effect on the date such obligation is created or (y) otherwise on terms and conditions acceptable to Agent in its reasonable discretion.

"Person" shall mean any individual, sole proprietorship, partnership, corporation, business trust, joint stock company, trust, unincorporated organization, association, limited liability company, limited liability partnership, institution, public benefit corporation, joint venture, entity or Governmental Body (whether federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

"Plan" shall mean any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Benefit Plan and a Multiemployer Plan, as defined herein) maintained by any Company or any member of the Controlled Group or to which any Company or any member of the Controlled Group is required to contribute.

"Pledge Agreement" shall mean any pledge agreements executed on or subsequent to the Closing Date by any Loan Party or other Person with respect to any Subsidiary Equity Interest and/or any other Investment Property of any Company to secure the Obligations, in each case as such pledge agreement may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Pledged Equity Interest Collateral" shall have the meaning set forth in Section 4.14(a) hereof.

"Pledged Issuer" shall mean any Subsidiary of any Loan Party in its capacity as the "issuer" (as defined in the definition of "Equity Interest") of any Subsidiary Equity Interest in which any Loan Party has any right, title or interest and which is subject to a Lien in favor of Agent for the benefit of the Secured Parties created under this Agreement or any Other Document.

"PNC" shall have the meaning set forth in the preamble to this Agreement and shall include all of its successors and assigns.

"Post-Petition Obligations" shall have the meaning set forth in the definition of "Obligations".

"Pro Forma Balance Sheet" shall have the meaning set forth in Section 5.5(a) hereof.

"Pro Forma Financial Statements" shall have the meaning set forth in Section 5.5(b) hereof.

"Projections" shall have the meaning set forth in Section 5.5(b) hereof.

"Properly Contested" shall mean, in the case of any Indebtedness, Lien or Taxes, as applicable, of any Person that are not paid as and when due or payable by reason of such Person's bona fide dispute concerning its liability to pay the same or concerning the amount thereof: (a) such Indebtedness, Lien or Taxes, as applicable, are being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted; (b) such Person has established appropriate reserves as shall be required in conformity with GAAP; (c) the non-payment of such Indebtedness or Taxes will not have a Material Adverse Effect or will not result in the forfeiture of any assets of such Person; (d) no Lien is imposed upon any of such Person's assets with respect to such Indebtedness or taxes unless such Lien (x) does not attach to any Receivables or Inventory, (y) is at all times junior and subordinate in priority to the Liens in favor of Agent (except only with respect to property Taxes that have priority as a matter of applicable state law) and, (z) enforcement of such Lien is stayed during the period prior to the final resolution or disposition of such dispute; and (e) if such Indebtedness or Lien, as applicable, results from, or is determined by the entry, rendition or issuance against a Person or any of its assets of a judgment, writ, order or decree, enforcement of such judgment, writ, order or decree is stayed pending a timely appeal or other judicial review.

"Protective Advances" shall have the meaning set forth in Section 16.2(f) hereof.

"Published Rate" shall mean the rate of interest published each Business Day in the Wall Street Journal "Money Rates" listing under the caption "London Interbank Offered Rates" for a one month period (or, if no such rate is published therein for any reason, then the Published Rate shall be the LIBOR Rate for a one month period as published in another publication selected by Agent).

"Purchase Money Indebtedness" shall mean, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations) incurred at the time of, or within ninety (90) days after, the acquisition of or improvement of any tangible fixed assets (including any real property, improvements thereto or equipment (including any item of equipment purchased in connection with a particular construction project that the Borrower or a Subsidiary expects to sell to its customer with respect to such project and that, pending such sale, is classified as inventory)) for the purpose of financing all or any part of the cost of such acquisition or improvement.

"Purchasing CLO" shall have the meaning set forth in Section 16.3(d) hereof.

"Purchasing Lender" shall have the meaning set forth in Section 16.3(c) hereof.

"Qualified Cash" shall mean, as of any date of determination, the amount of unrestricted cash and Cash Equivalents of the Loan Parties denominated in Dollars that is in deposit accounts or in securities accounts, or any combination thereof, which deposit accounts and securities accounts are the subject of Control Agreements and are maintained with a branch office of the applicable bank or securities intermediary located within the United States of America.

"Qualified ECP Loan Party" shall mean each Loan Party that on the Eligibility Date is (a) a corporation, partnership, proprietorship, organization, trust, or other entity other than a "commodity pool" as defined in Section 1a(10) of the CEA and CFTC regulations thereunder that has total assets exceeding $10,000,000 or (b) an Eligible Contract Participant that can cause another person to qualify as an Eligible Contract Participant on the Eligibility Date under Section 1a(18)(A)(v)(II) of the CEA by entering into or otherwise providing a "letter of credit or keepwell, support, or other agreement" for purposes of Section 1a(18)(A)(v)(II) of the CEA.

"RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as same may be amended, modified or supplemented from time to time.

"Real Property" shall mean all real property assets (whether or not owned in fee, leased, or otherwise) of any Loan Party, together with all buildings, fixtures, improvements, leases, licenses, permits, and approvals of any Loan Party with respect to any real estate asset, including all of the premises owned and leased by the Loan Parties listed on Schedule 4.4 hereto or hereafter owned or leased by any Loan Party.

"Real Property Collateral" shall mean all Collateral consisting of Real Property.

"Receivables" shall mean and include, as to any Person, all of such Person's accounts (as defined in Article 9 of the Uniform Commercial Code) and all of such Person's contract rights, instruments (including those evidencing indebtedness owed to such Person by its Affiliates), documents, chattel paper (including electronic chattel paper), general intangibles relating to accounts, contract rights, instruments, documents and chattel paper, and drafts and acceptances, credit card receivables and all other forms of obligations owing to such Person arising out of or in connection with the sale or lease of Inventory or the rendition of services, all supporting obligations, guarantees and other security therefor, whether secured or unsecured, now existing or hereafter created, and whether or not specifically sold or assigned to Agent hereunder.

"Receivables Advance Rate" shall have the meaning set forth in Section 2.1(a)(y) hereof.

"Refinancing Indebtedness" shall mean any financing, renewal or extension of Indebtedness so long as:

(a) such refinancing, renewal or extension does not result in an increase in the principal amount of the Indebtedness so refinanced, renewed or extended, other than by the amount of premiums paid thereon, accrued and unpaid interest with respect thereto, and the fees and expenses incurred in connection therewith;

(b) such refinancing, renewal or extension does not result in a shortening of the average weighted maturity (measured as of the date of the refinancing, renewal or extension) of the Indebtedness so refinanced, renewed or extended, and such refinancing, renewal or extension is not on terms or conditions that, taken as a whole, are less favorable to the interests of the Secured Parties than the terms and conditions of the Indebtedness being refinanced, renewed or extended;

(c) if the Indebtedness that is refinanced, renewed or extended was Subordinated Debt, then the terms and conditions of the refinancing, renewal or extension shall include subordination terms and conditions that are at least as favorable to the Secured Parties as those that were applicable to the refinanced, renewed or extended Indebtedness;

(d) the refinancing, renewal or extension is not recourse to any Person that is liable on account of the Obligations, other than those Persons which were obligated (as permitted by Sections 7.3 and/or 7.8 hereof) with respect to the Indebtedness that was refinanced, renewed or extended;

(e) the refinancing, renewal or extension is not secured by Liens on any assets of any Company or any other assets or property subject to a Lien in favor of Agent for benefit of any of the Secured Parties to secure any of the Obligations other than any such assets of any applicable Company (or other Person) that were subject to a Permitted Encumbrance with respect to the Indebtedness that was refinanced, renewed or extended, and if such Liens were subordinated in favor of Liens held by the Agent, then the terms and conditions of the refinancing, renewal or extension shall include subordination terms and conditions as to such Liens that are at least as favorable to the Secured Parties as those that were applicable to the refinanced, renewed or extended Indebtedness; and

(f) such refinancing, renewal or extension shall not otherwise be on terms and conditions that are materially less favorable to the applicable Companies (taking into account current market conditions at the time of such refinancing, renewal or extension).

"Register" shall have the meaning set forth in Section 16.3(e) hereof.

"Reimbursement Obligation" shall have the meaning set forth in Section 2.14(b) hereof.

"Reimbursement/Cash Collateral Facility" shall mean that certain secured facility for the providing of cash collateral for the benefit of Loan Parties provided for under the Related L/C Facility Agreement.

"Reimbursement/Cash Collateral Facility Agent" shall mean MSD PCOF Partners XLV, LLC, as agent under the Reimbursement/Cash Collateral Facility Documents, together with its successors and assigns in such capacity.

"Reimbursement/Cash Collateral Facility Agreement" shall mean the Reimbursement, Guaranty, and Security Agreement dated as of the Closing Date among Parent, as Borrower, the Guarantors, as Guarantors, the financial institutions party thereto from time to time as "Cash Collateral Providers", and Reimbursement/Cash Collateral Facility Agent, as it may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Reimbursement/Cash Collateral Facility Documents" shall mean the Reimbursement/Cash Collateral Facility Agreement and all reimbursement agreements, credit facility agreements, security agreements, promissory notes, and other agreements, contracts, instruments, and documents executed in connection therewith, in each case as such agreement, contract, instrument, or document may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Reimbursement/Cash Collateral Facility Obligations" shall mean the "Obligations" as defined under the Related L/C Facility Agreement.

"Related Equity Interest Rights" shall have the meaning set forth in the definition of "Equity Interests".

"Related L/C Facility" shall mean that certain secured letter of credit issuance facility provided for under the Related L/C Facility Agreement.

"Related L/C Facility Agreement" shall mean that certain Letter of Credit Issuance and Reimbursement, Guaranty, and Security Agreement dated as of the date hereof among Borrower, Guarantors, and PNC, as the letter of credit issuer thereunder (PNC, in such capacity, together with its successors and assign in such capacity, the "Related L/C Facility Issuer"), as it may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Related L/C Facility Documents" shall mean, collectively, the Related L/C Facility Agreement and the "Other Documents" (as defined in the Related L/C Facility Agreement") relating thereto, in each case as it may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Related L/C Facility Fees" shall mean the "Facility Fees" as defined in the Related L/C Facility Agreement

"Related L/C Facility Letter of Credit" shall mean each letter of credit issued under the Related L/C Facility pursuant to the Related L/C Facility Agreement.

"Related L/C Facility Letter of Credit Fees" shall mean the "Letter of Credit Fees" as defined in the Related L/C Facility Agreement.

"Related L/C Facility Letter of Credit Reserve" shall mean a Reserve, applicable at all times as to both the Maximum Revolving Advance Amount and the Formula Amount, in the amount as of any applicable date equal to three percent (3%) of the Dollar Equivalent of the aggregate amount of the "Maximum Undrawn Amounts" (as defined in the Related L/C Facility Agreement) as of such date with respect to all Related L/C Facility Letters of Credit outstanding on such date.

"Related L/C Facility Loan Parties Cash Collateral" shall mean the "Loan Parties Cash Collateral" as defined in the Related L/C Facility Agreement.

"Related L/C Facility Loan Parties Cash Pledge Agreement" shall mean the "Loan Parties Cash Pledge Agreement" as defined in the Related L/C Facility Agreement.

"Related L/C Facility Obligations" shall mean all "Obligations" as defined under and included in the definition of such term in the Related L/C Facility Agreement.

"Related L/C Facility Pledged Cash Collateral" shall mean the "Pledged Cash Collateral" as defined in the Related L/C Facility Agreement.

"Related L/C Facility Reimbursement Obligation" shall mean any matured "Reimbursement Obligation" under the Related L/C Facility.

"Related L/C Facility Third Party Cash Collateral" shall mean the "Third Party Cash Collateral" as defined in the Related L/C Facility Agreement.

"Related L/C Facility Third Party Cash Pledge Agreement" shall mean the "Third Party Cash Pledge Agreement" as defined in the Related L/C Facility Agreement.

"Related L/C Facility Third Party Cash Pledgor" shall mean the "Third Party Pledgor" as defined in the Related L/C Facility Agreement.

"Release" shall have the meaning set forth in Section 5.7(c)(i) hereof.

"Reportable Compliance Event" shall mean that (1) any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, custodially detained, penalized or the subject of an assessment for a penalty or enters into a settlement with an Governmental Body in connection with any sanctions or other Anti-Terrorism Law or Anti-Corruption law, or any predicate crime to any Anti-Terrorism Law or Anti-Corruption Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations represents a violation of any Anti-Terrorism Law. or Anti-Corruption Law; (2) any Covered Entity engages in a transaction that has caused or may cause the Lenders or Agent to be in violation of any Anti-Terrorism Law, including a Covered Entity's use of any proceeds of the credit facility to fund any operations in, finance any investments or activities in, or, make any payments to, directly or knowingly indirectly, a Sanctioned Jurisdiction or Sanctioned Person; or (3) any Collateral becomes Embargoed Property.

"Replacement Notice" shall have the meaning set forth in Section 3.11 hereof.

"Reportable ERISA Event" shall mean a reportable event described in Section 4043(c) of ERISA or the regulations promulgated thereunder for which the 30 day notice has not been waived by the PBGC.

"Required Lenders" shall mean Lenders (not including Swing Loan Lender (in its capacity as such Swing Loan Lender) or any Defaulting Lender) holding more than fifty percent (50.00%) of the aggregate of the Revolving Commitment Amounts of all Lenders (excluding any Defaulting Lender) (or, if the Revolving Commitments hereunder have been terminated, the aggregate amount of the outstanding principal balance of all Revolving Advances (other than Revolving Advances held by any Defaulting Lender), the aggregate amount of the outstanding Participation Commitments of all Revolving Lenders (excluding any Defaulting Lender) with respect to all outstanding Swing Loans, and the aggregate amount of the Participation Commitments of all Revolving Lenders (excluding any Defaulting Lender) with respect to the Maximum Undrawn Amount of all outstanding Letters of Credit); provided, however, (x) if there are fewer than three (3) Lenders (excluding any Defaulting Lender), Required Lenders shall mean all Lenders (excluding any Defaulting Lender), and (y) for purposes of this definition, all Lenders that are Affiliates of each other shall be deemed to constitute only one Lender.

"Reserve Percentage" shall mean as of any day the maximum effective percentage in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as "Eurocurrency Liabilities").

"Reserves" shall mean reserves against the Maximum Revolving Advance Amount and/or the Formula Amount, including without limitation, and at all times the Related L/C Facility Letter of Credit Reserve, as Agent may reasonably deem proper and necessary from time to time in its Permitted Discretion.

"Responsible Officer" shall mean, as to any Person, any Chief Executive Officer, Chief Financial Officer, Treasurer, or President of such Person (or any equivalent senior executive officer), any general partner of such Person, or any managing member of such Person.

"Restricted Payment" shall mean (a) the declaration or payment of any dividend or the making of any other payment or distribution, directly or indirectly, on account of Equity Interests issued by any Company (including any payment in connection with any merger or consolidation involving any Company) or to the direct or indirect holders of Equity Interests issued by any Company in their capacity as such holders (other than dividends or distributions payable in Qualified Equity Interests issued by Parent), (b) the purchase, redemption or making of any sinking fund or similar payment, or otherwise acquisition or retirement for value (including in connection with any merger or consolidation involving any Loan Party) any Equity Interests issued by any Company, or (c) the making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of any Company now or hereafter outstanding; provided that dividends payable solely in Stock or Stock Equivalents (other than Disqualified Stock) shall not constitute Restricted Payments.

"Revolving Advances" shall mean all Advances pursuant to Section 2.1 hereof. Unless the context shall expressly provide or clearly require otherwise, "Revolving Advances" shall include all Out-of-Formula Loans and all Protective Advances.

"Revolving Commitment" shall mean the obligation of each applicable Lender (as provided for on Schedule 1.1 hereto (as such Schedule may be amended and restated from time to time in accordance herewith) and/or in any assignment of any Revolving Commitment to such Revolving Lender pursuant to Section 16.3(c) or (d) hereof) to make Revolving Advances and participate in Swing Loans and Letters of Credit in an aggregate principal and/or face amount not to exceed the Revolving Commitment Amount of such Lender.

"Revolving Commitment Amount" shall mean, as to any Revolving Lender, the revolving loan commitment amount set forth opposite such Revolving Lender's name on Schedule 1.1 hereto (as such Schedule may be amended and restated from time to time in accordance herewith) (or, in the case of any Revolving Lender that became party to this Agreement after the Closing Date as a result of any assignment of any Revolving Commitment to such Revolving Lender pursuant to Section 16.3(c) or (d) hereof, the Revolving Commitment Amount of such Revolving Lender as set forth in the applicable Commitment Transfer Supplement); as such Revolving Commitment Amount may be increased or decreased from time to time upon any assignment of any Revolving Commitment by or to such Revolving Lender pursuant to Section 16.3(c) or (d) hereof.

"Revolving Commitment Percentage" shall mean, as to any Revolving Lender prior to the termination of the Revolving Commitment of such Revolving Lender and/or the Revolving Commitments of all Revolving Lenders in accordance with the terms hereof, the percentage equal to (a) the Revolving Commitment Amount of such Revolving Lender *divided by* (b) the Maximum Revolving Advance Amount as in effect at the applicable time of determination (and after any termination of the Revolving Commitments of all Revolving Lenders in accordance with the terms hereof, the Revolving Commitment Percentage of each Revolving Lender shall be the percentage equal to (x) aggregate amount of the outstanding principal balance of all Revolving Advances held by such Revolving Lender, and the aggregate amount of the outstanding Participation Commitments of such Revolving Lender with respect to all outstanding Swing Loans and the Maximum Undrawn Amount of all outstanding Letters of Credit (including, as to any Revolving Lender that is also the Agent, all Out-of-Formula Advances funded by Agent pursuant to Section 16.2(e) and all Protective Advances funded by Agent pursuant to Section 16.2(f)) divided by (y) aggregate amount of the outstanding principal balance of all Revolving Advances held by all Revolving Lenders and the aggregate amount of the outstanding Participation Commitments of all Revolving Lenders with respect to all outstanding Swing Loans, and the Maximum Undrawn Amount of all outstanding Letters of Credit (including, if the Agent is also a Revolving Lender, all Out-of-Formula Advances funded by Agent pursuant to Section 16.2(e) and all Protective Advances funded by Agent pursuant to Section 16.2(f)).

"Revolving Lender" shall mean each Lender that that holds any Revolving Commitment (or, after any termination of the Revolving Commitments of all Revolving Lenders in accordance with the terms hereof, each Lender which held any Revolving Commitment immediately prior to such termination).

"Revolving Credit Note" shall mean, collectively, the promissory notes referred to in Section 2.1(a) hereof.

"Revolving Interest Rate" shall mean (a) with respect to (x) Revolving Advances that are Domestic Rate Loans and (y) all Swing Loans, an interest rate per annum equal to the sum of the Applicable Margin plus the Alternate Base Rate, and (b) with respect to Revolving Advances that are accruing interest as a LIBOR Rate Loans for any particular Interest Period, an interest rate per annum equal to the sum of the Applicable Margin plus the LIBOR Rate for such LIBOR Rate Loan for such Interest Period.

"Sanctioned Jurisdiction" shall mean a country, territory, region, or government that is the subject or target of sanctions administered by OFAC (which, as of the Closing date, is the Crimea region of Ukraine, Cuba, Iran, North Korea, Syria, and Venezuela).

"Sanctioned Person" shall mean (a) a Person that is the subject of sanctions administered by OFAC or the U.S. Department of State ("State"), including by virtue of being (i) named on OFAC's list of "Specially Designated Nationals and Blocked Persons"; (ii) organized under the laws of, ordinarily resident in, or physically located in a Sanctioned Jurisdiction (except transactions with a Person that are authorized by OFAC); (iii) owned or controlled 50% or more in the aggregate, by one or more Persons that are the subject of sanctions administered by OFAC; (b) a Person that is the subject of sanctions maintained by the European Union ("E.U."), including by virtue of being named on the E.U.'s "Consolidated list of persons, groups and entities subject to E.U. financial sanctions" or other, similar lists; (c) a Person that is the subject of sanctions maintained by the United Kingdom ("U.K."), including by virtue of being named on the "Consolidated List Of Financial Sanctions Targets in the U.K." or other, similar lists; or (d) a Person that is the subject of sanctions imposed by any Governmental Body of a jurisdiction whose laws apply to this Agreement.

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

"Secured Hedge Agreements" shall mean, collectively, all Lender-Provided Interest Rate Hedges and Lender-Provided Foreign Currency Hedges.

"Secured Parties" shall mean, collectively, Agent, Issuer, Swing Loan Lender and Lenders, together with any Affiliates of Agent or any Lender to whom any Hedge Liabilities or Cash Management Liabilities are owed and with each other holder of any of the Obligations (including all holders of the Related L/C Facility Obligations), and the respective successors and assigns of each of them.

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

"Security" means any Equity Interests, Equity Interest Equivalents, voting trust certificate, bond, debenture, promissory note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, or any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, but shall not include any evidence of the Obligations.

"Senior Financial Covenant Indebtedness" shall mean, collectively, (x) all Financial Covenant Debt of Loan Parties on a Consolidated Basis that is secured by a Lien on any assets or properties of any Company, and (y) all other Financial Covenant Debt of Loan Parties on a Consolidated Basis owing by any Non-Loan Party and/or with respect to which any Non-Loan Party is obligated (and, for the avoidance of doubt, including in all cases any Non-Recourse Indebtedness).

"Senior Net Leverage Ratio" shall mean, with respect to Loan Parties on a Consolidated Basis as of any applicable testing date, the ratio of (a) the result of (x) Senior Financial Covenant Indebtedness outstanding as of such testing date *minus* (y) the lesser of (1) Qualified Cash of Loan Parties as of such testing date or (2) $20,000,000, to (b) EBITDA for the four (4) fiscal quarter measurement period ending as of such testing date (or such other fiscal measurement period ending as of such testing date as may be explicitly stated in any case); provided that, for purposes of testing the Senior Net Leverage Ratio of Loan Parties on a Consolidated Basis to determine compliance with Section 6.5 or any other provision hereof other than clause (g) of the definition of "Payment Conditions", in each case for measurement periods ending on or prior to March 31, 2022: (x) for the fiscal quarter ending date occurring on September 30, 2021, the EBITDA for Loan Parties on a Consolidated Basis shall be measured for the single fiscal quarter measurement period ending on such date, multiplied by four (4), (y) for the fiscal quarter ending date occurring on December 31, 2021, the EBITDA for Loan Parties on a Consolidated Basis shall be measured for the two fiscal quarter measurement period ending on such date, multiplied by two (2), and (z) for the fiscal quarter ending date occurring on March 31, 2022, the EBITDA for Loan Parties on a Consolidated Basis shall be measured for the three fiscal quarter measurement period ending on such date, multiplied by four-thirds (4/3).

"Settlement" shall have the meaning set forth in Section 2.6(d) hereof.

"Settlement Date" shall have the meaning set forth in Section 2.6(d) hereof.

"Solvent" means, with respect to any Person, that the value of the assets of such Person (both at fair value and present fair saleable value) is, on the date of determination, greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person as of such date and that, as of such date, such Person is able to pay all liabilities of such Person as such liabilities are expected to mature and does not have unreasonably small capital for its then current business activities. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Specified Equity Contribution" shall have the meaning set forth in Section 6.5(e).

"Subordinated Debt" means Indebtedness of Parent or any of its Subsidiaries pursuant to terms and conditions acceptable to Agent and the Required Lenders in their respective sole discretion that is, by its terms, expressly subordinated to the prior Payment in Full of the Obligations pursuant to subordination terms and conditions acceptable to Agent and the Required Lenders in their respective sole discretion. The terms of any Subordinated Debt may permit Intercompany Subordinated Debt Payments.

"Subsidiary" shall mean of any Person a corporation or other entity of whose Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the directors of such corporation, or other Persons performing similar functions for such entity, are owned, directly or indirectly, by such Person.

"Subsidiary Equity Interest" shall mean (a) with respect to the Equity Interests issued to a Loan Party by any Subsidiary (other than a Foreign Subsidiary), 100% of such issued and outstanding Equity Interests, and (b) with respect to any Equity Interests issued to a Loan Party by any First-Tier Foreign Subsidiary (i) 100% of such issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956(c)(2)) and (ii) 100% of such issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)); provided that the Subsidiary Equity Interests shall not include any Equity Interests of a Foreign Subsidiary that is not a First-Tier Foreign Subsidiary.

"Supply Chain Agreement" shall mean, as to any Approved Supply Chain Financing, the supplier agreement(s), receivables purchase agreement(s), and/or other agreement(s)/master terms that govern the terms and conditions of such Approved Supply Chain Financing as between the applicable Borrower(s) and the applicable Supply Chain Receivables Buyer.

"Supply Chain Financing" shall mean a program offered by a Customer of any Company and a bank or other financial institution providing financing to such Customer whereby such bank or other financial institution shall purchase from the applicable Company and/or make payment to the applicable Company in respect of certain Receivables owing by such Customer to such Company in advance of the original due date for such Receivables at an agreed-upon discounted rate.

"Supply Chain Lien Agreement" shall mean, as to any Approved Supply Chain Financing, an agreement (acceptable to Agent in its Permitted Discretion) regarding the respective Liens and rights of Agent and such bank/financial institutions as to the applicable Receivables.

"Supply Chain Receivables" shall mean and any all Receivables owing to any Company from any Approved Supply Chain Customer.

"Supply Chain Receivables Buyer" shall mean the bank or other financial institution participating in any Approved Supply Chain Financing as the buyer of or party making payment with respect to the applicable Receivables of the applicable Approved Supply Chain Customer.

"Supply Chain Purchased Receivable" shall mean each Receivable of an Approved Supply Chain Customer that has either (x) been sold and transferred by an applicable Company to the applicable Supply Chain Receivables Buyer and with respect to which the full purchase price (as determined by the applicable Supply Chain Agreement) has been paid for the benefit of the applicable Company in cash into a Blocked Account or Depositary Account and title has been transferred to the applicable Supply Chain Receivables Buyer, or (y) been paid by the applicable Supply Chain Receivables Buyer and with respect to which the full payment amount (as determined by the applicable Supply Chain Agreement) has been paid for the benefit of the applicable Company in cash into a Blocked Account or Depositary Account, in each case, all in accordance with and subject to the terms of the applicable Supply Chain Agreement and the applicable Supply Chain Lien Agreement.

"Swap" shall mean any "swap" as defined in Section 1a(47) of the CEA and regulations thereunder other than (a) a swap entered into on, or subject to the rules of, a board of trade designated as a contract market under Section 5 of the CEA, or (b) a commodity option entered into pursuant to CFTC Regulation 32.3(a).

"Swap Obligation" shall mean any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap which is also a Lender-Provided Interest Rate Hedge, or a Lender-Provided Foreign Currency Hedge.

"Swing Loan Lender" shall mean PNC, in its capacity as lender of the Swing Loans.

"Swing Loan Note" shall mean the promissory note described in Section 2.4(a) hereof.

"Swing Loans" shall mean the Advances made pursuant to Section 2.4 hereof.

"Tax Affiliate" means, with respect to any Person, (a) any Subsidiary of such Person, and (b) any Affiliate of such Person with which such Person files or is eligible to file consolidated U.S. federal income tax returns or consolidated, combined, unitary or similar tax returns for state, local or foreign tax purposes.

"Taxes" shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Body, including any interest, additions to tax or penalties applicable thereto.

"Term" shall have the meaning set forth in Section 13.1 hereof.

"Termination Event" shall mean: (a) a Reportable ERISA Event with respect to any Pension Plan; (b) the withdrawal of any Company or any member of the Controlled Group from a Pension Plan 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; (c) the providing of notice of intent to terminate a Pension Plan in a distress termination described in Section 4041(c) of ERISA; (d) the commencement of proceedings by the PBGC to terminate a Pension Plan; (e) any event or condition (i) which would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or (ii) that would reasonably be expected to result in the termination of a Multiemployer Plan pursuant to Section 4041A of ERISA; (f) the partial or complete withdrawal within the meaning of Section 4203 or 4205 of ERISA, of any Company or any member of the Controlled Group from a Multiemployer Plan; (g) notice that a Multiemployer Plan is subject to Section 4245 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent, upon any Company or any member of the Controlled Group. Notwithstanding the foregoing or anything in this Agreement to the contrary, a 'Termination Event' shall not include (i) an application for waiver of the minimum funding standard under Section 412 of the Code for a Pension Plan for the 2018 or 2019 plan years if and to the extent such application was approved and resulted in a Pension Funding Waiver (ii) the failure to make any required contribution to a Pension Plan or to meet the minimum funding standard of Section 430 of the Code with respect to a Pension Plan for the 2018 or 2019 plan years if and to the extent such failure is subject to a Pension Funding Waiver, nor (iii) the Deferred PBGC Payments; *provided, however*, that the failure of the Company or any member of the Controlled Group to comply in all material respects with the terms and conditions of any Pension Funding Waiver, including, without limitation, the timely payment of any amortization installments required by such Pension Funding Waivers, shall constitute a 'Termination Event.'

"Total Net Leverage Ratio" shall mean, with respect to Loan Parties on a Consolidated Basis as of any applicable testing date, the ratio of (a) the difference of (x) Financial Covenant Debt outstanding as of such testing date *minus* (y) the positive difference (if any) of (x) unrestricted cash and Cash Equivalents on the consolidated balance sheet of Loan Parties on a Consolidated Basis as of such testing date minus (y) $30,000,000 (provided that, in no case shall the amount under this subclause (y) be less than $0), to (b) EBITDA for the four (4) fiscal quarter measurement period ending as of such testing date (or such other fiscal measurement period ending as of such testing date as may be explicitly stated in any case); provided that, for purposes of testing the Total Net Leverage Ratio of Loan Parties on a Consolidated Basis under this Agreement for measurement periods ending on or prior to March 31, 2022: (x) for the fiscal quarter ending date occurring on September 30, 2021, the EBITDA for Loan Parties on a Consolidated Basis shall be measured for the single fiscal quarter measurement period ending on such date, multiplied by four (4), (y) for the fiscal quarter ending date occurring on December 31, 2021, the EBITDA for Loan Parties on a Consolidated Basis shall be measured for the two fiscal quarter measurement period ending on such date, multiplied by two (2), and (z) for the fiscal quarter ending date occurring on March 31, 2022, the EBITDA for Loan Parties on a Consolidated Basis shall be measured for the three fiscal quarter measurement period ending on such date, multiplied by four-thirds (4/3).

"Toxic Substance" shall mean and include any material present on any Real Property (including the Leasehold Interests) which has been shown to have significant adverse effect on human health or which is subject to regulation under the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., applicable state law, or any other applicable Federal or state laws now in force or hereafter enacted relating to toxic substances. "Toxic Substance" includes but is not limited to asbestos, polychlorinated biphenyls (PCBs) and lead-based paints.

"Transactions" shall mean (i) the closing under and becoming effective of this Agreement and the funding/issuance hereunder of the any Revolving Loans and/or Letters of Credit requested by Borrower to be funded/issued on the Closing Date (if any) (ii) the closing under and becoming effective of the Related L/C Facility Credit Agreement and the issuance thereunder of the initial Letters of Credit requested by Borrower to be issued on the Closing Date, including the delivery by the Related L/C Facility Third Party Pledgor of the Related L/C Facility Third Party Cash Collateral, (iii) the closing under and becoming effective of the Reimbursement/Cash Collateral Facility, (iv) the repayment in full of the Existing BAML Credit Facility (excluding certain letters of credit that shall remain outstanding and shall be cash collateralized or backstopped by Letters of Credit issued under this Agreement or under the Related L/C Facility Credit Agreement), and (v) the payment of all fees, premiums, costs, and expenses payable by the Loan Parties on the Closing Date in connection with any and all of the foregoing .

"Transferee" shall have the meaning set forth in Section 16.3(d) hereof.

"Treasury Management Obligations" means, collectively, Cash Management Liabilities relating to or arising under or in connection with Cash Management Products and Services consisting of and/or for the provision of ACH transactions and cash management and treasury management services and products, including without limitation deposit accounts, controlled disbursement accounts or services, lockboxes, collection deposit accounts and management thereof, blocked accounts, automated clearinghouse/ACH transactions, wire transfer/electronic funds transfer services, overdrafts, and interstate depository network services.

"Undrawn Availability" at a particular date shall mean an amount equal to (a) the Line Cap minus (b) the sum of (i) the aggregate amount of the outstanding principal balance of all Revolving Advances (including any Out-of-Formula Loans and Protective Advances, whether funded by Agent or the Revolving Lenders) and all Swing Loans and the Maximum Undrawn Amount of all outstanding Letters of Credit, plus (ii) all amounts due and owing to any Loan Party's trade creditors which are outstanding sixty (60) days or more past their due date, plus (iii) fees and expenses incurred in connection with the Transactions for which Loan Parties are liable but which have not been paid or charged to Borrowers' Account.

"Unfunded Capital Expenditures" shall mean, as to any Company, without duplication, a Capital Expenditure funded (a) from such Loan Party's internally generated cash flow or (b) with the proceeds of a Revolving Advance or Swing Loan.

"Uniform Commercial Code" shall have the meaning set forth in Section 1.3 hereof.

"Usage Amount" shall have the meaning set forth in Section 3.3(b) hereof.

"Unsecured Notes" shall mean, collectively, (x) those certain 8.125% Senior Notes due 2026 issued by Parent under the Unsecured Notes Indenture, in an aggregate principal amount of $172,881,575 as of the Closing Date, and (y) any additional unsecured Senior Notes issued under the Unsecured Notes Indenture by Parent made in accordance with the terms hereof.

"Unsecured Notes Documents" shall mean, collectively, the Unsecured Notes, the Unsecured Notes Indenture, and all agreements, contracts, instruments, and documents executed in connection therewith, in each case as such agreement, contract, instrument, or document may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Unsecured Notes Indenture" shall mean, collectively, (x) that certain Indenture dated February 12, 2021 between Parent and the Bank of New York Mellon Trust Company, N.A., as trustee (in such capacity, the "Unsecured Notes Trustee"), (y) that certain First Supplemental Indenture dated February 12, 2021 between Parent and Unsecured Notes Trustee executed in connection such Indenture dated February 12, 2021, and (z) any further supplemental indenture entered into by Parent and the Unsecured Notes Trustee pursuant to such Indenture from time to time after the Closing Date in connection with any issuance of Indebtedness by Parent made in accordance with the terms hereof (as any such agreement or indenture may be may be amended, modified, supplemented, renewed, restated or replaced from time to time).

"USA PATRIOT Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, amended, modified, renewed, extended or replaced.

"Voting Equity Interest" means Equity Interests of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or similar controlling Persons, of such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency).

"Wholly-Owned" means, in respect of any Subsidiary of any Person, a circumstance where all of the Stock of such Subsidiary (other than director's qualifying shares, and the like, as may be required by applicable law) is owned by such Person, either directly or indirectly through one or more Wholly-Owned Subsidiaries thereof.

1.3. Uniform Commercial Code Terms. All terms used herein and defined in the Uniform Commercial Code as adopted in the State of New York from time to time (the "Uniform Commercial Code") shall have the meaning given therein unless otherwise defined herein. Without limiting the foregoing, the terms "accounts", "chattel paper" (and "electronic chattel paper" and "tangible chattel paper"), "commercial tort claims", "deposit accounts", "documents", "equipment", "financial asset", "fixtures", "general intangibles", "goods", "instruments", "inventory", "investment property", "letter-of-credit rights", "payment intangibles", "proceeds", "promissory note" "securities", "software" and "supporting obligations" as and when used in the description of Collateral shall have the meanings given to such terms in Articles 8 or 9 of the Uniform Commercial Code. To the extent the definition of any category or type of collateral is expanded by any amendment, modification or revision to the Uniform Commercial Code, such expanded definition will apply automatically as of the date of such amendment, modification or revision.

1.4. Certain Matters of Construction. The terms “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. All references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement. Any pronoun used shall be deemed to cover all genders. Wherever appropriate in the context, terms used herein in the singular also include the plural and vice versa. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. Unless otherwise provided, all references to any instruments or agreements to which Agent is a party, including references to any of the Other Documents, shall include any and all modifications, supplements or amendments thereto, any and all restatements or replacements thereof and any and all extensions or renewals thereof. Except as otherwise expressly provided for herein, all references herein to the time of day shall mean the time in New York, New York. Unless otherwise provided, all financial calculations shall be performed with Inventory valued on a first-in, first-out basis. Whenever the words “including” or “include” shall be used, such words shall be understood to mean “including, without limitation” or “include, without limitation”. A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by Required Lenders. Any Lien referred to in this Agreement or any of the Other Documents as having been created in favor of Agent, any agreement entered into by Agent pursuant to this Agreement or any of the Other Documents, any payment made by or to or funds received by Agent pursuant to or as contemplated by this Agreement or any of the Other Documents, or any act taken or omitted to be taken by Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of Agent and Lenders. Wherever the phrase “to the best of Loan Parties’ knowledge” or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or Other Documents, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if he/she had engaged in a good faith and diligent performance of his/her duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

1.5. LIBOR Notification. Section 3.8.2. of this Agreement provides a mechanism for determining an alternate rate of interest in the event that the London interbank offered rate is no longer available or in certain other circumstances. The Agent does not warrant or accept any responsibility for and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of LIBOR Rate or with respect to any alternative or successor rate thereto, or replacement rate therefor.

II. ADVANCES, PAYMENTS.

2.1. Revolving Advances.

(a) Amount of Revolving Advances. Subject to the terms and conditions set forth in this Agreement, specifically including Section 2.1(b) hereof, each Revolving Lender, severally and not jointly, will make Revolving Advances to Borrowers in aggregate amounts outstanding at any time equal to such Revolving Lender's Revolving Commitment Percentage of the lesser of (x) the Line Cap less the outstanding amount of Swing Loans, less the Dollar Equivalent of the aggregate Maximum Undrawn Amount of all outstanding Letters of Credit, or (y) an amount equal to the Dollar Equivalent of the sum of the following less the outstanding amount of Swing Loans:

(i) the Dollar Equivalent of up to 85% (the "Receivables Advance Rate") of Eligible Receivables, plus

(ii) the lesser of (A) the Dollar Equivalent of up to 85% of the of the Net Orderly Liquidation Value of Eligible Inventory (as evidenced by an Inventory appraisal satisfactory to Agent in its sole discretion exercised in good faith) (the "Inventory NOLV Advance Rate", together with the Inventory Advance Rate and the Receivables Advance Rate, collectively, the "Advance Rates"), or (B) $15,000,000 in the aggregate at any one time, plus

(iii) the lesser of (A) 100% of Eligible Cash or (B) $10,000,000, minus

(iv) the Dollar Equivalent of the aggregate Maximum Undrawn Amount of all outstanding Letters of Credit, minus

(v) the Dollar Equivalent of Reserves established hereunder against the Formula Amount, specifically including but not limited to the Related L/C Facility Letter of Credit Reserve and any reserves to reflect the risks, as determined by Agent in its Permitted Discretion, of currency exchange rate fluctuations with respect to any of the currencies other than Dollars in which the Eligible Receivables are denominated and/or any of the Approved LC Foreign Currencies in which any Foreign Currency Letters of Credit are denominated and/or any currencies other than Dollars in which any Related L/C Facility Letters of Credit are denominated.

The amount derived from the sum of (x) Sections 2.1(a)(y)(i) and (ii) above minus (y) Sections 2.1(a)(y)(iii) and (iv) above at any time and from time to time shall be referred to as the "Formula Amount". The Revolving Advances shall be evidenced by one or more secured promissory notes (collectively, the "Revolving Credit Note") substantially in the form attached hereto as Exhibit 2.1. Notwithstanding anything to the contrary contained in the foregoing or otherwise in this Agreement, the Dollar Equivalent of the outstanding aggregate principal amount of Swing Loans and the Revolving Advances at any one time outstanding shall not exceed the Dollar Equivalent of the amount equal to the Line Cap less the Dollar Equivalent of the aggregate Maximum Undrawn Amount of all outstanding Letters of Credit; nor shall the total sum of the Dollar Equivalent of the outstanding aggregate principal amount of Swing Loans and the Revolving Advances at any one time outstanding plus the Dollar Equivalent of the aggregate Maximum Undrawn Amount of all outstanding Letters of Credit at such time exceed the Line Cap at such time. Notwithstanding anything to the contrary provided for this Agreement, no assets acquired in any Acquisition and/or of any Person acquired in any Acquisition shall be included in the Formula Amount for any purpose hereunder unless and until such time as such assets shall be owned by and/or such Person shall have become a Borrowing Base Entity, nor until Agent has received a Field Examination with respect to such assets and an Inventory Appraisal with respect to the Inventory included in such assets, in form and substance, and with results, acceptable to Agent in its Permitted Discretion; provided that, upon Borrowers' written request, Agent shall complete such Field Examination and obtain such Inventory Appraisal as promptly as is commercially reasonable following the earlier of (x) the consummation of such Acquisition, or (y) the time Borrowers shall obtain from any Person to be acquired and/or whose assets are being acquired sufficient access for Agent to commence such Field Examination and Inventory Appraisal.

Notwithstanding anything to the contrary provided for in this Section 2.1(a) or any other provision of this Agreement, Borrowers may not request, and no Lender shall have any obligation or duty to fund or make, any Revolving Advance unless Borrowers shall provide to Agent evidence reasonably acceptable to Agent that the aggregate amount of all unrestricted cash and Cash Equivalents on the consolidated balance sheet of Loan Parties on a Consolidated Basis as of the date such Revolving Advance is requested is less than $30,000,000 (provided that nothing in this paragraph shall apply to (x) any deemed request for a Revolving Advance under the second sentence of Section 2.2(a) or any charge to Borrowers' Account as a Revolving Advance made in Agent's discretion under Section 2.23, or (y) any deemed request by Borrowers for Revolving Advance to satisfy any Reimbursement Obligation under Section 2.14(b).)

(b) Discretionary Rights. The Advance Rates may be increased or decreased, and any Reserves may be increased or decreased and/or new Reserves may be imposed or Reserves may be released, by Agent at any time and from time to time in the exercise of its Permitted Discretion. Each Borrower consents to any such increases or decreases and/or impositions or releases and acknowledges that decreasing the Advance Rates or increasing or imposing Reserves may limit or restrict Advances requested by Borrowing Agent. Prior to the occurrence of an Event of Default or Default, Agent shall endeavor to give Borrowing Agent five (5) days prior notice of its intention to decrease the Advance Rates, increase any Reserve, or impose any new Reserve; provided, however, no Borrower nor any Guarantor shall have any right of action whatsoever against Agent for, and Agent shall not be liable for any damages resulting from, the failure of Agent to provide the prior notice contemplated in this sentence. The rights of Agent under this subsection are subject to the provisions of Section 16.2(b) hereof.

(c) Eligible Cash Accounts. Loan Parties hereby covenant and agree that Loan Parties shall not and shall have the right to withdrawn or cause to be withdrawn any cash or Cash Equivalents from any Eligible Cash Account unless (x) Loan Parties shall have given Agent at least 5 Business Days' prior written notice of Loan Parties' request for such withdrawal, (y) no Default or Event of Default shall have occurred and be continuing either on the date such notice is given or on the actual proposed date for such withdrawal, and (z) after giving pro forma effect to such withdrawal both on the date such notice is given and on the actual proposed date for such withdrawal, the total sum of the Dollar Equivalent of the outstanding aggregate principal amount of Swing Loans and the Revolving Advances then outstanding plus the Dollar Equivalent of the aggregate Maximum Undrawn Amount of all Letters of Credit then outstanding would exceed the Line Cap at such time. In any such case where Loan Parties have given written notice of a request to withdraw any cash or Cash Equivalents from any Eligible Cash Account in accordance with the requirements of this Section 2.1(c) and all the provisions of this Section 2.1(c) shall be satisfied with respect to such request and withdrawal, Agent shall take all actions reasonably required (including giving instructions pursuant to any Control Agreement with respect to any Eligible Cash Account) to effectuate such withdrawal on the proposed date therefor and cause the applicable cash or Cash Equivalents to be directed as Loan Parties may request in the notice requesting such withdrawal. For the avoidance of doubt, Loan Parties may deposit cash or Cash Equivalents into any designated Eligible Cash Account in such amounts and at such times and from time to time as they may elect in their discretion. Notwithstanding anything to the contrary provided for herein, Loan Parties may not request a withdrawal from the Eligible Cash Account(s) more than four (4) times in any calendar year (or such additional number of times in any year as Agent in is discretion may agree from time to time).

2.2. Procedures for Requesting Revolving Advances; Procedures for Selection of Applicable Interest Rates for All Advances.

(a) Borrowing Agent on behalf of Borrowers may notify Agent prior to 3:00 p.m. on a Business Day of Borrowers' request to incur, on that day, a Revolving Advance hereunder. Should any amount (x) required to be paid as interest hereunder, or as fees or other charges under this Agreement or any Other Document with Agent or Lenders, or with respect to any other Obligation under this Agreement or any Other Document, or (y) required to be paid as fees, interest, or other charges under the Related L/C Facility Agreement or any other Related L/C Facility Document with Related L/C Facility Issuer, or with respect to any other L/C Obligation under the Related L/C Facility, in any case under clauses (x) or (y), become due, the same shall, at the option of Agent in its sole discretion, be deemed a request for a Revolving Advance maintained as a Domestic Rate Loan as of the date such payment is due, in the amount required to pay in full such Obligation, and such request shall be irrevocable; provided that, notwithstanding anything to the contrary provided for in the foregoing, no Revolving Advance shall be so deemed requested or made hereunder in respect of any Related L/C Facility Reimbursement Obligation unless either (and then only to the extent that) (x) the Related L/C Facility Pledged Cash Collateral held by the Related L/C Facility Issuer at such time has first been exhausted and/or (y) any Applicable Law (including any automatic stay in any Insolvency Proceeding) shall prohibit the Related L/C Facility Issuer from accessing/debiting/applying any remaining portion of the Related L/C Facility Pledged Cash Collateral then held by it to such Related L/C Facility Reimbursement Obligation. If the Borrowers enter into a separate written agreement with Agent regarding Agent's auto-advance service, then each Advance made pursuant to such service (including Advances made for the payment of interest, fees, charges or Obligations) shall be deemed an irrevocable request for a Revolving Advance maintained as a Domestic Rate Loan as of the date such auto-advance is made.

(b) Notwithstanding the provisions of subsection (a) above, in the event Borrowers desires to obtain a LIBOR Rate Loan for any Advance (other than a Swing Loan), Borrowing Agent shall give Agent written notice by no later than 3:00 p.m. on the day which is three (3) Business Days prior to the date such LIBOR Rate Loan is to be borrowed, specifying (i) the date of the proposed borrowing (which shall be a Business Day), (ii) the type of borrowing and the amount of such Advance to be borrowed, which amount shall be in a minimum amount of $1,000,000 and in integral multiples of $500,000 thereafter, and (iii) the duration of the first Interest Period therefor. Interest Periods for LIBOR Rate Loans shall be for one or three months; provided that, if an Interest Period would end on a day that is not a Business Day, it shall end on the next succeeding Business Day unless such day falls in the next succeeding calendar month in which case the Interest Period shall end on the next preceding Business Day. Any Interest Period that begins on the last Business Day of a calendar month (or a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. Upon and after the occurrence of an Event of Default, and during the continuation thereof, at the option of Agent or at the direction of the Required Lenders, no LIBOR Rate Loan shall be made available to any Borrower. After giving effect to each requested LIBOR Rate Loan, including those which are converted from a Domestic Rate Loan under Section 2.2(e) hereof, there shall not be outstanding at any one time more than five (5) LIBOR Rate Loans, in the aggregate at any time (or such additional number of times in any year as Agent in is discretion may agree from time to time).

(c) Each Interest Period of a LIBOR Rate Loan shall commence on the date such LIBOR Rate Loan is made and shall end on such date as Borrowing Agent may elect as set forth in subsection (b)(iii) above, provided that the exact length of each Interest Period shall be determined in accordance with the practice of the interbank market for offshore Dollar deposits and no Interest Period shall end after the last day of the Term.

(d) Borrowing Agent shall elect the initial Interest Period applicable to a LIBOR Rate Loan by its notice of borrowing given to Agent pursuant to Section 2.2(b) hereof or by its notice of conversion given to Agent pursuant to Section 2.2(e) hereof, as the case may be. Borrowing Agent shall elect the duration of each succeeding Interest Period by giving irrevocable written notice to Agent of such duration not later than 3:00 p.m. on the day which is three (3) Business Days prior to the last day of the then current Interest Period applicable to such LIBOR Rate Loan. If Agent does not receive timely notice of the Interest Period elected by Borrowing Agent, Borrowing Agent shall be deemed to have elected to convert such LIBOR Rate Loan to a Domestic Rate Loan as of the last day of the Interest Period applicable to such LIBOR Rate Loan subject to Section 2.2(e) below.

(e) Provided that no Default or Event of Default shall have occurred and be continuing, Borrowing Agent may, on the last Business Day of the then current Interest Period applicable to any outstanding LIBOR Rate Loan, or on any Business Day with respect to Domestic Rate Loans, convert any such loan into a loan of another type in the same aggregate principal amount provided that any conversion of a LIBOR Rate Loan shall be made only on the last Business Day of the then current Interest Period applicable to such LIBOR Rate Loan. If Borrowing Agent desires to convert a loan, Borrowing Agent shall give Agent written notice by no later than 3:00 p.m. (i) on the day which is three (3) Business Days prior to the date on which such conversion is to occur with respect to a conversion from a Domestic Rate Loan to a LIBOR Rate Loan, or (ii) on the day which is one (1) Business Day prior to the date on which such conversion is to occur (which date shall be the last Business Day of the Interest Period for the applicable LIBOR Rate Loan) with respect to a conversion from a LIBOR Rate Loan to a Domestic Rate Loan, specifying, in each case, the date of such conversion, the loans to be converted and if the conversion is to a LIBOR Rate Loan, the duration of the first Interest Period therefor.

(f) At its option and upon written notice given prior to 3:00 p.m. at least three (3) Business Days prior to the date of such prepayment, Borrowers may, subject to Section 2.2(g) and Section 2.20 hereof, prepay the LIBOR Rate Loans in whole at any time or in part from time to time with accrued interest on the principal being prepaid to the date of such repayment. Borrowers shall specify the date of prepayment of Advances which are LIBOR Rate Loans and the amount of such prepayment. In the event that any prepayment of a LIBOR Rate Loan is required or permitted on a date other than the last Business Day of the then current Interest Period with respect thereto, Borrowers shall indemnify Agent and Lenders therefor in accordance with Section 2.2(g) hereof.

(g) Each Borrower shall indemnify Agent and Lenders and hold Agent and Lenders harmless from and against any and all losses or expenses that Agent and Lenders may sustain or incur as a consequence of any prepayment, conversion of or any default by any Borrower in the payment of the principal of or interest on any LIBOR Rate Loan or failure by Borrowers to complete a borrowing of, a prepayment of or conversion of or to a LIBOR Rate Loan after notice thereof has been given, including, but not limited to, any interest payable by Agent or Lenders to lenders of funds obtained by it in order to make or maintain its LIBOR Rate Loans hereunder. A certificate as to any additional amounts payable pursuant to the foregoing sentence submitted by Agent or any Lender to Borrowing Agent shall be conclusive absent manifest error.

(h) Notwithstanding any other provision hereof, if any Applicable Law, treaty, regulation or directive, or any change therein or in the interpretation or application thereof, including without limitation any Change in Law, shall make it unlawful for Lenders or any Lender (for purposes of this subsection (h), the term "Lender" shall include any Lender and the office or branch where any Lender or any Person controlling such Lender makes or maintains any LIBOR Rate Loans) to make or maintain its LIBOR Rate Loans, the obligation of Lenders (or such affected Lender) to make LIBOR Rate Loans hereunder shall forthwith be cancelled and Borrowers shall, if any affected LIBOR Rate Loans are then outstanding, promptly upon request from Agent, either pay all such affected LIBOR Rate Loans or convert such affected LIBOR Rate Loans into loans of another type. If any such payment or conversion of any LIBOR Rate Loan is made on a day that is not the last day of the Interest Period applicable to such LIBOR Rate Loan, Borrowers shall pay Agent, upon Agent's request, such amount or amounts set forth in clause (g) above. A certificate as to any additional amounts payable pursuant to the foregoing sentence submitted by Lenders to Borrowing Agent shall be conclusive absent manifest error.

(i) Anything to the contrary contained herein notwithstanding, neither any Agent nor any Lender, nor any of their participants, is required actually to acquire LIBOR deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate. The provisions set forth herein shall apply as if each Lender or its participants had match funded any Obligation as to which interest is accruing based on the LIBOR Rate by acquiring LIBOR deposits for each Interest Period in the amount of the LIBOR Rate Loans.

2.3. [RESERVED].

2.4. Swing Loans.

(a) Subject to the terms and conditions set forth in this Agreement, and in order to minimize the transfer of funds between Revolving Lenders and Agent for administrative convenience, Agent, Revolving Lenders and Swing Loan Lender agree that in order to facilitate the administration of this Agreement, Swing Loan Lender may, at its election and option made in its sole discretion cancelable at any time for any reason whatsoever, make swing loan advances ("Swing Loans") available to Borrowers as provided for in this Section 2.4 at any time or from time to time after the Closing Date to, but not including, the last day of the Term, in an aggregate principal amount up to but not in excess of the Maximum Swing Loan Advance Amount, provided that the outstanding aggregate principal amount of Swing Loans and the Revolving Advances at any one time outstanding shall not exceed the Dollar Equivalent of the amount equal to the Line Cap less the Dollar Equivalent of the aggregate Maximum Undrawn Amount of all outstanding Letters of Credit; nor shall the total sum of the Dollar Equivalent of the outstanding aggregate principal amount of Swing Loans and the Revolving Advances at any one time outstanding plus the Dollar Equivalent of the aggregate Maximum Undrawn Amount of all outstanding Letters of Credit at such time exceed the Line Cap at such time. All Swing Loans shall be Domestic Rate Loans only. Borrowers may borrow (at the option and election of Swing Loan Lender), repay and reborrow (at the option and election of Swing Loan Lender) Swing Loans and Swing Loan Lender may make Swing Loans as provided in this Section 2.4 during the period between Settlement Dates. All Swing Loans shall be evidenced by a secured promissory note (the "Swing Loan Note") substantially in the form attached hereto as Exhibit 2.4. Swing Loan Lender's agreement to make Swing Loans under this Agreement is cancelable at any time for any reason whatsoever and the making of Swing Loans by Swing Loan Lender from time to time shall not create any duty or obligation, or establish any course of conduct, pursuant to which Swing Loan Lender shall thereafter be obligated to make Swing Loans in the future

(b) Upon either (x) any request by Borrowing Agent for a Revolving Advance made pursuant to Section 2.2(a) hereof or (y) the occurrence of any deemed request by Borrowers for a Revolving Advance pursuant to the provisions of Section 2.2(a) hereof, Swing Loan Lender may elect, in its sole discretion, to have such request or deemed request treated as a request for a Swing Loan, and may advance same day funds to Borrowers as a Swing Loan; provided that notwithstanding anything to the contrary provided for herein, Swing Loan Lender may not make Swing Loan Advances if Swing Loan Lender has been notified by Agent or by Required Lenders that one or more of the applicable conditions set forth in Section 8.2 hereof have not been satisfied or the Revolving Commitments have been terminated for any reason.

(c) Upon the making of a Swing Loan (whether before or after the occurrence of a Default or an Event of Default and regardless of whether a Settlement has been requested with respect to such Swing Loan), each Revolving Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from Swing Loan Lender, without recourse or warranty, an undivided interest and participation in such Swing Loan in proportion to its Revolving Commitment Percentage. Swing Loan Lender or Agent may, at any time, require the Revolving Lenders to fund such participations by means of a Settlement as provided for in Section 2.6(d) hereof. From and after the date, if any, on which any Revolving Lender is required to fund, and funds, its participation in any Swing Loans purchased hereunder, Agent shall promptly distribute to such Revolving Lender its Revolving Commitment Percentage of all payments of principal and interest and all proceeds of Collateral received by Agent in respect of such Swing Loan; provided that no Revolving Lender shall be obligated in any event to make Revolving Advances in an amount in excess of its Revolving Commitment Amount minus its Participation Commitment (taking into account any reallocations under Section 2.22 hereof) of the Dollar Equivalent of the Maximum Undrawn Amount of all outstanding Letters of Credit.

2.5. Disbursement of Advance Proceeds. All Advances shall be disbursed from whichever office or other place Agent may designate from time to time and, together with any and all other Obligations of Loan Parties to Agent or Lenders, shall be charged to Borrowers' Account on Agent's books. The proceeds of each Revolving Advance or Swing Loan requested by Borrowing Agent on behalf of Borrowers or deemed to have been requested by Borrowers under Sections 2.2(a), 2.6(b) or 2.14 hereof shall, (i) with respect to requested Revolving Advances, to the extent Revolving Lenders make such Revolving Advances in accordance with Section 2.2(a), 2.6(b) or 2.14 hereof, and with respect to Swing Loans made upon any request or deemed request by Borrowing Agent for a Revolving Advance to the extent Swing Loan Lender makes such Swing Loan in accordance with Section 2.4(b) hereof, be made available to the Borrowers on the day so requested by way of credit to Borrowers' operating account at PNC, or such other bank as Borrowing Agent may designate following notification to Agent, in immediately available federal funds or other immediately available funds or, (ii) with respect to Revolving Advances deemed to have been requested by Borrowers or Swing Loans made upon any deemed request for a Revolving Advance by Borrowers, be disbursed to Agent to be applied to the outstanding Obligations giving rise to such deemed request. During the Term, Borrowers may use the Revolving Advances and Swing Loans by borrowing, prepaying and reborrowing, all in accordance with the terms and conditions hereof.

2.6. Making and Settlement of Advances.

(a) Each borrowing of Revolving Advances shall be advanced according to the applicable Revolving Commitment Percentages of the respective Revolving Lenders (subject to any contrary terms of Section 2.22 hereof). Each borrowing of Swing Loans shall be advanced by the Swing Loan Lender alone.

(b) Promptly after receipt by Agent of a request or a deemed request for a Revolving Advance pursuant to Section 2.2(a) hereof and, with respect to Revolving Advances, to the extent Agent elects not to provide a Swing Loan or the making of a Swing Loan would result in the aggregate amount of all outstanding Swing Loans exceeding the maximum amount permitted in Section 2.4(a) hereof, Agent shall notify the Revolving Lenders of its receipt of such request specifying the information provided by Borrowing Agent and the apportionment among Revolving Lenders of the requested Revolving Advance as determined by Agent in accordance with the terms hereof. Each Revolving Lender shall remit the principal amount of each Revolving Advance to Agent such that Agent is able to, and Agent shall, to the extent the applicable Revolving Lenders have made funds available to it for such purpose and subject to Section 8.2 hereof, fund such Revolving Advance to Borrowers in U.S. Dollars and immediately available funds at the Payment Office prior to the close of business, on the applicable borrowing date; provided that if any applicable Revolving Lender fails to remit such funds to Agent in a timely manner, Agent may elect in its sole discretion to fund with its own funds the Revolving Advance of such Revolving Lender on such borrowing date, and such Revolving Lender shall be subject to the repayment obligation in Section 2.6(c) hereof.

(c) Unless Agent shall have been notified by telephone, confirmed in writing, by any Revolving Lender that such Revolving Lender will not make the amount which would constitute its applicable Revolving Commitment Percentage of the requested Revolving Advance available to Agent, Agent may (but shall not be obligated to) assume that such Revolving Lender has made such amount available to Agent on such date in accordance with Section 2.6(b) hereof and may, in reliance upon such assumption, make available to Borrowers a corresponding amount. In such event, if a Revolving Lender has not in fact made its applicable Revolving Commitment Percentage of the requested Revolving Advance available to Agent, then the applicable Revolving Lender and Borrowers severally agree to pay to Agent on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to Borrowers through but excluding the date of payment to Agent, at (i) in the case of a payment to be made by such Revolving Lender, the greater of (A) (x) the daily average Federal Funds Effective Rate (computed on the basis of a year of 360 days) during such period as quoted by Agent, times (y) such amount or (B) a rate determined by Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by Borrowers, the Revolving Interest Rate for Revolving Advances that are Domestic Rate Loans. If such Revolving Lender pays its share of the applicable Revolving Advance to Agent, then the amount so paid shall constitute such Revolving Lender's Revolving Advance. Any payment by Borrowers shall be without prejudice to any claim Borrowers may have against a Revolving Lender that shall have failed to make such payment to Agent. A certificate of Agent submitted to any Revolving Lender or Borrowers with respect to any amounts owing under this paragraph (c) shall be conclusive, in the absence of manifest error.

(d) Agent, on behalf of Swing Loan Lender, shall demand settlement (a "Settlement") of all or any Swing Loans with Revolving Lenders on at least a weekly basis, or on any more frequent date that Agent elects or that Swing Loan Lender at its option exercisable for any reason whatsoever may request, by notifying Revolving Lenders of such requested Settlement by facsimile, telephonic or electronic transmission no later than 3:00 p.m. on the date of such requested Settlement (the "Settlement Date"). Subject to any contrary provisions of Section 2.22 hereof, each Revolving Lender shall transfer the amount of such Revolving Lender's Revolving Commitment Percentage of the outstanding principal amount (plus interest accrued thereon to the extent requested by Agent) of the applicable Swing Loan with respect to which Settlement is requested by Agent, to such account of Agent as Agent may designate not later than 5:00 p.m. on such Settlement Date if requested by Agent by 3:00 p.m., otherwise not later than 5:00 p.m. on the next Business Day. Settlements may occur at any time notwithstanding that the conditions precedent to making Revolving Advances set forth in Section 8.2 hereof have not been satisfied or the Revolving Commitments shall have otherwise been terminated at such time. All amounts so transferred to Agent shall be applied against the amount of outstanding Swing Loans and, when so applied shall constitute Revolving Advances of such Revolving Lenders accruing interest as Domestic Rate Loans. If any such amount is not transferred to Agent by any Revolving Lender on such Settlement Date, Agent shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon as specified in Section 2.6(c) hereof.

(e) Subject to any separate written agreement among any applicable Lenders, if any Lender or Participant (a "Benefited Lender") shall at any time receive any payment of all or part of its Advances, or interest thereon, or receive any Collateral in respect thereof (whether voluntarily or involuntarily or by set-off) in a greater proportion than any such payment to and Collateral received by any other Lender, if any, in respect of such other Lender's Advances, or interest thereon, and such greater proportionate payment or receipt of Collateral is not expressly permitted hereunder, such Benefited Lender shall purchase for cash from the other Lenders a participation in such portion of each such other Lender's Advances, or shall provide such other Lender with the benefits of any such Collateral, or the proceeds thereof, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such Collateral or proceeds ratably with each of the other Lenders; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that each Lender so purchasing a portion of another Lender's Advances may exercise all rights of payment (including rights of set-off) with respect to such portion as fully as if such Lender were the direct holder of such portion, and the obligations owing to each such purchasing Lender in respect of such participation and such purchased portion of any other Lender's Advances shall be part of the Obligations secured by the Collateral, and the obligations owing to each such purchasing Lender in respect of such participation and such purchased portion of any other Lender's Advances shall be part of the Obligations secured by the Collateral.

2.7. Maximum Advances. Notwithstanding anything to the contrary set forth in Section 2.1(a) hereof or otherwise in this Agreement, the Dollar Equivalent of the aggregate at any time of (x) the total principal amount of all Revolving Advances plus Swing Loans outstanding at such time and (y) the Dollar Equivalent of the Maximum Undrawn Amount of all Letters of Credit outstanding at such time shall not exceed the Line Cap, and no Advance shall be made hereunder (including the issuance of any Letter of Credit) at any time if, after giving effect to the making (or issuance) thereof, the foregoing provisions of this sentence would be violated.

2.8. Manner and Repayment of Advances.

(a) The Revolving Advances and Swing Loans shall be due and payable in full on the last day of the Term subject to earlier prepayment as herein provided. Notwithstanding the foregoing, all Advances shall be subject to earlier repayment upon (x) acceleration upon the occurrence of an Event of Default under this Agreement or (y) termination of this Agreement. Subject to the provisions of Sections 4.8(h) and 11.5 hereof and also to any separate written agreements among any applicable Lenders, each payment (including each prepayment) by on behalf of any Loan Party on account of the principal of and/or interest on the Advances (other than the Letters of Credit) shall be applied, first to the interest accrued and unpaid on any outstanding Swing Loans and Revolving Advances, second. to the principal of any outstanding Swing Loans, and third, to the principal of any Revolving Advances pro rata according to the applicable Revolving Commitment Percentages of the Revolving Lenders (subject to any contrary provisions of Section 2.22 hereof).

(b) Each Borrower recognizes that the amounts evidenced by checks, notes, drafts or any other items of payment relating to and/or proceeds of Collateral may not be collectible by Agent on the date received by Agent. During any Cash Dominion Period, Agent shall conditionally credit Borrowers' Account for each item of payment received through the Blocked Accounts and the Depositary Accounts on the next Business Day after the Business Day on which such item of payment is received by Agent (and the Business Day on which each such item of payment is so credited shall be referred to, with respect to such item, as the "Application Date"). Agent is not, however, required to credit Borrowers' Account for the amount of any item of payment which is unsatisfactory to Agent and Agent may charge Borrowers' Account for the amount of any item of payment which is returned, for any reason whatsoever, to Agent unpaid. Subject to the foregoing, Borrowers agree that for purposes of computing the interest charges under this Agreement, each item of payment received by Agent shall be deemed applied by Agent on account of the Obligations on its respective Application Date. During any Cash Dominion Period, all proceeds received by Agent shall be applied to the Obligations in accordance with Section 4.8(h).

(c) All payments of principal, interest and other amounts payable hereunder, or under any of the Other Documents shall be made to Agent at the Payment Office not later than 1:00 p.m. on the due date therefor in Dollars in federal funds or other funds immediately available to Agent. Agent shall have the right to effectuate payment of any and all Obligations due and owing hereunder by charging Borrowers' Account or by making Advances as provided in Section 2.2 hereof.

(d) Except as expressly provided herein, all payments (including prepayments) to be made by Borrowers on account of principal, interest, fees and other amounts payable hereunder shall be made without deduction, setoff or counterclaim and shall be made to Agent on behalf of Lenders to the Payment Office, in each case on or prior to 1:00 p.m., in Dollars and in immediately available funds.

2.9. Repayment of Excess Advances. If at any time the aggregate balance of outstanding Revolving Advances, Swing Loans, and/or Advances taken as a whole exceeds the maximum amount of such type of Advances and/or Advances taken as a whole (as applicable) permitted hereunder (specifically including without limitation, if at any time the aggregate amount of the principal amount of all Revolving Advances and Swing Loans outstanding at such time and the Dollar Equivalent of the Maximum Undrawn Amount of all Letters of Credit outstanding at such time exceeds the Line Cap at such time), such excess Advances shall be immediately due and payable without the necessity of any demand, at the Payment Office, whether or not a Default or an Event of Default has occurred.

2.10. Statement of Account. Agent shall maintain, in accordance with its customary procedures, a loan account ("Borrowers' Account") in the name of Borrowers in which shall be recorded the date and amount of each Advance made by Agent or Lenders and the date and amount of each payment in respect thereof; provided, however, the failure by Agent to record the date and amount of any Advance shall not adversely affect Agent or any Lender. Each month, Agent shall send to Borrowing Agent a statement showing the accounting for the Advances made, payments made or credited in respect thereof, and other transactions between Agent, Lenders and Borrowers and the other Loan Parties during such month. The monthly statements shall be deemed correct and binding upon Borrowers in the absence of manifest error and shall constitute an account stated between Lenders and Borrowers unless Agent receives a written statement of Borrowers' specific exceptions thereto within thirty (30) days after such statement is received by Borrowing Agent. The records of Agent with respect to Borrowers' Account shall be conclusive evidence absent manifest error of the amounts of Advances and other charges thereto and of payments applicable thereto.

2.11. Letters of Credit.

(a) Subject to the terms and conditions hereof, Issuer shall issue or cause the issuance of standby letters of credit (but not trade/documentary/commercial) denominated in Dollars or an Approved LC Foreign Currency ("Letters of Credit" , and any Letter of Credit denominated in any currency other than Dollars is a "Foreign Currency Letter of Credit") for the account of any Company, Joint Venture, or Consortium except to the extent that the issuance thereof would then cause the Dollar Equivalent of the sum of (i) the principal amount of the Revolving Advances plus the Swing Loans outstanding at such time, plus (ii) the Maximum Undrawn Amount of all Letters of Credit already outstanding, plus (iv) the Maximum Undrawn Amount of the Letter of Credit to be issued to exceed Line Cap. The Dollar Equivalent of the Maximum Undrawn Amount of all outstanding Letters of Credit shall not exceed in the aggregate at any time the Letter of Credit Sublimit. Notwithstanding anything to the contrary provided for herein, no letter of credit that could (both at the time of the request therefor and at the time of the issuance thereof, and taking into account all of the terms and provisions of the Related L/C Facility Agreement and all of the limitations/restrictions regarding the issuance of Related L/C Facility Letters of Credit thereunder at each such applicable time) be issued as a Related L/C Facility Letter of Credit under the Related L/C Facility Agreement may be requested or issued as a Letter of Credit under this Agreement. All disbursements or payments related to Letters of Credit shall be deemed to be Domestic Rate Loans consisting of Revolving Advances and shall bear interest at the Revolving Interest Rate for Domestic Rate Loans. Letters of Credit that have not been drawn upon shall not bear interest (but fees shall accrue in respect of outstanding Letters of Credit as provided in Section 3.2 hereof).

(b) Notwithstanding any provision of this Agreement, Issuer shall not be under any obligation to issue any Letter of Credit if (i) any order, judgment or decree of any Governmental Body or arbitrator shall by its terms purport to enjoin or restrain Issuer from issuing any Letter of Credit, or any Law applicable to Issuer or any request or directive (whether or not having the force of law) from any Governmental Body with jurisdiction over Issuer shall prohibit, or request that Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date, and which Issuer in good faith deems material to it, or (ii) the issuance of the Letter of Credit would violate one or more policies of Issuer applicable to letters of credit generally.

2.12. Issuance of Letters of Credit.

(a) Borrowing Agent may request Issuer to issue or cause the issuance of a Letter of Credit for the account of any Company, Joint Venture, or Consortium by delivering to Issuer, with a copy to Agent at the Payment Office, prior to 1:00 p.m., at least five (5) Business Days prior to the proposed date of issuance, such Issuer's form of Letter of Credit Application (the "Letter of Credit Application") completed to the satisfaction of Agent and Issuer; and, such other certificates, documents and other papers and information as Agent or Issuer may reasonably request. Issuer shall not issue any requested Letter of Credit if such Issuer has received notice from Agent or any Lender that one or more of the applicable conditions set forth in Section 8.2 hereof have not been satisfied or the Revolving Commitments have been terminated for any reason.

(b) Each Letter of Credit shall, among other things, (i) provide for the payment of sight drafts, or other written demands for payment, or acceptances of usance drafts when presented for honor thereunder in accordance with the terms thereof and when accompanied by the documents described therein and (ii) have an expiry date (both at the time of the initial issuance thereof and at the time of any renewal or extension thereof) (x) not later than twelve (12) months after such Letter of Credit's date of issuance and (y) in no event later than the last day of the Term (unless the Agent, Issuer and Borrowing Agent (each acting in their sole discretion) shall agree to issue a Letter of Credit with an expiry date later than the last day of the Term as in effect as of the date of the issuance or extension/renewal of such Letter of Credit on such terms as they may agree, which such terms shall at a minimum provide for such Letter of Credit to be cash collateralized immediately upon issuance or extension/renewal thereof, pursuant to Section 3.2(b) of this Agreement). Each standby Letter of Credit shall be subject either to the Uniform Customs and Practice for Documentary Credits as most recently published by the International Chamber of Commerce at the time a Letter of Credit is issued (the "UCP") or the International Standby Practices (International Chamber of Commerce Publication Number 590) (the "ISP98 Rules"), or any subsequent revision thereof at the time a standby Letter of Credit is issued, as determined by Issuer.

(c) Agent shall use its reasonable efforts to notify Lenders of the request by Borrowing Agent for a Letter of Credit hereunder.

2.13. Requirements For Issuance of Letters of Credit.

(a) Borrowing Agent shall authorize and direct any Issuer to name the applicable Borrower as the "Applicant" or "Account Party" of each Letter of Credit. If Agent is not Issuer of any Letter of Credit, Borrowing Agent shall authorize and direct Issuer to deliver to Agent all agreements, documents, instruments and other writings and property received by Issuer pursuant to such Letter of Credit and to accept and rely upon Agent's instructions and agreements with respect to all matters arising in connection with such Letter of Credit, and the application therefor.

2.14. Disbursements, Reimbursement.

(a) Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from Issuer a participation in each Letter of Credit and each drawing thereunder in an amount equal to such Lender's Revolving Commitment Percentage of the Dollar Equivalent of the Maximum Undrawn Amount of such Letter of Credit (as in effect from time to time) and the amount of such drawing, respectively.

(b) In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, Issuer will promptly notify Agent and Borrowing Agent. Regardless of whether Borrowing Agent shall have received such notice, Borrowers shall reimburse (such obligation to reimburse Issuer shall sometimes be referred to as a "Reimbursement Obligation") Issuer prior to 12:00 Noon on each date that an amount is paid by Issuer under any Letter of Credit (each such date, a "Drawing Date") in an amount equal to the Dollar Equivalent of the amount so paid by Issuer (the "Dollar Equivalent Drawing Amount"). In the event Borrowers fail to reimburse Issuer for the full Dollar Equivalent Drawing Amount of any drawing under any Letter of Credit by 12:00 Noon on the Drawing Date, Issuer will promptly notify Agent and each Revolving Lender thereof, and Borrowers shall be automatically deemed to have requested that a Revolving Advance maintained as a Domestic Rate Loan in the amount of the Dollar Equivalent Drawing Amount be made by Lenders to be disbursed on the Drawing Date under such Letter of Credit, and Revolving Lenders shall be unconditionally obligated to fund such Revolving Advance (all whether or not the conditions specified in Section 8.2 hereof are then satisfied or the Revolving Commitments have been terminated for any reason) as provided for in Section 2.14(c) hereof. Any notice given by Issuer pursuant to this Section 2.14(b) may be oral if promptly confirmed in writing; provided that the lack of such a confirmation shall not affect the conclusiveness or binding effect of such notice.

(c) Each Revolving Lender shall upon any notice pursuant to Section 2.14(b) hereof make available to Issuer through Agent at the Payment Office an amount in immediately available funds equal to its Revolving Commitment Percentage (subject to any contrary provisions of Section 2.22 hereof) of the Dollar Equivalent Drawing Amount, whereupon the participating Lenders shall (subject to Section 2.14(d) hereof) each be deemed to have made a Revolving Advance maintained as a Domestic Rate Loan to Borrowers in that amount. If any Revolving Lender so notified fails to make available to Agent, for the benefit of Issuer, the amount of such Lender's Revolving Commitment Percentage of such Dollar Equivalent Drawing Amount by 2:00 p.m. on the Drawing Date, then interest shall accrue on such Lender's obligation to make such payment, from the Drawing Date to the date on which such Lender makes such payment (i) at a rate per annum equal to the Federal Funds Effective Rate during the first three (3) days following the Drawing Date and (ii) at a rate per annum equal to the rate applicable to Revolving Advances maintained as a Domestic Rate Loan on and after the fourth day following the Drawing Date. Agent and Issuer will promptly give notice of the occurrence of the Drawing Date, but failure of Agent or Issuer to give any such notice on the Drawing Date or in sufficient time to enable any Revolving Lender to effect such payment on such date shall not relieve such Lender from its obligations under this Section 2.14(c), provided that such Lender shall not be obligated to pay interest as provided in this Section 2.14(c) until and commencing from the date of receipt of notice from Agent or Issuer of a drawing.

(d) With respect to any unreimbursed drawing that is not converted into a Revolving Advance maintained as a Domestic Rate Loan in the amount of the applicable Dollar Equivalent Drawing Amount to Borrowers in whole or in part as contemplated by Section 2.14(b) hereof, because of Borrowers' failure to satisfy the conditions set forth in Section 8.2 hereof (other than any notice requirements) or for any other reason, Borrowers shall be deemed to have incurred from Agent a borrowing (each a "Letter of Credit Borrowing") in the amount of such Dollar Equivalent Drawing Amount. Such Letter of Credit Borrowing shall be due and payable on demand (together with interest) and, until paid, shall bear interest at the rate per annum applicable to a Revolving Advance maintained as a Domestic Rate Loan and shall be part of the Obligations secured by the Collateral. Each applicable Lender's payment to Agent pursuant to Section 2.14(c) hereof shall be deemed to be a payment in respect of its participation in such Letter of Credit Borrowing and shall constitute a "Participation Advance" from such Lender in satisfaction of its Participation Commitment in respect of the applicable Letter of Credit under this Section 2.14.

(e) Each applicable Lender's Participation Commitment in respect of the Letters of Credit shall continue until the last to occur of any of the following events: (x) Issuer ceases to be obligated to issue or cause to be issued Letters of Credit hereunder; (y) no Letter of Credit issued or created hereunder remains outstanding and uncancelled; and (z) all Persons (other than Borrowers) have been fully reimbursed for all payments made under or relating to Letters of Credit.

2.15. Repayment of Participation Advances.

(a) Upon (and only upon) receipt by Agent for the account of Issuer of immediately available funds from Borrowers (i) in reimbursement of any payment made by Issuer or Agent under the Letter of Credit with respect to which any Lender has made a Participation Advance to Agent, or (ii) in payment of interest on such a payment made by Issuer or Agent under such a Letter of Credit, Agent will pay to each Revolving Lender, in the same funds as those received by Agent, the amount of such Lender's Revolving Commitment Percentage of such funds, except Agent shall retain the amount of the Revolving Commitment Percentage of such funds of any Revolving Lender that did not make a Participation Advance in respect of such payment by Agent (and, to the extent that any of the other Revolving Lenders have funded any portion such Defaulting Lender's Participation Advance in accordance with the provisions of Section 2.22 hereof, Agent will pay over to such Non-Defaulting Lenders a pro rata portion of the funds so withheld from such Defaulting Lender).

(b) If Issuer or Agent is required at any time to return to any Loan Party, or to a trustee, receiver, liquidator, custodian, or any official in any Insolvency Proceeding, any portion of the payments made by Borrowers or any other Loan Party to Issuer or Agent pursuant to Section 2.15(a) hereof in reimbursement of a payment made under the Letter of Credit or interest or fee thereon, each applicable Lender shall, on demand of Agent, forthwith return to Issuer or Agent the amount of its Revolving Commitment Percentage of any amounts so returned by Issuer or Agent plus interest at the Federal Funds Effective Rate.

2.16. Documentation. Each Loan Party agrees to be bound by the terms of the Letter of Credit Application and by Issuer's interpretations of any Letter of Credit issued on behalf of any Borrower and by Issuer's written regulations and customary practices relating to letters of credit, though Issuer's interpretations may be different from such Loan Parties' own. In the event of a conflict between the Letter of Credit Application and this Agreement, this Agreement shall govern. It is understood and agreed that, except in the case of gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), Issuer shall not be liable for any error, negligence and/or mistakes, whether of omission or commission, in following Borrowing Agent's or any Loan Party's instructions or those contained in the Letters of Credit or any modifications, amendments or supplements thereto.

2.17. Determination to Honor Drawing Request. In determining whether to honor any request for drawing under any Letter of Credit by the beneficiary thereof, Issuer shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit and that any other drawing condition appearing on the face of such Letter of Credit has been satisfied in the manner so set forth.

2.18. Nature of Participation and Reimbursement Obligations. The obligation of each Revolving Lender in accordance with this Agreement to make the Revolving Advances or Participation Advances as a result of a drawing under a Letter of Credit, and the obligations of Borrowers to reimburse Issuer upon a draw under a Letter of Credit, shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Section 2.18 under all circumstances, including the following circumstances:

(i) any set-off, counterclaim, recoupment, defense or other right which such Lender or any Loan Party, Company, Joint Venture, or Consortium, as the case may be, may have against Issuer, Agent, any Loan Party Company, Joint Venture, or Consortium, or Lender, as the case may be, or any other Person for any reason whatsoever;

(ii) the failure of any Borrower or any other Person to comply, in connection with a Letter of Credit Borrowing, with the conditions set forth in this Agreement for the making of a Revolving Advance, it being acknowledged that such conditions are not required for the making of a Letter of Credit Borrowing and the obligation of Lenders to make Participation Advances under Section 2.14 hereof;

(iii) any lack of validity or enforceability of any Letter of Credit;

(iv) any claim of breach of warranty that might be made by any Loan Party, Company, Joint Venture, or Consortium, Agent, Issuer or any Lender against the beneficiary of a Letter of Credit, or the existence of any claim, set-off, recoupment, counterclaim, cross-claim, defense or other right which any Loan Party, Company, Joint Venture, or Consortium, Agent, Issuer or any Lender may have at any time against a beneficiary, any successor beneficiary or any transferee of any Letter of Credit or assignee of the proceeds thereof (or any Persons for whom any such transferee or assignee may be acting), any Loan Party, Company, Joint Venture, or Consortium, Issuer, Agent or any Lender or any other Person, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between any Loan Party, Company, Joint Venture, or Consortium, or any Subsidiaries of such Loan Party, Company, Joint Venture, or Consortium, and the beneficiary for which any Letter of Credit was procured);

(v) the lack of power or authority of any signer of (or any defect in or forgery of any signature or endorsement on) or the form of or lack of validity, sufficiency, accuracy, enforceability or genuineness of any draft, demand, instrument, certificate or other document presented under or in connection with any Letter of Credit, or any fraud or alleged fraud in connection with any Letter of Credit, or the transport of any property or provision of services relating to a Letter of Credit, in each case even if Issuer or any of Issuer's Affiliates has been notified thereof;

(vi) payment by Issuer under any Letter of Credit against presentation of a demand, draft or certificate or other document which is forged or does not fully comply with the terms of such Letter of Credit (provided that the foregoing shall not excuse Issuer from any obligation under the terms of any applicable Letter of Credit to require the presentation of documents that on their face appear to satisfy any applicable requirements for drawing under such Letter of Credit prior to honoring or paying any such draw);

(vii) the solvency of, or any acts or omissions by, any beneficiary of any Letter of Credit, or any other Person having a role in any transaction or obligation relating to a Letter of Credit, or the existence, nature, quality, quantity, condition, value or other characteristic of any property or services relating to a Letter of Credit;

(viii) any failure by Issuer or any of Issuer's Affiliates to issue any Letter of Credit in the form requested by Borrowing Agent, unless Agent and Issuer have each received written notice from Borrowing Agent of such failure within three (3) Business Days after Issuer shall have furnished to Agent and Borrowing Agent a copy of such Letter of Credit and such error is material and no drawing has been made thereon prior to receipt of such notice;

(ix) the occurrence of any Material Adverse Effect;

(x) any breach of this Agreement or any Other Document by any party thereto;

(xi) the occurrence or continuance of an Insolvency Proceeding with respect to any Loan Party;

(xii) the fact that a Default or an Event of Default shall have occurred and be continuing;

(xiii) the fact that the Term shall have expired or this Agreement or the Commitments have been terminated;

(xiv) with respect to any Foreign Currency Letter of Credit, any fluctuation in the Exchange Rates between Dollars and the Approved LC Foreign Currency in which such Foreign Currency Letter of Credit over time and from time to time is denominated; and

(xv) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

2.19. Liability for Acts and Omissions.

(a) As between Loan Parties and Issuer, Swing Loan Lender, Agent and Lenders, each Loan Party assumes all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, Issuer shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for an issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged (even if Issuer or any of its Affiliates shall have been notified thereof); (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) the failure of the beneficiary of any such Letter of Credit, or any other party to which such Letter of Credit may be transferred, to comply fully with any conditions required in order to draw upon such Letter of Credit or any other claim of any Loan Party, Company, Joint Venture, or Consortium, against any beneficiary of such Letter of Credit, or any such transferee, or any dispute between or among any Loan Party, Company, Joint Venture, or Consortium, and any beneficiary of any Letter of Credit or any such transferee; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, facsimile, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of Issuer, including any Governmental Acts, and none of the above shall affect or impair, or prevent the vesting of, any of Issuer's rights or powers hereunder. Nothing in the preceding sentence shall relieve Issuer from liability for Issuer's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment) in connection with actions or omissions described in such clauses (i) through (viii) of such sentence. In no event shall Issuer or Issuer's Affiliates be liable to any Loan Party, Company, Joint Venture, or Consortium for any indirect, consequential, incidental, punitive, exemplary or special damages or expenses (including without limitation attorneys' fees), or for any damages resulting from any change in the value of any property relating to a Letter of Credit.

(b) Without limiting the generality of the foregoing, Issuer and each of its Affiliates: (i) may rely on any oral or other communication believed in good faith by Issuer or such Affiliate to have been authorized or given by or on behalf of the applicant for a Letter of Credit; (ii) may honor any presentation if the documents presented appear on their face substantially to comply with the terms and conditions of the relevant Letter of Credit; (iii) may honor a previously dishonored presentation under a Letter of Credit, whether such dishonor was pursuant to a court order, to settle or compromise any claim of wrongful dishonor, or otherwise, and shall be entitled to reimbursement to the same extent as if such presentation had initially been honored, together with any interest paid by Issuer or its Affiliates; (iv) may honor any drawing that is payable upon presentation of a statement advising negotiation or payment, upon receipt of such statement (even if such statement indicates that a draft or other document is being delivered separately), and shall not be liable for any failure of any such draft or other document to arrive, or to conform in any way with the relevant Letter of Credit; (v) may pay any paying or negotiating bank claiming that it rightfully honored under the laws or practices of the place where such bank is located; and (vi) may settle or adjust any claim or demand made on Issuer or its Affiliate in any way related to any order issued at the applicant's request to an air carrier, a letter of guarantee or of indemnity issued to a steamship agent or carrier or any document or instrument of like import (each an "Order") and honor any drawing in connection with any Letter of Credit that is the subject of such Order, notwithstanding that any drafts or other documents presented in connection with such Letter of Credit fail to conform in any way with such Letter of Credit.

(c) In furtherance and extension and not in limitation of the specific provisions set forth above, any action taken or omitted by Issuer under or in connection with the Letters of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith and without gross negligence (as determined by a court of competent jurisdiction in a final non-appealable judgment), shall not put Issuer under any resulting liability to any Loan Party, Company, Joint Venture, or Consortium, Agent or any Lender.

2.20. Prepayments

(a) Voluntary Prepayments.

(i) Voluntary Prepayments of the Revolving Advances. Borrowers may voluntarily prepay the Swing Loans and Revolving Advances in whole or in part at any time and from time to time without premium or penalty (other than, if applicable, any indemnity payable in connection therewith pursuant to Section 2.2(g) hereof). Unless all Revolving Lenders shall agree otherwise in any particular case (without establishing any course of dealing or course of conduct for any such voluntary prepayment of the Revolving Advances made thereafter), such any voluntary prepayment shall be accompanied by all accrued interest on the amount prepaid. Any and all voluntary prepayments of the Revolving Advances under this Section 2.20(a)(i) hereof shall be applied to the repayment of the Obligations in accordance with Section 2.20(c) hereof below, subject to Borrowers' ability to reborrow Revolving Advances and request Letters of Credit in accordance with the terms hereof.

(b) Mandatory Prepayments.

(i) If at any time the Dollar Equivalent of the sum of: (x) the total principal amount of all Revolving Advances plus Swing Loans outstanding at such time and (y) the Dollar Equivalent of the Maximum Undrawn Amount of all Letters of Credit outstanding at such time shall exceed the Line Cap, Borrowers shall immediately, without the necessity of any demand, and whether or not a Default or an Event of Default has occurred, repay the Advances (including cash collateralization in accordance with Section 3.2(b) of the outstanding Letters of Credit, if applicable) as necessary to eliminate such excess. Any and all such repayments under this Section 2.20(b)(i) shall be applied to the repayment of the Obligations in accordance with Section 2.20(c) hereof below, subject to Borrowers' ability to reborrow Revolving Advances and request Letters of Credit in accordance with the terms hereof.

(ii) During any Cash Dominion Period, all proceeds of Revolving Loan Priority Collateral (as such term is defined in the Intercreditor Agreement) and all other proceeds of Collateral received by Agent through the Blocked Accounts and/or Deposit Account shall be applied, on a daily basis, to the repayment of the Obligations in accordance with Section 2.20(c) hereof below, subject to Borrowers' ability to reborrow Revolving Advances and request Letters of Credit in accordance with the terms hereof.

(c) All prepayments of the Obligations and the Advances under Sections 2.20(a) and (b) above shall, subject to the provisions of Section 11.5 hereof, be applied first, to the repayment in full of the outstanding principal amount of any Out-of-Formula Loans and Protective Advances funded by Agent, second, to the repayment in full of the outstanding principal amount of any Swing Loans, third, ratably, to the repayment in full of the outstanding principal amount of any Out-of-Formula Loans and Protective Advances funded by Revolving Lenders, and fourth, ratably, to the repayment in full of the outstanding principal amount of all other Revolving Advances, all subject to Borrowers' ability to reborrow Revolving Advances and request Letters of Credit in accordance with the terms hereof.

2.21. Use of Proceeds.

(a) Borrowers shall use the proceeds of the Advances : (i) on the Closing Date, to repay the Indebtedness owing under the Existing BAML Credit Facility and pay fees and expenses relating to the Transactions, and (ii) following the Closing Date to provide for working capital needs of the Borrowers (including reimbursement of drawings under Letters of Credit issued hereunder), including Capital Expenditures, and for other general corporate purposes, including, without limitation, the making of Permitted Acquisitions, Permitted Investments, and Permitted Restricted Payments.

(b) Without limiting the generality of Section 2.21(a) above, neither the Loan Parties nor any other Person which may in the future become party to this Agreement or the Other Documents as a Borrower or Guarantor, intends to use nor shall they use any portion of the proceeds of the Advances, directly or indirectly, for any purpose in violation of Applicable Law.

2.22. Defaulting Lenders.

(a) Notwithstanding anything to the contrary contained herein, in the event any Lender is a Defaulting Lender, all rights and obligations hereunder of such Defaulting Lender and of the other parties hereto shall be modified to the extent of the express provisions of this Section 2.22 so long as such Lender is a Defaulting Lender.

(b) except as otherwise expressly provided for in this Section 2.22, Revolving Advances shall be made pro rata from Revolving Lenders which are not Defaulting Lenders based on their respective Revolving Commitment Percentages, and no Revolving Commitment Percentage of any Lender or any pro rata share of any Revolving Advances required to be advanced by any Lender shall be increased as a result of any Lender being a Defaulting Lender. Amounts received in respect of principal of any type of Revolving Advances shall be applied to reduce such type of Revolving Advances of each Revolving Lender (other than any Defaulting Lender) in accordance with their Revolving Commitment Percentages; provided, that, Agent shall not be obligated to transfer to a Defaulting Lender any payments received by Agent for 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 that is a Revolving Lender (a "Defaulting Revolving Lender") shall instead be paid to or retained by Agent. Agent may hold and, in its discretion, re-lend to a Borrower the amount of such payments received or retained by it for the account of such Defaulting Revolving Lender.)

(i) fees pursuant to Section 3.3 (b) hereof shall cease to accrue in favor of such Defaulting Lender.

(ii) if any Swing Loans are outstanding or any Letter of Credit Obligations (or drawings under any Letter of Credit for which Issuer has not been reimbursed) are outstanding or exist at the time any Revolving Lender becomes a Defaulting Lender, then:

(A) such Defaulting Lender's Participation Commitment in the outstanding Swing Loans and of the Maximum Undrawn Amount of all outstanding Letters of Credit shall be reallocated among Non-Defaulting Lenders in proportion to the respective Revolving Commitment Percentages of such Non-Defaulting Lenders to the extent (but only to the extent) that (x) such reallocation does not cause the aggregate sum of outstanding Revolving Advances made by any such Non-Defaulting Lender plus such Lender's reallocated Participation Commitment in the outstanding Swing Loans plus such Lender's reallocated Participation Commitment in the aggregate Maximum Undrawn Amount of all outstanding Letters of Credit to exceed the Revolving Commitment Amount of any such Non-Defaulting Lender, and (y) no Default or Event of Default has occurred and is continuing at such time;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, Borrowers shall within one Business Day following notice by Agent (x) first, prepay any outstanding Swing Loans that cannot be reallocated, and (y) second, cash collateralize, for the benefit of Issuer, Borrowers' obligations corresponding to such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit (after giving effect to any partial reallocation pursuant to clause (A) above) in accordance with Section 3.2(b) hereof for so long as such Obligations are outstanding;

(C) if Borrowers cash collateralize any portion of such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit pursuant to clause (B) above, Borrowers shall not be required to pay any fees to such Defaulting Lender pursuant to Section 3.2(a) hereof with respect to such Defaulting Lender's Revolving Commitment Percentage of Maximum Undrawn Amount of all Letters of Credit during the period such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit are cash collateralized;

(D) if such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit is reallocated pursuant to clause (A) above, then the Letter of Credit Commitment Fees payable to Revolving Lenders pursuant to Section 3.2(a) hereof shall be adjusted and reallocated to Non-Defaulting Lenders in accordance with such reallocation; and

(E) if all or any portion of such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit is neither reallocated nor cash collateralized pursuant to clause (A) or (B) above, then, without prejudice to any rights or remedies of Issuer or any other Lender hereunder, all Letter of Credit Commitment Fees payable under Section 3.2(a) hereof with respect to such Defaulting Lender's Revolving Commitment Percentage of the Maximum Undrawn Amount of all Letters of Credit shall be payable to Issuer (and not to such Defaulting Lender) until (and then only to the extent that) such Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit is reallocated and/or cash collateralized; and

(F) so long as any Revolving Lender is a Defaulting Lender, Swing Loan Lender shall not be required to fund any Swing Loans and Issuer shall not be required to issue, amend or increase any Letter of Credit, unless such Issuer is satisfied that the related exposure and Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit and all Swing Loans (after giving effect to any such issuance, amendment, increase or funding) will be fully allocated to Non-Defaulting Lenders and/or cash collateral for such Letters of Credit will be provided by Borrowers in accordance with clause (A) and (B) above, and participating interests in any newly made Swing Loan or any newly issued or increased Letter of Credit shall be allocated among Non-Defaulting Lenders in a manner consistent with Section 2.22(b)(ii)(A) above (and such Defaulting Lender shall not participate therein).

(c) A Defaulting Lender shall not be entitled to give instructions to Agent or to approve, disapprove, consent to or vote on any matters relating to this Agreement and the Other Documents, and all amendments, waivers and other modifications of this Agreement and the Other Documents may be made without regard to a Defaulting Lender and, for purposes of the definition of Required Lenders, a Defaulting Lender shall not be deemed to be a Lender, to have any outstanding Advances or a Revolving Commitment, provided, that this clause (c) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification described in clauses (i) or (ii) of Section 16.2(b) hereof.

(d) Other than as expressly set forth in this Section 2.22, the rights and obligations of a Defaulting Lender (including the obligation to indemnify Agent) and the other parties hereto shall remain unchanged. Nothing in this Section 2.22 shall be deemed to release any Defaulting Lender from its obligations under this Agreement and the Other Documents, shall alter such obligations, shall operate as a waiver of any default by such Defaulting Lender hereunder, or shall prejudice any rights which any Borrower, Agent or any Lender may have against any Defaulting Lender as a result of any default by such Defaulting Lender hereunder.

(e) In the event that Agent, Borrowers, and, if such Defaulting Lenders is a Revolving Lender, Swing Loan Lender and Issuer, agree in writing that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then Agent (A) will so notify the parties hereto, and (B) if such cured Defaulting Lender is a Revolving Lender, then the Participation Commitments of all Revolving Lenders (including such cured Defaulting Lender) of the Swing Loans and Maximum Undrawn Amount of all outstanding Letters of Credit shall be reallocated to reflect the inclusion of such Lender's Revolving Commitment, and on such date, such cured Defaulting Lender is a Revolving Lender shall purchase at par such of the Revolving Advances of the other Revolving Lenders as Agent shall determine may be necessary in order for such Lender to hold such Revolving Advances in accordance with its Revolving Commitment Percentage.

(f) If Swing Loan Lender or Issuer has a good faith belief that any Revolving Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, Swing Loan Lender shall not be required to fund any Swing Loans and Issuer shall not be required to issue, amend or increase any Letter of Credit, unless Swing Loan Lender or Issuer, as the case may be, shall have entered into arrangements with Borrowers or such Lender, satisfactory to Swing Loan Lender or Issuer, as the case may be, to defease any risk to it in respect of such Lender hereunder.

2.23. Payment of Obligations. Agent may, in its sole discretion, charge to Borrowers' Account as a Revolving Advance or, at the discretion of Swing Loan Lender, as a Swing Loan (i) all payments with respect to any of the Obligations required hereunder (including without limitation principal payments, payments of interest, payments of Letter of Credit Fees and all other fees provided for hereunder and payments under Sections 16.5 and 16.9 hereof) as and when each such payment shall become due and payable (whether as regularly scheduled, upon or after acceleration, upon maturity or otherwise), (ii) without limiting the generality of the foregoing clause (i), (a) all amounts expended by Agent or any Lender pursuant to Sections 4.2 or 4.3 hereof and (b) all expenses which Agent incurs in connection with the forwarding of Advance proceeds and the establishment and maintenance of any Blocked Accounts or Depository Accounts as provided for in Section 4.8(h) hereof, (iii) any sums expended by Agent or any Lender due to any Loan Party's failure to perform or comply with its obligations under this Agreement or any Other Document including any Loan Party's obligations under Sections 3.3, 3.4, 4.4, 4.7, 6.4, 6.6, 6.7 and 6.8 hereof, and (iv) without limiting the generality of the foregoing clause (i) all payment with respect to any of the Related L/C Facility Obligations required under the Related L/C Facility Documents, and all amounts so charged shall be added to the Obligations and shall be secured by the Collateral; provided that, notwithstanding anything to the contrary provided for in the foregoing, no Revolving Advance shall be deemed requested by Borrowers or made hereunder in respect of any Related L/C Facility Reimbursement Obligation unless either (and then only to the extent that) (x) the Related L/C Facility Pledged Cash Collateral held by the Related L/C Facility Issuer at such time has first been exhausted or (y) any Applicable Law (including any automatic stay in any Insolvency Proceeding) shall prohibit the Related L/C Facility Issuer from accessing/debiting/applying any remaining portion of the Related L/C Facility Pledged Cash Collateral then held by it to such Related L/C Facility Reimbursement Obligation. To the extent Revolving Advances are not actually funded by the other Lenders in respect of any such amounts so charged, all such amounts so charged shall be deemed to be Revolving Advances (or, if applicable, Swing Loans) made by and owing to Agent and Agent shall be entitled to all rights (including accrual of interest) and remedies of a Lender under this Agreement and the Other Documents with respect to such Revolving Advances.

III. INTEREST AND FEES.

3.1. Interest. Interest on Advances shall be payable in arrears (a) on the first day of each month with respect to Domestic Rate Loans, (b) with respect to LIBOR Rate Loans having an Interest Period of one, two or three months, at the end of the applicable Interest Period, and (c) with respect to LIBOR Rate Loans having an Interest Period of six months (if Interest Periods of six months are permitted under this Agreement at any time), at the end of each three month period during such Interest Period, provided that all accrued and unpaid interest shall be due and payable at the end of the Term. Interest charges shall be computed on the actual principal amount of Advances outstanding for each day during the month and/or any applicable Interest Period at a rate per annum equal to (i) with respect to Revolving Advances, the applicable Revolving Interest Rate, and (ii) with respect to Swing Loans, the Revolving Interest Rate for Domestic Rate Loans, as applicable (as applicable, the "Contract Rate"). Except as expressly provided otherwise in this Agreement, any Obligations other than the Advances that are not paid when due shall accrue interest at the Revolving Interest Rate for Domestic Rate Loans, subject to the provision of the final sentence of this Section 3.1 regarding the Default Rate. Whenever, subsequent to the Closing Date, the Alternate Base Rate is increased or decreased, the applicable Contract Rate with respect to any Domestic Rate Loans shall be similarly changed without notice or demand of any kind by an amount equal to the amount of such change in the Alternate Base Rate during the time such change or changes remain in effect. The LIBOR Rate with respect to any LIBOR Rate Loans shall be adjusted with respect to LIBOR Rate Loans without notice or demand of any kind on the effective date of any change in the Reserve Percentage as of such effective date. Upon and after the occurrence of an Event of Default and during the continuation thereof, at the option of Agent or at the direction of Required Lenders (or, in the case of any Event of Default under Section 10.7 hereof, immediately and automatically upon the occurrence of any such Event of Default without the requirement of any affirmative action by any party), the interest rate applicable to the Revolving Advances and/or any other Obligations (or, in the case of any Event of Default under Section 10.7 hereof, all Obligations) shall be at rate per annum equal to the applicable Contract Rate plus two percent (2%) per annum (as applicable, the "Default Rate").

3.2. Letter of Credit Fees.

(a) Borrowers shall pay (x) to Agent, for the ratable benefit of Revolving Lenders, fees for each outstanding Letter of Credit for the period from and excluding the date of issuance of same to and including the date of expiration or termination, equal to the aggregate daily face amount of all outstanding Letters of Credit multiplied by the Applicable Margin for Letters of Credit (it being understood and agreed that in no event shall the fee under this subsection (x) in respect of any Letter of Credit be less than Agent's minimum fee for the maintenance of letters of credit in effect from time to time), and (y) to Issuer, a fronting fee of one quarter of one percent (0.25%) per annum times the daily face amount of each outstanding Letter of Credit for the period from and excluding the date of issuance of same to and including the date of expiration or termination, (all of the foregoing fees, the "Letter of Credit Fees"; the fees pursuant to the foregoing clause (x) are the "Letter of Credit Commitment Fees" and the fees pursuant to the foregoing clause (y) are the "Letter of Credit Fronting Fees"), all such Letter of Credit Fees to be calculated on the basis of a 360-day year for the actual number of days elapsed and to be payable quarterly in arrears on the first day of each calendar quarter and on the last day of the Term (provided that, in the event that at any time, Payment in Full of the Obligations has occurred but any Letters of Credit remain outstanding, all Letter of Credit Fees provided for in this sentence shall continue to accrue with respect to each such Letter of Credit until such time as such Letter of Credit has expired in accordance with its terms, been drawn in full, and returned for cancellation with the consent of the applicable beneficiary or beneficiaries under such Letters of Credit, except that, at any time when cash collateral has been provided with respect to any such Letter of Credit in the full amount required by and in accordance with Section 3.2(b) below, all Letter of Credit Commitment Fees shall accrue for the benefit of and be payable to the Issuer of such Letter of Credit). In addition, Borrowers shall pay to Agent, for the benefit of Issuer, any and all administrative, issuance, amendment, payment and negotiation charges with respect to Letters of Credit and all fees and expenses as agreed upon by Issuer and the Borrowing Agent in connection with any Letter of Credit, including in connection with the opening, amendment or renewal of any such Letter of Credit and any acceptances created thereunder, all such charges, fees and expenses, if any, shall be payable on demand and shall be deemed earned in full on the date when the same are due and payable hereunder and shall not be subject to rebate or pro-ration upon the termination of this Agreement for any reason. Any such charge in effect at the time of a particular transaction shall be the charge for that transaction, notwithstanding any subsequent change in Issuer's prevailing charges for that type of transaction. Upon and after the occurrence of an Event of Default, and during the continuation thereof, at the option of Agent or at the direction of Required Lenders (or, in the case of any Event of Default under Section 10.7 hereof, immediately and automatically upon the occurrence of any such Event of Default without the requirement of any affirmative action by any party), the Letter of Credit Commitment Fees shall be increased by an additional two percent (2%) per annum (as to such Letter of Credit Fees, the "Letter of Credit Default Rate").

(b) (i) At any time following the occurrence of an Event of Default, at the option of Agent or at the direction of Required Lenders (or, in the case of any Event of Default under Section 10.7 hereof, immediately and automatically upon the occurrence of such Event of Default, without the requirement of any affirmative action by any party), or (ii) upon the last day of the Term or (ii) upon any other termination of this Agreement (and also, if applicable, in connection with any mandatory prepayment under Section 2.20 hereof), Borrowers will cause cash to be provided to Agent, to be held by Agent as cash collateral, in an amount equal to one hundred and five percent (103%) of the Maximum Undrawn Amount of all outstanding Letters of Credit. Each Loan Party hereby irrevocably authorizes Agent, in its sole discretion, either:

(A) to hold such cash collateral in one or more general ledger or general operating accounts or suspense accounts of Agent and/or in one or more investment accounts of Agent, and in any such case, Agent may commingle such cash collateral with other funds and property of Agent on deposit in such accounts from time to time, and such cash collateral shall not bear interest and Agent shall have no obligation to pay interest thereon (and Loan Parties hereby waive any claim under Article 9 of the Uniform Commercial Code or any other Applicable Law to any such interest), and Agent shall not be required to account for any income or interest it may earn with respect to any cash collateral during any such time as cash collateral is held by Agent under this clause (A), or

(B) if Agent shall so elect in its sole discretion either (1) to open an account in which such cash collateral may be maintained on behalf of any one or more Loan Parties and in the name of such Loans Part, and to deposit such cash collateral into such an account, or (2) to deposit such cash collateral into an account opened by Loan Parties, and in any such case under this clause (B), Agent may, in its discretion, either (x) invest such cash collateral (less applicable reserves) in such short-term money-market items as to which Agent and such Borrower mutually agree (or, in the absence of such agreement, as Agent may reasonably select), and in any such case under this subclause (x). the net return on such investments shall be credited to such account and constitute additional cash collateral, or (y) (notwithstanding the foregoing clause (x)) establish the account provided for under this clause (B) as a non-interest bearing account and in such case under this subclause (y), Agent shall have no obligation (and Loan Parties hereby waive any claim) under Article 9 of the Uniform Commercial Code or under any other Applicable Law to pay interest on cash collateral being held by Agent (and in such case under this subclause (y), Agent shall not be required to account for any income or interest it may earn with respect to any cash collateral during any such time as cash collateral is held in any account provided for under this clause (B)).

No Loan Party may withdraw any such cash collateral provided under this Section 3.2(b) except upon the occurrence of all of the following: (x) Payment in Full of the Obligations; (y) the expiration, drawing in full, and/or return for cancellation with the consent of the applicable beneficiaries of all Letters of Credit and (without duplication of any amount paid pursuant to the preceding clause (x), payment in full of all Obligations with respect to any Letters of Credit that may have arisen subsequent to any Payment in Full of the Obligations (including without limitation any Reimbursement Obligations arising in respect of any draws with respect to any Letters of Credit made subsequent to such Payment in Full and any Letter of Credit Fees or other charges that may have accrued under Section 3.2(a) above with respect to any Letters of Credit that remained outstanding at any time following such Payment in Full); and (z) termination of this Agreement. Loan Parties hereby assign, pledge and grant to Agent, for its benefit and the ratable benefit of the Secured Parties, a continuing security interest in and to and Lien on any such cash collateral and any right, title and interest of Loan Parties in any deposit account, securities account or investment account into which such cash collateral may be deposited and/or in which such cash collateral may be held by Agent from time to time, all to secure the Obligations, specifically including all Obligations with respect to any Letters of Credit. Loan Parties agree that upon the coming due of any Reimbursement Obligations (or any other Obligations, including Obligations for Letter of Credit Fees, with respect to the Letters of Credit), Agent may use such cash collateral to pay and satisfy such Obligations.

3.3. Closing Fee and Facility Fee.

(a) Borrowers shall pay to Agent, for the ratable benefit of Lenders, a closing fee of $500,000, which such fee shall be due and payable, and fully-earned and non-refundable under any circumstances upon the execution and delivery of this Agreement by all parties hereto; provided that, to the extent that, after payment of all costs and expenses of Agent incurred through the Closing Date and payable by Loan Parties pursuant to Section 16.9 hereof, any portion of the deposit fee of $250,000 paid by Parent to Agent pursuant to that certain proposal letter dated as of June 20, 2021 between Agent and Parent remains, Agent shall apply such remaining deposit funds to the payment of the closing fee provided for under this paragraph.

(b) If, for any day in each calendar quarter during the Term, the daily unpaid balance of the Dollar Equivalent of the sum of Revolving Advances plus Swing Loans plus the Dollar Equivalent of the Maximum Undrawn Amount of all outstanding Letters of Credit (the "Usage Amount") does not equal the Maximum Revolving Advance Amount, then Borrowers shall pay to Agent, for the ratable benefit of the Revolving Lenders based on their Revolving Commitment Percentages, a fee at a rate equal to 0.375% per annum for each such day on the amount by which the Maximum Revolving Advance Amount on such day exceeds such Usage Amount (the "Facility Fee"). Such Facility Fee shall be payable to Agent in arrears on the first Business Day of calendar quarter with respect to each day in the previous calendar quarter (including the first Business Day of the first calendar quarter beginning after the Closing Date, in which case the Facility Fee shall be paid with respect to the period from the Closing Date through and including the last day of the calendar quarter in which the Closing Date occurs) and on the last day of the Term with respect to the period from the end of the previous calendar quarter through and including the last day of the Term.

3.4. Collateral Monitoring Fee and Collateral Evaluation Fee, Field Examination Costs and Expenses, Appraisal Costs.

(a) [RESERVED].

(b) Borrowers shall pay to Agent, for its sole and separate account and not the account of any Lender, a monthly collateral management fee equal to $8,333 per month, the first monthly installment of which shall be due and payable upon the execution and delivery of this Agreement by all parties hereto and successive installments of which shall be paid each on first Business Day of each month (beginning with the month of August 2021, provided that, if during any month, the Usage Amount on any day shall exceed the amount equal to fifty percent (50%) of the Maximum Revolving Advance Amount as in effect on such day, the monthly collateral management fee for the immediately following month shall increase to $11,500 for such immediately following month. Each installment of such agency management fee shall be deemed fully earned and non-refundable under any circumstances immediately upon becoming due and payable.

(c) Borrowers shall pay to Agent, for its sole and separate account and not the account of any Lender, promptly at the conclusion of any Field Examination conducted in accordance with the terms of Section 4.6 hereof (whether such examination is performed by Agent's employees or by a third party retained by Agent), a collateral evaluation fee in an amount equal to (x) the amount customarily charged by Administrative Agent at such time and from time to time to its customers per day for each person employed and/or retained by Administrative Agent to perform such evaluation (based on an eight (8) hour day and subject to adjustment if additional hours are worked) (which base per diem amount customarily charged by Administrative Agent as of the Effective Date is $1,500), plus (y) a per examination field examination management and review fee in the amount in an amount equal to the amount customarily charged by Administrative Agent as a field examination management and review fee at such time and from time to time to its customers (which fee amount customarily charged by Administrative Agent as of the Effective Date is $2,500 (for the Initial Field Examination and for any Field Examination in connection with any Acquisition) or $1,500 (in each other case) for each Field Examination), plus (z) all out-of-pocket costs and disbursements incurred by Agent and its employees and agents in the performance of such Field Examination (provided that if third parties are retained to perform any such Field Examination by Administrative Agent in its Permitted Discretion, then such fees charged by such third parties plus all costs and disbursements incurred by such third party (as well as the amounts under the preceding clause(y)) shall be the responsibility of Borrower and shall not be subject to the foregoing limits) (all collectively as to any Field Examination, the "Field Examination Fees and Costs"), in full and without any deduction, off-set or counterclaim by Borrowers; provided that, notwithstanding the foregoing or anything to the contrary in this Agreement, in the absence of the occurrence and continuance of any Event of Default, Borrowers shall not be required to pay the Field Examination Fees and Costs for more than two (2) such Field Examinations in any calendar year; provided further that the limitations set forth in the immediately foregoing proviso: (1) shall not apply to any Field Examination initiated after the occurrence and during the continuance of any Event of Default (and any Field Examination conducted in Agent's Permitted Discretion and at Borrowers' expense after the occurrence and during the continuance of any Event of Default shall not be counted against such limitations), and (2) shall not limit the right of Agent in its Permitted Discretion to conduct additional Field Examinations in any calendar year at its own cost and expense pursuant to Section 4.6 hereof. Notwithstanding anything to the contrary provided for in the foregoing or in this Agreement, (A) the Borrowers shall be liable for the Field Examination Fees and Costs with respect to the Initial Field Exam, and the Initial Field Exam shall not be counted against the limitations set forth in clause (1) of the foregoing sentence with respect to the calendar year in which the Closing Date occurs, and (B) Borrowers shall be liable for the Field Examination Fees and Costs of any Field Examination conducted with respect to any Acquisition of assets by any Borrowing Base Entity and/or any Acquisition of any Person that becomes a Borrowing Base Entity, and such Field Examination Fees and Costs shall not be counted against the limitations set forth in clause (1) of the foregoing sentence with respect to the calendar year in which the closing of the Acquisition occurs.

(d) Borrowers shall pay to Agent, for its sole and separate account and not the account of any Lender, promptly at the conclusion of any Inventory Appraisal obtained by Agent in accordance with the terms of Section 4.7 hereof the out-of-pocket costs and expenses incurred by Agent in obtaining such Inventory Appraisal (as to any such Inventory Appraisal, the "Appraisal Costs"), in full and without deduction, off-set or counterclaim by Borrowers; provided that, notwithstanding the foregoing or anything to the contrary in this Agreement, in the absence of the occurrence and continuance of any Event of Default, Borrowers shall not be required to pay the Appraisal Costs for more than one (1) such Inventory Appraisals in any calendar year; but also provided further that the limitations set forth in the immediately foregoing proviso: (1) shall not apply to any Inventory Appraisals initiated after the occurrence and during the continuance of any Event of Default (and any Inventory Appraisal obtained in Agent's Permitted Discretion and at Borrowers' expense after the occurrence and during the continuance of any Event of Default shall not be counted against such limitations), and (2) shall not limit the right of Agent in its Permitted Discretion to conduct additional Inventory Appraisals in any calendar year at its own cost and expense pursuant to Section 4.7 hereof. Notwithstanding anything to the contrary provided for in the foregoing or in this Agreement, (A) the Borrowers shall be liable for the Appraisal Costs with respect to the Initial Inventory Appraisal and (B) Borrowers shall be liable for the Appraisal Costs of any Inventory Appraisal conducted with respect to any Acquisition of assets by any Borrowing Base Entity and/or any Acquisition of any Person that becomes a Borrowing Base Entity, and such Appraisal Costs shall not be counted against the limitations set forth in clause (1) of the foregoing sentence with respect to the calendar year in which the closing of the Acquisition occurs..

3.5. Computation of Interest and Fees. Interest and fees hereunder shall be computed on the basis of a year of 360 days and for the actual number of days elapsed. If any payment to be made hereunder becomes due and payable on a day other than a Business Day, the due date thereof shall be extended to the next succeeding Business Day and interest thereon shall be payable at the applicable Contract Rate during such extension.

3.6. Maximum Charges. In no event whatsoever shall interest and other charges charged hereunder exceed the highest rate permissible under Applicable Law. In the event interest and other charges as computed hereunder would otherwise exceed the highest rate permitted under Applicable Law: (i) the interest rates hereunder will be reduced to the maximum rate permitted under Applicable Law; (ii) such excess amount shall be first applied to any unpaid principal balance owed by Borrowers; and (iii) if the then remaining excess amount is greater than the previously unpaid principal balance, Lenders shall promptly refund such excess amount to Borrowers and the provisions hereof shall be deemed amended to provide for such permissible rate.

3.7. Increased Costs. In the event that any Applicable Law or any Change in Law or compliance by any Lender (for purposes of this Section 3.7, the term "Lender" shall include Agent, Swing Loan Lender, any Issuer or Lender and any corporation or bank controlling Agent, Swing Loan Lender, any Lender or Issuer and the office or branch where Agent, Swing Loan Lender, any Lender or Issuer (as so defined) makes or maintains any LIBOR Rate Loans) with any request or directive (whether or not having the force of law) from any central bank or other financial, monetary or other authority, shall:

(a) subject Agent, Swing Loan Lender, any Lender or Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any LIBOR Rate Loan, or change the basis of taxation of payments to Agent, Swing Loan Lender, such Lender or Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.10 hereof and the imposition of any Excluded Tax described in clauses (b) through (d) of the definition of Excluded Tax payable by Agent, Swing Loan Lender, such Lender or Issuer);

(b) impose, modify or deem applicable any reserve, special deposit, assessment, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, or deposits in or for the account of, advances or loans by, or other credit extended by, any office of Agent, Swing Loan Lender, Issuer or any Lender, including pursuant to Regulation D of the Board of Governors of the Federal Reserve System; or

(c) impose on Agent, Swing Loan Lender, any Lender, or Issuer, or the London interbank market, any other condition, loss or expense (other than Taxes) affecting this Agreement or any Other Document or any Advance made by any Lender, or any Letter of Credit or participation therein;

and the result of any of the foregoing is to increase the cost to Agent, Swing Loan Lender, any Lender or Issuer of making, converting to, continuing, renewing or maintaining its Advances hereunder by an amount that Agent, Swing Loan Lender, such Lender, or Issuer deems to be material or to reduce the amount of any payment (whether of principal, interest or otherwise) in respect of any of the Advances by an amount that Agent, Swing Loan Lender, or such Lender or Issuer deems to be material, then, in any case Borrowers shall promptly pay Agent, Swing Loan Lender, such Lender, or Issuer, upon its demand, such additional amount as will compensate Agent, Swing Loan Lender, such Lender, or Issuer for such additional cost or such reduction, as the case may be, provided that the foregoing shall not apply to increased costs which are reflected in the LIBOR Rate, as the case may be. Agent, Swing Loan Lender, such Lender, or Issuer shall certify the amount of such additional cost or reduced amount to Borrowing Agent, and such certification shall be conclusive absent manifest error.

3.8. Alternate Rate of Interest.

3.8.1. Interest Rate Inadequate or Unfair. In the event that Agent or any Lender shall have determined that:

(a) reasonable means do not exist for ascertaining the LIBOR Rate applicable pursuant to Section 2.2 hereof for any Interest Period;

(b) Dollar deposits in the relevant amount and for the relevant maturity are not available in the London interbank LIBOR market, with respect to an outstanding LIBOR Rate Loan, a proposed LIBOR Rate Loan, or a proposed conversion of a Domestic Rate Loan into a LIBOR Rate Loan;

(c) the making, maintenance or funding of any LIBOR Rate Loan has been made impracticable or unlawful by compliance by Agent or such Lender in good faith with any Applicable Law or any interpretation or application thereof by any Governmental Body or with any request or directive of any such Governmental Body (whether or not having the force of law), or

(d) the LIBOR Rate will not adequately and fairly reflect the cost to such Lender of the establishment or maintenance of any LIBOR Rate Loan,

then Agent shall give Borrowing Agent prompt written or telephonic notice of such determination. If such notice is given prior to Benchmark Replacement Date (as defined below), (i) any such requested LIBOR Rate Loan shall be made as a Domestic Rate Loan, unless Borrowing Agent shall notify Agent no later than 1:00 p.m. two (2) Business Days prior to the date of such proposed borrowing, that its request for such borrowing shall be cancelled or made as an unaffected type of LIBOR Rate Loan, (ii) any Domestic Rate Loan or LIBOR Rate Loan which was to have been converted to an affected type of LIBOR Rate Loan shall be continued as or converted into a Domestic Rate Loan, or, if Borrowing Agent shall notify Agent, no later than 1:00 p.m. two (2) Business Days prior to the proposed conversion, shall be maintained as an unaffected type of LIBOR Rate Loan, and (iii) any outstanding affected LIBOR Rate Loans shall be converted into a Domestic Rate Loan, or, if Borrowing Agent shall notify Agent, no later than 1:00 p.m. two (2) Business Days prior to the last Business Day of the then current Interest Period applicable to such affected LIBOR Rate Loan, shall be converted into an unaffected type of LIBOR Rate Loan, on the last Business Day of the then current Interest Period for such affected LIBOR Rate Loans (or sooner, if any Lender cannot continue to lawfully maintain such affected LIBOR Rate Loan). Until such notice has been withdrawn, Lenders shall have no obligation to make an affected type of LIBOR Rate Loan or maintain outstanding affected LIBOR Rate Loans and no Borrower shall have the right to convert a Domestic Rate Loan or an unaffected type of LIBOR Rate Loan into an affected type of LIBOR Rate Loan.

3.8.2. Benchmark Replacement Setting. (a) *Announcements Related to LIBOR*. On March 5, 2021, the ICE Benchmark Administration, the administrator of LIBOR (the **"**IBA**"**) and the U.K. Financial Conduct Authority, the regulatory supervisor for the IBA, announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12-month USD LIBOR tenor settings (collectively, the **"**Cessation Announcements**"**). The parties hereto acknowledge that, as a result of the Cessation Announcements, a Benchmark Transition Event occurred on March 5, 2021 with respect to USD LIBOR under clauses (1) and (2) of the definition of Benchmark Transition Event below; provided however, no related Benchmark Replacement Date occurred as of such date.

(b) *Benchmark Replacement*. Notwithstanding anything to the contrary herein or in any Other Document (and any agreement executed in connection with an Interest Rate Hedge shall be deemed not to be an "Other Document" for purposes of this Section 3.8.2), 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 Other 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 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 Other Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) 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 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.

(c) *Benchmark Replacement Conforming Changes*. In connection with the implementation of a Benchmark Replacement, 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 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 Document.

(d) *Notices; Standards for Decisions and Determinations*. Agent will promptly notify the Borrowers and the Lenders of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to paragraph (e) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.8.2, 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 Document, except, in each case, as expressly required pursuant to this Section 3.8.2.

(e) *Unavailability of Tenor of Benchmark*. Notwithstanding anything to the contrary herein or in any Other 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 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 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 Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) *Benchmark Unavailability Period*. Upon the Borrowers' receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrowers may revoke any request for an Advance bearing interest based on USD LIBOR , conversion to or continuation of an Advance bearing interest based on USD LIBOR to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrowers will be deemed to have converted any such request into a request for an Advance of or conversion to Advances bearing interest under the Alternate Base Rate option. 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 the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

(g) *Term SOFR Transition Event*. Notwithstanding anything to the contrary herein or in any Other Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (i) the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Other Document in respect of such Benchmark setting (the **"**Secondary Term SOFR Conversion Date**"**) and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any Other Document; and (ii) Advances outstanding on the Secondary Term SOFR Conversion Date bearing interest based on the then-current Benchmark shall be deemed to have been converted to Advances bearing interest at the Benchmark Replacement with a tenor approximately the same length as the interest payment period of the then-current Benchmark; provided that, this paragraph (g) shall not be effective unless Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion.

(h) Certain Defined Terms. As used in this Section 3.8.2:

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then current Benchmark is a term rate or is based on a term rate, any tenor for such Benchmark 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 paragraph (e) of this Section titled "Benchmark Replacement Setting", or (y) if the then current Benchmark is not a term rate nor based on a term rate, any payment period for interest calculated with reference to such Benchmark pursuant to this Agreement as of such date

"*Benchmark*" means, initially, USD LIBOR; provided that if a Benchmark Transition Event a Term SOFR 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 paragraph (b) of this Section titled "Benchmark Replacement Setting."

"*Benchmark Replacement*" means, for any Available Tenor, the first alternative set forth in the order below that can be determined by 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 Agent and the Borrowers 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 U.S. 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 Agent in its reasonable discretion; provided, further, that, with respect to a Term SOFR Transition Event, on the applicable Benchmark Replacement Date, the "Benchmark Replacement" shall revert to and shall be determined as set forth in clause (1) of this definition. 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 Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable 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 applicable amount(s) set forth below:

Available Tenor	Benchmark Replacement Adjustment*
One-Week	0.03839% (3.839 basis points)
One-Month	0.11448% (11.448 basis points)
Two-Months	0.18456% (18.456 basis points)
Three-Months	0.26161% (26.161 basis points)
Six-Months	0.42826% (42.826 basis points)
* These values represent the ARRC/ISDA recommended spread adjustment values available here: https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf	

(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 Agent and the Borrowers 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 U.S. dollar-denominated syndicated credit facilities;

provided that, if the then-current Benchmark is a term rate, more than one tenor of such Benchmark is available as of the applicable Benchmark Replacement Date and the applicable Unadjusted Benchmark Replacement will not be a term rate, the Available Tenor of such Benchmark for purposes of this definition of "Benchmark Replacement Adjustment" shall be deemed to be the Available Tenor that has approximately the same length (disregarding business day adjustments) as the payment period for interest calculated with reference to such Unadjusted Benchmark Replacement.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Alternate Base Rate," 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, and other technical, administrative or operational matters) that the 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 Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as Agent decides is reasonably necessary in connection with the administration of this Agreement and the Other 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 determined by Agent, which date shall promptly follow the date of the public statement or publication of information referenced therein;

(3) in the case of a Term SOFR Transition Event, the date that is set forth in the Term SOFR Notice provided to the Lenders and the Borrower pursuant to this Section titled "Benchmark Replacement Setting", which date shall be at least 30 days from the date of the Term SOFR Notice; or

(4) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) 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 an Official Body having jurisdiction over the Administrative Agent, the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, 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) or an Official Body having jurisdiction over Agent 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 Other Document in accordance with this Section titled "Benchmark Replacement Setting" and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Other Document in accordance with this Section titled "Benchmark Replacement Setting."

"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 Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for business loans; provided, that if Agent decides that any such convention is not administratively feasible for Agent, then 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:

(1) a notification by Agent to (or the request by the Borrower to Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a 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 Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by 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 or, if no floor is specified, zero.

"*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 Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board 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.

"Term SOFR Notice" means a notification by Agent to the Lenders and the Borrowers of the occurrence of a Term SOFR Transition Event.

"Term SOFR Transition Event" means the determination by Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, and is determinable for each Available Tenor, (b) the administration of Term SOFR is administratively feasible for Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section titled "Benchmark Replacement Setting" that is not Term SOFR.

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

"USD LIBOR" means the London interbank offered rate for U.S. dollars.

3.9. Capital Adequacy.

(a) In the event that Agent, Swing Loan Lender, Issuer, or any Lender shall have determined that any Applicable Law or guideline regarding capital adequacy, or any Change in Law or any change in the interpretation or administration thereof by any Governmental Body, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Agent, Swing Loan Lender, Issuer, or any Lender (for purposes of this Section 3.9, the term "Lender" shall include Agent, Swing Loan Lender, Issuer, or any Lender and any corporation or bank controlling Agent, Swing Loan Lender or any Lender and the office or branch where Agent, Swing Loan Lender or any Lender (as so defined) makes or maintains any LIBOR Rate Loans) 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, has or would have the effect of reducing the rate of return on Agent's, Swing Loan Lender's, Issuer's, or any Lender's capital as a consequence of its obligations hereunder (including the making of any Swing Loans) to a level below that which Agent, Swing Loan Lender, Issuer, or such Lender could have achieved but for such adoption, change or compliance (taking into consideration Agent's, Swing Loan Lender's, Issuer's and each Lender's policies with respect to capital adequacy) by an amount deemed by Agent, Swing Loan Lender, Issuer, or any Lender to be material, then, from time to time, Borrowers shall pay upon demand to Agent, Swing Loan Lender, Issuer, or such Lender such additional amount or amounts as will compensate Agent, Swing Loan Lender, Issuer, or such Lender for such reduction. In determining such amount or amounts, Agent, Swing Loan Lender, Issuer, or such Lender may use any reasonable averaging or attribution methods. The protection of this Section 3.9 shall be available to Agent, Swing Loan Lender, Issuer, and each Lender regardless of any possible contention of invalidity or inapplicability with respect to the Applicable Law, rule, regulation, guideline or condition.

(b) A certificate of Agent, Swing Loan Lender, Issuer, or such Lender setting forth such amount or amounts as shall be necessary to compensate Agent, Swing Loan Lender, Issuer, or such Lender with respect to Section 3.9(a) hereof when delivered to Borrowing Agent shall be conclusive absent manifest error.

3.10. Taxes.

(a) Any and all payments by or on account of any Obligations hereunder or under any Other Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, except as required by Applicable Law. If Loan Parties (or other applicable withholding agent) shall be required by Applicable Law to deduct or withhold any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable by the Loan Parties shall be increased as necessary so that after such deductions or withholdings (including deductions and withholdings applicable to additional sums payable under this Section) Agent, Swing Loan Lender, Lender, Issuer or Participant, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) Loan Parties (or other applicable withholding agent) shall make such deductions or withholdings and (iii) Loan Parties (or other applicable withholding agent) shall timely pay the full amount deducted or withheld to the relevant Governmental Body in accordance with Applicable Law.

(b) Without limiting the provisions of Section 3.10(a) above, Loan Parties shall timely pay any Other Taxes to the relevant Governmental Body in accordance with Applicable Law.

(c) Each Loan Party shall indemnify Agent, Swing Loan Lender, each Lender, Issuer and any Participant, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by Agent, Swing Loan Lender, such Lender, Issuer, or such Participant, as the case may be, and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to Loan Parties by any Lender, Swing Loan Lender, Participant, or Issuer (with a copy to Agent), or by Agent on its own behalf or on behalf of Swing Loan Lender, a Lender or Issuer, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by any Loan Party to a Governmental Body, Loan Parties shall deliver to Agent the original or a certified copy of a receipt issued by such Governmental Body evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any Loan Party is resident for tax purposes, or under any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any Other Document shall deliver to Loan Parties (with a copy to Agent), at the time or times prescribed by Applicable Law or reasonably requested by Loan Parties or Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. Notwithstanding the submission of such documentation claiming a reduced rate of or exemption from U.S. withholding tax, Agent shall be entitled to withhold United States federal income taxes at the full 30% withholding rate if in its reasonable judgment it is required to do so under the due diligence requirements imposed upon a withholding agent under §1.1441-7(b) of the United States Income Tax Regulations or other Applicable Law. Further, Agent is indemnified under §1.1461-1(e) of the United States Income Tax Regulations against any claims and demands of any Lender, Issuer or assignee or participant of a Lender or Issuer for the amount of any tax it deducts and withholds in accordance with regulations under §1441 of the Code. In addition, any Lender, if requested by Loan Parties or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Loan Parties or Agent as will enable Loan Parties or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in this Section 3.10(e), the completion, execution and submission of any documentation (other than such documentation set forth in Section 3.10(e)(i), (ii), (iii), and (v) and Section 3.10(f)) 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. Without limiting the generality of the foregoing, in the event that any Loan Party is resident for tax purposes in the United States of America, any Foreign Lender (or other Lender) shall deliver to Loan Parties and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender (or other Lender) becomes a Lender under this Agreement (and from time to time thereafter upon the request of Loan Parties or Agent, but only if such Foreign Lender (or other Lender) is legally entitled to do so), whichever of the following is applicable:

(i) executed copies of IRS Form W-8BEN or W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(ii) executed copies of IRS Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of Loan Parties within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) executed copies of IRS Form W-8BEN or W-8BEN-E,

(iv) any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Loan Parties or Agent to determine the withholding or deduction required to be made, or

(v) To the extent that any Lender is not a Foreign Lender and is a resident for tax purposes in the United States of America, such Lender shall submit to Loan Parties and Agent executed copies of an IRS Form W-9 or any other form prescribed by Applicable Law certifying that such Lender is exempt from United States federal backup withholding tax.

(f) If a payment made to a Lender, Swing Loan Lender, Participant, Issuer, or Agent under this Agreement or any Other Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Person fails 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, Swing Loan Lender, Participant, Issuer, or Agent shall deliver to Agent (in the case of Swing Loan Lender, a Lender, Participant or Issuer) and Loan Parties such documentation prescribed by Applicable Law or reasonably requested by Agent or any Loan Party sufficient for Agent and Loan Parties to comply with their obligations under FATCA and to determine that Swing Loan Lender, such Lender, Participant, Issuer, or Agent has complied with such applicable reporting requirements or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 3.10(f), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender, Swing Loan Lender, Participant, Issuer, and Agent, as applicable, agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Loan Parties and Agent in writing of its legal inability to do so.

(g) If Agent, Swing Loan Lender, a Lender, a Participant or Issuer determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by Loan Parties or with respect to which Loan Parties have paid additional amounts pursuant to this Section, it shall pay to Loan Parties an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid by Loan Parties under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund); net of all out-of-pocket expenses (including Taxes) of Agent, Swing Loan Lender, such Lender, Participant, or Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Body with respect to such refund), provided that Loan Parties, upon the request of Agent, Swing Loan Lender, such Lender, Participant, or Issuer, agrees to repay the amount paid over to Loan Parties (plus any penalties, interest or other charges imposed by the relevant Governmental Body) to Agent, Swing Loan Lender, such Lender, Participant or Issuer in the event such Agent, Swing Loan Lender, Lender, Participant or Issuer is required to repay such refund to such Governmental Body. Notwithstanding anything to the contrary in this Section 3.10(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3.10(g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section shall not be construed to require Agent, Swing Loan Lender, any Lender, Participant, or Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Loan Parties or any other Person.

(h) The rights and duties of the parties under this Section 3.10 shall survive the termination of this Agreement and the payment of the amounts payable hereunder until expiry of the applicable statute of limitations.

3.11. Replacement of Lenders. If any Lender (an "Affected Lender") (a) makes demand upon Borrowers for (or if Borrowers are otherwise required to pay) amounts pursuant to Section 3.7, 3.9 or 3.10 hereof, (b) is unable to make or maintain LIBOR Rate Loans as a result of a condition described in Section 2.2(h) hereof, (c) is a Defaulting Lender, or (d) denies any consent requested by Agent pursuant to Section 16.2(b) hereof, Borrowers may, within ninety (90) days of receipt of such demand, notice (or the occurrence of such other event causing Borrowers to be required to pay such compensation or causing Section 2.2(h) hereof to be applicable), or such Lender becoming a Defaulting Lender or denial of a request by Agent pursuant to Section 16.2(b) hereof, as the case may be, by notice (a "Replacement Notice") in writing to Agent and such Affected Lender (i) request the Affected Lender to cooperate with Borrowers in obtaining a replacement Lender satisfactory to Agent and Borrowers (the "Replacement Lender"); (ii) request the non-Affected Lenders to acquire and assume all of the Affected Lender's Advances and its Revolving Commitment and Participation Commitments, all as provided herein, but none of such Lenders shall be under any obligation to do so; or (iii) propose a Replacement Lender subject to approval by Agent in their good faith business judgment. If any satisfactory Replacement Lender shall be obtained, and/or if any one or more of the non-Affected Lenders shall agree to acquire and assume all of the Affected Lender's Advances and its Revolving Commitment and Participation Commitments, then such Affected Lender shall assign, in accordance with Section 16.3 hereof, all of its Advances and its Revolving Commitment and Participation Commitments, and other rights and obligations under this Agreement and the Other Documents to such Replacement Lender or non-Affected Lenders, as the case may be, in exchange for payment of the principal amount so assigned and all interest and fees accrued on the amount so assigned, *plus* all other Obligations then due and payable to the Affected Lender including for any breakage fee pursuant to Section 2.2(g) (as though such payment constituted a prepayment) and any Early Termination Fee, as applicable.

IV. COLLATERAL: GENERAL TERMS

4.1. Security Interest in the Collateral. To secure the prompt payment and performance to Agent and each other Secured Party of the Obligations, each Loan Party hereby assigns, pledges and grants to Agent for its benefit and for the ratable benefit of each other Secured Party, a continuing security interest in and to and Lien on all of its Collateral, whether now owned or existing or hereafter created, acquired or arising and wheresoever located. Each Loan Party shall mark its books and records as may be necessary or appropriate to evidence, protect and perfect Agent's security interest and shall cause its financial statements to reflect such security interest. Each Loan Party shall provide Agent with written notice of all commercial tort claims promptly upon the occurrence of any events giving rise to any such claims (regardless of whether legal proceedings have yet been commenced), such notice to contain a brief description of the claim(s), the events out of which such claims arose and the parties against which such claim(s) may be asserted and, if applicable in any case where legal proceedings regarding such claim(s) have been commenced, the case title together with the applicable court and docket number. Upon delivery of each such notice, such Loan Party shall be deemed to thereby grant to Agent a security interest and lien in and to such commercial tort claims described therein and all proceeds thereof. Each Loan Party shall provide Agent with written notice promptly upon becoming the beneficiary under any letter of credit or otherwise obtaining any right, title or interest in any letter of credit rights, and at Agent's request shall take such actions as Agent may reasonably request for the perfection of Agent's security interest therein.

4.2. Perfection of Security Interest. Each Loan Party shall take all action that may be necessary or desirable, or that Agent may request, so as at all times to maintain the validity, perfection, enforceability and priority of Agent's security interest in and Lien on the Collateral or to enable Agent to protect, exercise or enforce its rights hereunder and in the Collateral, including, but not limited to, (a) immediately discharging all Liens other than Permitted Encumbrances, (b) obtaining Lien Waiver Agreements, (c) delivering to Agent, endorsed or accompanied by such instruments of assignment as Agent may specify, and stamping or marking, in such manner as Agent may specify, any and all chattel paper, instruments, letters of credit and advices thereof and documents evidencing or forming a part of the Collateral, (d) entering into warehousing, lockbox, customs and freight agreements and other custodial arrangements satisfactory to Agent, and (e) executing and delivering financing statements, Control Agreements, instruments of pledge, mortgages, notices and assignments, in each case in form and substance satisfactory to Agent, relating to the creation, validity, perfection, maintenance or continuation of Agent's security interest and Lien under the Uniform Commercial Code or other Applicable Law (including without limitation as to each Real Property owned by any Loan Party that does not constitute Excluded Property: (i) execution and delivery of a Mortgage in form and substance reasonably acceptable to Agent in its Permitted Discretion, (ii) providing to Agent a mortgagee title insurance policy (in standard ALTA form, issued by a title insurance company satisfactory to Agent in its Permitted Discretion, in an amount equal to not less than purchase price of such Real Property) insuring such Mortgage to create a valid Lien on such Real Property with no exceptions which Agent shall not have approved in writing in its Permitted Discretion (it being understood that Agent shall not approve any exceptions with respect to any Lien that is not a Permitted Encumbrance) and no survey exception, (iii) provide to Agent such customary legal opinions regarding such Mortgage (including customary opinions as to such Mortgage under the laws of the jurisdiction in which the applicable real estate is located) as Agent may reasonably require in its Permitted Discretion, and (iv) if requested by Agent, providing to Agent a copy of a customary survey of such Real Property reasonably satisfactory to Agent in its Permitted Discretion). By its signature hereto, each Loan Party hereby authorizes Agent to file, and ratifies any such filings made prior to the date hereof, against such Loan Party, one or more financing, continuation or amendment statements pursuant to the Uniform Commercial Code in form and substance satisfactory to Agent (which statements may have a description of collateral which is broader than that set forth herein, including without limitation a description of Collateral as "all assets" and/or "all personal property" of any Loan Party). All charges, expenses and fees Agent may incur in doing any of the foregoing, and any local taxes relating thereto, shall be charged to Borrowers' Account as a Revolving Advance of a Domestic Rate Loan and added to the Obligations, or, at Agent's option, shall be paid by Loan Parties to Agent for its benefit and for the ratable benefit of Lenders immediately upon demand.

4.3. Preservation of Collateral. Following the occurrence of a Default or an Event of Default, in addition to the rights and remedies set forth in Section 11.1 hereof, Agent: (a) may at any time take such steps as Agent deems necessary to protect Agent's interest in and to preserve the Collateral, including the hiring of security guards or the placing of other security protection measures as Agent may deem appropriate; (b) may employ and maintain at any of any Loan Party's premises a custodian who shall have full authority to do all acts necessary to protect Agent's interests in the Collateral; (c) may lease warehouse facilities to which Agent may move all or part of the Collateral; (d) may use any Loan Party's owned or leased lifts, hoists, trucks and other facilities or equipment for handling or removing the Collateral; and (e) shall have, and is hereby granted, a right of ingress and egress to the places where the Collateral is located, and may proceed over and through any of Loan Parties' owned or leased property. During an Event of Default, each Loan Party shall cooperate fully with all of Agent's efforts to preserve the Collateral and will take such actions to preserve the Collateral as Agent may direct. All of Agent's expenses of preserving the Collateral, including any expenses relating to the bonding of a custodian, shall be charged to Borrowers' Account as a Revolving Advance maintained as a Domestic Rate Loan and added to the Obligations.

4.4. Ownership and Location of Collateral.

(a) With respect to the Collateral, at the time the Collateral becomes subject to Agent's security interest: (i) each Loan Party shall be the sole owner of and fully authorized and able to sell, transfer, pledge and/or grant a first priority security interest in each and every item of its respective Collateral to Agent; and, except for Permitted Encumbrances the Collateral shall be free and clear of all Liens whatsoever; (ii) each document and agreement executed by each Loan Party or delivered to Agent or any Lender in connection with this Agreement shall be true and correct in all respects; (iii) all signatures and endorsements of each Loan Party that appear on such documents and agreements shall be genuine and each Loan Party shall have full capacity to execute same; and (iv) each Loan Party's equipment and Inventory shall be maintained at the locations set forth on Schedule 4.4 hereto (as such Schedule may be updated from time to time in accordance with this Agreement), and shall not be removed from such locations without the prior written consent of Agent except with respect to the sale of Inventory in the Ordinary Course of Business, the disposition of equipment to the extent permitted in Section 7.1(b) hereof or de minimis personal equipment used by individual employees or officers.

(b) (i) There is no location at which any Loan Party has any Inventory (except for Inventory in transit) or other Collateral with a value equal to the Dollar Equivalent of $500,000 or greater other than those locations listed on Schedule 4.4 hereto (as such Schedule may be updated from time to time in accordance with this Agreement); (ii) Schedule 4.4 hereto (as such Schedule may be updated from time to time in accordance with this Agreement) contains a true, correct, and complete list of the legal names and addresses of all warehouses at which Inventory of any Loan Party with a value equal to the Dollar Equivalent of $500,000 or greater is stored; none of the receipts received by any Loan Party from any warehouse states that the goods covered thereby are to be delivered to bearer or to the order of a named Person or to a named Person and such named Person's assigns; (iii) Schedule 4.4 hereto (as such Schedule may be updated from time to time in accordance with this Agreement) sets forth a true, correct, and complete list of (A) the chief executive office of each Loan Party, (B) each business location at which any unique books and records of any Loan Party (not duplicated at the applicable corporate headquarters of such Loan Party) are kept, and (C) each business location of any Loan Party or third-party warehouse/bailee/processor of any Loan Party (excluding any Foreign Unsecured Loan Party) at which tangible Collateral with a fair market value, as to each such location, in excess of the Dollar Equivalent of $500,000 is located, and (iv) Schedule 4.4 hereto (as such Schedule may be updated from time to time in accordance with this Agreement) sets forth a true, correct, and complete list of the location, by state and street address, of all Real Property owned or leased by each Loan Party, identifying which Real Properties are owned and which are leased, together with the names and addresses of any landlords or other third parties in possession, custody or control of any Collateral with a value equal to the Dollar Equivalent of $500,000 or greater.

4.5. Defense of Agent's and Lenders' Interests. Until (a) Payment in Full of all of the Obligations and (b) the termination of the Commitments and the termination of this Agreement, Agent's interests in the Collateral shall continue in full force and effect. During such period no Loan Party shall, without Agent's prior written consent, pledge, sell (except for sales or other dispositions otherwise permitted in Section 7.1(b) hereof), assign, transfer, create or suffer to exist a Lien upon or encumber or allow or suffer to be encumbered in any way except for Permitted Encumbrances, any part of the Collateral. Each Loan Party shall defend Agent's interests in the Collateral against any and all Persons whatsoever. At any time following demand by Agent for payment of all Obligations, Agent shall have the right to take possession of the indicia of the Collateral and the Collateral in whatever physical form contained, including: labels, stationery, documents, instruments and advertising materials. If Agent exercises this right to take possession of the Collateral, each Loan Party shall, upon demand, assemble it in the best manner possible and make it available to Agent at a place reasonably convenient to Agent. In addition, with respect to all Collateral, Agent and Lenders shall be entitled to all of the rights and remedies set forth herein and further provided by the Uniform Commercial Code or other Applicable Law. Each Loan Party shall, and Agent may, instruct all suppliers, carriers, forwarders, warehousemen or others receiving or holding cash, checks, Inventory, documents or instruments in which Agent holds a security interest to deliver same to Agent and/or subject to Agent's order and if they shall come into any Loan Party's possession, they, and each of them, shall be held by such Loan Party in trust as Agent's trustee, and such Loan Party will immediately deliver them to Agent in their original form together with any necessary endorsement.

4.6. Inspection of Premises. At all reasonable times and from time to time as often as Agent shall elect in its Permitted Discretion, Agent and each Lender shall have full access to and the right to audit, check, inspect and make abstracts and copies from each Loan Party's books, records, audits, correspondence and all other papers relating to the Collateral and the operation of each Loan Party's business. Agent, any Lender and their agents may enter upon any premises of any Loan Party at any time during business hours and at any other reasonable time, and from time to time as often as Agent shall elect, for the purpose of inspecting the Collateral and any and all records pertaining thereto and the operation of such Loan Party's business.

4.7. Appraisals. Agent may, in its Permitted Discretion, exercised in a commercially reasonable manner, at any time after the Closing Date and from time to time, engage the services of an independent appraisal firm or firms of reputable standing, satisfactory to Agent, for the purpose of appraising then current values of Loan Parties' assets. Unless an Event of Default shall have occurred and be continuing at such time, Agent shall consult with Loan Parties as to the identity of any such firm. In the event the value of Loan Parties' assets included in the Formula Amount as so determined pursuant to such appraisal is less than anticipated by Agent such that the Revolving Advances are in excess of such Advances permitted hereunder, then, promptly upon Agent's demand for same, Borrowers shall make mandatory prepayments of the then outstanding Revolving Advances so as to eliminate the excess Advances.

4.8. Receivables; Deposit Accounts and Securities Accounts.

(a) Each of the Receivables shall be a bona fide and valid account representing a bona fide indebtedness incurred by the Customer therein named, for a fixed sum as set forth in the invoice relating thereto (provided immaterial or unintentional invoice errors shall not be deemed to be a breach hereof) with respect to an absolute sale or lease and delivery of goods upon stated terms of a Loan Party, or work, labor or services theretofore rendered by a Loan Party as of the date each Receivable is created. Same shall be due and owing in accordance with the applicable Loan Party's standard terms of sale without dispute, setoff or counterclaim except as may be stated on the accounts receivable schedules delivered by Loan Parties to Agent.

(b) Each Customer, to the best of each Loan Party's knowledge, as of the date each Receivable is created, is and will be solvent and able to pay all Receivables on which the Customer is obligated in full when due. With respect to such Customers of any Loan Party who are not solvent, such Loan Party has set up on its books and in its financial records bad debt reserves adequate to cover such Receivables.

(c) Each Loan Party's chief executive office is located as set forth on Schedule 4.4 hereto. Until written notice is given to Agent by Borrowing Agent of any other office at which any Loan Party keeps its records pertaining to Receivables, all such records shall be kept at such executive office.

(d) Loan Parties shall instruct their Customers to deliver all remittances upon Receivables (whether paid by check or by wire transfer of funds) to such Blocked Account(s) and/or Depository Accounts (and any associated lockboxes) as Agent shall designate from time to time as contemplated by Section 4.8(h) hereof or as otherwise agreed to from time to time by Agent. Notwithstanding the foregoing, to the extent any Loan Party directly receives any remittances upon Receivables, such Loan Party shall, at such Loan Party's sole cost and expense, but on Agent's behalf and for Agent's account, collect as Agent's property and in trust for Agent all amounts received on Receivables, and shall not commingle such collections with any Loan Party's funds or use the same except to pay Obligations, and shall as soon as possible and in any event no later than one (1) Business Day after the receipt thereof (i) in the case of remittances paid by check, deposit all such remittances in their original form (after supplying any necessary endorsements) and (ii) in the case of remittances paid by wire transfer of funds, transfer all such remittances, in each case, into such Blocked Accounts(s) and/or Depository Account(s). Each Loan Party shall deposit in the Blocked Account and/or Depository Account or, upon request by Agent, deliver to Agent, in original form and on the date of receipt thereof, all checks, drafts, notes, money orders, acceptances, cash and other evidences of Indebtedness.

(e) At any time following the occurrence and during the continuance of an Event of Default or a Default, Agent shall have the right to send notice of the assignment of, and Agent's security interest in and Lien on, the Receivables to any and all Customers or any third party holding or otherwise concerned with any of the Collateral. Thereafter, at any time after the occurrence and during the continuance of an Event of Default, Agent shall have the sole right to collect the Receivables, take possession of the Collateral, or both. Agent's actual collection expenses, including, but not limited to, stationery and postage, telephone and facsimile, secretarial and clerical expenses and the salaries of any collection personnel used for collection, may be charged to Borrowers' Account and added to the Obligations.

(f) Agent shall have the right to receive, endorse, assign and/or deliver in the name of Agent or any Loan Party any and all checks, drafts and other instruments for the payment of money relating to the Receivables, and each Loan Party hereby waives notice of presentment, protest and non-payment of any instrument so endorsed. Each Loan Party hereby constitutes Agent or Agent's designee as such Loan Party's attorney with power (i) at any time: (A) to endorse such Loan Party's name upon any notes, acceptances, checks, drafts, money orders or other evidences of payment or Collateral; (B) to sign such Loan Party's name on any invoice or bill of lading relating to any of the Receivables, drafts against Customers, assignments and verifications of Receivables; (C) to send verifications of Receivables to any Customer; (D) to sign such Loan Party's name on all financing statements, agreements, documents or instruments deemed necessary or appropriate by Agent to preserve, protect, or perfect Agent's interest in the Collateral and to file same; and (E) to receive, open and dispose of all mail addressed to any Loan Party at any post office box/lockbox maintained by Agent for Loan Parties or at any other business premises of Agent; and (ii) at any time following the occurrence and during the continuance of an Event of Default: (A) to demand payment of the Receivables; (B) to enforce payment of the Receivables by legal proceedings or otherwise; (C) to exercise all of such Loan Party's rights and remedies with respect to the collection of the Receivables and any other Collateral; (D) to sue upon or otherwise collect, extend the time of payment of, settle, adjust, compromise, extend or renew the Receivables; (E) to settle, adjust or compromise any legal proceedings brought to collect Receivables; (F) to prepare, file and sign such Loan Party's name on a proof of claim in bankruptcy or similar document against any Customer; (G) to prepare, file and sign such Loan Party's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Receivables; (H) to accept the return of goods represented by any of the Receivables; (I) to change the address for delivery of mail addressed to any Loan Party to such address as Agent may designate; and (J) to do all other acts and things necessary to carry out this Agreement. All acts of such attorney or designee are hereby ratified and approved, and such attorney or designee shall not be liable for any acts of omission or commission nor for any error of judgment or mistake of fact or of law, unless done maliciously or with gross (not mere) negligence (as determined by a court of competent jurisdiction in a final non-appealable judgment); this power being coupled with an interest is irrevocable while any of the Obligations remain unpaid.

(g) Subject only to the non-waivable provisions of Part 6 of Article 9 of the Uniform Commercial Code, neither Agent nor any Lender shall, under any circumstances or in any event whatsoever, have any liability for any error or omission or delay of any kind occurring in the settlement, collection or payment of any of the Receivables or any instrument received in payment thereof, or for any damage resulting therefrom.

(h) All proceeds of Revolving Loan Priority Collateral (as such term is defined in the Intercreditor Agreement), and, during any Cash Dominion Period, all other proceeds of Collateral to the extent not required under the Reimbursement/Cash Collateral Facility Agreement to be used to make a mandatory prepayment of the Reimbursement/Cash Collateral Facility Obligations, shall be deposited by Loan Parties into either (i) a lockbox account, dominion account or such other "blocked account" (each a "Blocked Account" and collectively, the "Blocked Accounts") established at a bank or banks as are acceptable to Agent (each such bank, a "Blocked Account Bank" and collectively, the "Blocked Account Banks") pursuant to an arrangement with such Blocked Account Bank as may be acceptable to Agent, or (ii) a lockbox account, dominion account, or other depository accounts ("Depository Accounts") established at Agent for the deposit of such proceeds. Each applicable Loan Party, Agent and each Blocked Account Bank shall enter into a Control Agreement with respect to the applicable Blocked Accounts which directs such Blocked Account Bank to transfer such funds so deposited on a daily basis (or at such other times acceptable to Agent) to a Depository Account maintained with Agent. All funds deposited in such Blocked Accounts or Depository Accounts shall immediately become subject to the security interest of Agent for its own benefit and the ratable benefit of the Secured Parties, and Borrowing Agent shall obtain the agreement by such Blocked Account Bank to waive any offset rights against the funds so deposited. Neither Agent nor any Lender assumes any responsibility for such blocked account arrangement, including any claim of accord and satisfaction or release with respect to deposits accepted by any Blocked Account Bank thereunder. At all times during any Cash Dominion Period, Agent shall apply all funds deposited and/or received into the Depository Accounts to the satisfaction of the Obligations (including the cash collateralization of the Letters of Credit in accordance with Section 3.2(b) hereof) in accordance with the provisions of Section 2.20(b)(ii) hereof; at all times when no Cash Dominion Period is in effect, all funds deposited and/or received into any Depositary Accounts shall be transferred by Agent on a daily basis to such operating/disbursement accounts of the Loan Parties maintained with Agent as Agent and Loan Parties shall agree from time to time.

(i) No Loan Party will, without Agent's consent, compromise or adjust any material amount of the Receivables (or extend the time for payment thereof) or accept any material returns of merchandise or grant any additional discounts, allowances or credits thereon except for those compromises, adjustments, returns, discounts, credits and allowances as have been heretofore customary in the Ordinary Course of Business of such Loan Party.

(j) All deposit accounts (including all Blocked Accounts and Depository Accounts), securities accounts and investment accounts of each Borrower and its Subsidiaries as of the Closing Date are set forth on Schedule 4.8(j). No Loan Party shall open any new deposit account, securities account or investment account with a bank, depository institution or securities intermediary that is not the Agent unless (i) Loan Parties shall have given at least ten (10) days prior written notice to Agent, and (2) such bank, depository institution or securities intermediary, each applicable Loan Party, and Agent shall have entered into an Control Agreement with respect to such account prior to or contemporaneously with the opening thereof (and, if such account is a Blocked Account, such Control Agreement shall also comply with the requirements of Section 4.8(h)); provided that, notwithstanding anything to the contrary contained herein, Borrowers shall not be required to obtain a Control Agreement or to otherwise give "control" to Agent with respect to any Excluded Deposit Accounts that are not maintained with Agent.

(k) Subject to the provisions of Section 8.3(a) hereof, Loan Parties (excluding any Foreign Subsidiaries that may be Loan Parties) shall maintain all of their primary treasury management accounts and other primary Cash Management Products and Services with Agent, including without limitation all of the Loan Parties' primary lockboxes/lockbox accounts and collection accounts and all of such Loan Parties' primary operating and disbursement accounts.

4.9. Inventory. To the extent Inventory held for sale or lease has been produced by any Loan Party, it has been and will be produced by such Loan Party in accordance with the Federal Fair Labor Standards Act of 1938, as amended, modified or supplemented and all applicable rules, regulations and orders thereunder, in all material respects.

4.10. Maintenance of Equipment. The equipment of Loan Parties shall be maintained in good operating condition and repair (reasonable wear and tear excepted) and all necessary replacements of and repairs thereto shall be made so that the value and operating efficiency of the equipment shall be maintained and preserved. No Loan Party shall use or operate its equipment in material violation of any material law, statute, ordinance, code, rule or regulation.

4.11. Exculpation of Liability. Nothing set forth herein shall be construed to constitute Agent or any Lender as any Loan Party's agent for any purpose whatsoever, nor shall Agent or any Lender be responsible or liable for any shortage, discrepancy, damage, loss or destruction of any part of the Collateral wherever the same may be located and regardless of the cause thereof. Neither Agent nor any Lender, whether by anything herein or in any assignment or otherwise, assume any of any Loan Party's obligations under any contract or agreement assigned to Agent or such Lender, and neither Agent nor any Lender shall be responsible in any way for the performance by any Loan Party of any of the terms and conditions thereof.

4.12. Financing Statements. Except with respect to the financing statements filed by Agent, financing statements described on Schedule 7.2 hereto and financing statements filed in connection with Permitted Encumbrances, no financing statement covering any of the Collateral or any proceeds thereof is or will be on file in any public office.

4.13. Investment Property Collateral. Except as set forth in Article XI and, with respect to Subsidiary Equity Interest, Section 4.14(h) hereof, (i) the Loan Parties will have the right to exercise all voting rights with respect to the Investment Property and (ii) the Loan Parties will have the right to receive all cash dividends and distributions, interest and premiums declared and paid on the Investment Property to the extent otherwise permitted under this Agreement. In the event any additional Equity Interests (other than Excluded Property) are issued to or acquired any Loan Party, whether as a result any new purchase by or transfer or assignment to such Loan Party, as a result of a stock dividend or distribution or in lieu of interest on any of the Investment Property, as a result of any split of any of the Investment Property, by reclassification, or otherwise, any certificates evidencing any such additional Equity Interests will be delivered to Agent within thirty (30) days and such shares will be subject to this Agreement and a part of the Investment Property to the same extent as the original Investment Property of such Loan Party on the Closing Date.

4.14. Provisions Regarding Pledged Equity Interests. Without limiting the generality of Sections 4.1 or 4.13 hereof or of any Pledge Agreement that may from time to time be in effect, and as a supplement to and expansion of (and without any intention to limit or contradict) the other provisions of this Article IV and/or any provisions of any such Pledge Agreement:

(a) Each Loan Party, for the purpose of granting a continuing lien and security interest to secure the Obligations for the benefit of Agent and each other Secured Party, does hereby collaterally assign to Agent (for the benefit of Agent and each other Secured Party), and pledge to Agent (for the benefit of Agent and each other Secured Party), and grant such a continuing lien and security interest to Agent (for the benefit of Agent and each other Secured Party) in, all of such Loan Party's right, title and interest in and to all of the following property, together with any additions, exchanges, replacements and substitutions therefor, dividends and distributions with respect thereto, and the proceeds thereof (collectively, as to all Loan Parties, the "Pledged Equity Interest Collateral"; provided that, notwithstanding anything to the contrary provided in this Section 4.14, the Pledged Equity Interest Collateral shall not at any time include any Excluded Property):

(i) all Equity Interests of any Person of any kind or nature held by such Loan Party consisting of Subsidiary Equity Interest, whether now owned or hereafter acquired by such Loan Party or in which such Loan Party now or hereafter has any rights, options or warrants, including without limitation: (1) all of the capital stock, capital shares and other Equity Interests in those Subsidiaries consisting of corporations, companies and other business entities (other than the business entities of the types listed in the following clauses (2) and (3)), including such corporations, companies and entities listed on Schedule 4.14 hereto (as such Schedule may be amended and/or updated from time to time in accordance herewith), (2) all of the partnership interests and other Equity Interests in those in those Subsidiaries consisting of limited partnerships and general partnerships, including such partnerships listed on Schedule 4.14 hereto (as such Schedule may be amended and/or updated from time to time in accordance herewith), and (3) all of the membership/limited liability company interests and other Equity Interests in those in those Subsidiaries consisting of limited liability companies, including such limited liability companies listed on Schedule 4.14 hereto (as such Schedule may be amended and/or updated from time to time in accordance herewith), in each case (1) through (3) together with all certificates representing such Equity Interests and all rights (but none of the obligations) under or arising out of the applicable Organizational Documents of such Subsidiaries, and specifically including without limitation, with respect to each such partnership Subsidiary, all rights and remedies of such Loan Party as a general partner or limited partner with respect to the respective partnership interests and other Equity Interests of such Loan Party in each such partnership Subsidiary under the respective Organizational Documents of such partnership and under the partnership laws of the state in which each such partnership is organized, and, with respect to each such limited liability company Subsidiary, all rights and remedies of the such Loan Party as a member or manager or managing member with respect to the respective membership interests and other Equity Interests of such Loan Party in each such limited liability company Subsidiary under the respective Organizational Documents of such limited liability company and under the limited liability company laws of the state in which each such limited liability company is organized); and

(ii) all Related Equity Interest Rights related to any such Equity Interests described in the foregoing clause (i).

(b) The pledge and security interest described in this Section 4.14 shall continue in effect to secure all Obligations under this Agreement and the Other Documents from time to time incurred or arising (a) for so long as this Agreement is in effect and (b) until the Commitments have terminated and the Obligations are Paid in Full.

(c) Pledge Representations and Warranties: Each Loan Party hereby represents and warrants as follows:

(i) Such Loan Party has not sold, assigned, transferred, pledged or granted any option or security interest in or otherwise hypothecated the Pledged Equity Interest Collateral in any manner whatsoever, and the Pledged Equity Interest Collateral is pledged herewith free and clear of any and all Liens, encumbrances, claims, pledges, restrictions, legends, options and other claims and charges, other than Permitted Encumbrances of the type described in clauses (a), (b) and (e) of the definition thereof.

(ii) The execution, delivery and performance of this Agreement and the pledge of the Pledged Equity Interest Collateral referred to herein, and all other terms and provisions hereof (specifically including Section 4.14(h) hereof and the powers and proxies granted to Agent thereunder) are not in violation of and shall not create any default under any Organizational Documents of any Pledged Issuer.

(iii) There are no restrictions upon the pledge or transfer of, nor on the voting rights associated with, or the transfer of, any of the Pledged Equity Interest Collateral, except as provided by applicable federal and state laws and the terms of the Organizational Documents of the applicable Pledged Issuer and/or as stated on the face of any applicable certificates evidencing any such Pledged Equity Interest Collateral.

(iv) The Pledged Equity Interest Collateral has been validly authorized and issued by each Pledged Issuer thereof and, if applicable, such Pledged Equity Interest Collateral is fully paid for and non-assessable.

(v) Each Loan Party has delivered to Agent all certificates representing or evidencing the Pledged Equity Interest Collateral, if any, accompanied by duly executed instruments of transfer or assignments in blank, to be held by Agent.

(d) Each Loan Party, in its capacity as a pledgor of its Pledged Equity Interest Collateral under this Section 4.14, hereby irrevocably instructs each of its direct Subsidiaries, in such direct Subsidiary's present and/or future capacity (if, as, and when applicable) as a Pledged Issuer that has issued or at any time and/or from time to time hereafter may issue any Pledged Equity Interest Collateral now or hereafter held by such pledging Loan Party, to comply with any instructions originated by Agent with respect to the interests of such pledging Loan Party in any such Pledged Equity Interest Collateral now or hereafter issued by such Pledged Issuer that is now or at any time and/or from time to time hereafter held by such pledging Loan Party without further consent of such pledging Loan Party and each such pledging Loan Party agrees that each such Pledged Issuer shall be fully protected in so complying. Each Loan Party that is a direct Subsidiary of another Loan Party, in present and/or future capacity (if, as, and when applicable) as a Pledged Issuer that has issued or at any time and/or from time to time hereafter may issue any Pledged Equity Interest Collateral to any one or more other Loan Parties, hereby irrevocably agrees to comply with any such instructions originated by Agent with respect to any interests of any other Loan Party in any such Pledged Equity Interest Collateral now or hereafter issued by such Loan Party as such a Pledged Issuer that is now or at any time and/or from time to time hereafter held by any such pledging Loan Party without further consent of such pledging Loan Party. However, Agent agrees it shall not issue any such instructions with respect to the Pledged Collateral held by any Loan Party in any Pledged Issuer unless an Event of Default shall have occurred and be continuing. Each Loan Party acknowledges and agrees that Agent shall be authorized at any time to provide a copy of this Agreement to any Pledged Issuer as evidence that such Loan Party has given the foregoing instructions.

(e) In addition to all other rights granted to Agent in this Agreement or any Other Document, under the Uniform Commercial Code or otherwise available at law or in equity, Agent shall have the following rights, each of which may be exercised at Agent's Permitted Discretion (but without any obligation to do so (but subject to any written to any separate written agreement among any applicable Lenders)), at any time following the occurrence and during the continuance of an Event of Default hereunder, without further consent of any Loan Party: (i) transfer the whole or any part of the Pledged Equity Interest Collateral into the name of Agent or its nominee or to conduct a sale of the Pledged Equity Interest Collateral pursuant to the Uniform Commercial Code or pursuant to any other applicable law; (ii) vote the Pledged Equity Interest Collateral in whole or in part as more fully provided for in Section 4.14(h) hereof; (iii) notify the persons obligated on any of the Pledged Equity Interest Collateral to make payment to Agent of any amounts due or to become due thereon; and (iv) release, surrender or exchange any of the Pledged Equity Interest Collateral at any time, or to compromise any dispute with respect to the same. Agent may proceed against the Pledged Equity Interest Collateral, or any other Collateral securing the Obligations, in any order, and against any Loan Party pledging any of the Pledged Equity Interest Collateral and any other obligor (including without limitation, any one or more other Loan Parties), jointly and/or severally, in any order to satisfy the Obligations. Each Loan Party waives and releases any right to require Agent to first collect any of the Obligations secured by the Pledged Equity Interest Collateral from any other Collateral of such Loan Party or any other party (including without limitation, any one or more other Loan Parties) securing the Obligations under any theory of marshalling of assets, or otherwise. Any and all dividends, distributions, interest declared, distributed or paid and any proceeds of the Pledged Equity Interest Collateral which are received by any Loan Party following the occurrence and continuance of an Event of Default under this Agreement shall be received in trust for the benefit of Agent and the Secured Parties; segregated from the other property and funds of such Loan Party; and forthwith upon demand delivered to Agent as Pledged Equity Interest Collateral in the same form as received (with any necessary documents, endorsements or assignments in blank with guaranteed signatures). All rights and remedies of Agent are cumulative, not alternative. For so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations have been Paid in Full, each Loan Party hereby irrevocably appoints Agent, or Agent's nominee or any other person whom Agent may designate, as such Loan Party's attorney-in-fact, subject to the terms of this Section 4.14, following the occurrence and during the continuance of an Event of Default, with the power, at Agent's option, (i) to effectuate the transfer of any of the Pledged Equity Interest Collateral on the books of each Pledged Issuer thereof to the name of Agent or to the name of Agent's nominee, designee or transferee; (ii) to endorse and collect checks payable to such Loan Party representing distributions or other payments on any of the Pledged Equity Interest Collateral; and (iii) to carry out the terms and provisions of this Section 4.14. Each Loan Party acknowledges and agrees that Agent shall be authorized at any time to provide a copy of this Agreement to any Pledged Issuer as evidence that Agent has been given the foregoing power of attorney.

(f) Each Loan Party recognizes that Agent may be unable to effect, or may effect only after such delay which would adversely affect the value that might be realized from the Pledged Equity Interest Collateral, a public sale of all or part of the Pledged Equity Interest Collateral by reason of certain prohibitions contained in the Securities Act or other applicable securities legislation in any other applicable jurisdiction and may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such securities for their own account, for investment and not with a view to the distribution or resale thereof. Each Loan Party agrees that any such private sale may be at prices and on terms less favorable to Agent or the seller than if sold at public sales, and therefore recognizes and confirms that such private sales shall not be deemed to have been made in a commercially unreasonable manner solely because they were made privately. Each Loan Party agrees that Agent has no obligation to delay the sale of any such securities for the period of time necessary to permit any Pledged Issuer of such securities to register such securities for public sale under the Securities Act or other applicable securities legislation in any other applicable jurisdiction.

(g) In the event that (x) any Loan Party shall acquire any Equity Interests of any kind or nature in any new direct Subsidiary formed or acquired by such Loan Party after the Closing Date), or (y) any stock dividend, reclassification, readjustment or other change is made or declared in the capital structure of any direct Subsidiary or any Loan Party acquires or in any other manner receives additional shares of stock, membership/limited liability company interests, partnership interests or other Equity Interests in any Subsidiary, or any option included within the Pledged Equity Interest Collateral with respect to the stock, membership/limited liability company interests, partnership interests or other Equity Interests of any direct Subsidiary is exercised, then any and all such new Equity Interests (together with all Related Equity Interest Rights associated therewith) so acquired, other than any Excluded Property, and any and all such new, substituted or additional Equity Interests (together with all Related Equity Interest Rights associated therewith) issued by reason of any such change or exercise to such Loan Party, other than any Excluded Property, shall immediately and automatically become subject to this Agreement specifically including this Section 4.14 and the pledge and grant of a security interest created by each Loan Party hereunder and each Loan Party hereby grants a security interest in any such future Equity Interests of any Subsidiary (together with all Related Equity Rights associated therewith) other than any Excluded Property, to Agent for the benefit of Secured Parties to secure the Obligations. Any and all certificates issued to such Loan Party with respect to any such new, substituted or additional Equity Interests, accompanied by duly executed instruments of transfer or assignments in blank, shall be delivered to and held by Agent in the same manner as the Pledged Equity Interest Collateral originally pledged hereunder. Promptly upon the acquisition by any Loan Party of any such new, substituted or additional Equity Interests, Loan Parties shall deliver written notice of such new, substituted or additional Equity Interests to Agent, which such written notice shall include an updated and amended Schedule 4.14 to this Agreement, which shall upon delivery be deemed to have amended and restated the previously effective version of such Schedule 4.14.

(h) Until the earlier of (x) the time after the occurrence and during the continuance of any Event of Default hereunder that Agent shall give prior notice in writing to any Loan Party (which such notice shall be automatically effective immediately upon such Loan Party's receipt thereof) of the exercise of Agent's rights under this Section 4.14(h), or (y) the commencement of any proceeding of the type described in clause (x) or clause (y) of Section 10.7 hereof with respect to any Loan Party (in which case no notice or other affirmative action shall be required by Agent, unless Agent shall affirmatively elect at such time to forego the effectiveness of this clause (y)) (a "Triggering Equity Event"), each Loan Party shall retain the sole right to vote the Pledged Equity Interest Collateral belonging to it and to exercise all Related Equity Interests Rights with respect to the Pledged Equity Interest Collateral belonging to it for all purposes not in violation of the terms hereof. Upon any such Triggering Equity Event as to any Loan Party, such Loan Party shall have no further rights to, and shall not, exercise any such Related Equity Interest Rights with respect to the Pledged Equity Interest Collateral belonging to it, and all such Related Equity Interest Rights with respect to the Pledged Equity Interest Collateral belonging to it shall be thereafter exercisable only by Agent (regardless of whether Agent shall have taken title to such Pledged Equity Interest Collateral and/or otherwise exercised any of its other rights and remedies with respect to such Pledged Equity Interest Collateral and even prior to any such exercise). Without limiting the generality of the foregoing, with respect to any Pledged Issuer that is a limited liability company or partnership, the Related Equity Interest Rights which Agent may exercise upon exercise of its rights under this Section 4.14(h) shall include (i) the right to replace any "managing member" or "manager" and/or any "general partner", as applicable, of any such limited liability company or partnership Pledged Issuer and/or to replace any one or more of the members of any board of members/managers/partners/directors (or similar board) that may at any time have any rights to manage and direct the business and affairs of the applicable Pledged Issuer under its Organizational Documents as in effect from time to time (including in any such case under this clause (i), the right to replace the pledging Loan Party in any such capacity, and each Loan Party hereby agrees that, notwithstanding anything to the contrary provided for in Organizational Documents of any such Pledged Issuer, upon any exercise by Agent of any such right under this clause (i) resulting in the replacement of such Loan Party in any such capacity, such Loan Party shall immediately and automatically be deemed to have resigned from such capacity without the need of any further or affirmative action of such Loan Party), and, if necessary in connection with the foregoing, the power to amend the limited liability company operating agreement or partnership agreement, as applicable, of any such limited liability company or partnership Pledged Issuer to effectuate such replacement; and (ii) if the pledging Loan Party is a general partner or managing member of any such limited liability company or partnership Pledged Issuer, to act as such general partner or managing member of any such Pledged Issuer with respect to any and all business matters relating to the applicable Pledged Issuer and/or its property and businesses for all purposes under the Organizational Documents of such Pledged Issuer and/or under the applicable limited liability company or partnership laws of the jurisdiction of organization of such Pledged Issuer.

(i) In furtherance of the foregoing and (a) for so long as this Agreement is in effect and (b) until the Commitments have been terminated and the Obligations have been Paid in Full, each Loan Party hereby irrevocably appoints Agent, or Agent's nominee or any other person whom Agent may designate, as such Loan Party's attorney in fact with full power of substitution and in the name of such Loan Party, and hereby gives and grants to Agent an irrevocable and exclusive proxy for and in such Loan Party's name, place and stead, to exercise under such power of attorney and/or under such proxy any and all voting or other ownership and/or management rights and other Related Equity Interest Rights with respect to the Pledged Equity Interest Collateral of any Pledged Issuer belonging to it (including any such exercise of any Related Equity Interest Rights with respect to any and all business matters relating to any applicable Pledged Issuer and/or its property and businesses), in each case exercisable only following (but at all times during the continuance of) the occurrence and continuance of any Triggering Equity Event. The power of attorney and proxy granted and appointed in this Section 4.14(h)(i) shall include the right to sign each Loan Party's name (as a holder of any Equity Interest of any Subsidiary and/or as a shareholder of or member or partner in any applicable Pledged Issuer) to any consent, certificate or other document relating to the exercise of any such voting or other ownership and/or management rights and other Related Equity Interest Rights with respect to the Pledged Equity Interest Collateral belonging to such Loan Party that Applicable Law or the Organizational Documents of the applicable Pledged Issuer(s) may permit or require, to cause the Pledged Equity Interest Collateral belonging to such Loan Party to be voted and/or such other ownership and/or management rights or other Related Equity Right to be exercised in accordance with the preceding sentence. Each Loan Party hereby represents and warrants that there are no other proxies and powers of attorney with respect to the Pledged Equity Interest Collateral of any Pledged Issuer belonging to such Loan Party that such Loan Party may have granted or appointed; and no Loan Party will give a subsequent proxy or power of attorney or enter into any other voting agreement with respect to the Pledged Equity Interest Collateral of any Pledged Issuer belonging to such Loan Party and any attempt to do so shall be void and of no effect. Each Loan Party agrees that each Pledged Issuer shall be fully protected in complying with any instructions given by Agent under such power of attorney granted under this Section 4.14(h)(i) and/or recognizing and honoring any exercise by Agent of such proxy granted under this Section 4.14(h)(i). Each Loan Party acknowledges and agrees that Agent shall be authorized at any time to provide a copy of this Agreement to any Pledged Issuer as evidence that Agent has been given the foregoing power of attorney and proxy. The proxies and powers of attorney granted by each Loan Party pursuant to this Section 4.14(h)(i) are coupled with an interest and are given to secure the performance of the Obligations and shall continue and be irrevocable (a) for so long as this Agreement is in effect and (b) until the Commitments have been terminated and all of the Obligations have been Paid in Full.

(j) To the extent that Agent shall reasonably determine that any amendments to the Organizational Documents of any Pledged Issuer that is a wholly-owned Subsidiary of Parent and its Subsidiaries are necessary in order for Agent to be granted the collateral assignment, pledge and Liens in the Pledged Equity Interest Collateral issued by such Pledged Issuer provided for herein, and/or to exercise the rights and remedies, or to be granted and to exercise the proxies and powers of attorney, provided for in herein (specifically including without limitation under Sections 4.14(h) hereof) with respect to the Pledged Equity Interest Collateral issued by such Pledged Issuer in accordance with the terms hereof (whether because of any contrary provisions of such Organization Documents or any requirement of the Applicable Laws governing corporations, limited liability companies, partnerships or professional corporations (as applicable) in the jurisdiction of organization of such Pledged Issuer, or otherwise), each Loan Party shall, within fifteen (15) days of such Loan Party's receipt of Agent's written request therefor, adopt such amendments to such Organizational Documents of such Pledged Issuer as Agent may reasonably request. Loan Parties hereby further acknowledge and agree that, with respect to any Subsidiary whose Equity Interests are owned only by one or more Loan Parties, if and to the extent that any provision of the Organizational Documents of any such Subsidiary should be deemed to be inconsistent with or to prohibit the granting of the collateral assignment, pledge and Liens to Agent by Loan Parties in the Pledged Equity Interest Collateral issued by such Subsidiary provided for herein, or the exercise of any of the rights and remedies of and/or proxies or powers of attorney granted to Agent under this Section 4.14, such Organizational Documents of such Pledged Issuer are hereby amended as necessary to allow for such grant and to allow the full exercise by Agent of all such rights and remedies and/or proxies or powers of attorney, and this Agreement shall constitute and be deemed for all purposes and under all circumstances to be an amendment to any such applicable Organizational Document of such Pledged Issuer.

V. REPRESENTATIONS AND WARRANTIES.

Each Loan Party represents and warrants as follows:

5.1. Authority. Each Loan Party has full power, authority and legal right to enter into this Agreement and the Other Documents to which it is a party and to perform all its respective Obligations hereunder and thereunder. This Agreement and the Other Documents to which it is a party have been duly executed and delivered by each Loan Party, and this Agreement and the Other Documents to which it is a party constitute the legal, valid and binding obligation of such Loan Party enforceable in accordance with their terms, except as such enforceability may be limited by any Insolvency Law. The execution, delivery and performance of this Agreement and of the Other Documents to which it is a party (a) are within such Loan Party's corporate or company powers, as applicable, have been duly authorized by all necessary corporate or company action, as applicable, are not in contravention of law or the terms of such Loan Party's Organizational Documents or to the conduct of such Loan Party's business or of any Material Contract or undertaking to which such Loan Party is a party or by which such Loan Party is bound, including the Reimbursement/Cash Collateral Facility Documents or the Unsecured Notes Documents, (b) will not conflict with or violate any law or regulation, or any judgment, order or decree of any Governmental Body, (c) will not require the Consent of any Governmental Body, any party to a Material Contract or any other Person, except those Consents set forth on Schedule 5.1 hereto, all of which will have been duly obtained, made or compiled prior to the Closing Date and which are in full force and effect and (d) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Encumbrances upon any asset of such Loan Party under the provisions of any agreement, instrument, or other document to which such Loan Party is a party or by which it or its property is a party or by which it may be bound, including the Reimbursement/Cash Collateral Facility Documents or the Unsecured Notes Documents.

5.2. Formation and Qualification.

(a) Each Company is duly incorporated or formed, as applicable, and in good standing under the laws of the state listed on Schedule 5.2(a) hereto and is qualified to do business and is in good standing in the states listed on Schedule 5.2(a) hereto which constitute all states in which qualification and good standing are necessary for such Company to conduct its business and own its property and where the failure to so qualify could reasonably be expected to have a Material Adverse Effect on such Company. Each Loan Party has delivered to Agent true and complete copies of its Organizational Documents and will promptly notify Agent of any amendment or changes thereto.

(b) The only Subsidiaries of each Loan Party are listed on Schedule 5.2(b) hereto.

5.3. Survival of Representations and Warranties. All representations and warranties of such Loan Party set forth in this Agreement and the Other Documents to which it is a party shall be true at the time of such Loan Party's execution of this Agreement and the Other Documents to which it is a party, and shall survive the execution, delivery and acceptance thereof by the parties thereto and the closing of the transactions described therein or related thereto.

5.4. Tax Returns. Each Company's federal tax identification number is set forth on Schedule 5.4 hereto. Each Company has filed all federal, provincial, territorial, and material state and local tax returns and other reports each is required by law to file and has paid all federal, provincial, territorial, and material state and local taxes, assessments, fees and other governmental charges that are due and payable, except for such taxes, assessments, fees and other governmental charges that are being Properly Contested. The provision for taxes on the books of each Company is adequate for all years not closed by applicable statutes, and for its current fiscal year, and no Loan Party has any knowledge of any deficiency or additional assessment in connection therewith not provided for on the books of the Companies.

5.5. Financial Statements.

(a) The pro forma balance sheet of Parent and its Subsidiaries (the "Pro Forma Balance Sheet") delivered to Agent on the Closing Date reflects the consummation of the Transactions and is accurate, complete and correct and fairly reflects the financial condition of Loan Parties on a Consolidated Basis as of the Closing Date after giving effect to the Transactions, and has been prepared in accordance with GAAP, consistently applied. The Pro Forma Balance Sheet has been certified as accurate, complete and correct in all material respects by a Responsible Officer of Parent. All financial statements referred to in this Section 5.5(a), including the related schedules and notes thereto, have been prepared in accordance with GAAP, except as may be disclosed in such financial statements.

(b) The projections of cash flow, income, stockholders' equity, and balance sheet projections of Parent and its Subsidiaries on a Consolidated Basis, on a monthly basis for July through December 2021, on a quarterly basis for fiscal year 2022, and annually thereafter through the end of the Term, copies of which have been delivered to Agent (the "Projections" and together with the Pro Forma Balance Sheet, the "Pro Forma Financial Statements") were prepared by a Responsible Officer of Parent, are based on underlying assumptions which provide a reasonable basis for the projections set forth therein and reflect Loan Parties' judgment based on present circumstances of the most likely set of conditions and course of action for the projected period.

(c) The (x) audited consolidated balance sheet of Parent and its Subsidiaries, and such other Persons described therein, as of December 31, 2020, and the related audited consolidated statements of income, stockholders' equity, and cash flows for the fiscal year ended on such date, all accompanied by reports thereon containing unqualified opinions by independent certified public accountants, and (y) interim management-prepared unaudited consolidated balance sheet of Parent and its Subsidiaries, and such other Persons described therein, as of March 31, 2020, and the related interim management-prepared unaudited statements of income, stockholders' equity, and cash flow for the respective quarterly and year to date periods ended on each such date (collectively, the "Historical Financial Statements"), copies of which have been delivered to Agent, have been prepared in accordance with GAAP consistently applied (except for changes in application to which such accountants concur, and subject to, in the case of the unaudited interim financial statements, normal year-end adjustments, the lack of footnote disclosures and non-material quarter-end adjustments) and present fairly in all material respects the financial position of Loan Parties on a Consolidated Basis at such dates and the results of their operations for such periods.

(d) Since December 31. 2020, there has occurred any event, condition or state of facts which could reasonably be expected to have a Material Adverse Effect.

5.6. Entity Names. No Loan Party has been known by any other company or corporate name, as applicable, in the past five (5) years and does not sell Inventory under any other name except as set forth on Schedule 5.6 hereto, nor has any Loan Party been the surviving corporation or company, as applicable, of a merger or consolidation or acquired all or substantially all of the assets of any Person during the preceding five (5) years.

5.7. O.S.H.A.; Environmental Compliance; Flood Insurance.

(a) Except as set forth on Schedule 5.7 hereto, each Company is in compliance with, and its facilities, business, assets, property, leaseholds, Real Property and equipment are in compliance with the Federal Occupational Safety and Health Act and Environmental Laws and there are no outstanding citations, notices or orders of non-compliance issued to any Company or relating to its business, assets, property, leaseholds or equipment under any such laws, rules or regulations.

(b) Except as set forth on Schedule 5.7 hereto, each Company has been issued all required federal, state and local licenses, certificates or permits (collectively, "Approvals") relating to all applicable Environmental Laws and all such Approvals are current and in full force and effect.

(c) Except as set forth on Schedule 5.7 hereto: (i) there have been no releases, spills, discharges, leaks or disposal (collectively referred to as "Releases") of Hazardous Materials at, upon, under or migrating from or onto any Real Property owned, leased or occupied by any Company, except for those Releases which are in full compliance with Environmental Laws; (ii) there are no underground storage tanks or polychlorinated biphenyls on any Real Property owned, leased or occupied by any Company, except for such underground storage tanks or polychlorinated biphenyls that are present in compliance with Environmental Laws; (iii) the Real Property owned, leased or occupied by any Company has never been used by any Company to dispose of Hazardous Materials, except as authorized by Environmental Laws; and (iv) no Hazardous Materials are managed by Company on any Real Property including any premises owned, leased or occupied by any Company, excepting such quantities as are managed in accordance with all applicable manufacturer's instructions and compliance with Environmental Laws and as are necessary for the operation of the commercial business of any Company or of its tenants.

(d) All Real Property owned by Companies is insured pursuant to policies and other bonds which are valid and in full force and effect and which provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of each such Company in accordance with prudent business practice in the industry of such Company. Each Company has taken all actions required under the Flood Laws and/or requested by Agent to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral, including, but not limited to, providing Agent with the address and/or GPS coordinates of each structure located upon any Real Property that will be subject to a Mortgage in favor of Agent, for the benefit of Lenders, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral.

5.8. Solvency; No Litigation, Violation, Indebtedness or Default; ERISA Compliance.

(a) On the Closing Date, after giving effect to the Transactions, and also on the date each Advance is made or issued hereunder, Loan Parties, taken as a whole, are and will be Solvent.

(b) Except as set forth on Schedule 5.8(b) hereto, no Company has any pending or threatened litigation, arbitration, actions or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, $1,000,000. None of the pending or threatened litigation, arbitration, actions or proceedings set forth on Schedule 5.8(b) hereto could reasonably be expected to have a Material Adverse Effect.

(c) No Company has any outstanding Indebtedness other than the Obligations, except for (i) Indebtedness set forth on Schedule 7.8 hereto, and (ii) Indebtedness otherwise permitted under Section 7.8 hereof.

(d) No Company is in violation of any applicable statute, law, rule, regulation or ordinance in any respect which could reasonably be expected to have a Material Adverse Effect, nor is any Company in violation of any order of any court, Governmental Body or arbitration board or tribunal.

(e) Except as would not reasonably be expected to result, individually or when taken together with all of the following events or conditions, a Material Adverse Effect, (i) each Plan and Pension Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other Applicable Laws (ii) each Company and each member of the Controlled Group has met all applicable minimum funding requirements under Section 302 of ERISA and Section 412 of the Code in respect of each Pension Plan, and each Pension Plan is in compliance with Sections 412, 430 and 436 of the Code and Sections 206(g), 302 and 303 of ERISA, without regard to waivers and variances, other than the Pension Funding Waivers; (iii) each Plan which is intended to be a qualified plan under Section 401(a) of the Code as currently in effect has been determined by the Internal Revenue Service to be qualified under Section 401(a) of the Code or an application for such a determination is currently being processed by the Internal Revenue Code; (iv) neither any Company nor any member of the Controlled Group has incurred any liability to the PBGC other than for the payment of premiums due and not delinquent under Section 4007 of ERISA; (v) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and the PBGC has not instituted, and is not reasonably expected to institute, proceedings under Title IV of ERISA to terminate any Pension Plan; (vi) neither the Company nor any member of the Controlled Group has incurred any liability for any excise tax arising under Section 4971 or 4972 of the Code with respect to any Pension Plan; (vii) no Company nor (to the knowledge of any Company) any fiduciary of, nor any trustee to, any Plan, has engaged in a non-exempt "prohibited transaction" described in Section 406(a) of ERISA or Section 4975(c)(1)(A)-(D) of the Code; (viii) no Termination Event has occurred or is reasonably expected to occur; (ix) neither any Company nor any member of the Controlled Group has any liability under Section 4069 or 4212(c) of ERISA; and (x) neither any Company nor any member of the Controlled Group maintains or is required to contribute to any Plan which provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code or similar state laws or for death benefits or retirement benefits under any Pension Plan. Each Company and, to the knowledge of the Loan Parties, each member of the Controlled Group (as applicable), have complied in all material respects with the terms and conditions of any Pension Funding Waiver, including, without limitation, the timely payment of any amortization installments required by such Pension Funding Waivers.

5.9. Intellectual Property. As of the date of this Agreement, (a) all patents and patent applications, trademark registrations and applications to register trademarks, and copyright registrations and applications to register copyrights (all of the foregoing in subsection (a) collectively, "Registered Intellectual Property"); and (b) all material unregistered Intellectual Property, in each of the foregoing cases in subsections (a) and (b), owned or purported to be owned by any Company: (a) are set forth on Schedule 5.9 hereto; and (b) are valid, subsisting, and, to the Company's knowledge, enforceable, and all Registered Intellectual Property has been duly registered or filed with all appropriate Governmental Bodies. Each Company owns or licenses pursuant to a written agreement or otherwise has the valid and enforceable right to use all Intellectual Property that is used, held for use or necessary for the operation of its business free and clear of all Liens. As of the date of this Agreement, there is no Intellectual Property Claim, and no objection to, pending challenge to the validity of, or proceeding by any Governmental Body to suspend, revoke, terminate or adversely modify, any such Intellectual Property, and no Company is aware of any bona fide basis for any such challenge or proceeding, except as set forth on Schedule 5.9 hereto. All Intellectual Property owned, used or held for use by any Company consists of original material or property developed by such Company or was lawfully acquired by such Company from the proper and lawful owner, and has not infringed, misappropriated or otherwise violated, and does not infringe, misappropriate or otherwise violate any Intellectual Property of any third party. Each Company has taken reasonable measures to maintain the proprietary nature of all material Intellectual Property owned or purported to be owned by such Company (including the confidentiality of any trade secrets included in such Intellectual Property) so as to preserve the value thereof from the date of creation or acquisition thereof. Each Company has complied with all Applicable Laws, as well as its own rules, policies, and procedures, relating to privacy, data protection, and the collection and use of personal information collected, used, or held for use by such Company.

5.10. Licenses and Permits. Except as set forth in Schedule 5.10, each Company (a) is in compliance with and (b) has procured and is now in possession of, all material licenses or permits required by any applicable federal, state, provincial or local law, rule or regulation for the operation of its business in each jurisdiction wherein it is now conducting or proposes to conduct business and where the failure to procure such licenses or permits could reasonably be expected to have a Material Adverse Effect.

5.11. Default of Indebtedness. No Company is in default in the payment of the principal of or interest on any Indebtedness with an outstanding principal balance in excess of $2,500,000 or under any instrument or agreement under or subject to which any Indebtedness has been issued and no event has occurred under the provisions of any such instrument or agreement which with or without the lapse of time or the giving of notice, or both, constitutes or would constitute an event of default thereunder.

5.12. No Default. No Company is in default in the payment or performance of any of its contractual obligations and no Default or Event of Default has occurred. No Company, and no Subsidiary, Joint Venture or Consortium of a Company is in material default in the payment or performance of any Performance Guaranty.

5.13. No Burdensome Restrictions. No Company is party to any contract or agreement the performance of which could reasonably be expected to have a Material Adverse Effect. Each Company has heretofore delivered to Agent true and complete copies of all Material Contracts to which it is a party or to which it or any of its properties is subject. No Company has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien which is not a Permitted Encumbrance.

5.14. No Labor Disputes. No Company is not involved in any labor dispute that could reasonably be expected to have a material adverse effect on the operations of any Loan Party or to have a Material Adverse Effect; there are no strikes or walkouts in existence or, to the knowledge of such Company, threatened, that in either case could reasonably be expected to have a material adverse effect on the operations of any Loan Party or to have a Material Adverse Effect, and no collective bargaining agreement is scheduled to expire during the Term other than as set forth on Schedule 5.14 hereto. To the knowledge of such Company, there are no union organizing activities involving any Company's employees threatened or in existence.

5.15. Margin Regulations. No Company is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect. No part of the proceeds of any Advance will be used for "purchasing" or "carrying" "margin stock" as defined in Regulation U of such Board of Governors.

5.16. Investment Company Act. No Company is an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, nor is it controlled by such a company.

5.17. Delivery of Certain Documents.

(a) Delivery of Reimbursement/Cash Collateral Facility Documents. Loan Parties have delivered to Agent true, correct, and complete copies (as executed) of all material reimbursement agreements, credit facility agreements, security agreements, and other agreements, contracts, and documents related to the Reimbursement/Cash Collateral Facility (in each case complete with all schedules, annexes, exhibits, and disclosure letters referred to therein or attached or delivered pursuant thereto, if any) and all amendments thereto, waivers or consents relating thereto, and other side letters or agreements affecting the terms thereof. None of such documents and agreements has been amended or supplemented, nor have any of the provisions thereof been waived, except pursuant to a written agreement or instrument which has heretofore been delivered to Agent.

(b) Delivery of B. Riley Guarantee. Loan Parties have delivered to Agent received a true, correct and complete copy (as executed) of the B. Riley Fee Letter, and the B. Riley Guarantee (complete with all schedules, annexes, exhibits, and disclosure letters referred to therein or attached or delivered pursuant thereto, if any) and all amendments thereto, waivers or consents relating thereto, and other side letters or agreements affecting the terms thereof), which has not been amended or supplemented, nor have any of the provisions thereof been waived, except pursuant to a written agreement or instrument which has heretofore been delivered to Agent.

(c) Delivery of Unsecured Note Documents. Loan Parties have delivered to Agent true, correct, and complete copies (as executed) of the Unsecured Note Indenture and any other material agreements, contracts, and documents related to the Unsecured Notes (complete with all schedules, annexes, exhibits, and disclosure letters referred to therein or attached or delivered pursuant thereto, if any) and all amendments thereto, waivers or consents relating thereto, and other side letters or agreements affecting the terms thereof), which has not been amended or supplemented, nor have any of the provisions thereof been waived, except pursuant to a written agreement or instrument which has heretofore been delivered to Agent.

5.18. [RESERVED].

5.19. Swaps. No Company is a party to, nor will it be a party to, any swap agreement whereby such Company has agreed or will agree to swap interest rates or currencies unless same provides that damages upon termination following an event of default thereunder are payable on an unlimited "two-way basis" without regard to fault on the part of either party.

5.20. Business and Property of Loan Parties.

(a) Upon and after the Closing Date, the Companies (excluding Parent) do not propose to engage in any business other than substantially those businesses and activities engaged in by Parent and its Subsidiaries on the Closing Date, any other businesses or activities reasonably related, incidental, ancillary or complementary thereto or reasonable extensions or expansions thereof, as reasonably determined in good faith by the Borrower, including, without limitation, any business relating, incidental, ancillary or complementary to power generation, clean energy or nuclear service or any services relating thereto, and any other businesses that, when taken together with the existing businesses of the Borrower and its Subsidiaries, are immaterial with respect to the assets and liabilities of the Borrower and its Subsidiaries, taken as a whole (collectively, the "Eligible Line of Business"). On the Closing Date, each Company will own or lease all the property and/or possess all of the rights and Consents reasonably necessary for the conduct of the business of such Loan Party.

(b) Parent (i) does not engage in any material business or other commercial activities, (ii) does not own any material assets or property, (iii) is not liable with respect to any Indebtedness except for Permitted Indebtedness pursuant to clause (h) of the definition of that term (including the Unsecured Notes), Performance Guarantees or material Contractual Obligations, or (iv) has not granted any Liens over any of its assets or property, in any such case under clauses (i) through (iv) other than: (A) ownership of the Equity Interests of its Subsidiaries and of cash and Cash Equivalents, (B) the maintenance of its corporate existence, and activities and contractual rights incidental thereto and incidental to its status and activities as a holding company for its Subsidiaries; (C) the Obligations hereunder and the Related L/C Facility Obligations, and (D) obligations under the Reimbursement/Cash Collateral Facility and (E) its liabilities, obligations, and Indebtedness under the B. Riley Guarantee Reimbursement Agreement and the B. Riley Fee Letter.

5.21. Ineligible Securities. Loan Parties do not intend to use and shall not use any portion of the proceeds of the Advances, directly or indirectly, to purchase during the underwriting period, or for 30 days thereafter, Ineligible Securities being underwritten by a securities Affiliate of Agent or any Lender.

5.22. Federal Securities Laws. No Company nor any of its Subsidiaries (a) is required to file periodic reports under the Exchange Act, (b) has any securities registered under the Exchange Act or (c) has filed a registration statement that has not yet become effective under the Securities Act.

5.23. Equity Interests. The authorized and outstanding Equity Interests and Equity Interest Equivalents of each Company, and each legal and beneficial holder of such Equity Interests and Equity Interest Equivalents (other than the Equity Interests and Equity Interest Equivalents of Parent) as of the Closing Date, are as set forth on Schedule 5.23(a) hereto. All of the Equity Interests of each Company have been duly and validly authorized and issued and are fully paid and non-assessable and have been sold and delivered to the holders hereof in compliance with, or under valid exemption from, all federal and state laws and the rules and regulations of each Governmental Body governing the sale and delivery of securities. Except for the rights and obligations set forth on Schedule 5.23(b), there are no subscriptions, warrants, options, calls, commitments, rights or agreement or other Equity Interest Equivalents by which any Company or any of the holders of the Equity Interests of any Company is bound relating to the issuance, transfer, voting or redemption of shares of its Equity Interests or any pre-emptive rights held by any Person with respect to the Equity Interests of Companies. Except as set forth on Schedule 5.23(c), Companies have not issued any securities convertible into or exchangeable for shares of its Equity Interests or any options, warrants or other rights to acquire such shares or securities convertible into or exchangeable for such shares or other Equity Interest Equivalents.

5.24. Commercial Tort Claims. No Loan Party has any commercial tort claims with respect to which the damages recoverable by Loan Parties could reasonably be expected to exceed $1,000,000, except as set forth on Schedule 5.23 hereto.

5.25. Letter of Credit Rights. No Loan Party has any letter of credit rights (other than letter of credit rights constituting supporting obligations) except as set forth on Schedule 5.24 hereto.

5.26. Material Contracts. Schedule 5.25 hereto sets forth all Material Contracts of Loan Parties as of the Closing Date. All Material Contracts are in full force and effect and no material defaults currently exist thereunder.

5.27. Affiliate Transactions. Except as permitted by Section 7.10 hereof, no Company nor any of its Subsidiaries is a party to or bound by any agreement or arrangement (whether oral or written) to which any Affiliate of any Company or any Subsidiary of any Company is a party.

5.28. Certificate of Beneficial Ownership. The Certificate of Beneficial Ownership executed and delivered to Agent and Lenders for each Loan Party on or prior to the date of this Agreement, as updated from time to time in accordance with this Agreement, is accurate, complete and correct as of the date hereof and as of the date any such update is delivered. Each Loan Party acknowledges and agrees that the Certificate of Beneficial Ownership is one of the Other Documents.

5.29. Disclosure. No representation or warranty made by any Loan Party in this Agreement or any Other Document or in any financial statement, report, certificate or any other document delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not misleading. There is no fact known to any Loan Party or which reasonably should be known to such Loan Party which such Loan Party has not disclosed to Agent in writing with respect to the Transactions which could reasonably be expected to have a Material Adverse Effect.

5.30. Sanctions and other Anti-Terrorism Laws. No (a) Covered Entity: (i) is a Sanctioned Person, nor to its knowledge any employees, officers, directors, affiliates, consultants, brokers or agents acting on a Covered Entity's behalf in connection with this Agreement is a Sanctioned Person; (ii) directly, or indirectly through any third party, engages in any transactions or other dealings with any Sanctioned Person or Sanctioned Jurisdiction, or which otherwise are prohibited by any Laws of the United States or laws of other applicable jurisdictions relating to economic sanctions and other Ant-Terrorism Laws; (b) Collateral may be deemed Embargoed Property.

5.31. Anti-Corruption Laws. Each Covered Entity has (a) conducted its business in compliance with all Anti-Corruption Laws and (b) has instituted and maintains policies and procedures designed to ensure compliance with such Laws.

VI. AFFIRMATIVE COVENANTS.

Each Loan Party shall, and shall cause each of its Subsidiaries to, until the Payment in Full of the Obligations, the termination of the Commitments and the termination of this Agreement:

6.1. Compliance with Laws. Comply with all Applicable Laws with respect to the Collateral or any part thereof or to the operation of such Company's business the non-compliance with which could reasonably be expected to have a Material Adverse Effect (except to the extent any separate provision of this Agreement shall expressly require compliance with any particular Applicable Law(s) pursuant to another standard).

6.2. Conduct of Business and Maintenance of Existence and Assets. (a) Conduct continuously and operate actively its business according to good business practices and maintain all of its properties useful or necessary in its business in good working order and condition (reasonable wear and tear excepted and except as may be disposed of in accordance with the terms of this Agreement), and, except if the failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, take actions that are reasonably deemed necessary by such Loan Party within its sole discretion to enforce and protect the validity of material Intellectual Property included in the Collateral; (b) keep in full force and effect its existence and comply in all material respects with the laws and regulations governing the conduct of its business where the failure to do so could reasonably be expected to have a Material Adverse Effect; and (c) make all such reports and pay all such franchise and other similar taxes and license fees and do all such other acts and things as may be lawfully required to maintain its rights, licenses, leases, powers and franchises under the laws of the United States or any political subdivision thereof where the failure to do so could reasonably be expected to have a Material Adverse Effect.

6.3. Books and Records. Keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to its business and affairs (including without limitation accruals for taxes, assessments, levies and claims, allowances against doubtful Receivables and accruals for depreciation, obsolescence or amortization of assets), all in accordance with, or as required by, GAAP consistently applied in the opinion of such independent public accountant as shall then be regularly engaged by Companies.

6.4. Payment of Taxes. Pay, when due, all taxes, assessments and other governmental charges lawfully levied or assessed upon such Company or any of the Collateral, including real and personal property taxes, assessments and charges and all franchise, income, employment, social security benefits, withholding, and sales taxes, except (i) such taxes, assessments, fees and other governmental charges that are being Properly Contested and (ii) immaterial local taxes, assessments and other governmental charges. If any tax by any Governmental Body is or may be imposed on or as a result of any transaction between any Company and Agent or any Lender which Agent or any Lender may be required to withhold or pay or if any taxes, assessments, or other charges remain unpaid after the date fixed for their payment, or if any claim shall be made which, in the opinion of Agent, may possibly create a valid Lien on the Collateral, Agent may, with prior written notice to the Loan Parties, pay the taxes, assessments or other charges and each Company hereby indemnifies and holds Agent and each Lender harmless in respect thereof. Agent will not pay any taxes, assessments or charges to the extent that any applicable Company has Properly Contested those taxes, assessments or charges. The amount of any payment by Agent under this Section 6.4 shall be charged to Borrowers' Account as a Revolving Advance maintained as a Domestic Rate Loan and added to the Obligations and, until Companies shall provide Agent with an indemnity therefor (or supply Agent with evidence satisfactory to Agent that due provision for the payment thereof has been made), Agent may hold without interest any balance standing to Companies' credit and Agent shall retain its security interest in and Lien on any and all Collateral held by Agent .

6.5. Financial Covenants.

(a) Fixed Charge Coverage Ratio. Cause Loan Parties on a Consolidated Basis to maintain as of the end of the fiscal quarter ending September 30, 2021 and as of the end of each fiscal quarter ending thereafter, a Fixed Charge Coverage Ratio calculated and measured for the four (4) fiscal quarter measurement period ending as of the end of such fiscal quarter of not less than 1.00 to 1.00; provided that, (x) for the fiscal quarter ended September 30, 2021, the Fixed Charge Coverage Ratio for Loan Parties on a Consolidated Basis shall be measured for purposes of determining compliance with this Section 6.5(a) for the single fiscal quarter measurement period ending on such date, (y) for the fiscal quarter ended December 31, 2021, the Fixed Charge Coverage Ratio for Loan Parties on a Consolidated Basis shall be measured for purposes of determining compliance with this Section 6.5(a) for the two fiscal quarter measurement period ending on such date, and (z) for the fiscal quarter ended March 31, 2022, the Fixed Charge Coverage Ratio for Loan Parties on a Consolidated Basis shall be measured for purposes of determining compliance with this Section 6.5(a) for the three fiscal quarter measurement period ending on such date, and further provided that, notwithstanding anything to the contrary provided for in any of the foregoing, the Fixed Charge Coverage Ratio of Loan Parties on a Consolidated Basis shall not be tested or measured for purposes of this Section 6.5(a) as of the end of the fiscal quarter ending September 30, 2021 unless the Dollar Equivalent of the aggregate amount of the Maximum Undrawn Amounts of all Letters of Credit outstanding hereunder exceeds $5,000,000 on any day during the fiscal quarter the ended.

(b) Senior Net Leverage Ratio. Cause Loan Parties on a Consolidated Basis to maintain as of the end of the fiscal quarter ending September 30, 2021 and as of the end of each fiscal quarter ending thereafter, a Senior Net Leverage Ratio tested as of such date of not greater than 2.50 to 1.00.

(c) Cash Repatriation Covenant. Notwithstanding any provisions of this Agreement to the contrary, Loan Parties shall not, and shall not permit their Subsidiaries to, allow the aggregate amount of all unrestricted cash and Cash Equivalents (excluding any cash and Cash Equivalents subject to any pledge to any third-party constituting a Permitted Encumbrance) belonging to any Companies other than Loan Parties to exceed $35,000,000 at any one time.

(d) Minimum Liquidity Covenant. Maintain Liquidity of at least $30,000,000 at all times.

(e) Notwithstanding any provision to the contrary set forth in Sections 6.5(a) and 6.5(b), in the event that Loan Parties fail to comply with the requirements of Sections 6.5(a) or 6.5(b) as of the last day of any fiscal quarter, until the tenth (10th) Business Day after the day on which financial statements are required to be delivered pursuant to Section 9.8 for such fiscal quarter (such ten (10) Business Day period, the "Cure Period"), Parent shall have the right (the "Cure Right") the right to issue common Equity Interests (or other Equity Interests of the Borrower reasonably acceptable to Agent) for cash or otherwise receive direct equity contributions in cash (any such net cash proceeds of such issuance or contribution, excluding such net cash proceeds of such issuance or contribution of Disqualified Stock, a "Specified Equity Contribution"), which Specified Equity Contribution shall be included in the calculation of EBITDA solely for purposes of determining compliance with the Fixed Charge Coverage Ratio covenant set forth in Section 6.5(a) above and the Leverage Ratio covenant set forth in Section 6.5(b) above as of the last day of such fiscal quarter and for applicable subsequent periods which include such fiscal quarter; provided that: (i) any such Specified Equity Contribution shall be in an aggregate amount not in excess of the amount required to cause Loan Parties to be in pro forma compliance with Sections 6.5(a) and/or 6.5(b) above for such fiscal quarter (for the avoidance of doubt, if Loan Parties fail to comply with the requirements of both Sections 6.5(a) and 6.5(b) above, the Specified Equity Contribution shall be in an amount required to cause Loan Parties to be in compliance with both Sections 6.5(a) and 6.5(b) above), (ii) the Cure Right may not be exercised more than two (2) times in any period of four (4) consecutive fiscal quarters, or more than five (5) times in during the Term, (iii) there shall be no pro forma reduction in Indebtedness with the proceeds of any Specified Equity Contribution for purposes of determining compliance with the Leverage Ratio or Fixed Charge Coverage Ratio for any fiscal quarter in which such Specified Equity Contribution is included in the calculation of EBITDA, (iv) if a Cash Dominion Period shall be in effect at the time of Specified Equity Contribution, Loan Parties shall cause the net cash proceeds of Specified Equity Contributions to be remitted to Agent for application to the Obligations in accordance with the provisions of Section 2.20(c), and (v) all Specified Equity Contributions shall be disregarded for all calculations under this Agreement (including any covenant or other provision herein that is subject to compliance with a Leverage Ratio or Fixed Charge Coverage Ratio) except for purposes of determining compliance with the Leverage Ratio and the Fixed Charge Coverage Ratio under Sections 6.5(a) and 6.5(b) above for the relevant period. Notwithstanding anything to the contrary contained herein, (A) in any applicable case where the Loan Parties have failed to be in compliance with either the Fixed Charge Coverage Ratio covenant set forth in Section 6.5(a) above and the Leverage Ratio covenant set forth in Section 6.5(b) above as of the last day of any applicable fiscal quarter, if upon the valid exercise of the Cure Right in accordance with this Section 6.5(e), Loan Parties shall then be in compliance with the requirements of the Fixed Charge Coverage Ratio covenant set forth in Section 6.5(a) above and the Leverage Ratio covenant set forth in Section 6.5(b) above, such covenants shall be deemed satisfied and complied with as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply with such covenants prior to the exercise of the Cure Right, and any Default or Event of Default related to any failure to comply the Financial Covenants shall be deemed not to have occurred; provided that, prior to the exercise of the Cure Right and receipt by Parent or Agent (as applicable) of the associated Specified Equity Contribution in any such case, none of Agent, Issuer, or Lenders shall have any obligations to fund any Revolving Advance or issue any Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit).

6.6. Insurance.

(a) (i) Keep all its insurable properties and properties in which such Company has an interest insured against the hazards of fire, flood, sprinkler leakage, those hazards covered by extended coverage insurance and such other hazards, and for such amounts, as is customary in the case of companies engaged in businesses similar to such Company's including business interruption insurance; (ii) maintain a bond in such amounts as is customary in the case of companies engaged in businesses similar to such Company insuring against larceny, embezzlement or other criminal misappropriation of insured's officers and employees who may either singly or jointly with others at any time have access to the assets or funds of such Company either directly or through authority to draw upon such funds or to direct generally the disposition of such assets; (iii) maintain public and product liability insurance against claims for personal injury, death or property damage suffered by others; (iv) maintain all such worker's compensation or similar insurance as may be required under the laws of any state or jurisdiction in which such Company is engaged in business; (v) [RESERVED]; (vi) provide Agent with (A) copies of all policies and evidence of the maintenance of such policies by the renewal thereof at least thirty (30) days before any expiration date, and (B) appropriate loss payable endorsements in form and substance satisfactory to Agent, naming Agent as an additional insured and mortgagee and/or lender loss payee (as applicable) as its interests may appear with respect to all insurance coverage referred to in clauses (i) and (iii) above, and providing (I) that all proceeds thereunder shall be payable to Agent, (II) no such insurance shall be affected by any act or neglect of the insured or owner of the property described in such policy, and (III) that such policy and loss payable clauses may not be cancelled, amended or terminated unless at least thirty (30) days prior written notice is given to Agent (or in the case of non-payment, at least ten (10) days prior written notice). In the event of any loss thereunder, the carriers named therein hereby are directed by Agent and the applicable Company to make payment for such loss to Agent and not to such Company and Agent jointly. If any insurance losses are paid by check, draft or other instrument payable to any Company and Agent jointly, Agent may endorse such Company's name thereon and do such other things as Agent may deem advisable to reduce the same to cash.

(b) Each Company shall take all actions required under the Flood Laws and Flood Requirement Standards and also all actions reasonably requested by Agent to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral, including, but not limited to, providing Agent with the address and/or GPS coordinates of each structure on any real property that will be subject to a mortgage in favor of Agent, for the benefit of Lenders, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral, and thereafter maintaining such flood insurance in full force and effect for so long as required by the Flood Laws and Flood Requirement Standards.

(c) Agent is hereby authorized to adjust and compromise claims under insurance coverage as to any Loan Party referred to in Sections 6.6(a)(i) and (iii) and (iv) and 6.6(b) above. All loss recoveries received by Agent under any such insurance as to any Loan Party, shall be applied to the Obligations in accordance with Section 2.20(b)(ii) or (iii) hereof, if any as applicable. If any Loan Party fails to obtain insurance as hereinabove provided, or to keep the same in force, Agent, if Agent so elects, may obtain such insurance and pay the premium therefor on behalf of such Loan Party, which payments shall be charged to Borrowers' Account and constitute part of the obligations.

6.7. Payment of Indebtedness and Leasehold Obligations. Pay, discharge or otherwise satisfy (a) at or before maturity (subject, where applicable, to specified grace periods) all its Indebtedness, except when the failure to do so could not reasonably be expected to have a Material Adverse Effect or when the amount or validity thereof is currently being Properly Contested, subject at all times to any applicable subordination arrangement in favor of Lenders and (b) when due its rental obligations under all leases under which it is a tenant, and shall otherwise comply, in all material respects, with all other terms of such leases and keep them in full force and effect.

6.8. Environmental Matters.

(a) Ensure that the Real Property owned or leased by any Company and all operations and businesses conducted thereon are in compliance and remain in compliance with all Environmental Laws and it shall manage any and all Hazardous Materials on any Real Property by any Company in compliance with Environmental Laws.

(b) Establish and maintain an environmental management and compliance system to assure and monitor continued compliance with all applicable Environmental Laws which system shall include periodic environmental compliance audits to be conducted by knowledgeable environmental professionals. All potential violations and violations of Environmental Laws shall be reviewed with legal counsel to determine any required reporting to applicable Governmental Bodies and any required corrective actions to address such potential violations or violations.

(c) Respond promptly to any Hazardous Discharge or Environmental Complaint and take all necessary action in order to safeguard the health of any Person and to avoid subjecting the Collateral or Real Property to any Lien. If any Company shall fail to respond promptly to any Hazardous Discharge or Environmental Complaint or any Company shall fail to comply with any of the requirements of any Environmental Laws, Agent on behalf of Lenders may, but without the obligation to do so, for the sole purpose of protecting Agent's interest in the Collateral: (i) give such notices or (ii) enter onto the Real Property owned or leased by any Company (or authorize third parties to enter onto such Real Property) and take such actions as Agent (or such third parties as directed by Agent) deem reasonably necessary or advisable, to remediate, remove, mitigate or otherwise manage with any such Hazardous Discharge or Environmental Complaint. All reasonable costs and expenses incurred by Agent and Lenders (or such third parties) in the exercise of any such rights, including any sums paid in connection with any judicial or administrative investigation or proceedings, fines and penalties, together with interest thereon from the date expended at the Default Rate for Domestic Rate Loans constituting Revolving Advances shall be paid upon demand by Companies, and until paid shall be added to and become a part of the Obligations secured by the Liens created by the terms of this Agreement or any other agreement between Agent, any Lender and any Company.

(d) Promptly upon the written request of Agent from time to time, Companies shall provide Agent, at Companies' expense, with an environmental site assessment or environmental compliance audit report prepared by an environmental engineering firm acceptable in the reasonable opinion of Agent, to assess with a reasonable degree of certainty the existence of a Hazardous Discharge and the potential costs in connection with abatement, remediation and removal of any Hazardous Materials found on, under, at or within the Real Property owned or leased by any Company. Any report or investigation of such Hazardous Discharge proposed and acceptable to the responsible Governmental Body shall be acceptable to Agent. If such estimates, individually or in the aggregate, exceed $100,000, Agent shall have the right to require Companies to post a bond, letter of credit or other security reasonably satisfactory to Agent a to secure payment of these costs and expenses.

6.9. Standards of Financial Statements. Cause all financial statements referred to in Sections 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, and 9.13 hereof as to which GAAP is applicable to be complete and correct in all material respects (subject, in the case of interim financial statements, to normal year-end audit adjustments) and to be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except as disclosed therein and agreed to by such reporting accountants or officer, as applicable).

6.10. Federal Securities Laws. Promptly notify Agent in writing if any Company or any of their Subsidiaries (a) is required to file periodic reports under the Exchange Act, (b) registers any securities under the Exchange Act or (c) files a registration statement under the Securities Act.

6.11. Execution of Supplemental Instruments. Execute and deliver to Agent from time to time, upon demand, such supplemental agreements, statements, assignments and transfers, or instructions or documents relating to the Collateral, and such other instruments as Agent may request, in order that the full intent of this Agreement may be carried into effect.

6.12. Additional Collateral and Guaranties; After-Acquired Real Property.

(a) Notify Agent promptly after any Person (i) becomes a Collateral Jurisdiction Subsidiary that is not an Immaterial Subsidiary (including a Collateral Jurisdiction Subsidiary that ceases for any reason to satisfy the definition of "Immaterial Subsidiary" at any time) or (ii) becomes a First-Tier Foreign Subsidiary, and promptly thereafter (and in any event within 30 days, or such longer period of time permitted by Agent in its sole discretion):

(i) if such Person is a Collateral Jurisdiction Subsidiary and is not a Captive Insurance Subsidiary, Loan Parties shall:

(A) deliver to Agent an executed Certificate of Beneficial Ownership for such Person, and such other documentation and other information relating to such Person requested request by Agent or by any Lender through Agent in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act; provided that, in the event that Agent shall determine that an Event of Default would occur under Section 10.17 hereof, and/or that any misrepresentation or breach under any warranty or representation set forth in Section 5.29 or 5.30 or breach of any covenant set forth in Section 6.17, 7.21, or 7.21 would occur, as a result of any joinder of such Person to this Agreement and the Other Documents as a Loan Party, or Agent shall determine that Agent or any :Lender would be in violation of any Anti-Corruption Laws or Anti-Terrorism Laws as a result of such joinder, Agent shall not be obligated to join such Person as Loan Party hereto and Loan Parties shall have no right to join such Person as a Loan Party hereunder;

(B) cause such Collateral Jurisdiction Subsidiary to become a Borrower or Guarantor hereunder (as Loan Parties may elect, provided that any joinder of any such Collateral Jurisdiction Subsidiary hereto as a Borrower is subject to Agent consent to such joinder of such Person as a Borrower rather than Guarantor hereunder, such consent not to be unreasonably (as determined in Agent's Permitted Discretion) withheld, conditioned, or delayed) by executing and delivering to Agent joinder agreement(s) with respect to this Agreement and any applicable Other Documents, favorable opinion(s) of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of this Agreement and the Other Documents as to such Person, customary "corporate" opinions as to such Person, and customary legal opinions as to the creation and perfection of Agent's Liens in the Collateral of such Person), and such other documentation as Agent may reasonably require (including customary "secretary's certificates" or "officer's certificates concerning such Person's Organizational Documents, incumbency of such Person's officers/authorized signers, and authorizing resolutions regarding such joinder transactions adopted by such Person's board of directors or similar governing body or Person(s)) in connection with joinder, such joinder agreement, legal opinions and other documentation to be in form, contents, scope and substance reasonably acceptable to Agent in its Permitted Discretion; and

(C) if such Person is joined hereto as a Borrower, cause such Person and all other Borrowers to deliver amended and restated Notes to any Lender that makes any request therefore,

(D) cause such Person to execute and deliver such documents and take such actions reasonably requested by Agent to create and perfect in favor of Agent (or any representative of or trustee for Agent designated by Agent for such purpose) Liens for the benefit of the Secured Parties in such Person's Collateral, and

(E) cause Parent and/or the applicable Subsidiaries of Parent to execute and delivery such documents and take such actions (including delivery of all certificated Pledged Interests in and of such Person and customary related "stock powers") , requested by Agent to create and perfect in favor of Agent Liens for the benefit of the Secured Parties in the Subsidiary Equity Interest of such Person;

(ii) if such Person is a First-Tier Foreign Subsidiary, Loan Parties shall cause Parent and/or the applicable Subsidiaries of Parent to execute and delivery such documents and take such actions (including delivery of all certificated Equity Interests in and of such Person and customary related "stock powers"), requested by Agent to create and perfect in favor of Agent Liens for the benefit of the Secured Parties in the Subsidiary Equity Interest of such Person.

(b) With respect to any fee interest in any Material Real Property of any Loan Party (whether owned by such Loan Party as of or acquired by such Loan Party subsequent to the Closing Date), the applicable Loan Party shall, promptly (and, in any event, within 45 days following the date of such request, unless such date is extended by Agent in its sole discretion) upon request therefor by Agent in its sole discretion: (i) execute a Mortgage covering such Real Property and complying with the provisions hereof, (ii) provide the Secured Parties with title insurance (in in standard ALTA form, issued by a title insurance company reasonably satisfactory to Agent and insuring the Mortgage to create a valid Lien on such Real Property with no exceptions other than Permitted Encumbrances and any other exceptions (excluding any Lien securing any Indebtedness) which Agent shall not have approved in its discretion and no survey exceptions) in an amount at least equal to the purchase price of such Real Property (or such other amount as the Administrative Agent shall reasonably specify), and if applicable, lease estoppel certificates, (iv) if requested by Agent in its sole discretion, deliver to Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to Agent, and (v) comply with the Flood Requirement Standards. Without limiting the foregoing, at any time that there is Material Real Property that is subject to a Mortgage, no MIRE Event shall be consummated prior to Agent confirming compliance with the Flood Requirement Standards.

(c) Notwithstanding anything to the contrary provided for in this Agreement, following the Closing Date, no Company shall create, form, purchase, or acquire any Collateral Jurisdiction Subsidiary that is not a Wholly-Owned Subsidiary.

6.13. Government Receivables. Upon Agent's request, take all steps necessary to protect Agent's interest in the Collateral under the Federal Assignment of Claims Act, the Uniform Commercial Code and all other applicable state or local statutes or ordinances and deliver to Agent appropriately endorsed, any instrument or chattel paper connected with any Receivable arising out of any contract between any Loan Party and the United States, any state or any department, agency or instrumentality of any of them.

6.14. Membership / Partnership Interests. Designate and cause all of its Subsidiaries that are limited liability companies or partnerships and are the issuers of any Subsidiary Equity Interest to designate (a) their limited liability company membership interests or partnership interests as the case may be, as securities as contemplated by the definition of "security" in Section 8-102(15) and Section 8-103 of Article 8 of the Uniform Commercial Code, and (b) certificate such limited liability company membership interests and partnership interests, as applicable, and deliver to Agent all original certificates evidencing such Equity Interests, together with transfer powers executed in blank.

6.15. Keepwell. If it is a Qualified ECP Loan Party, then jointly and severally, together with each other Qualified ECP Loan Party, hereby absolutely unconditionally and irrevocably (a) guarantees the prompt payment and performance of all Swap Obligations owing by each Non-Qualifying Party (it being understood and agreed that this guarantee is a guaranty of payment and not of collection), and (b) undertakes to provide such funds or other support as may be needed from time to time by any Non-Qualifying Party to honor all of such Non-Qualifying Party's obligations under this Agreement or any Other Document in respect of Swap Obligations (provided, however, that each Qualified ECP Loan Party shall only be liable under this Section 6.15 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 6.15, or otherwise under this Agreement or any Other Document, voidable under applicable law, including applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Loan Party under this Section 6.15 shall remain in full force and effect until the Payment in Full of the Obligations and the termination of this Agreement and the Other Documents. Each Qualified ECP Loan Party intends that this Section 6.15 constitute, and this Section 6.15 shall be deemed to constitute, a guarantee of the obligations of, and 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 CEA.

6.16. Certificate of Beneficial Ownership and Other Additional Information. Provide to Agent and the Lenders: (i) as may be requested by Agent or any Lender from time to time, confirmation of the accuracy of the information set forth in the most recent Certificate of Beneficial Ownership provided to the Agent and Lenders; (ii) a new Certificate of Beneficial Ownership, in form and substance acceptable to Agent and each Lender, when the individual(s) to be identified as a Beneficial Owner have changed; and (iii) such other information and documentation as may reasonably be requested by Agent or any Lender from time to time for purposes of compliance by Agent or such Lender with applicable laws (including without limitation the USA Patriot Act and other "know your customer" and anti-money laundering rules and regulations), and any policy or procedure implemented by Agent or such Lender to comply therewith.

6.17. Sanctions and other Anti-Terrorism Laws; Anti-Corruption Laws. (a) The Loan Parties covenant and agree that (A) they shall immediately notify the Agent and each of the Lenders in writing upon the occurrence of a Reportable Compliance Event; and (B) if, at any time, any Collateral becomes Embargoed Property, in addition to all other rights and remedies available to the Agent and each of the Lenders, upon request by the Agent or any of the Lenders, the Loan Parties shall provide substitute Collateral acceptable to the Lenders that is not Embargoed Property.

(b) Each Covered Entity shall conduct their business in compliance with all Anti-Corruption Laws and maintain policies and procedures designed to ensure compliance with such Laws.

VII. NEGATIVE COVENANTS.

No Loan Party shall, nor shall it permit any of its Subsidiaries to, until the Payment in Full of the Obligations, the termination of the Commitments and the termination of this Agreement:

7.1. Merger, Consolidation, Acquisition and Sale of Assets.

(a) Enter into any merger, consolidation or other reorganization with or into any other Person, permit any other Person to consolidate with or merge with it, acquire all or a substantial portion of the assets or Equity Interests of any Person or of any division or line of business of any Person, or consummate an LLC Division, except that:

(i) any Loan Party may merge, consolidate or reorganize with another Loan Party or a Subsidiary of a Loan Party or acquire the assets or Equity Interests of another Loan Party or a Subsidiary of a Loan Party so long as (A) in each case, Borrowing Agent shall provide Agent with notice of such merger, consolidation, reorganization or acquisition, including copies of all of the material agreements, documents and instruments related to such merger, consolidation, reorganization or acquisition, within ten (10) Business Days prior to the intended date for the consummation thereof, (B) in connection with any merger, consolidation or reorganization to which Parent is a party, Parent must be the surviving entity of such merger, consolidation or reorganization and no Change of Control shall occur as a result of and no violation of Section 7.9(b) hereof shall exist after giving effect to such transaction, (C) in connection with any merger, consolidation or reorganization to which a Borrowing Base Entity a party, the surviving entity of such merger, consolidation or reorganization must be, or concurrently with the consummation of such merger, consolidation or reorganization become, a Borrowing Base Entity, (D) no Event of Default or Default shall occur under any other provision hereof or of any Other Document as a result of or after giving effect to such transaction, and (E) promptly following the consummation thereof, Loan Parties shall deliver to Agent copies (with evidence of filing) of any public filings or notices made in connection with or to effect such consummation,

(ii) any Non-Loan Party may merge, consolidate or reorganize with another Non-Loan Party or acquire the assets or Equity Interests of another Non-Loan Party so long as (A) Loan Parties shall deliver to Agent true, correct and complete copies of all of the relevant agreement, documents and instruments evidencing such merger, consolidation or reorganization (including copies (with evidence of filing) of any public filings or notices made in connection with or to effect such transaction) concurrently with the delivery of the monthly financial statements required to be delivered to Agent pursuant to Section 9.9 hereof, and (B) no Event of Default or Default shall occur under any other provision hereof or of any Other Document as a result of or after giving effect to such transaction,

(iii) Companies may make Permitted Investments, and

(iv) Companies may make Permitted Acquisitions;

(b) Dispose of any of its properties or assets, except for Permitted Dispositions; or

(c) Liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), except for:

(i) the liquidation or dissolution of any Borrowing Base Entity so long as all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Borrowing Base Entity are transferred to a Borrowing Base Entity that is not liquidating or dissolving,

(ii) the liquidation or dissolution of a Loan Party (other than Parent or a Borrowing Base Entity) so long as all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Loan Party are transferred to a Loan Party that is not liquidating or dissolving, and

(iii) the liquidation or dissolution of a Non-Loan Party so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Loan Party or Non-Loan Party that is not liquidating or dissolving.

7.2. Creation of Liens. Create or suffer to exist any Lien or transfer upon or against any of its property or assets now owned or hereafter created or acquired, except Permitted Encumbrances.

7.3. [RESERVED].

7.4. Investments. Make any Investments, other than Permitted Investments.

7.5. [RESERVED].

7.6. Capital Expenditures. Contract for, purchase or make any expenditure or commitments for Capital Expenditures incurred to renew, replace, rehabilitate, refurbish, restore or maintain the long-term useful life of property, plant and equipment of the Companies (excluding (A) any expenditures for replacements and substitutions for fixed assets, capital assets or equipment to the extent made with the proceeds of insurance to repair replace any such assets or equipment that were lost, damaged or destroyed from a casualty or condemnation event and (B) Capital Expenditures relating to ERP implementation and Capital Expenditures related to Acquisitions and other "growth" Capital Expenditures) in any fiscal year in an aggregate amount for all Loan Parties in excess of $7,500,000.

7.7. Restricted Payments. Declare, pay or make any Restricted Payment other than Permitted Restricted Payments.

7.8. Indebtedness. Create, incur, assume or suffer to exist any Indebtedness other than Permitted Indebtedness.

7.9. Nature of Business.

(a) Engage in any business other than an Eligible Line of Business, nor except as specifically permitted hereby purchase or invest, directly or indirectly, in any assets or property other than in the Ordinary Course of Business for assets or property which are useful in, necessary for and are to be used in its business as presently conducted.

(b) Without limiting the generality of the foregoing paragraph (a), in the case of Parent, take any actions, or omit any actions or allow any events or circumstances to occur, that would cause any of the representations and warranties in Section 5.21(b) hereof to become untrue.

7.10. Transactions with Affiliates. Directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise enter into any transaction or deal with, any Affiliate, except for (a) transactions among Loan Parties which are not expressly prohibited by the terms of this Agreement and which are in the Ordinary Course of Business; (b) transactions among Loan Parties (on the one hand) and Non-Loan Parties and Joint Ventures that are expressly permitted hereunder; (c) Restricted Payments and Investments otherwise permitted hereunder, (d) transactions in accordance with the Affiliate Agreements or as thereafter amended or replaced in any manner that, taken as a whole, is not more disadvantageous to the Secured Parties or the Borrower in any material respect than such agreement as it was in effect on the Closing Date; (e) reasonable director, officer and employee compensation (including bonuses) and other benefits (including pursuant to any employment agreement or any retirement, health, stock option or other benefit plan) and indemnification and insurance arrangements, in each case, as determined in good faith by Parent's board of directors or senior management; (f) the entering into of a tax sharing agreement, or payments pursuant thereto, between Parent and/or one or more Subsidiaries, on the one hand, and any Tax Affiliate, on the other hand, which payments by Parent and its Subsidiaries are not in excess of the tax liabilities that would have been payable by them on a stand-alone basis; (g) pledges by the Borrower or any Subsidiary of Stock of any Joint Venture in a transaction permitted by clause (i)(y) of the definition of Permitted Encumbrances; (i) any transaction entered into by a Person prior to the time such Person becomes a Subsidiary or is merged or consolidated into the Borrower or a Subsidiary (provided that such transaction is not entered into in contemplation of such event); and (j) the transactions entered into pursuant to the B. Riley Fee Letter, including the issuance of Stock and Stock Equivalents, and (k) transactions which are in the Ordinary Course of Business, on an arm's-length basis on terms and conditions no less favorable than terms and conditions which would have been obtainable from a Person other than an Affiliate and, to the extent as such transaction or series of related transactions involves aggregate payments or consideration in excess of $2,500,000, such transaction is disclosed to Agent in writing; provided, however, that neither the extension of credit to, nor the assumption, endorsement or guaranty of any Indebtedness of, any Affiliate (other than a Loan Party) shall be deemed to be a transaction in the Ordinary Course of Business for purposes of this Section 7.10.

7.11. [RESERVED].

7.12. [RESERVED].

7.13. Fiscal Year and Accounting Changes. Change its fiscal year from December 31 or make any significant change (a) in accounting treatment and reporting practices except as required by GAAP or (b) in tax reporting treatment except as required by law.

7.14. Pledge of Credit. Now or hereafter pledge Agent's or any Lender's credit on any purchases, commitments or contracts or for any purpose whatsoever or use any portion of any Advance in or for any business other than such Loan Party's business operations as conducted on the Closing Date.

7.15. Amendment of Organizational Documents. In the case of any Loan Party, (a) change its legal name, (b) change its form of legal entity (e.g., converting from a corporation to a limited liability company or vice versa), (c) change its jurisdiction of organization or become (or attempt or purport to become) organized in more than one jurisdiction, or (d) otherwise amend, modify or waive any term or material provision of its Organizational Documents, unless required by law, in any manner that would be materially adverse to the interest of Secured Parties or the continued perfection of any Liens of Agent on the Collateral or would obligate any Loan Party to take any action that could reasonably be expected (under any reasonably foreseeable circumstances) to require such Loan Party make any Restricted Payment other than a Permitted Restricted Payment or enter into any transaction in in violation of Section 7.10 hereof, in any such case without (x) giving at least ten (10) days prior written notice of such intended change to Agent, (y) having received from Agent confirmation that Agent has taken all steps necessary for Agent to continue the perfection of and protect the enforceability and priority of its Liens in the Collateral belonging to such Loan Party and in the Equity Interests of such Loan Party (other than Parent) and (z) in any case under clause (d), having received the prior written consent of Agent to such amendment, modification or waiver.

7.16. Compliance with ERISA. Except as would not reasonably be expected to result, individually or when taken together with all of the following events or conditions, in a Material Adverse Effect, (a) engage in any non-exempt "prohibited transaction", as that term is defined in Section 406(a) of ERISA or Section 4975(c)(1)(A)-(D) of the Code, (b) terminate any Pension Plan where such event would reasonably be expected to result in any liability of any Company or the imposition of a lien on the property of any Company pursuant to Section 4068 of ERISA, (c) incur any withdrawal liability to any Multiemployer Plan; (d) fail to promptly notify Agent once any Company knows or has reason to know any Termination Event has occurred or is reasonably expected to occur, (e) fail to comply with the requirements of ERISA or the Code or other Applicable Laws in respect of any Plan or Pension Plan, (f) fail to meet, or permit any Pension Plan to fail to meet, all minimum funding requirements under ERISA and the Code, without regard to any waivers or variances, or postpone or delay any funding requirement with respect to any Pension Plan, other than the Pension Funding Waivers, or (g) fail to comply in all material respects with the terms and conditions of any Pension Funding Waiver, including, without limitation, the timely payment of any amortization installments required by such Pension Funding Waivers.

7.17. Prepayment of Indebtedness. At any time, directly or indirectly, voluntarily prepay any Indebtedness, or repurchase, redeem, retire or otherwise acquire any Indebtedness of any Company, except:

(a) Borrowers may prepay the Obligations to the extent permitted hereunder;

(b) Intercompany Subordinated Debt Payments;

(c) any voluntary transaction pursuant to which, in accordance with the terms and provisions of the Reimbursement/Cash Collateral Facility Documents and the Related L/C Facility Agreement, any one or more of the Loan Parties shall deliver to Related L/C Facility Issuer additional cash to be held by Related L/C Facility Issuer as Related L/C Facility Loan Parties Cash Collateral pursuant to a Related L/C Facility Loan Parties Cash Pledge Agreement in replacement of an equivalent amount of any Related L/C Facility Third Party Cash Collateral (which such amount of Related L/C Facility Third Party Cash Collateral shall thereupon be released by Related L/C Facility Issuer and returned to the Related L/C Facility Third Party Cash Pledgor), but only so long as and to the extent that (x) no Revolving Advance may be requested (nor may any proceeds of any Revolving Advance made on or about the day of any such transaction be used) to fund any portion of the Related L/C Facility Loan Parties Cash Collateral and (y) no Default or Event of Default shall exist or shall have occurred and be continuing on such date, or would occur after giving effect to such proposed transaction (and to any Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction) (any such transaction, a "Related L/C Facility CC Replacement Transaction"); and

(d) prepayments, repurchases, redemptions or retirements in an aggregate amount not to exceed $5,000,000 in the aggregate in any fiscal year but only so long as and to the effect that after giving pro forma effect to any such payment (and any Indebtedness being incurred or requested and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction), the Payment Conditions with respect thereto shall have been satisfied.

7.18. Subordinated Debt.

(a) At any time, directly or indirectly, pay, prepay, repurchase, redeem, retire or otherwise acquire, or make any payment on account of any principal of, interest on or premium payable in connection with the repayment or redemption of any Subordinated Debt, except as expressly permitted under the applicable subordination agreement/subordination arrangements and, in the case of any voluntary prepayment, repurchase, redemption, retirement or acquisition, in accordance with the requirements of Section 7.17 hereof; and

(b) Notwithstanding anything to the contrary provided for in the foregoing or otherwise in this Agreement, no Revolving Advance may be requested (nor may any proceeds of any Revolving Advance made on or about the day of any such transaction be used) to fund any portion of any payment of principal or interest with respect to any Permitted Indebtedness of the type described in clause (h) of the definition of such term.

7.19. Other Agreements.

(a) Enter into any amendment, waiver, consent, or modification of or with respect to the material reimbursement agreements, credit facility agreements, security agreements, and other agreements, contracts, and documents related to the Reimbursement/Cash Collateral Facility to the extent such would be prohibited under the Intercreditor Agreement;

(b) Enter into any amendment, waiver, consent, or modification of or with respect to the B. Riley Guarantee Reimbursement Agreement or the B. Riley Fee Letter that is or could reasonably be expected to be adverse to the interests of the Companies or Secured Parties or would result in the occurrence of any Default or Event of Default hereunder.

(c) Enter into any amendment, waiver, consent, or modification of or with respect to the Unsecured Note Indenture or any other material agreement, contract, or document related to the Unsecured Notes that is or could reasonably be expected to be adverse to the interests of the Companies or Secured Parties or would result in the occurrence of any Default or Event of Default hereunder.

7.20. Sanctions and other Anti-Terrorism Laws. Each loan party hereby covenants and agrees that until the last day of the Term, the loan party will not, and will not permit any of its Subsidiaries to:(a) [reserved], (b) directly, or knowingly indirectly through a third party, engage in any transactions or other dealings with any Sanction Person or Sanctioned Jurisdiction, including any use of the proceeds of the Loans to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctions Person or Sanctioned Jurisdiction; (c) repay the Loans with funds derived from any unlawful activity; (d) [reserved], (e) engage in any transactions or other dealings with any Sanctioned Person or Sanctioned Jurisdiction prohibited by any applicable laws of the United States or other applicable jurisdictions relating to economic sanctions and any Anti-Terrorism Laws; or (f) cause any Lender or Agent to violate any sanctions administered by OFAC.

7.21. Anti-Corruption Laws. Each Loan Party hereby covenants and agrees that until the last day of the Term, the Loan Party will not, and will not permit any of its Subsidiaries to, directly or knowingly indirectly, use the Advances or any proceeds thereof for any purpose which would breach any Anti-Corruption Laws in any jurisdiction in which any Covered Entity conducts business.

VIII. CONDITIONS PRECEDENT.

8.1. Conditions to Initial Advances. The effectiveness of this Agreement and agreement of Lenders to make the initial Advances requested to be made on the Closing Date is subject to the satisfaction (or waiver by Agent in its sole discretion) of the following conditions precedent:

(a) Loan Documents. Agent shall have received on or before the Closing Date the following, each in form and substance reasonably satisfactory to the Agent and, unless indicated otherwise, dated as of the Closing Date:

(i) this Agreement, duly executed and delivered by each Credit Party;

(ii) the Notes;

(iii) originals of stock certificates representing 100% of the Equity Interest of each Pledged Issuer to the extent the Equity Interests of such Pledged Issuer are certificated, together with stock powers executed in blank;

(iv) the Intercreditor Agreement; and

(v) the Closing Date Flow of Funds Agreement duly executed and delivered by Borrowing Agent

(b) Financial Condition Certificate. Agent shall have received an executed Financial Condition Certificate in the form of Exhibit 8.1(b) attached hereto, signed by a Responsible Officer of Parent, dated as of the Closing Date, attaching and certifying true, correct, and complete copies of the Pro Forma Financial Statements and Historical Financial Statements;

(c) Closing Certificate. Agent shall have received a closing certificate signed by a Responsible Officer of Parent, dated as of the Closing Date, stating that (i) all representations and warranties set forth in this Agreement and the Other Documents are true and correct on and as of such date, (ii) on such date no Default or Event of Default has occurred or is continuing, and (ii) all of the conditions set forth in Sections 8.1(d), (e)(i), (e)(ii), (m), (k), (p), and (q) have been satisfied, and attaching and certifying true, correct, and complete copies of (x) all material reimbursement agreements, credit facility agreements, security agreements, and other agreements, contracts, and documents related to the Reimbursement/Cash Collateral Facility and (y) the B. Riley Guarantee and the B. Riley Fee Letter, in each case under clause (x) and (y) complete with all schedules, annexes, exhibits, and disclosure letters referred to therein or attached or delivered pursuant thereto, if any, and all amendments thereto, waivers or consents relating thereto, and other side letters or agreements affecting the terms thereof;

(d) Borrowing Base. Agent shall have received a Borrowing Base Certificate (as of a date acceptable to Agent and Lenders in their discretion) from Loan Parties evidencing that the Dollar Equivalent of the aggregate amount of Eligible Receivables and Eligible Inventory is sufficient to support Revolving Advances and Letters of Credit in the amount requested by Borrowers on the Closing Date and the requirements of Section 8.1(e)(i) hereof below;

(e) Unrestricted Cash; Undrawn Availability.

(i) After giving effect to the initial Advances hereunder and the issuance of the initial Related L/C Facility Letters of Credit, and the payment of all disbursements, costs and expenses relating to the Transactions as reflected in the Closing Date Flow of Funds Agreement and otherwise giving effect to the Transactions, and as evidenced by the Borrowing Base Certificate referenced in Section 8.1(d) above, Borrowers shall have Undrawn Availability of at least $15,000,000;

(ii) After giving pro forma effect to the Transactions, Loan Parties on a Consolidated Basis will have not less than $100,000,000 of the sum of (x) unrestricted cash on their consolidated balance sheet and (y) cash pledged (pursuant to the terms of the Existing BAML Credit Facility Payoff Letter) to cash collateralize the "Existing Letters of Credit" as defined under the Existing BAML Credit Facility Payoff Letter;

(f) Blocked Accounts and Disbursement Account. Loan Parties shall have opened at least one Depository Account and at least one disbursements/operating deposit account with Agent, and without limiting the foregoing, (x) with respect to any Blocked Accounts that will remain open following the Closing Date, the applicable Loan Part(ies) and applicable Blocked Account Bank will have executed and delivered to Agent a Control Agreement complying with the requirements of Section 4.8(h) with respect to each such Blocked Account, and (y) with respect to any deposit accounts (other than Blocked Accounts) or securities account not maintained with Agent that will remain open following the Closing Date, the applicable Loan Part(ies) and applicable depositary institution or securities intermediary at which any such account is maintained will have executed and delivered to Agent Control Agreement with respect to each such account; provided that, notwithstanding anything to the contrary contained herein, Borrowers shall not be required to obtain a Control Agreement or otherwise give "control" to Agent with respect to any Excluded Deposit Accounts that are not maintained with Agent;

(g) Environmental Reports. To the extent requested by Agent, Agent shall have received all environmental studies and reports prepared by independent environmental engineering firms with respect to all Real Property owned or leased by any Loan Party;

(h) Closing Date Transactions.

(i) Related L/C Facility. All of the conditions precedent set forth in Section 8.1 of the Related L/C Facility Credit Agreement (subject to any applicable provisions of Section 8.3 of the Related L/C Facility Credit Agreement) shall have occurred, and, without limiting the generality of the foregoing, the Related L/C Facility Third Party Pledgor shall have delivered the Related L/C Facility Third Party Cash Collateral in an amount not less than $70,000,000 to PNC, as the issuer under the Related L/C Facility and executed and delivered the "Third Party Cash Collateral Pledge Agreement" required and described under the Related L/C Facility Credit Agreement.

(i) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code financing statement and Uniform Commercial Code termination statements) required by this Agreement, any of the Other Documents or under Applicable Law or reasonably requested by Agent to be filed, registered or recorded in order to create, in favor of Agent, a perfected security interest in or lien upon the Collateral and in order to terminate the perfected security interest in or lien upon the Collateral of Existing Agent shall have been properly filed, registered or recorded in each jurisdiction in which the filing, registration or recordation thereof is so required or requested, and Agent shall have received an acknowledgment copy, or other evidence satisfactory to it, of each such filing, registration or recordation and satisfactory evidence of the payment of any necessary fee, tax or expense relating thereto;

(j) Payoff Letter. Agent shall have received a final executed copy of a payoff letter in form and substance and on terms and conditions satisfactory to Agent ("Existing BAML Credit Facility Payoff Letter") from Bank of American, N.A., as administrative agent under the Existing BAML Credit Facility, regarding the payment in full (or cash collateralization/backstop by letter of credit) of all Indebtedness and obligations owing to agents, lenders and secured parties under the Existing BAML Credit Facility and the release of all Liens on any Collateral or other assets of any Company securing the BAML Credit Facility (excluding any cash collateral granted pursuant to such Payoff Letter to secure the "Existing Letters of Credit" (as defined under the Existing BAML Credit Facility Payoff Letter) issued under the Existing BAML Credit Facility);

(k) [RESERVED].

(l) Secretary's Certificates, Authorizing Resolutions and Good Standings of Loan Parties. Agent shall have received, in form and substance satisfactory to Agent, a certificate of the Secretary or Assistant Secretary (or other equivalent officer, partner or manager) of each Loan Party dated as of the Closing Date which shall certify (i) copies of resolutions, in form and substance satisfactory to Agent, of the board of directors (or other equivalent governing body, member or partner) of such Loan Party authorizing (x) as to Borrowers, the execution, delivery and performance of this Agreement and each Other Document to which each such Borrower is a party (including authorization of the incurrence of indebtedness, borrowing of Advances and requesting of Letters of Credit on a joint and several basis with all Borrowers as provided for herein), (y) as to Guarantors, the execution, delivery and performance of this Agreement and each Other Document to which each such Guarantor is a party (including authorization of the giving of a guaranty of the Guaranteed Obligations on a joint and several basis with all Guarantors as provided for herein), and (y) the granting by such Loan Party of the security interests in and liens upon the Collateral to secure the Obligations and/or Guaranteed Obligations (and such certificate shall state that such resolutions have not been amended, modified, revoked or rescinded as of the date of such certificate), (ii) the incumbency and signature of the officers of such Loan Party authorized to execute this Agreement and the Other Documents, (iii) true, correct, and complete copies of the Organizational Documents of such Loan Party as in effect on such date, complete with all amendments thereto, and (iv) the good standing (or equivalent status) of such Loan Party in its jurisdiction of organization and each applicable jurisdiction where the conduct of such Loan Party's business activities or the ownership of its properties necessitates qualification, as evidenced by good standing certificates (or the equivalent thereof issued by any applicable jurisdiction) dated not more than thirty (30) days prior to the Closing Date, issued by the Secretary of State or other appropriate official of each such jurisdiction;

(m) Legal Opinion. Agent shall have received (i) the executed legal opinion of King & Spalding LLP and (ii) the executed legal opinion of John J. Dziewisz, internal counsel to the Borrower, in each case, in form and substance satisfactory to Agent which shall cover such matters incident to the Transactions as Agent may reasonably require and each Loan Party hereby authorizes and directs such counsel to deliver such opinions to Agent and Lenders;

(n) No Litigation. No litigation, investigation or proceeding before or by any arbitrator or Governmental Body shall be continuing or threatened against any Loan Party or Joint Venture or against the officers or directors of any Loan Party or Joint Venture (A) in connection with this Agreement, the Other Documents, the Related L/C Facility, the Reimbursement/Cash Collateral Facility, or any of the Transactions and which, in the reasonable opinion of Agent, is deemed material or (B) which could, in the reasonable opinion of Agent, have a Material Adverse Effect; and (ii) no injunction, writ, restraining order or other order of any nature materially adverse to any Loan Party or the conduct of its business or inconsistent with the due consummation of the Transactions shall have been issued by any Governmental Body;

(o) Collateral Examination.

(ii) Agent shall have received the Initial Field Examination and the Initial Inventory Appraisal, the results of which shall be satisfactory in form and substance to Agent in its Permitted Discretion.

(p) Fees. Agent shall have received all fees payable to Agent and Lenders on or prior to the Closing Date hereunder, including pursuant to Article III hereof;

(q) Pro Forma Financial Statements. Agent shall have received true, correct, and complete copies of the Pro Forma Financial Statements and Historical Financial Statements, which shall be satisfactory in all respects to Agent;

(r) Insurance. Agent shall have received in form and substance satisfactory to Agent, (i) evidence that adequate insurance, including without limitation, casualty and liability insurance, required to be maintained under this Agreement is in full force and effect, (ii) insurance certificates issued by Loan Parties' insurance broker containing such information regarding Loan Parties' casualty and liability insurance policies as Agent shall request and naming Agent as an additional insured, lenders loss payee and/or mortgagee, as applicable, and (iii) loss payable endorsements issued by Loan Parties' insurer naming Agent as lenders loss payee and mortgagee, as applicable;

(s) Consents. Agent shall have received any and all Consents necessary to permit the effectuation of the transactions contemplated by this Agreement and the Other Documents; and, Agent shall have received such Consents and waivers of such third parties as might assert claims with respect to the Collateral, as Agent and their counsel shall deem necessary;

(t) No Adverse Material Change. (i) Since December 31, 2020, no event, condition or state of facts which could reasonably be expected to have a Material Adverse Effect shall have occurred and (ii) no representations made or information supplied to Agent or Lenders shall have been proven to be inaccurate or misleading in any material respect;

(u) Contract Review. Agent shall have received and reviewed all Material Contracts of Companies including leases, collective bargaining agreements, vendor supply contracts, license agreements and distributorship agreements and such contracts and agreements shall be satisfactory in all respects to Agent;

(v) Compliance with Laws. Agent shall be reasonably satisfied that each Company is in material compliance with all pertinent federal, state, local or territorial regulations, including those with respect to the Federal Occupational Safety and Health Act, the Environmental Protection Act, ERISA and the Anti-Terrorism Laws;

(w) Flow of Funds Agreement. Agent shall have received a flow of funds agreement, including schedule(s) of detailed flow of funds/sources and uses, disbursements, and wire transfer instruction prepared by Loan Parties and approved by PNC, in its capacities as Agent hereunder and as issuer under the Related L/C Facility, in its sole discretion (the "Closing Date Flow of Funds Agreement"), duly executed and delivered by Borrowing Agent, pursuant to which the Borrowing Agent directs Agent to disburse the initial Advances hereunder so as to consummate the Transactions.

(x) Certificate of Beneficial Ownership; USA Patriot Act Diligence. Agent and each Lender shall have received, in form and substance acceptable to Agent and each Lender an executed Certificate of Beneficial Ownership for each Loan Party and such other documentation and other information requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act; and

(y) Other. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the Transactions shall be satisfactory in form and substance to Agent.

8.2. Conditions to Each Advance. The agreement of Lenders and Issuer to make any Advance requested to be made or issue on any date (including the initial Advances), is subject to the satisfaction of the following conditions precedent as of the date such Advance is made or issued:

(a) Representations and Warranties. Each of the representations and warranties made by any Loan Party in or pursuant to this Agreement and/or the Other Documents shall be true and correct in all material respects (except in the case of any such representation or warranty that is qualified as to materiality or as to the occurrence of (or the absence of the occurrence of) a Material Adverse Effect (specifically including without limitation the representations set forth in Section 5.5(d) hereof), each of which such representations and warranties shall be true and correct in all respects) on and as of such date as if made on and as of such date (except to the extent any such representation or warranty expressly relates only to any earlier and/or specified date, in which case such representation or warranty shall have been true and correct in all material respects (except in the case of any such representation or warranty that is qualified as to materiality or as to the occurrence of (or the absence of the occurrence of) a Material Adverse Effect (specifically including limitation the representations set forth in Section 5.5(d) hereof), each of which such representations and warranties shall have been true and correct in all respects) on and as of such earlier and/or specified date);

(b) No Default. No Event of Default or Default shall have occurred and be continuing on such date, or would exist after giving effect to the Advances requested to be made, on such date and, in the case of the initial Advances, after giving effect to the consummation of the Transactions; provided, however that Agent, in its sole discretion, may continue to make Advances notwithstanding the existence of an Event of Default or Default and that any Advances so made shall not be deemed a waiver of any such Event of Default or Default; and

(c) Maximum Advances. In the case of any type of Advance requested to be made or issued, after giving effect thereto, the aggregate amount of such type of Advance shall not exceed the maximum amount of such type of Advance permitted under this Agreement.

Each request for an Advance by Borrowing Agent or Borrowers hereunder shall constitute a representation and warranty by each Borrower and each other Loan Party as of the date of such Advance that the conditions set forth in this Section shall have been satisfied. Notwithstanding any provision to the contrary set forth in this Section 8.2, in no event shall the conditions set forth in this Section 8.2 be deemed to have been met during the continuance of any Cure Period.

8.3. Post-Closing Covenants/Conditions. Loan Parties hereby acknowledge and agree that Agent and Lenders have agreed to execute and deliver this Agreement and make the initial Advances on the Closing Date notwithstanding the fact that certain conditions precedent more fully described in this Section 8.3 have not been satisfied as of the Closing Date, and Loan Parties hereby covenant and agree to satisfy each of such conditions no later than the respective deadlines for each such condition set forth below as follows (as any such deadline may be extended from time to time by Agent in its sole discretion):

(a) No later than the date that is ninety (90) days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties (excluding any Foreign Subsidiaries that may be Loan Parties) shall (x) move, establish and continue thereafter to maintain all of their all of their primary treasury management accounts and other primary Cash Management Products and Services with Agent, including without limitation all of the Loan Parties' primary lockboxes/lockbox accounts and collection accounts and all of such Loan Parties' primary operating and disbursement accounts, and (y) with respect to any deposit accounts of any Loan Party which, without contravention of the foregoing or any other provision of this Agreement, shall continue to be maintained with a financial depository institution other than Agent, execute and deliver, and shall cause the applicable financial depository institution to execute and deliver, a Control Account with respect to such deposit account (which Control Account, if such deposit account is a Blocked Account, shall also comply with the requirements of Section 4.8(h) hereof); provided that, for the avoidance of doubt, nothing in this Section 8.3 shall be deemed to limit or contradict the provisions of, or to defer or limit the obligations of Loan Parties to comply with the requirements of, Section 4.8(h) hereof, and without limiting the generality of the foregoing, during the period from the Closing Date until the date that Loan Parties shall have fully complied with the requirements of clauses (x) and (y) of this Section 8.3(a), Loan Parties shall make arrangements with respect to each of its deposit accounts not maintained with Agent into which Customers remit payments and collections on Receivables or into which Loan Parties deposit payments and collections on Receivables received from Customers for the funds in each such deposit account to be wired and transferred to a Depositary Account maintained with Agent on a daily basis; but further provided that, notwithstanding anything to the contrary contained herein, Borrowers shall not be required to obtain a Control Agreement or to otherwise give control" to Agent with respect to any Excluded Deposit Accounts that are not maintained with Agent.

(b) No later than (x) thirty (30) days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties shall deliver to Agent loss payable endorsements issued by Loan Parties' insurers naming Agent as lenders loss payee and mortgagee, as applicable, with respect to each of Loan Parties' casualty/property insurance policies (including business interruption insurance policies) and (y) five (5) Business Days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties shall deliver to Agent customary insurance certificates/insurance letters issued by the insurance broker for any Loan Parties organized in Nova Scotia, Canada containing such information regarding such Loan Parties' casualty and liability insurance policies as Agent shall request and naming Agent as an additional insured, lenders loss payee and/or mortgagee, as applicable.

(c) No later than ninety (90) days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties (excluding any Foreign Subsidiaries that may be Loan Parties), Loan Parties shall have made commercially reasonable efforts to cause the applicable Persons to execute and deliver to Agent Lien Waiver Agreements with respect to (i) each leased corporate headquarters location of each Loan Party, all locations or places at which more than $500,000 of Inventory, equipment and books and records are located, and (ii) each leased location at which any unique books and records (not duplicated at the applicable corporate headquarters of such Loan Party) of any Loan Party regarding Borrowing Base are kept.

(d) No later than forty-five (45) days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties (excluding any Foreign Subsidiaries that may be Loan Parties), Loan Parties shall (x) have complied with, and caused each applicable Collateral Jurisdiction Subsidiary to comply with, the requirements of the provisions of Section 6.12 with respect to each Company that is a Collateral Jurisdiction Subsidiary on the Closing Date, and (y) enter into any amendment to this Agreement and any applicable Other Document reasonably requested by Agent and reasonably and in good faith negotiated by Agent with Loan Parties (and by Loan Parties with Agent) to incorporate provisions regarding matters governed the Applicable Laws of each jurisdiction in which any such Collateral Jurisdiction Subsidiary is organized or formed that are customarily included in asset-based revolving credit facilities in the United States for companies similarly situated to Loan Parties and its Subsidiaries addressing matters relating to the Companies already addressed by the representations and warranties and covenants set forth herein (such as pension and retirement benefits laws, other employee benefits laws, environmental laws, Permitted Encumbrances for statutory Liens and statutory priority claims and related exceptions/exclusions under the definitions of Eligible Inventory and Eligible Receivables and related Reserves, matters related to "centres of interest", anti-money laundering/anti-terrorism laws and other similar matters as are customarily required as a part of credit facilities of a similar size and nature to the credit facilities provided hereunder by lenders in such jurisdictions to borrowers that are similarly situated to the Loan Parties.

(e) No later than sixty (60) days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties shall have made commercially reasonable efforts to cause the PBGC to subordinate the Permitted Encumbrances described in subclause (i) of clause (q) of the definition of such term in favor of the Liens securing the Obligations to the extent contemplated by the documents evidencing/governing such Permitted Encumbrances and the PBGC Secured Obligations.

(f) No later than thirty (30) days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties shall deliver to Agent a true, correct and complete copy (as executed) of B. Riley Guarantee Reimbursement Agreement, complete with all schedules, annexes, exhibits, and disclosure letters referred to therein or attached or delivered pursuant thereto, if any, and all amendments thereto, waivers or consents relating thereto, and other side letters or agreements affecting the terms thereof, which shall be on terms reasonably acceptable to Agent.

IX. INFORMATION AS TO LOAN PARTIES.

Each Loan Party shall, or (except with respect to Section 9.11 hereof) shall cause Borrowing Agent on its behalf to, until the Payment in Full of the Obligations, the termination of the Commitments and the termination of this Agreement:

9.1. Disclosure of Material Matters. Promptly upon learning thereof, report to Agent all matters materially affecting the value, enforceability or collectability of any portion of the Collateral, including any Loan Party's reclamation or repossession of, or the return to any Loan Party of, a material amount of goods or claims or disputes asserted by any Customer or other obligor.

9.2. Schedules. Deliver to Agent), in form and substance satisfactory to Agent: (a) on or before the fifteenth (15th) day of each month (or, for the months of June, July, and August of 2021, the twentieth (20^{th}) day of the month) as and for the prior month (i) accounts receivable agings inclusive of reconciliations to the general ledger, (ii) accounts payable schedules inclusive of reconciliations to the general ledger, (iii) Inventory reports, and (iv) a Borrowing Base Certificate (which shall be calculated as of the last day of the prior month and which shall not be binding upon Agent or restrictive of Agent's rights under this Agreement), (b) at any time when any Event of Default shall have occurred and be continuing and also during any Cash Dominion Period, on or before Wednesday (or such other day of the week designated from time to time by Agent) of each week, a sales and collections "roll forward" report for the prior week, and (c) at such intervals as Agent may reasonably require: (i) confirmatory assignment schedules; (ii) copies of Customer's invoices; (iii) evidence of shipment or delivery; and (iv) such further schedules, documents and/or information regarding the Collateral as Agent may reasonably require including trial balances and test verifications; provided further that all such Borrowing Base Certificates and weekly sales and collections "roll forward" reports shall include a calculation of the Dollar Equivalent value of the Eligible Receivables and Letters of Credit denominated in currencies other than Dollars (with separate calculations as to the Eligible Receivables and Letters of Credit, denominated in each such non-Dollar Currency) based on the Exchange Rate as in effect on the "as of" date of such Borrowing Base Certificate. Agent shall have the right to confirm and verify all Receivables by any manner and through any medium it considers advisable and do whatever it may deem reasonably necessary to protect its interests hereunder. The items to be provided under this Section are to be in form satisfactory to Agent and executed by each Loan Party and delivered to Agent from time to time solely for Agent's convenience in maintaining records of the Collateral, and any Loan Party's failure to deliver any of such items to Agent shall not affect, terminate, modify or otherwise limit Agent's Lien with respect to the Collateral. Unless otherwise agreed to by Agent, the items to be provided under this Section 9.2 shall be delivered to Agent by the specific method of Approved Electronic Communication designated by Agent.

9.3. Environmental Reports.

(a) [Reserved].

(b) In the event any Company obtains, gives or receives notice of any Release or threat of Release of a reportable quantity of any Hazardous Materials at the Real Property owned or leased by any Company (any such event being hereinafter referred to as a "Hazardous Discharge") or receives any notice of violation, request for information or notification that it is potentially responsible for investigation or cleanup of environmental conditions at such Real Property, demand letter or complaint, order, citation, or other written notice with regard to any Hazardous Discharge or violation of Environmental Laws affecting such Real Property or any Company's interest therein or the operations or the business which could reasonably be expected to have a Material Adverse Effect (any of the foregoing is referred to herein as an "Environmental Complaint") from any Person, including any Governmental Body, then Borrowing Agent shall, within five (5) Business Days, give written notice of same to Agent detailing facts and circumstances of which any Company is aware giving rise to the Hazardous Discharge or Environmental Complaint. Such information is to be provided to allow Agent to protect its security interest in and Lien on the Collateral and is not intended to create nor shall it create any obligation upon Agent or any Lender with respect thereto.

(c) Borrowing Agent shall promptly forward to Agent copies of any request for information, notification of potential liability, demand letter relating to potential responsibility with respect to the investigation or cleanup of Hazardous Materials at any other site owned, operated or used by any Company to manage of Hazardous Materials and shall continue to forward copies of correspondence between any Company and the Governmental Body regarding such claims to Agent until the claim is settled. Borrowing Agent shall promptly forward to Agent copies of all documents and reports concerning a Hazardous Discharge or Environmental Complaint at the Real Property owned or leased by any Company, operations or business that any Company is required to file under any Environmental Laws. Such information is to be provided solely to allow Agent to protect Agent's security interest in and Lien on the Collateral.

9.4. Litigation. Promptly notify Agent in writing of any claim, litigation, suit or administrative proceeding affecting any Company or Joint Venture, whether or not the claim is covered by insurance, and of any litigation, suit or administrative proceeding, which in any such case affects a material portion of the Collateral or which could reasonably be expected to have a Material Adverse Effect.

9.5. Material Occurrences. Promptly notify Agent in writing upon the occurrence of: (a) any Event of Default or Default; (b) [reserved]; (c) [reserved]; (d) any event, development or circumstance whereby any financial statements or other reports delivered to Agent fail in any material respect to present fairly, in accordance with GAAP consistently applied, the financial condition or operating results of any Company as of the date of such statements; (e) any accumulated retirement plan funding deficiency which, if such deficiency continued for two plan years and was not corrected as provided in Section 4971 of the Code, could subject any Company or any member of the Controlled Group to a tax imposed by Section 4971 of the Code; (f) each and every default by any Company which might result in the acceleration of the maturity of any Indebtedness, including the names and addresses of the holders of such Indebtedness with respect to which there is a default existing or with respect to which the maturity has been or could be accelerated, and the amount of such Indebtedness; and (g) any other development in the business or affairs of any Loan Party, which could reasonably be expected to have a Material Adverse Effect; in each case describing the nature thereof and the action Companies propose to take with respect thereto.

9.6. Government Receivables. Notify Agent promptly if any of its Receivables arise out of contracts between any Loan Party and the United States, any state, or any department, agency or instrumentality of any of them in excess of $2,500,000.

9.7. Annual Financial Statements. Deliver to Agent within ninety (90) days after the end of each fiscal year of Parent, (A) financial statements of Parent and its Subsidiaries on a consolidated basis including, but not limited to, statements of income, stockholders' equity, and cash flow from the beginning of the current fiscal year to the end of such fiscal year and the balance sheet as at the end of such fiscal year, which such financial statements shall be true, complete and correct in all material respects and fairly present, in all material respects, the financial position of Parent and its Subsidiaries on a consolidated basis as of the date thereof and the results of operations for Parent and its Subsidiaries on a consolidated basis for such fiscal year and prepared in accordance with GAAP applied on a basis consistent with prior practices, and in reasonable detail, and shall be reported upon without qualification by an independent certified public accounting firm selected by Loan Parties and satisfactory to Agent in its Permitted Discretion (the "Accountants"); provided that, it is agreed by the parties hereto that Deloitte & Touche LLP shall be acceptable as the Accountants and (B) unaudited balance sheets of Parent and its Subsidiaries on a consolidating basis and unaudited statements of income, stockholders' equity, and cash flow of Parent and its Subsidiaries on a consolidating basis reflecting results of operations from the beginning of the current fiscal year to the end of such fiscal year and the balance sheet as at the end of such fiscal year, which such financial statements shall be true, complete and correct in all material respects and fairly present, in all material respects, the financial position of Parent and its Subsidiaries on a consolidated basis as of the date thereof and the results of operations for Parent and its Subsidiaries on a consolidated basis for such fiscal quarter and year-to-date period and prepared in accordance with GAAP applied on a basis consistent with prior practices. The report of the Accountants shall be accompanied by a statement of the Accountants certifying that (i) they have caused this Agreement to be reviewed, (ii) in making the examination upon which such report was based either no information came to their attention which to their knowledge constituted an Event of Default or a Default under this Agreement or any of the Other Documents or, if such information came to their attention, specifying any such Default or Event of Default, its nature, when it occurred and whether it is continuing, and such report shall contain or have appended thereto calculations which set forth Loan Parties' compliance with the requirements or restrictions imposed by Section 6.5 hereof. In addition, the reports shall be accompanied by a Compliance Certificate.

9.8. Quarterly Financial Statements. Deliver to Agent within forty-five (45) days after the end of each fiscal quarter, unaudited balance sheets of Parent and its Subsidiaries on a consolidated and consolidating basis and unaudited statements of income, stockholders' equity, and cash flow of Parent and its Subsidiaries on a consolidated and consolidating basis reflecting results of operations from the beginning of the fiscal year to the end of such quarter and for such quarter and setting forth in comparative form the respective financial statements for the corresponding date and period in the previous fiscal year and the budget delivered pursuant to Section 9.12 hereof, which such financial statements shall be true, complete and correct in all material respects and fairly present, in all material respects, the financial position of Parent and its Subsidiaries on a consolidated and consolidating basis as of the date thereof and the results of operations for Parent and its Subsidiaries on a consolidated and consolidating basis for such fiscal quarter and year-to-date period and prepared in accordance with GAAP applied on a basis consistent with prior practices, and in reasonable detail, subject to normal and recurring year-end adjustments that individually and in the aggregate are not material to Loan Parties' business. The reports shall be accompanied by a Compliance Certificate, as well as (i) a management discussion and analysis (with reasonable detail and specificity) of the results of operations for the fiscal periods reported, (ii) a calculation of the Available Amount as of the end of such fiscal quarter, and (iii) a calculation of Total Net Leverage as of the end of such fiscal quarter, (iv) a calculation of Senior Net Leverage as of the end of such fiscal quarter and (v) a calculation of EBITDA as of the end of such fiscal quarter.

9.9. Monthly Financial Statements. Deliver to Agent within thirty (30) days after the end of each month, (A) an unaudited balance sheet of Parent and its Subsidiaries on a consolidated basis and unaudited statements of income and cash flow of Parent and its Subsidiaries on a consolidated basis reflecting results of operations from the beginning of the fiscal year to the end of such month and for such month, which such financial statements shall be true, complete and correct in all material respects and fairly present, in all material respects, the financial position of Parent and its Subsidiaries on a consolidated basis as of the date thereof and the results of operations for Parent and its Subsidiaries on a consolidated basis for fiscal month and year-to-date period and prepared in accordance with GAAP applied on a basis consistent with prior practices, and in reasonable detail, subject to normal and recurring year-end adjustments that individually and in the aggregate are not material to Loan Parties' business and (B) reporting reasonably acceptable to Agent showing (i) the unrestricted cash and Cash Equivalents on the balance sheets of Loan Parties as of the last day of such month, (ii) the unrestricted cash and Cash Equivalents on the balance sheets of Loan Parties as of the last day of such month, and (iii) Qualified Cash as of the last day of such month. The reports shall be accompanied by a Compliance Certificate.

9.10. Other Reports. Deliver to Agent as soon as available, but in any event within ten (10) days after the issuance thereof, copies of all material notices, reports, financial statements and other materials sent or received pursuant to the Subordinated Loan Documents.

9.11. Additional Information.

(a) Promptly upon request, deliver to Agent such other information concerning the business, properties, condition (financial or otherwise), or operations, of any Company or Joint Venture as Agent may from time to time may reasonably request or as Agent may reasonably request as an ongoing supplement to any regularly scheduled period financial delivery, including without limitation, current copies of the Material Contracts, and

(b) Without limiting the generality of the foregoing Section 9.11(a), promptly upon request by Agent at reasonable intervals, deliver to Agent, a corporate organizational chart or other equivalent list, current as of the date of delivery of such annual financial statements, in form and substance reasonably acceptable to Agent and certified as true, correct and complete by an Responsible Officer of Parent, setting forth, for each of the Loan Parties, all Persons subject to Section 6.12 and all Subsidiaries of any of them and any joint venture (including Joint Ventures) or Consortium entered into by any of the foregoing, (i) its full legal name, (ii) its jurisdiction of organization and organizational number (if any) and (iii) the number of shares of each class of its Equity Interests authorized (if applicable), the number outstanding as of the date of delivery, and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by Parent.

9.12. Projected Operating Budget. Deliver to Agent, no later than ninety (90) days after the beginning of each of Parent's fiscal years commencing with fiscal year 2022, a month by month projected operating budget and cash flow of Parent and its Subsidiaries (including consolidated statements of income and cash flow for each month, and consolidated and consolidating balance sheets as at the end of and consolidated and consolidating statement of income, stockholders' equity, and cash flow for each fiscal quarter), such projections to be accompanied by a certificate signed by a Responsible Officer of Parent to the effect that such projections have been prepared on the basis of sound financial planning practice consistent with past budgets and financial statements and that such officer has no reason to question the reasonableness of any material assumptions on which such projections were prepared.

9.13. Variances from Operating Budget. Deliver to Agent, concurrently with the delivery of the financial statements referred to in Sections 9.7, 9.8 and 9.9 hereof, a written report summarizing all material variances from budgets submitted by Loan Parties pursuant to Section 9.12 hereof and a discussion and analysis by management with respect to such variances.

9.14. Notice of Suits, Adverse Events. Provide Agent with prompt written notice of (a) any lapse or other termination of any Consent issued to any Company by any Governmental Body or any other Person that is material to the operation of any Company's business, (b) any refusal by any Governmental Body or any other Person to renew or extend any such Consent; and (c) copies of any periodic or special reports filed by any Loan Party with any Governmental Body or Person, if such reports indicate any material change in the business, operations, affairs or condition of any Loan Party, or if copies thereof are requested by Lender, and (d) copies of any material notices and other communications from any Governmental Body or Person which specifically relate to any Loan Party.

9.15. ERISA Notices and Requests. Provide Agent with prompt written notice in the event that (a) any Company knows or has reason to know that a Termination Event has occurred or is reasonably expected to occur that alone or together with any other Termination Events that have occurred, would reasonably be expected to result in liability of any Company in an aggregate amount exceeding $5,000,000, together with a written statement describing such Termination Event and the action, if any, which such Company has taken, is taking, or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, Department of Labor or PBGC with respect thereto, (b) any Company knows or has reason to know that a non-exempt "prohibited transaction" (as defined in Section 406(a) of ERISA or Section 4975(c)(1)(A)-(D) of the Code) has occurred with respect to a Plan which would reasonably be expected to result in material liability of any Company, together with a written statement describing such transaction and the action which such Company has taken, is taking or proposes to take with respect thereto, (c) a funding waiver request has been filed with respect to any Pension Plan (other than the Pension Funding Waivers), together with all communications received by any Company with respect to such request, or (d) the establishment of any new Pension Plan by the Company or the commencement by the Company of contributions to any Pension Plan or Multiemployer Plan to which any Company or any member of the Controlled Group was not previously contributing shall occur.

9.16. Additional Information; Additional Documents.

(a) Promptly upon request, execute and deliver to Agent, upon request, such documents and agreements as Agent may, from time to time, reasonably request to carry out the purposes, terms or conditions of this Agreement.

(b) Documents required to be delivered pursuant to Section 9.7 and 9.8 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Loan Parties shall deliver paper copies of such documents to Agent or any Lender upon its request to the Loan Parties to deliver such paper copies until a written request to cease delivering paper copies is given by Agent or such Lender and (ii) Loan Parties shall notify Agent (by facsimile or electronic mail) of the posting of any such documents. Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Loan Parties with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

9.17. Updates to Certain Schedules. Deliver to Agent promptly as shall be required to maintain the related representations and warranties as true and correct, updates to Schedules 4.4 (Locations of equipment and Inventory), Schedule 4.14 (Pledged Equity Interest Collateral), 5.9 (Intellectual Property), 5.23 (Equity Interests), 5.24 (Commercial Tort Claims), and 5.25 (Letter-of-Credit Rights) hereto; provided, that absent the occurrence and continuance of any Event of Default, Loan Parties shall only be required to provide such updates on a quarterly basis in connection with delivery of a Compliance Certificate with respect to the applicable fiscal quarter. Any such updated Schedules delivered by Loan Parties to Agent in accordance with this Section 9.17 shall automatically and immediately be deemed to amend and restate the prior version of such Schedule previously delivered to Agent and attached to and made part of this Agreement.

9.18. Financial Disclosure. Each Loan Party hereby irrevocably authorizes and directs all accountants and auditors employed by such Company at any time during the Term to exhibit and deliver to Agent and each Lender copies of any of such Company's financial statements, trial balances or other accounting records of any sort in the accountant's or auditor's possession, and to disclose to Agent and each Lender any information such accountants may have concerning such Company's financial status and business operations, subject to customary confidentiality or conflict of interest exclusions.

X. EVENTS OF DEFAULT.

The occurrence of any one or more of the following events shall constitute an "Event of Default":

10.1. Nonpayment. Failure by any Loan Party to pay when due (a) any principal on the Obligations (including without limitation pursuant to Section 2.9 hereof), or (b) any interest or any other fee, charge, amount or liability provided for herein or in any Other Document and such failure continues for a period of three (3) Business Days, in each case whether at maturity, by reason of acceleration pursuant to the terms of this Agreement, by notice of intention to prepay or by required prepayment.

10.2. Breach of Representation. Except as provided in Section 10.17 hereof, any representation or warranty made or deemed made by any Loan Party in this Agreement, any of the Other Documents or any related agreement, document, certificate or financial or other statement provided at any time in connection herewith or therewith shall prove to have been incorrect or misleading in any material respect on the date when made or deemed to have been made;

10.3. Financial Information. Failure by any Loan Party to (a) deliver financial information when due hereunder or, if no due date is specified herein, within fifteen (15) days following a reasonable request therefor (as such deadline may be extended by consent of Agent upon request of Loan Parties, such consent not to be unreasonably withheld, conditioned or delayed), or (b) permit the inspection of its books or records or access to its premises for audits and appraisals in accordance with the terms hereof;

10.4. Judicial Actions and Seizures. (I) Issuance of a notice of Lien, levy, assessment, injunction or attachment (a) against any Loan Party's Inventory or Receivables or (b) against a material portion of any Company's other property, which, in either case, is not stayed or lifted within thirty (30) days, or (II) (a) the seizure, garnishment or taking by a Governmental Body of any portion of the Collateral, or (b) the title and rights of any Loan Party or any other Person which is the owner of any material portion of the Collateral shall have become the subject matter of claim, litigation, suit, garnishment or other proceeding which might, in the opinion of Agent, upon final determination, result in impairment or loss of the security provided by this Agreement or the Other Document;

10.5. Noncompliance. Except as otherwise provided for in Sections 10.1, 10.3, 10.5(b) and 10.17 hereof, any (a) failure or neglect of any Loan Party or any Person to perform, keep or observe any term, provision, condition, covenant (subject to any Cure Right) herein contained, or contained in any Other Document or any other agreement or arrangement, now or hereafter entered into between any Loan Party or such Person, and Agent or any Lender, or (b) failure or neglect of any Loan Party to perform, keep or observe any term, provision, condition or covenant, contained in Sections 4.5, 6.1, 6.3, 6.11, 6.13, 9.4 or 9.6 hereof which is not cured within thirty (30) days from the occurrence of such failure or neglect;

10.6. Judgments. Any (a) judgment(s), writ(s), order(s) or decree(s) for the payment of money are rendered against any one or more Compan(ies) in an aggregate amount in excess of $5,000,000 (excluding any judgment that would be covered by any insurance of any Company for which the applicable insurer has not disputed coverage or disclaimed liability), and (b) (i) action shall be legally taken by any judgment creditor to levy upon assets or properties of any Company to enforce any such judgment, (ii) any such judgment shall remain undischarged for a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, shall not be in effect, or (iii) any Liens arising by virtue of the rendition, entry or issuance of such judgment upon assets or properties of any Loan Party shall be senior to any Liens in favor of Agent on such assets or properties;

10.7. Bankruptcy. Any Loan Party, any Subsidiary or Affiliate of any Loan Party shall (a) apply for, consent to or suffer the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar fiduciary of itself or of all or a substantial part of its property, (b) admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business, (c) make a general assignment for the benefit of creditors, (d) commence a voluntary case under any state or federal bankruptcy or receivership laws (as now or hereafter in effect), (e) be adjudicated a bankrupt or insolvent (including by entry of any order for relief in any involuntary Insolvency Proceeding commenced against it), (f) file a petition seeking to take advantage of any other law providing for the relief of debtors, (g) acquiesce to, or fail to have dismissed, within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (h) take any action for the purpose of effecting any of the foregoing;

10.8. [RESERVED];

10.9. Lien Priority. Any Lien created hereunder or provided for hereby or under any of the Other Documents for any reason ceases to be or is not a valid and perfected Lien having a first priority interest (subject only to Permitted Encumbrances that have priority as a matter of Applicable Law tor pursuant to the Intercreditor Agreement to the extent such Liens only attach to Collateral other than Receivables or Inventory);

10.10. Performance Guarantees. Any counterparty or other stakeholder takes any material step to enforce any rights or remedies it may have with respect to Performance Guarantees it may have against any Loan Party as reasonably determined by the Agent, to the extent that (x) the aggregate potential liability thereof exceeds $10,000,000 and (y) the relevant counterparties and/or stakeholders have not agreed to waive or postpone the exercise of such rights or remedies within thirty (30) days.

10.11. Cross Default. Any (x) specified "event of default" under (i) the Reimbursement/Cash Collateral Facility or the B. Riley Guarantee Reimbursement Agreement, (ii) the Related L/C Facility Agreement, (iii) the Unsecured Notes and/or the Unsecured Notes Indenture, or (iv) any other Indebtedness (other than the Obligations) of any Company with a then-outstanding principal balance (or, in the case of any Indebtedness not so denominated, with a then-outstanding total obligation amount) of $5,000,000 or more, or (y) any other event or circumstance which would permit the holder of any such Indebtedness of any Company to accelerate such Indebtedness (and/or the obligations of Companies thereunder) prior to the scheduled maturity or termination thereof, shall occur (regardless of whether the holder of such Indebtedness shall actually accelerate, terminate or otherwise exercise any rights or remedies with respect to such Indebtedness);

10.12. Breach of Guaranty, Guarantor Security Agreement or Pledge Agreement. Termination or breach of any Guaranty, Guarantor Security Agreement, Pledge Agreement or similar agreement executed and delivered to Agent in connection with the Obligations, or if any Guarantor or pledgor attempts to terminate, challenges the validity of, or its liability under, any such Guaranty, Guarantor Security Agreement, Pledge Agreement or similar agreement;

10.13. Change of Control. Any Change of Control shall occur;

10.14. Invalidity. Any material provision of this Agreement or any Other Document shall, for any reason, cease to be valid and binding on any Loan Party, or any Loan Party shall so claim in writing to Agent or any Lender or any Loan Party challenges the validity of or its liability under this Agreement or any Other Document;

10.15. [RESERVED].

10.16. Pension Plans. A Termination Event or an event or condition described in Sections 7.16 hereof shall occur with respect to any Pension Plan or Multiemployer Plan and, as a result of such Termination Event, event or condition, together with all other such Termination Events, events or conditions, any Company shall incur, or would be reasonably likely to incur, liability to a Pension Plan or Multiemployer Plan, the Internal Revenue Service or the PBGC (or any combination thereof) which would reasonably be expected to have a Material Adverse Effectf; or

10.17. Anti-Money Laundering/International Trade Law Compliance. (x) Any representation, warranty or covenant contained in Sections 5.29, 5.30, 6.17, 7.20 and 7.21 is or becomes false or misleading at any time, (y) any Company or any employees, officers, directors, affiliates, consultants, brokers, and agents of any Company shall become a Sanctioned Person, or (y) any Collateral shall become Embargoed Property.

XI. LENDERS' RIGHTS AND REMEDIES AFTER DEFAULT.

11.1. Rights and Remedies.

(a) Upon the occurrence of: (i) an Event of Default pursuant to Section 10.7 hereof, all Obligations shall be immediately due and payable (including, without limitation, any fees pursuant to Section 13.1 hereof, if applicable) and this Agreement and the Commitments shall be deemed terminated, (ii) any of the other Events of Default and at any time thereafter, at the option of Agent or at the direction of Required Lenders all Obligations shall be immediately due and payable (including, without limitation, any fees pursuant to Section 13.1 hereof, if applicable) and Agent or Required Lenders shall have the right to terminate this Agreement and to terminate the Commitments; and (iii) without limiting Section 8.2 hereof, any Default under Sections 10.7(g) hereof, the obligation of Lenders to make Advances hereunder shall be suspended until such time as such involuntary petition shall be dismissed. Upon the occurrence of any Event of Default, Agent shall have the right to exercise any and all rights and remedies provided for herein, under the Other Documents, under the Uniform Commercial Code and at law or equity generally, including the right to foreclose the security interests granted herein and to realize upon any Collateral by any available judicial procedure and/or to take possession of and sell any or all of the Collateral with or without judicial process. Agent may enter any of any Loan Party's premises or other premises without legal process and without incurring liability to any Loan Party therefor, and Agent may thereupon, or at any time thereafter, in its discretion without notice or demand, take the Collateral and remove the same to such place as Agent may deem advisable and Agent may require Loan Parties to make the Collateral available to Agent at a convenient place. With or without having the Collateral at the time or place of sale, Agent may sell the Collateral, or any part thereof, at public or private sale, at any time or place, in one or more sales, at such price or prices, and upon such terms, either for cash, credit or future delivery, as Agent may elect. Except as to that part of the Collateral which is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Agent shall give Loan Parties reasonable notification of such sale or sales, it being agreed that in all events written notice mailed to Borrowing Agent at least ten (10) days prior to such sale or sales is reasonable notification. At any public sale Agent or any Lender may bid (including credit bid) for and become the purchaser, and Agent, any Lender or any other purchaser at any such sale thereafter shall hold the Collateral sold absolutely free from any claim or right of whatsoever kind, including any equity of redemption and all such claims, rights and equities are hereby expressly waived and released by each Loan Party. In connection with the exercise of the foregoing remedies, including the sale of Inventory, Agent is granted a perpetual non-revocable, royalty free, nonexclusive license and Agent is granted permission to use all of each Loan Party's (a) Intellectual Property which is used or useful in connection with Inventory for the purpose of marketing, advertising for sale and selling or otherwise disposing of such Inventory and (b) equipment for the purpose of completing the manufacture of unfinished goods. The Net Cash Proceeds realized from the sale of any Collateral shall be applied to the Obligations in the order set forth in Section 11.5 hereof. Non-cash proceeds will only be applied to the Obligations as they are converted into cash. If any deficiency shall arise, Loan Parties shall remain liable to Agent and Lenders therefor.

(b) To the extent that Applicable Law imposes duties on Agent to exercise remedies in a commercially reasonable manner, each Loan Party acknowledges and agrees that it is not commercially unreasonable for Agent: (i) to fail to incur expenses reasonably deemed significant by Agent 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 governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of; (iii) to fail to exercise collection remedies against Customers or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral; (iv) to exercise collection remedies against Customers 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 such 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 capacity 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, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure Agent against risks of loss, collection or disposition of Collateral or to provide to Agent 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 11.1(b) is to provide non-exhaustive indications of what actions or omissions by Agent would not be commercially unreasonable in Agent's exercise of remedies against the Collateral and that other actions or omissions by Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 11.1(b). Without limitation upon the foregoing, nothing set forth in this Section 11.1(b) shall be construed to grant any rights to any Loan Party or to impose any duties on Agent that would not have been granted or imposed by this Agreement or by Applicable Law in the absence of this Section 11.1(b).

11.2. Agent's Discretion. Agent shall have the right to determine which rights, Liens, security interests or remedies Agent may at any time pursue, relinquish, subordinate, or modify, which procedures, timing and methodologies to employ, and what any other action to take with respect to any or all of the collateral and in what order, thereto and such determination will not in any way modify or affect any of Agent's or Lenders' rights hereunder as against Loan Parties or each other.

11.3. Setoff. Subject to Section 14.13 hereof, in addition to any other rights which Agent or any Lender may have under Applicable Law, upon the occurrence of an Event of Default hereunder, Agent and such Lender shall have a right, immediately and without notice of any kind, to apply any Loan Party's property held by Agent and such Lender or any of their Affiliates to reduce the Obligations and to exercise any and all rights of setoff which may be available to Agent and such Lender with respect to any deposits held by Agent or such Lender. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of Default hereunder without any action of the Agent, although the Agent may enter such setoff on its books and records at a later time.

11.4. Rights and Remedies not Exclusive. The enumeration of the foregoing rights and remedies is not intended to be exhaustive and the exercise of any rights or remedy shall not preclude the exercise of any other right or remedies provided for herein or otherwise provided by law, all of which shall be cumulative and not alternative.

11.5. Allocation of Payments and Proceeds of Collateral after Event of Default. Notwithstanding any provisions of this Agreement to the contrary:

(a) After the occurrence and during the continuance of an Event of Default, all amounts collected or received by any Secured Party on account of the Obligations or in respect of the Collateral (including without limitation any and all payments paid by or on behalf of any Loan Party (including any and all payments by or on behalf of any Guarantor in respect of its obligations and liabilities under its Guaranty), any and all proceeds of Collateral, any amounts paid by or on behalf of any Loan Party (or any Subsidiary of any Loan Party) on account of any of Cash Management Liabilities or Hedge Liabilities, any and all amount obtained by any Secured Party in respect of the Obligations by exercise of any rights of setoff or recoupment, any and all adequate protection payments payable to any Secured Party, and any and all distributions to any Secured Party under a plan of reorganization) (all of the foregoing, the "Obligations Receipts") shall be, if received by any Secured Party other than Agent, turned over to promptly by such Secured Party to Agent in the form received (together with any applicable endorsement), and upon receipt by Agent, may be, at Agent's discretion, applied or paid over as follows:

FIRST, to the payment until paid in full of (x) all out-of-pocket costs and expenses (including without limitation all legal expenses and reasonable attorneys' fees) of Agent to the extent payable and/or reimbursable by Loan Parties under the provisions of Section 16.9 hereof and/or any other applicable provisions hereof or of any Other Document, including all such costs and expenses incurred by Agent in connection with enforcing the rights and remedies of Agent and/or any other Secured Parties under this Agreement and the Other Documents, (y) all indemnification obligations owing to Agent to the extent payable by Loan Parties under the provisions of Section 16.5 hereof and/or any other applicable provisions hereof or of any Other Document, and (z) all interest and principal with respect to any Out-of-Formula Loans and Protective Advances funded by Agent with respect to the Collateral under or pursuant to the terms of this Agreement;

SECOND, to payment until paid in full of any fees owing and payable to Agent hereunder and/or under any Other Document;

THIRD, ratably, to the payment until paid in full of (x) all out-of-pocket costs and expenses (including without limitation all legal expenses and reasonable attorneys' fees) of each of the Lenders to the extent payable and/or reimbursable by Loan Parties under the provisions of Section 16.9 hereof and/or any other applicable provisions hereof or of any Other Document, and (y) all indemnification obligations owing to each of the Lenders to the extent payable by Loan Parties under the provisions of Section 16.5 hereof and/or any other applicable provisions hereof or of any Other Document;

FOURTH, to the payment of all of the Obligations consisting of accrued and unpaid interest on account of the Swing Loans;

FIFTH, to the payment of the outstanding principal amount of the Obligations consisting of Swing Loans;

SIXTH, to the payment until paid in full of all Obligations arising under this Agreement and the Other Documents consisting of accrued and unpaid interest (excluding all interest paid pursuant to clauses FIRST and FOURTH above) and accrued and unpaid fees (including but not limited to all Letter of Credit Fees and all Facility Fees);

SEVENTH, to the payment until paid in full of the outstanding principal amount of the Obligations arising under this Agreement and the Other Documents (including Cash Management Liabilities and Hedge Liabilities), including the payment or cash collateralization of any outstanding Letters of Credit in accordance with Section 3.2(b) hereof (excluding all principal paid pursuant to clauses FIRST and FIFTH above);

EIGHTH, to the payment until paid in full of all other Obligations arising under this Agreement and the Other Documents which shall have become due and payable and not repaid pursuant to clauses "FIRST" through "SEVENTH" above; and

NINTH, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, and subject in all cases to the other provisions of this Section 11.5 and also to any separate written agreements among any applicable Lenders, (i) amounts received shall be applied in the numerical order provided until exhausted and each applicable category is paid in full prior to application to the next succeeding category, (ii) each of the Lenders and other Secured Parties (as applicable) shall receive (so long as it is not a Defaulting Lender) an amount equal to its pro rata share (based on the proportion that the then outstanding Advances and Participation Commitments in the Advances held by such Lender and the outstanding amount of any Cash Management Liabilities, and Hedge Liabilities held by such Secured Party bears to the aggregate then outstanding Advances and Participation Commitments in the Advances and outstanding Cash Management Liabilities and Hedge Liabilities) of amounts available to be applied pursuant to clause "THIRD" above, (iii) each of the Lenders and other Secured Parties (as applicable)shall receive (so long as it is not a Defaulting Lender) an amount equal to its pro rata share (based on the proportion that the then outstanding Advances and Participation Commitments in the Advances held by such Lender and the outstanding amount of any Cash Management Liabilities, and Hedge Liabilities held by such Secured Party bears to the aggregate then outstanding Advances and Participation Commitments in the Advances and outstanding Cash Management Liabilities and Hedge Liabilities) of amounts available to be applied pursuant to "SIXTH" and "SEVENTH" above; (iv) each of the Secured Parties shall receive (so long as it is not a Defaulting Lender) an amount equal to its pro rata share (based on the proportion that the then outstanding remaining Obligations payable under "EIGHTH" above held by such Secured Party bears to the aggregate then remaining Obligations payable under "EIGHTH" above; and (v) to the extent that any amounts available for distribution pursuant to clause "SEVENTH" above are attributable to the issued but undrawn amount of outstanding Letters of Credit, such amounts shall be held by Agent as cash collateral for the Letters of Credit pursuant to Section 3.2(b) hereof and applied (A) first, to reimburse Issuer from time to time for any drawings under such Letters of Credit for any drawings under such Letters of Credit and otherwise pay and satisfy any Letter of Credit Fees and other Obligations relating to the Letters of Credit as they become due and payable, and (B) then, following the expiration, drawing in full, and/or return for cancellation with the consent of the applicable beneficiaries of all Letters of Credit, to all other Obligations in the order provided in this Section 11.5.

(b) In the event that, notwithstanding the foregoing provisions of this Section 11.5, any Obligations Receipts shall be received by any Secured Party in violation of the terms of this Section 11.5, such amounts shall be held in trust for the benefit of the Secured Parties as a whole and shall promptly be paid over to or delivered to Agent in the form received (together with any applicable endorsement) for application.

(c) Notwithstanding anything to the contrary in this Section 11.5, no Swap Obligations of any Non-Qualifying Party shall be paid with amounts received from such Non-Qualifying Party under its Guaranty (including sums received as a result of the exercise of remedies with respect to such Guaranty) or from the proceeds of such Non-Qualifying Party's Collateral if such Swap Obligations would constitute Excluded Hedge Liabilities, provided, however, that to the extent possible appropriate adjustments shall be made with respect to payments and/or the proceeds of Collateral from other Loan Parties that are Eligible Contract Participants with respect to such Swap Obligations to preserve the allocation to Obligations otherwise set forth above in this Section 11.5.

(d) For the avoidance of doubt, for all purposes under this Section 11.5, as applied to any category of Obligations and/or any clause under Section 11.5(a) hereof, "paid in full" means payment in cash of all amounts owing hereunder and under the Other Documents in respect of such Obligations and/or such clause of Section 11.5(a) hereof according to the terms hereof and of the Other Documents, including loan fees, service fees, professional fees and interest, default interest calculated at default rates, interest on interest and expense reimbursements, whether or not the same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding, and specifically including without limitation in the case of each clause under Section 11.5(a) hereof all Obligations of the type described in such clause 11.5(a) constituting Post-Petition Obligations.

XII. WAIVERS AND JUDICIAL PROCEEDINGS.

12.1. Waiver of Notice. Each Loan Party hereby waives notice of non-payment of any of the Receivables, demand, presentment, protest and notice thereof with respect to any and all instruments, notice of acceptance hereof, notice of loans or advances made, credit extended, Collateral received or delivered, or any other action taken in reliance hereon, and all other demands and notices of any description, except such as are expressly provided for herein.

12.2. Delay. No delay or omission on Agent's or any Lender's part in exercising any right, remedy or option shall operate as a waiver of such or any other right, remedy or option or of any Default or Event of Default.

12.3. Jury Waiver. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, COUNTERCLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT, ANY OTHER DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, ANY OTHER DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HEREBY CONSENTS THAT ANY SUCH CLAIM, COUNTERCLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

XIII. EFFECTIVE DATE AND TERMINATION.

13.1. Term. This Agreement, which shall inure to the benefit of and shall be binding upon the respective successors and permitted assigns of each Loan Party, Agent and each Lender, shall become effective on the Closing Date and shall continue in full force and effect until the earlier of (x) the fourth anniversary of the Closing Date, and (y) any voluntary termination by the Borrowers of all of the Revolving Commitments hereunder (the "Term"), unless sooner terminated as herein provided. Borrowers may terminate this Agreement at any time upon fifteen (15) days prior written notice to Agent upon Payment in Full of the Obligations. In the event either the Revolving Commitments are permanently reduced and/or terminated (whether voluntarily by Borrowers, upon mutual agreement of Borrowers and Lenders, automatically and/or at the election of Agent or Required Lenders upon the occurrence or during the continuance of any Event of Default, or otherwise) prior to the last day of the Term (the date of any such permanent reduction or termination of the Revolving Commitments, an "Early Termination Date"), Borrowers shall pay to Agent, for the ratable benefit of Lenders, an early termination fee ("Early Termination Fee") in an amount equal to (1) if the Early Termination Date occurs on or after the Closing Date but prior to or on the date immediately preceding the second anniversary of the Closing Date, an amount equal to one percent (1.00%) of the amount of reduction (up to 100% thereof in the case of any termination) to the Revolving Commitments, and (2) if the Early Termination Date occurs on or after the second anniversary of the Closing Date, zero ($0), which such fee shall be will be due and payable and fully-earned and non-refundable immediately upon the occurrence of each such event described in the foregoing clauses (x) and (y) and shall constitute part of the Obligations for all purposes herein at all times from and thereafter. EACH OF THE LOAN PARTIES EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE APPLICABLE LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF SUCH AN EARLY TERMINATION FEE PURSUANT TO THE TERMS HEREOF IN CONNECTION WITH ANY PAYMENT INCLUDING UPON ACCELERATION OR FORECLOSURE, IF APPLICABLE. The Loan Parties expressly agree that (A) the Early Termination Fee is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (B) the Early Termination Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made, (C) there has been a course of conduct between Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Early Termination Fee, (D) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this Section 13.1, (E) the Loan Parties' agreement to pay the Early Termination Fee is a material inducement to the Lenders to offer the Commitments and make the Advances provided for herein, and (F) the Early Termination Fee represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such prepayment.]

13.2. Termination. The termination of this Agreement shall not affect Agent's or any Lender's rights, or any of the Obligations having their inception prior to the effective date of such termination or any Obligations which pursuant to the terms hereof continue to accrue after such date, and the provisions hereof shall continue to be fully operative until all transactions entered into, rights or interests created and all of the Obligations have been Paid in Full. The security interests, Liens and rights granted to Agent and Lenders hereunder and the financing statements filed in connection herewith shall continue in full force and effect, notwithstanding the termination of this Agreement or the fact that Borrowers' Account may from time to time be temporarily in a zero or credit position, until (a) all of the Obligations have Paid in Full, the Commitments and this Agreement and the Other Documents have been terminated and each Loan Party has provided Agent and Lenders with an indemnification satisfactory to Agent with respect thereto, and (b) all of the Loan Parties have released Agent and the other Secured Parties from and against any and all claims of any nature whatsoever that any Loan Party may have against Secured Parties pursuant to a release in form and substance acceptable to Agent. Accordingly, each Loan Party waives any rights which it may have under the Uniform Commercial Code to demand the filing of termination statements with respect to the Collateral, and Agent shall not be required to send such termination statements to each Loan Party, or to file them with any filing office, unless and until this Agreement shall have been terminated in accordance with its terms, all Obligations have been Paid in Full, and all of the Loan Parties have released Agent and the other Secured Parties from and against any and all claims of any nature whatsoever that any Loan Party may have against Agent and such other Secured Parties pursuant to a release in form and substance acceptable to Agent. All representations, warranties, covenants, waivers and agreements set forth herein shall survive the termination of this Agreement and the Payment in Full of the Obligations.

XIV. REGARDING AGENT.

14.1. Appointment. Each Lender hereby designates PNC to act as Agent for such Lender under this Agreement and the Other Documents. Each Lender hereby irrevocably authorizes Agent to take such action on its behalf under the provisions of this Agreement and the Other Documents and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto and Agent shall hold all Collateral, payments of principal and interest, fees (except the Letter of Credit Fronting Fees and the fees set forth in Section 3.4 hereof), charges and collections received pursuant to this Agreement, for the ratable benefit of Lenders. Agent may perform any of its duties hereunder by or through its agents or employees. As to any matters not expressly provided for by this Agreement (including collection of the Note), Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of Required Lenders, and such instructions shall be binding; provided, however, that Agent shall not be required to take any action which, in Agent's discretion, exposes Agent to liability or which is contrary to this Agreement or the Other Documents or Applicable Law unless Agent is furnished with an indemnification reasonably satisfactory to Agent with respect thereto.

14.2. Nature of Duties. Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and the Other Documents. Neither Agent nor any of its officers, directors, employees or agents shall be (i) liable for any action taken or omitted by them as such hereunder or in connection herewith, unless caused by their gross (not mere) negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), or (ii) responsible in any manner for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof set forth in this Agreement, or in any of the Other Documents or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any of the Other Documents or for the value, validity, effectiveness, genuineness, due execution, enforceability or sufficiency of this Agreement, or any of the Other Documents or for any failure of any Loan Party to perform its obligations hereunder. Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements set forth in, or conditions of, this Agreement or any of the Other Documents, or to inspect the properties, books or records of any Loan Party. The duties of Agent as respects the Advances to Borrowers shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon Agent any obligations in respect of this Agreement or the transactions described herein except as expressly set forth herein.

14.3. Lack of Reliance on Agent. Independently and without reliance upon Agent or any other Lender, each Lender has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of each Loan Party in connection with the making and the continuance of the Advances hereunder and the taking or not taking of any action in connection herewith, and (ii) its own appraisal of the creditworthiness of each Loan Party. Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before making of the Advances or at any time or times thereafter except as shall be provided by any Loan Party pursuant to the terms hereof. Agent shall not be responsible to any Lender for any recitals, statements, information, representations or warranties herein or in any agreement, document, certificate or a statement delivered in connection with or for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency of this Agreement or any Other Document, or of the financial condition of any Loan Party, or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement, the Notes, the Other Documents or the financial condition or prospects of any Loan Party, or the existence of any Event of Default or any Default.

14.4. Resignation of Agent; Successor Agent. Agent may resign on sixty (60) days written notice to each of Lenders and Borrowing Agent and upon such resignation, Required Lenders will promptly designate a successor Agent reasonably satisfactory to Borrowing Agent (provided that no such approval by Borrowing Agent shall be required (i) in any case where the successor Agent is one of Lenders or (ii) after the occurrence and during the continuance of any Event of Default). Any such successor Agent shall succeed to the rights, powers and duties of Agent, and shall in particular succeed to all of Agent's right, title and interest in and to all of the Liens in the Collateral securing the Obligations created hereunder or any Other Document, and the term "Agent" shall mean such successor agent effective upon its appointment, and the former Agent's rights, powers and duties as Agent shall be terminated, without any other or further act or deed on the part of such former Agent. However, notwithstanding the foregoing, if at the time of the effectiveness of the new Agent's appointment, any further actions need to be taken in order to provide for the legally binding and valid transfer of any Liens in the Collateral from former Agent to new Agent and/or for the perfection of any Liens in the Collateral as held by new Agent or it is otherwise not then possible for new Agent to become the holder of a fully valid, enforceable and perfected Lien as to any of the Collateral, former Agent shall continue to hold such Liens solely as agent for perfection of such Liens on behalf of new Agent until such time as new Agent can obtain a fully valid, enforceable and perfected Lien on all Collateral, provided that Agent shall not be required to or have any liability or responsibility to take any further actions after such date as such agent for perfection to continue the perfection of any such Liens (other than to forego from taking any affirmative action to release any such Liens). After Agent's resignation as Agent, the provisions of this Article XIV, and any indemnification rights under this Agreement, including without limitation, rights arising under Section 16.5 hereof, shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement (and in the event resigning Agent continues to hold any Liens pursuant to the provisions of the immediately preceding sentence, the provisions of this Article XIV and any indemnification rights under this Agreement, including without limitation, rights arising under Section 16.5 hereof, shall inure to its benefit as to any actions taken or omitted to be taken by it in connection with such Liens).

14.5. Certain Rights of Agent. If Agent shall request instructions from Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any Other Document, Agent shall be entitled to refrain from such act or taking such action unless and until Agent shall have received instructions from Required Lenders; and Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, Lenders shall not have any right of action whatsoever against Agent as a result of its acting or refraining from acting hereunder in accordance with the instructions of Required Lenders.

14.6. Reliance. Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, statement, certificate, email, facsimile or telecopier message, order or other document or telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person or entity, and, with respect to all legal matters pertaining to this Agreement and the Other Documents and its duties hereunder, upon advice of counsel selected by it. Agent may employ agents and attorneys-in-fact and shall not be liable for the default or misconduct of any such agents or attorneys-in-fact selected by Agent with reasonable care.

14.7. Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder or under the Other Documents, unless Agent has received notice from a Lender or Borrowing Agent referring to this Agreement or the Other Documents, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that Agent receives such a notice, Agent shall give notice thereof to Lenders. Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by Required Lenders; 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 such Default or Event of Default as it shall deem advisable in the best interests of Lenders.

14.8. Indemnification. To the extent Agent is not reimbursed and indemnified by Loan Parties, each Lender will reimburse and indemnify Agent in proportion to its respective portion of the outstanding Advances and its respective Participation Commitments in the outstanding Letters of Credit and outstanding Swing Loans (or, if no Advances are outstanding, pro rata according to the percentage that its Revolving Commitment Amount constitutes of the total aggregate Revolving Commitment Amounts), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against Agent in performing its duties hereunder, or in any way relating to or arising out of this Agreement or any Other Document; provided that Lenders shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from Agent's gross (not mere) negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment). All amounts due under this Section 14.8 shall be payable not later than ten (10) days after demand therefor.

14.9. Agent in its Individual Capacity. With respect to the obligation of Agent to lend under this Agreement, the Advances made by it shall have the same rights and powers hereunder as any other Lender and as if it were not performing the duties as Agent specified herein; and the term "Lender" or any similar term shall, unless the context clearly otherwise indicates, include Agent in its individual capacity as a Lender. Agent may engage in business with any Loan Party as if it were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party for services in connection with this Agreement or otherwise without having to account for the same to Lenders.

14.10. Delivery of Documents. To the extent Agent receives financial statements required under Sections 9.7, 9.8, 9.9, 9.12 and 9.13 hereof or Borrowing Base Certificates from any Loan Party pursuant to the terms of this Agreement which any Loan Party is not obligated to deliver to each Lender, Agent will promptly deliver such documents and information to Lenders.

14.11. Loan Parties' Undertaking to Agent. Without prejudice to their respective obligations to Lenders under the other provisions of this Agreement, each Loan Party hereby undertakes with Agent to pay to Agent from time to time on demand all amounts from time to time due and payable by it for the account of Agent or Lenders or any of them pursuant to this Agreement to the extent not already paid. Any payment made pursuant to any such demand shall pro tanto satisfy the relevant Loan Party's obligations to make payments for the account of Lenders or the relevant one or more of them pursuant to this Agreement.

14.12. No Reliance on Agent's Customer Identification Program. To the extent the Advances or this Agreement is, or becomes, syndicated in cooperation with other Lenders, each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA PATRIOT Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended, modified, supplemented or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any of Loan Parties, their Affiliates or their agents, the Other Documents or the transactions hereunder or contemplated hereby: (i) any identity verification procedures, (ii) any recordkeeping, (iii) comparisons with government lists, (iv) customer notices or (v) other procedures required under the CIP Regulations or such Anti-Terrorism Laws.

14.13. Other Agreements. Each of Lenders agrees that it shall not, without the prior written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the request of Agent, set off against the Obligations, any amounts owing by such Lender to any Loan Party or any deposit accounts of any Loan Party now or hereafter maintained with such Lender. Anything in this Agreement to the contrary notwithstanding, each of Lenders further agrees that it shall not, unless specifically requested to do so by Agent, take any action to protect or enforce its rights arising out of this Agreement or the Other Documents, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and the Other Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

14.14. Erroneous Payments.

(a) If the Agent notifies a Lender, Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, Issuer or Secured Party (any such Lender, Issuer, Secured Party or other recipient, a "Payment Recipient") that the Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuer, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Agent, and such Lender, Issuer or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent in same day funds at the greater of the Overnight Bank Funding Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice from the Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, Issuer or Secured Party hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Agent (or any of its Affiliates) (x) that is in an amount different than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such, prepayment or repayment (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates), or (z) that such Lender, Issuer or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) In the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuer or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Agent pursuant to this Section 14.14(b),

(c) Each Lender, Issuer or Secured Party hereby authorizes the Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuer or Secured Party under any Other Document, or otherwise payable or distributable by the Agent to such Lender, Issuer or Secured Party from any source, against any amount due to the Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (Or portion thereof) is not recovered by the Agent for any reason, after demand therefor by the Agent in accordance with immediately preceding clause (a), from any Lender or Issuer that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Agent's notice to such Lender or Issuer at any time, (i) such Lender or Issuer shall be deemed to have assigned its loans (but not its commitments) of the relevant class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Agent may specify) (such assignment of the loans (but not commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an assignment and assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender or Issuer shall deliver any Notes evidencing such loans to the Borrower or the Agent, (ii) the Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Agent as the assignee Lender shall become a Lender or Issuer, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender or assigning Issuer shall cease to be a Lender or Issuer, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable commitments which shall survive as to such assigning Lender or assigning Issuer and (iv) the Agent may reflect in the Register its ownership interest in the loans subject to the Erroneous Payment Deficiency Assignment. The Agent may, in its discretion, sell any loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender or Issuer shall be reduced by the net proceeds of the sale of such loan (or portion thereof), and the Agent shall retain all other rights, remedies and claims against such Lender or Issuer (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the commitments of any Lender or Issuer and such commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Agent has sold a loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Agent may be equitably subrogated, the Agent shall be contractually subrogated to all the rights and interests of the applicable Lender, Issuer or Secured Party under the Other Documents with respect to such Erroneous Payment Return Deficiency (the "Erroneous Payment Subrogation Rights").

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other loan party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from the Borrower or any other loan party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payment received, including without limitation, waiver of any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations under this Section 14.14 shall survive the resignation or replacement of the Agent, the termination of all of the commitments and/or repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Other Document.

XV. BORROWING AGENCY.

15.1. Borrowing Agency Provisions.

(a) Each Loan Party hereby irrevocably designates Borrowing Agent to be its attorney and agent and in such capacity whether verbally, in writing or through electronic methods (including, without limitation, an Approved Electronic Communication) to (i) borrow, (ii) request advances, (iii) request the issuance of Letters of Credit, (iv) sign and endorse notes, (v) execute and deliver all instruments, documents, applications, security agreements, reimbursement agreements and letter of credit agreements for Letters of Credit and all other agreements, documents, instruments, certificates, notices, writings and further assurances now or hereafter required hereunder, (vi) make elections regarding interest rates, (vii) give instructions regarding Letters of Credit and agree with Issuer upon any amendment, extension or renewal of any Letter of Credit and (viii) otherwise take action under and in connection with this Agreement and the Other Documents, all on behalf of and in the name of such Loan Party or Loan Parties, and hereby authorizes Agent to pay over or credit all loan proceeds hereunder in accordance with the request of Borrowing Agent.

(b) The handling of this credit facility as a co-borrowing facility with a borrowing agent in the manner set forth in this Agreement is solely as an accommodation to Loan Parties and at their request. Neither Agent nor any Lender shall incur liability to Loan Parties as a result thereof. To induce Agent and Lenders to do so and in consideration thereof, each Loan Party hereby indemnifies Agent and each Lender and holds Agent and each Lender harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against Agent or any Lender by any Person arising from or incurred by reason of the handling of the financing arrangements of Loan Parties as provided herein, reliance by Agent or any Lender on any request or instruction from Borrowing Agent or any other action taken by Agent or any Lender with respect to this Section 15.1 except due to willful misconduct or gross (not mere) negligence by the indemnified party (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

(c) All Obligations shall be joint and several, and each Borrower shall make payment upon the maturity of the Obligations by acceleration or otherwise, and such obligation and liability on the part of each Borrower shall in no way be affected by any extensions, renewals and forbearance granted by Agent or any Lender to any Loan Party, failure of Agent or any Lender to give any Loan Party notice of borrowing or any other notice, any failure of Agent or any Lender to pursue or preserve its rights against any Loan Party, the release by Agent or any Lender of any Collateral now or thereafter acquired from any Loan Party, and such agreement by each Borrower to pay upon any notice issued pursuant thereto is unconditional and unaffected by prior recourse by Agent or any Lender to the other Loan Parties or any Collateral for such Borrower's Obligations or the lack thereof. Each Borrower waives all suretyship defenses.

15.2. Waiver of Subrogation. Each Loan Party expressly waives any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution of any other claim which such Loan Party may now or hereafter have against the other Loan Parties or any other Person directly or contingently liable for the Obligations hereunder, or against or with respect to any other Loan Party's property (including, without limitation, any property which is Collateral for the Obligations), arising from the existence or performance of this Agreement, until the termination of the Commitments, the termination of this Agreement and the Payment in Full of the Obligations.

15.3. Common Enterprise. The successful operation and condition of each of the Loan Parties and other Companies is dependent on the continued successful performance of the functions of the group of Loan Parties and other Companies as a whole and the successful operation of each Loan Parties and other Companies is dependent on the successful performance and operation of each other Loan Party and each other Company. Each of the Borrowers expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly or indirectly, from successful operations of Parent, each of the other Borrowers, each of the other Loan Parties, and the other Companies. Each Borrower expects to derive benefit (and the board of directors or other governing body of each such Borrower have determined that it may reasonably be expected to derive benefit), directly and indirectly, from the credit extended by the Lenders to the Borrowers hereunder, both in their separate capacities and as members of the group of Companies. Each Borrower has determined that execution, delivery, and performance of this Agreement and any Other Documents to be executed by such Borrower is within its corporate purpose, will be of direct and indirect benefit to such Borrower, and is in its best interest.

XVI. MISCELLANEOUS.

16.1. Governing Law. This Agreement and each Other Document (unless and except to the extent expressly provided otherwise in any such Other Document), and all matters relating hereto or thereto or arising herefrom or therefrom (whether arising under contract law, tort law or otherwise) shall, in accordance with Section 5-1401 of the General Obligations Law of the State of New York, be governed by and construed in accordance with the laws of the State of New York. Any judicial proceeding brought by or against any Loan Party with respect to any of the Obligations, this Agreement or any of the Other Documents may be brought in any court of competent jurisdiction in the State of New York, United States of America, and, by execution and delivery of this Agreement, each Loan Party accepts for itself and in connection with its properties, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. 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 or registered mail (return receipt requested) directed to Borrowing Agent at its address set forth in Section 16.6 hereof and service so made shall be deemed completed five (5) days after the same shall have been so deposited in the mails of the United States of America, or, at Agent's option, by service upon Borrowing Agent which each Loan Party irrevocably appoints as such Loan Party's Agent for the purpose of accepting service within the State of New York. Nothing herein shall affect the right to serve process in any manner permitted by law or shall limit the right of Agent or any Lender to bring proceedings against any Loan Party in the courts of any other jurisdiction. Each Loan Party waives any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon forum non conveniens. Each Loan Party waives the right to remove any judicial proceeding brought against such Loan Party in any state court to any federal court. Any judicial proceeding by any Loan Party against Agent or any Lender involving, directly or indirectly, any matter or claim in any way arising out of, related to or connected with this Agreement or any of the Other Documents shall be brought only in a federal or state court located in the County of New York, State of New York.

16.2. Entire Understanding.

(a) This Agreement and the documents executed concurrently herewith contain the entire understanding between each Loan Party, Agent and each Lender and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. Any promises, representations, warranties or guarantees not herein contained and hereinafter made shall have no force and effect unless in writing, signed by each Loan Party's, Agent's and each Lender's respective officers. Neither this Agreement nor any portion or provisions hereof may be amended, modified, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged. Notwithstanding the foregoing, Agent may modify this Agreement or any of the Other Documents for the purposes of completing missing content or correcting erroneous content of an administrative nature, without the need for a written amendment, provided that Agent shall send a copy of any such modification to Loan Parties and each Lender (which copy may be provided by electronic mail). Each Loan Party acknowledges that it has been advised by counsel in connection with the execution of this Agreement and Other Documents and is not relying upon oral representations or statements inconsistent with the terms and provisions of this Agreement.

(b) Required Lenders, Agent with the consent in writing of Required Lenders, and the Loan Parties may, subject to the provisions of this Section 16.2(b), from time to time enter into any written amendments to this Agreement or any of the Other Documents or any other supplemental agreements, documents or instruments for the purpose of adding or deleting any provisions or otherwise amending, modifying, supplementing, changing, varying or waiving in any manner the conditions, provisions or terms hereof or thereof or waiving any Event of Default hereunder or thereunder, but only to the extent specified in such written amendments or other agreements, documents or instruments; provided, however, that no such amendment, or other agreement, document or instrument shall:

(i) increase the Revolving Commitment or the maximum dollar amount of the Revolving Commitment Amount, as applicable of any Lender without the consent of such Lender directly affected thereby;

(ii) whether or not any Advances are outstanding, extend the Term or the time for payment of principal or interest of any Advance (excluding the due date of any mandatory prepayment of an Advance), or any fee payable to any Lender, or reduce the principal amount of or the rate of interest borne by any Advances or reduce any fee payable to any Lender, without the consent of each Lender directly affected thereby (except that Required Lenders may elect to waive or rescind any imposition of the Default Rate under Section 3.1 hereof or Letter of Credit Default Rate under Section 3.2 hereof (unless imposed by Agent));

(iii) except in connection with any increase pursuant to Section 2.24 hereof, increase the Maximum Revolving Advance Amount without the consent of all Lenders;

(iv) alter the definition of the term Required Lenders or alter, amend or modify this Section 16.2(b) without the consent of all Lenders;

(v) alter, amend or modify the provisions of Section 11.5 hereof without the consent of all Lenders;

(vi) release any Collateral during any calendar year (other than in accordance with the provisions of this Agreement) having an aggregate value in excess of $10,000,000 without the consent of all Lenders;

(vii) change the rights and duties of Agent without the consent of all Lenders and Agent;

(viii) subject to clause (e) below, permit any Revolving Advance to be made if after giving effect thereto the total of Revolving Advances outstanding hereunder would exceed the Formula Amount for more than sixty (60) consecutive Business Days or exceed one hundred and ten percent (110%) of the Formula Amount without the consent all Lenders;

(ix) increase the Advance Rates above the Advance Rates in effect on the Closing Date without the consent of all Lenders;

(x) release any Borrower without the consent of all Lenders; or

(xi) subordinated the Liens securing the Obligations in favor of any other Liens (other than any Permitted Liens which have priority over the Liens securing the Obligations by operation of law or any Permitted Liens which, by the express terms hereof, are contemplated to have priority over any of the Liens securing the Obligations).

(c) Any such supplemental agreement shall apply equally to each Lender and shall be binding upon Loan Parties, Lenders and Agent and all future holders of the Obligations. In the case of any waiver, Loan Parties, Agent and Lenders shall be restored to their former positions and rights, and any Event of Default waived shall be deemed to be cured and not continuing, but no waiver of a specific Event of Default shall extend to any subsequent Event of Default (whether or not the subsequent Event of Default is the same as the Event of Default which was waived), or impair any right consequent thereon.

(d) In the event that Agent requests the consent of a Lender pursuant to this Section 16.2 and (x) such consent is denied and (y) Required Lenders have approved such consent, then Agent may require such Lender to assign its interest in the Advances to Agent or to another Lender or to any other Person designated by Agent (the "Designated Lender"), for a price equal to (i) then outstanding principal amount thereof plus (ii) accrued and unpaid interest and fees (including any Early Termination Fee) due such Lender, which interest and fees shall be paid when collected from Borrowers. In the event Agent elects to require any Lender to assign its interest to Agent or to the Designated Lender, Agent will so notify such Lender in writing within forty five (45) days following such Lender's denial, and such Lender will assign its interest to Agent or the Designated Lender no later than five (5) days following receipt of such notice pursuant to a Commitment Transfer Supplement executed by such Lender, Agent or the Designated Lender, as appropriate, and Agent.

(e) Notwithstanding (i) the existence of a Default or an Event of Default, (ii) that any of the other applicable conditions precedent set forth in Section 8.2 hereof have not been satisfied or the Revolving Commitments have been terminated for any reason, or (iii) any other contrary provision of this Agreement, Agent may, without the consent of any Lender, voluntarily permit the outstanding Revolving Advances at any time to exceed an amount equal to the Formula Amount by up to ten percent (10%) of the Formula Amount for up to sixty (60) consecutive Business Days (the "Out-of-Formula Loans"). If Agent is willing in its sole and absolute discretion to permit such Out-of-Formula Loans, the Revolving Lenders shall be obligated to fund such Out-of-Formula Loans in accordance with their respective Revolving Commitment Percentages, and such Out-of-Formula Loans shall be payable on demand and shall bear interest at the Default Rate; provided that, if Agent does permit Out-of-Formula Loans, neither Agent nor Lenders shall be deemed thereby to have changed the limits of Section 2.1(a) hereof nor shall any Lender be obligated to fund Revolving Advances in excess of its Revolving Commitment Amount. For purposes of this paragraph, the discretion granted to Agent hereunder shall not preclude involuntary overadvances that may result from time to time due to the fact that the Formula Amount was unintentionally exceeded for any reason, including, but not limited to, Collateral previously deemed to be Eligible Receivables or Eligible Inventory, as applicable, becomes ineligible, collections of Receivables applied to reduce outstanding Revolving Advances are thereafter returned for insufficient funds or overadvances are made to protect or preserve the Collateral. In the event Agent involuntarily permits the outstanding Revolving Advances to exceed the Formula Amount by more than ten percent (10%), Agent shall use its efforts to have Borrowers decrease such excess in as expeditious a manner as is practicable under the circumstances and not inconsistent with the reason for such excess. Revolving Advances made after Agent has determined the existence of involuntary overadvances shall be deemed to be involuntary overadvances and shall be decreased in accordance with the preceding sentence. To the extent any Out-of-Formula Loans are not actually funded by the other Lenders as provided for in this Section 16.2(e), Agent may elect in its discretion to fund such Out-of-Formula Loans and any such Out-of-Formula Loans so funded by Agent shall be deemed to be Revolving Advances made by and owing to Agent, and Agent shall be entitled to all rights (including accrual of interest) and remedies of a Revolving Lender under this Agreement and the Other Documents with respect to such Revolving Advances.

(f) In addition to (and not in substitution of) the discretionary Revolving Advances permitted above in this Section 16.2, (A) Agent is hereby authorized by Borrowers and Lenders, at any time in Agent's sole discretion regardless of (i) the existence of a Default or an Event of Default, (ii) whether any of the other applicable conditions precedent set forth in Section 8.2 hereof have not been satisfied or the Revolving Commitments have been terminated for any reason, or (iii) any other contrary provision of this Agreement, to make Revolving Advances to Borrowers on behalf of Lenders which Agent, in its reasonable business judgment, deems necessary or desirable (a) to preserve or protect the Collateral, or any portion thereof, (b) to enhance the likelihood of, or maximize the amount of, repayment of the Advances and other Obligations, or (c) to pay any other amount chargeable to Borrowers pursuant to the terms of this Agreement (any such Revolving Advances, the "Protective Advances"); provided that at any time after giving effect to any such Protective Advances, the outstanding Revolving Advances, Swing Loans, Maximum Undrawn Amount of all outstanding Letters of Credit do not exceed the Maximum Revolving Advance Amount. The Revolving Lenders shall be obligated to fund such Protective Advances and effect a settlement with Agent therefore upon demand of Agent in accordance with their respective Revolving Commitment Percentages. To the extent any Protective Advances are not actually funded by the other Lenders as provided for in this Section 16.2(f), any such Protective Advances funded by Agent shall be deemed to be Revolving Advances made by and owing to Agent, and Agent shall be entitled to all rights (including accrual of interest) and remedies of a Revolving Lender under this Agreement and the Other Documents with respect to such Revolving Advances.

16.3. Successors and Assigns; Participations; New Lenders.

(a) This Agreement shall be binding upon and inure to the benefit of Loan Parties, Agent, each Lender, all future holders of the Obligations and their respective successors and assigns, except that no Loan Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Agent and each Lender.

(b) Each Loan Party acknowledges that in the regular course of commercial banking business one or more Lenders may at any time and from time to time sell participating interests in the Advances to other Persons (each such transferee or purchaser of a participating interest, a "Participant"). Each Participant may exercise all rights of payment (including rights of set-off) with respect to the portion of such Advances held by it or other Obligations payable hereunder as fully as if such Participant were the direct holder thereof provided that (i) Borrowers shall not be required to pay to any Participant more than the amount which it would have been required to pay to Lender which granted an interest in its Advances or other Obligations payable hereunder to such Participant had such Lender retained such interest in the Advances hereunder or other Obligations payable hereunder unless the sale of the participation to such Participant is made with Borrower's prior written consent and (ii) in no event shall Borrowers be required to pay any such amount arising from the same circumstances and with respect to the same Advances or other Obligations payable hereunder to both such Lender and such Participant. Loan Parties agree that each Participant shall be entitled to the benefits of Sections 2.2(g), 3.7, 3.9 and 3.10 (subject to the requirements and limitations therein, including the requirements under Section 3.10(e) (it being understood that the documentation required under Section 3.10(e) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 16.3(a); provided that each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 3.11 with respect to any Participant. Each Loan Party hereby grants to any Participant a continuing security interest in any deposits, moneys or other property actually or constructively held by such Participant as security for the Participant's interest in the Advances. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Advances or other obligations under this Agreement or any Other Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under this Agreement or any Other Documents) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Income Tax 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 and any Other Documents notwithstanding any notice to the contrary. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(c) Any Lender may sell, assign or transfer all or any part of its rights and obligations under or relating to any of the Advances or Commitments of such Lender under this Agreement and the Other Documents to one or more entities (each a "Purchasing Lender"), in minimum amounts of not less than $5,000,000, pursuant to a Commitment Transfer Supplement, executed by a Purchasing Lender, the transferor Lender, and Agent and delivered to Agent for recording, provided, however, each such sale, assignment or transfer by any Revolving Lender prior to the termination of such Revolving Lender's Revolving Commitment must consist of an assignment by such Revolving Lender of both the designated portion of such Revolving Lender's Revolving Commitment (which may be all of such Revolving Commitment) and of that portion of the Revolving Advances held by such Lender as is proportionate to that portion of such Revolving Lender's Revolving Commitment so sold, assigned or transferred. Upon such execution, delivery, acceptance and recording, from and after the transfer effective date determined pursuant to such Commitment Transfer Supplement, (i) Purchasing Lender thereunder shall be a party hereto and, to the extent provided in such Commitment Transfer Supplement, have the rights and obligations of a Lender hereunder with respect to the Advances and, if applicable, Commitments transferred to such Purchasing Lender under such Commitment Transfer Supplement, and (ii) the transferor Lender thereunder shall, to the extent provided in such Commitment Transfer Supplement, be released from its obligations under this Agreement. Such Commitment Transfer Supplement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing Lender and, if and as applicable, the resulting adjustment of the Revolving Commitment Percentages arising from the purchase by such Purchasing Lender of all or a portion of the rights and obligations of such transferor Lender under this Agreement and the Other Documents. Each Loan Party hereby consents to the addition of such Purchasing Lender and, if and as applicable, the resulting adjustment of the Revolving Commitment Percentages arising from the purchase by such Purchasing Lender of all or a portion of the rights and obligations of such transferor Lender under this Agreement and the Other Documents. Loan Parties shall execute and deliver such further documents and do such further acts and things in order to effectuate the foregoing; provided, however, that the consent of Borrowers (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Permitted Assignee; provided that Borrowers shall be deemed to have consented to any such assignment unless Borrowing Agent shall object thereto by written notice to Agent within five (5) Business Days after having received prior notice thereof.

(d) Any Lender, with the consent of Agent, which shall not be unreasonably withheld or delayed, may directly or indirectly sell, assign or transfer all or any portion of its rights and obligations under or relating to any of the Advances or Commitments of such Lender under this Agreement and the Other Documents to an entity, whether a corporation, partnership, trust, limited liability company or other entity that (i) is a Fund and (ii) is administered, serviced or managed by the assigning Lender or an Affiliate of such Lender (a "Purchasing CLO" and together with each Participant and Purchasing Lender, each a "Transferee" and collectively the "Transferees"), pursuant to a Commitment Transfer Supplement modified as appropriate to reflect the interest being assigned ("Modified Commitment Transfer Supplement"), executed by any intermediate purchaser, the Purchasing CLO, the transferor Lender, and Agent as appropriate and delivered to Agent for recording, provided, however, each such sale, assignment or transfer by any Revolving Lender prior to the termination of such Revolving Lender's Revolving Commitment must consist of an assignment by such Revolving Lender of both the designated portion of such Revolving Lender's Revolving Commitment (which may be all of such Revolving Commitment) and of that portion of the Revolving Advances held by such Lender as is proportionate to that portion of such Revolving Lender's Revolving Commitment so sold, assigned or transferred. Upon such execution and delivery, from and after the transfer effective date determined pursuant to such Modified Commitment Transfer Supplement, (i) Purchasing CLO thereunder shall be a party hereto and, to the extent provided in such Modified Commitment Transfer Supplement, have the rights and obligations of a Lender thereunder with respect to the Advances and, if applicable, Commitments transferred to such Purchasing CLO under such Commitment Transfer Supplement, and (ii) the transferor Lender thereunder shall, to the extent provided in such Modified Commitment Transfer Supplement, be released from its obligations under this Agreement. Such Modified Commitment Transfer Supplement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing CLO. Each Loan Party hereby consents to the addition of such Purchasing CLO. Loan Parties shall execute and deliver such further documents and do such further acts and things in order to effectuate the foregoing.

(e) Agent shall maintain at its address a copy of each Commitment Transfer Supplement and Modified Commitment Transfer Supplement delivered to it and a register (the "Register") for the recordation of the names and addresses of each Lender and the outstanding principal, accrued and unpaid interest and other fees due hereunder. The entries in the Register shall be conclusive, in the absence of manifest error, and each Loan Party, Agent and Lenders may treat each Person whose name is recorded in the Register as the owner of the Advance recorded therein for the purposes of this Agreement. The Register shall be available for inspection by Borrowing Agent or any Lender at any reasonable time and from time to time upon reasonable prior notice. Agent shall receive a fee in the amount of $3,500 payable by the applicable Purchasing Lender and/or Purchasing CLO upon the effective date of each transfer or assignment (other than to an intermediate purchaser or to a Permitted Assignee) to such Purchasing Lender and/or Purchasing CLO and, if and as applicable, the resulting adjustment of the Revolving Commitment Percentages arising therefrom.

(f) Each Loan Party authorizes each Lender to disclose to any Transferee and any prospective Transferee any and all financial information in such Lender's possession concerning such Loan Party which has been delivered to such Lender by or on behalf of such Loan Party pursuant to this Agreement or in connection with such Lender's credit evaluation of such Loan Party.

(g) Notwithstanding anything to the contrary set forth in this Agreement, any Lender may at any time and from time to 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; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

16.4. Application of Payments. Agent shall have the continuing and exclusive right to apply or reverse and re-apply any payment and any and all proceeds of Collateral to any portion of the Obligations. To the extent that any Loan Party makes a payment or Agent or any Lender receives any payment or proceeds of the Collateral for any Loan Party's benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the Obligations or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by Agent or such Lender.

16.5. Indemnity. Each Loan Party shall defend, protect, indemnify, pay and save harmless Agent, Issuer, each Lender and each of their respective officers, directors, Affiliates, attorneys, employees and agents (each an "Indemnified Party") for and from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, actions, judgments, suits, costs, charges, expenses and disbursements of any kind or nature whatsoever (including fees and disbursements of counsel) (collectively, "Claims") which may be imposed on, incurred by, or asserted against any Indemnified Party in arising out of or in any way relating to or as a consequence, direct or indirect, of: (i) this Agreement, the Other Documents, the Advances and other Obligations and/or the transactions contemplated hereby including the Transactions, (ii) any action or failure to act or action taken only after delay or the satisfaction of any conditions by any Indemnified Party in connection with and/or relating to the negotiation, execution, delivery or administration of the Agreement and the Other Documents, the credit facilities established hereunder and thereunder and/or the transactions contemplated hereby including the Transactions, (iii) any Loan Party's failure to observe, perform or discharge any of its covenants, obligations, agreements or duties under or breach of any of the representations or warranties made in this Agreement and the Other Documents, (iv) the enforcement of any of the rights and remedies of Agent, Issuer or any Lender under the Agreement and the Other Documents, (v) any threatened or actual imposition of fines or penalties, or disgorgement of benefits, for violation of any Anti-Terrorism Law by any Loan Party or any Affiliate or Subsidiary of any Loan Party, and (vi) any claim, litigation, proceeding or investigation instituted or conducted by any Governmental Body or instrumentality, any Loan Party, any Affiliate or Subsidiary of any Loan Party or any other Person with respect to any aspect of, or any transaction contemplated by, or referred to in, or any matter related to, this Agreement or the Other Documents, whether or not Agent or any Lender is a party thereto. Without limiting the generality of any of the foregoing, each Loan Party shall defend, protect, indemnify, pay and save harmless each Indemnified Party from (x) any Claims which may be imposed on, incurred by, or asserted against any Indemnified Party arising out of or in any way relating to or as a consequence, direct or indirect, of the issuance of any Letter of Credit hereunder and (y) any Claims which may be imposed on, incurred by, or asserted against any Indemnified Party under any Environmental Laws with respect to or in connection with any Real Property owned or leased by any Company, any Hazardous Discharge, the presence of any Hazardous Materials affecting such Real Property (whether or not the same originates or emerges from such Real Property or any contiguous real estate), including any Claims consisting of or relating to the imposition or assertion of any Lien on any of such Real Property under any Environmental Laws and any loss of value of such Real Property as a result of the foregoing except to the extent such loss, liability, damage and expense is attributable to any Hazardous Discharge resulting from actions on the part of Agent or any Lender. Loan Parties' obligations under this Section 16.5 shall arise upon the discovery of the presence of any Hazardous Materials at any Real Property owned or leased by any Company, whether or not any federal, state, or local environmental agency has taken or threatened any action in connection with the presence of any Hazardous Materials, in each such case except to the extent that any of the foregoing arises out of the gross negligence or willful misconduct of the Indemnified Party (as determined by a court of competent jurisdiction in a final and non-appealable judgment). Without limiting the generality of the foregoing, this indemnity shall extend to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including fees and disbursements of counsel) asserted against or incurred by any of the Indemnified Parties by any Person under any Environmental Laws or similar laws by reason of any Loan Party's or any other Person's failure to comply with laws applicable to solid or hazardous waste materials, including Hazardous Materials and Hazardous Waste, or other Toxic Substances. This Section 16.5 shall not apply to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from a non-Tax claim.

16.6. Notice. Any notice or request hereunder may be given to Borrowing Agent or any Loan Party or to Agent or any Lender at their respective addresses set forth below or at such other address as may hereafter be specified in a notice designated as a notice of change of address under this Section. Any notice, request, demand, direction or other communication (for purposes of this Section 16.6 only, a "Notice") to be given to or made upon any party hereto under any provision of this Agreement shall be given or made by telephone or in writing (which includes by means of electronic transmission (i.e., "e-mail") or facsimile transmission or by setting forth such Notice on a website to which Loan Parties are directed (an "Internet Posting") if Notice of such Internet Posting (including the information necessary to access such site) has previously been delivered to the applicable parties hereto by another means set forth in this Section 16.6) in accordance with this Section 16.6. Any such Notice must be delivered to the applicable parties hereto at the addresses and numbers set forth under their respective names set forth below in this Section 16.6 or in accordance with any subsequent unrevoked Notice from any such party that is given in accordance with this Section 16.6. Any Notice shall be effective:

(a) In the case of hand-delivery, when delivered;

(b) If given by mail, four (4) days after such Notice is deposited with the United States Postal Service, with first-class postage prepaid, return receipt requested;

(c) In the case of a telephonic Notice, when a party is contacted by telephone, if delivery of such telephonic Notice is confirmed no later than the next Business Day by hand delivery, a facsimile or electronic transmission, an Internet Posting or an overnight courier delivery of a confirmatory Notice (received at or before 12:00 Noon on such next Business Day);

(d) In the case of a facsimile transmission, when sent to the applicable party's facsimile machine's telephone number, if the party sending such Notice receives confirmation of the delivery thereof from its own facsimile machine;

(e) In the case of electronic transmission, when actually received;

(f) In the case of an Internet Posting, upon delivery of a Notice of such posting (including the information necessary to access such site) by another means set forth in this Section 16.6; and

(g) If given by any other means (including by overnight courier), when actually received.

Any Lender giving a Notice to Borrowing Agent or any Loan Party shall concurrently send a copy thereof to Agent, and Agent shall promptly notify the other Lenders of its receipt of such Notice.

(A) If to Agent or PNC at:

PNC Bank, National Association
2 International Place, 29th Floor
Boston, MA 02110
Attention: Relationship Manager – Babcock & Wilcox

with a copy to:

Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103
Attention: Michael Graziano, Esq.
Facsimile: (215) 832-5387
Email: Graziano@blankrome.com

(B) If to a Lender other than Agent, as specified on its signature page hereto or in the Commitment Transfer Supplement or joinder agreement under which such Lender became a party hereto.

(C) If to Borrowing Agent or any Loan Party:

Babcock & Wilcox Enterprises, Inc.
1200 East Market Street
Akron, Ohio 44305
Attention: Lou Salamone
Telephone: 919-280-7343
Email: lsalamone@babcock.com

and-

Babcock & Wilcox Enterprises, Inc.
1200 East Market Street
Akron, Ohio 44305
Attention: John Dziewisz
Email: jjdziewisz@babcock.com

with a copy to:

King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309
Attention: Sarah Borders
Telephone: (404) 572-3596
Email: sborders@kslaw.com

16.7. Survival. The obligations of Loan Parties under Sections 2.2(f), 2.2(g), 2.2(h), 2.16, 2.17, 2.19, 3.7, 3.8, 3.9, 3.10, 16.5 and 16.9 hereof and the obligations of Lenders under Sections 2.2, 2.15(b), 2.16, 2.18, 2.19, 14.8 and 16.5 hereof shall survive the termination of this Agreement and the Other Documents and the Payment in Full of the Obligations.

16.8. Severability. If any part of this Agreement is contrary to, prohibited by, or deemed invalid under Applicable Laws, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given effect so far as possible.

16.9. Expenses. The Loan Parties shall pay (a) all out-of-pocket expenses incurred by Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for each of Agent), and shall pay all fees and time charges and disbursements for attorneys who may be employees of Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the Other Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (b) all reasonable out-of-pocket expenses incurred by Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, (c) all reasonable out-of-pocket expenses incurred by Agent, any Lender or Issuer (including the fees, charges and disbursements of any counsel for Agent, any Lender or Issuer), and shall pay all fees and time charges for attorneys who may be employees of Agent, any Lender or Issuer, in connection with the enforcement or protection of its rights (i) in connection with this Agreement and the Other Documents, including its rights under this Section, or (ii) in connection with the Advances made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit, and (d) all reasonable out-of-pocket expenses of Agent's regular employees and agents engaged periodically to perform audits of the Loan Parties' books, records and business properties; provided for this Section 16.9, that any expenses for counsel shall be limited to one lead counsel and one local counsel in each relevant jurisdiction, and one specialty counsel in any relevant area of the law, for Agent and Lenders as a group.

16.10. Injunctive Relief. Each Loan Party recognizes that, in the event any Loan Party fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, or threatens to fail to perform, observe or discharge such obligations or liabilities, any remedy at law may prove to be inadequate relief to Lenders; therefore, Agent, if Agent so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving that actual damages are not an adequate remedy.

16.11. Consequential Damages. Neither Agent, nor any Lender, nor any agent or attorney for any of them, shall be liable to any Loan Party (or any Affiliate of any Loan Party) for indirect, punitive, exemplary or consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Obligations or as a result of any transaction contemplated under this Agreement or any Other Document.

16.12. Captions. The captions at various places in this Agreement are intended for convenience only and do not constitute and shall not be interpreted as part of this Agreement.

16.13. Counterparts; Facsimile Signatures. This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement.

Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature hereto.

16.14. Construction. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, schedules or exhibits thereto.

16.15. Confidentiality; Sharing Information. Agent, each Lender and each Transferee shall hold all non-public information obtained by Agent, such Lender or such Transferee pursuant to the requirements of this Agreement in accordance with Agent's, such Lender's and such Transferee's customary procedures for handling confidential information of this nature; provided, however, Agent, each Lender and each Transferee may disclose such confidential information (a) to its examiners, Affiliates, directors, officers, partners, employees agents, current and prospective financing sources and investors, outside auditors, counsel and other professional advisors, (b) to Agent, any Lender or to any prospective Transferees, (c) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any of the Other Documents, and (d) as required or requested by any Governmental Body or representative thereof or pursuant to legal process; provided, further that (i) unless specifically prohibited by Applicable Law, Agent, each Lender and each Transferee shall use its reasonable best efforts prior to disclosure thereof, to notify the applicable Loan Party of the applicable request for disclosure of such non-public information (A) by a Governmental Body or representative thereof (other than any such request in connection with an examination of the financial condition of a Lender or a Transferee by such Governmental Body) or (B) pursuant to legal process and (ii) in no event shall Agent, any Lender or any Transferee be obligated to return any materials furnished by any Loan Party other than those documents and instruments in possession of Agent or any Lender in order to perfect its Lien on the Collateral once the Obligations have been Paid in Full, the Commitments have been terminated and this Agreement has been terminated. Each Loan Party acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to such Loan Party or one or more of its Affiliates (in connection with this Agreement or otherwise) by any Lender or by one or more Subsidiaries or Affiliates of such Lender and each Loan Party hereby authorizes each Lender to share any information delivered to such Lender by such Loan Party and its Subsidiaries pursuant to this Agreement, or in connection with the decision of such Lender to enter into this Agreement, to any such Subsidiary or Affiliate of such Lender, it being understood that any such Subsidiary or Affiliate of any Lender receiving such information shall be bound by the provisions of this Section 16.15 as if it were a Lender hereunder. Such authorization shall survive the repayment of the other Obligations and the termination of this Agreement. Notwithstanding any non-disclosure agreement or similar document executed by Agent in favor of any Loan Party or any of any Loan Party's affiliates, the provisions of this Agreement shall supersede such agreements.

16.16. Publicity. Each Loan Party and each Lender hereby authorizes Agent to make appropriate announcements of the financial arrangement entered into among Loan Parties, Agent and Lenders, including announcements which are commonly known as tombstones, in such advertising, print media, and promotional materials (including, without limitation, on any of the Agent's websites) and to such selected parties as Agent shall in its sole and absolute discretion deem appropriate.

16.17. Certifications From Banks and Participants; USA PATRIOT Act.

(a) Each Lender or assignee or participant of a Lender that is not incorporated under the Laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA PATRIOT Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to Agent the certification, or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the USA PATRIOT Act and the applicable regulations: (1) within ten (10) days after the Closing Date, and (2) as such other times as are required under the USA PATRIOT Act.

(b) The USA PATRIOT Act requires all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, Agent and each Lender may from time to time request, and each Loan Party shall provide to Agent or such Lender, such Loan Party's name, address, tax identification number and/or such other identifying information as shall be necessary for Agent or such Lender to comply with the USA PATRIOT Act and any other Anti-Terrorism Law.

XVII. GUARANTY AND SURETYSHIP AGREEMENT

17.1. Guaranty and Suretyship Agreement. Each Guarantor hereby guarantees, and becomes surety for the prompt payment and performance when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of (a) all of the Obligations owing by the Loan Parties to the Secured Parties, including all of the costs and expenses and all of the indemnities owing to any Secured Party or other Indemnitee under the provisions of Sections 16.5 and 16.9 hereof, and (b) the costs and expenses of Agent in enforcing the provisions of this Article XVII (the "Guaranteed Obligations"). The obligations and liabilities of the Guarantors under this Article XVII are joint and several, and each Guarantor hereby acknowledges and accepts such joint and several liability and further acknowledges and agrees that the joint and several liabilities of Guarantors under the provisions of this Article XVII shall be primary and direct liabilities and not secondary liabilities.

17.2. Guaranty of Payment and Not Merely Collection. The provisions of this Article XVII constitute a guaranty of payment and not of collection and no Secured Party shall be required, as a condition of any Guarantor's liability hereunder, to make any demand upon or to pursue any of their rights against any Loan Parties and/or any of the Collateral, or to pursue any rights which may be available to any Secured Party with respect to any other person who may be liable for the payment of the Guaranteed Obligations and/or any other collateral or security available to any Secured Party therefor.

17.3. Guarantor and Suretyship Waivers.

(a) The provisions of this Article XVII constitute an absolute, unconditional, irrevocable and continuing guaranty and will remain in full force and effect until all of the Guaranteed Obligations have been Paid in Full. The provisions of this Article XVII will remain in full force and effect even if there are no Guaranteed Obligations outstanding at a particular time or from time to time. The provisions of this Article XVII will not be affected (i) by any surrender, exchange, acceptance, compromise or release by any Secured Party of any other party, or any other guaranty or any Collateral or other collateral or security held by it for any of the Guaranteed Obligations, (ii) by any failure of any Secured Party to take any steps to perfect or maintain their Liens or security interest in or to preserve their rights in or to any Collateral or any other security or other collateral for the Guaranteed Obligations or any guaranty, or (iii) by any irregularity, unenforceability or invalidity of the Guaranteed Obligations or any part thereof or any security therefor or other guaranty thereof, and the provisions of this Article XVII will not be affected by any other facts, events, occurrences or circumstances (except Payment in Full of the Guaranteed Obligations) that might otherwise give rise to any "guarantor" or "suretyship" defenses to which any Guarantor might otherwise be entitled, all of which such "guarantor" or "suretyship" defenses are hereby waived by each Guarantor. The obligations of each Guarantor hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense of any kind, including any such counterclaim, set-off, deduction or defense based upon any claim such Guarantor may have against any Borrower or any Secured Party (or any of their respective Affiliates), or based upon any claim any Borrower or any other guarantor or surety may have against any Secured Party (or any of their respective Affiliates), except the Payment in Full of the Guaranteed Obligations.

(b) Notice of acceptance of the agreement to guaranty provided for under the provisions of this Article XVII, notice of extensions of credit to Loan Parties from time to time, notice of default, diligence, presentment, notice of dishonor, protest, demand for payment, and any defense based upon any Secured Party's failure to comply with the notice requirements of §§ 9-611, 9-612 and 9-613 of the Uniform Commercial Code are hereby waived to the fullest extent permitted by law. Each Guarantor hereby waives all defenses based on suretyship or impairment of collateral to the fullest extent permitted by law.

(c) Secured Parties may at any time and from time to time, without impairing or releasing, discharging or modifying any Guarantor's liabilities hereunder and (for purposes of this Article XVII only) without notice to or the consent of any Guarantor: (i) change the manner, place, time or terms of payment or performance of or interest rates or other fees on, or other terms relating to (including the maturity thereof), any of the Guaranteed Obligations; (ii) renew, extend, substitute, modify, amend or alter or refinance, or grant consents or waivers relating to any of the terms and provisions of this Agreement or any of the Other Documents or of the Guaranteed Obligations, or of any other guaranties, or any security for the Obligations or guaranties, (iii) increase (without limit of any kind) or decrease the Guaranteed Obligations (including all loans and extensions of credit thereunder) or modify the terms on which loans and extensions of credit may be made to Loan Parties (including without limitation by making available to Loan Parties under this Agreement and/or any Other Document and as part of the Guaranteed Obligations any new loans, advances or other extensions of credit of any kind, including any such new loans, advances or extension of credit of a new or different type or nature (including any new Cash Management Products and Services of any kind, Foreign Currency Hedges of any kind and/or Interest Rate Hedge of any kind) as compared to the loans, advances and extensions of credit available to Loan Parties hereunder as of the Closing Date); (iv) apply any and all payments by whomever paid or however realized including any proceeds of the Collateral or any other collateral or security, to any Guaranteed Obligations in such order, manner and amount as Agent may determine in its sole discretion in accordance with the terms of this Agreement; (v) settle, compromise or deal with any other Person, including any Borrower or any other guarantor, with respect to the Guaranteed Obligations in such manner as Agent deems appropriate in its sole discretion; (vi) substitute, exchange, subordinate, sell, compromise or release any security or guaranty for the Guaranteed Obligations; or (vii) take such actions and exercise such remedies hereunder as provided herein.

17.4. Repayments or Recovery from Secured Parties. If any demand or claim is made at any time upon any Secured Party for the repayment or recovery of any amount received by it in payment or on account of the Guaranteed Obligations (including any such demand or claim made in respect of or arising out of any laws relating to fraudulent transfers, fraudulent conveyances or preferences) and if any Secured Party repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body in respect of such demand or claim, or by reason of any settlement or compromise of any such demand or claim, the joint and several liability of Guarantors with respect to such portion of the Guaranteed Obligations previously satisfied by the payment of the amount so repaid or recovered shall be reinstated and revived and Guarantors will be and remain jointly and severally liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by Agent and/or such Lender, as the case may be. The provisions of this Section 17.4 shall survive any release and/or termination of this Agreement (and/or of any Guarantor's liability under this Article XVII) and will be and remain effective notwithstanding any contrary action which may have been taken by Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to Secured Parties' rights hereunder and any such release and/or termination will be deemed to have been conditioned upon such payment having become final and irrevocable.

17.5. Enforceability of Obligations. No modification, limitation or discharge of the Guaranteed Obligations arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law with respect to any Borrower or any other guarantor or surety for the Guaranteed Obligations will affect, modify, limit or discharge Guarantors' liability in any manner whatsoever and the provisions of this Article XVII will remain and continue in full force and effect and will be enforceable against each Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. Each Guarantor hereby waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the Guaranteed Obligations that may result from any such proceeding.

17.6. Guaranty Payable upon Event of Default; Remedies.

(a) Upon the occurrence and during the continuance of any Event of Default under this Agreement: (i) Guarantors shall pay to Agent, immediately upon Agent's demand therefore (except in the case of any Event of Default under Section 10.7, in which case Guarantors shall pay to Agent immediately, without any demand or notice whatsoever), the full amount of the Guaranteed Obligations; (ii) Agent in its discretion may exercise with respect to any Collateral of any Guarantor or any other collateral or security for the Guaranteed Obligations any one or more of the rights and remedies provided a secured party under the Uniform Commercial Code or any other applicable law or at equity (all of which such rights and remedies are hereby deemed incorporated herein and confirmed and ratified by Guarantors as if expressly set forth and granted and agreed to by Guarantors herein); and/or (iii) Agent in its discretion may exercise from time to time any other rights and remedies available to it or any other Secured Party at law, in equity or otherwise.

(b) The Guarantors jointly and severally agree that, as between the Guarantors and the Secured Parties, the Obligations of Loan Parties under this Agreement and the Other Documents may be declared to be forthwith due and payable as provided in Section 11.1 hereof (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 11.1) for purposes of this Article XVII (specifically including Section 17.1 hereof), notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Loan Parties and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such Obligations (whether or not due and payable by Loan Parties) shall forthwith become due and payable by the Guarantors for purposes of this Article XVII (specifically including Section 17.1 hereof).

(c) Each Guarantor hereby acknowledges that the guarantee provided for under the provisions of this Article XVII constitutes an instrument for the payment of money, and consents and agrees that any Secured Party, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

17.7. Waiver of Subrogation. Until the Guaranteed Obligations are Paid in Full and this Agreement and the Commitments have been terminated, each Guarantor waives in favor of Secured Parties any and all rights which such Guarantor may have to (a) assert any claim against any Borrower or any other Guarantor based on subrogation, restitution, reimbursement or contribution rights with respect to payments made under the provisions of this Article XVII, and (b) any realization on any property of any Borrower or any other Guarantor, including participation in any marshalling of any Borrower's or any other Guarantor's assets.

17.8. Continuing Guaranty and Suretyship Agreement. The provisions of this Article XVII shall constitute a continuing guaranty and suretyship obligation of each Guarantor with respect to all Guaranteed Obligations from time to time outstanding, arising or incurred, and shall continue in effect, and Secured Parties may continue to act in reliance hereon, until all of the Guaranteed Obligations have been Paid in Full and this Agreement and the Commitments have been terminated, and until such time, no Guarantor shall have any right to terminate or revoke the provisions of this Article XVII nor any of the guarantee and surety agreements and other covenants and undertakings provided for herein.

17.9. General Limitation on Guarantee Obligations. If, in the course of any legal action or proceeding under any applicable law, including any Insolvency Proceedings with respect to any Guarantor, the obligations of any Guarantor under the provisions of this Article XVII would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under the provisions of this Article XVII, then, notwithstanding any other provision to the contrary, the amount of such liabilities of such Guarantor under the provisions of this Article XVII shall, without any further action by such Guarantor, any Secured Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 17.10 hereof) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding. Absent any such determination in any such legal action or proceeding, the provisions of this Section 17.9 shall in no respect limit the obligations and liabilities of any Guarantor to Secured Parties, and each Guarantor shall remain liable to Secured Parties for the full amount guaranteed by such Guarantor hereunder.

17.10. Right of Contribution. Each Guarantor hereby agrees that to the extent that any Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 17.7 hereof. The provisions of this Section 17.10 shall in no respect limit the obligations and liabilities of any Guarantor to Secured Parties, and each Guarantor shall remain liable to Secured Parties for the full amount guaranteed by such Guarantor hereunder.

17.11. Keepwell. Without limiting any other provision of this Article XVII or otherwise limiting the provisions of Section 6.15 hereof as to the Loan Parties generally, each Guarantor hereby agrees that, for the purposes of this Article XVII as an absolute, unconditional, irrevocable and continuing guaranty agreement, the provisions of Section 6.15 hereof are hereby incorporated and restated in this Article XVII as an obligation of each Guarantor that is and/or may hereafter be a Qualified ECP Loan Party from time to time.

[Remainder of Page Intentionally Left Blank]

Each of the parties has signed this Agreement as of the day and year first above written.

BORROWER:

BABCOCK & WILCOX ENTERPRISES, INC.

By: /s/ Rodney Carlson
Name: Rodney Carlson
Title: Treasurer

GUARANTORS:

AMERICON EQUIPMENT SERVICES, INC.
AMERICON, LLC
BABCOCK & WILCOX CONSTRUCTION CO., LLC
BABCOCK & WILCOX EBENSBURG POWER, LLC
BABCOCK & WILCOX EQUITY INVESTMENTS, LLC
BABCOCK & WILCOX HOLDINGS, LLC,
BABCOCK & WILCOX INDIA HOLDINGS, INC.
BABCOCK & WILCOX INTERNATIONAL SALES AND SERVICE CORPORATION
BABCOCK & WILCOX INTERNATIONAL, INC.
THE BABCOCK & WILCOX COMPANY
BABCOCK & WILCOX TECHNOLOGY, LLC
DELTA POWER SERVICES, LLC
DIAMOND OPERATING CO., INC.
DIAMOND POWER AUSTRALIA HOLDINGS, INC.
DIAMOND POWER CHINA HOLDINGS, INC.
DIAMOND POWER EQUITY INVESTMENTS, INC.
DIAMOND POWER INTERNATIONAL, LLC
EBENSBURG ENERGY, LLC
O&M HOLDING COMPANY
POWER SYSTEMS OPERATIONS, INC.
SOFCO – EFS HOLDINGS LLC
BABCOCK & WILCOX SPIG, INC.
BABCOCK & WILCOX CANADA CORP.

By: /s/ Rodney Carlson
Name: Rodney Carlson
Title: Treasurer

PNC BANK, NATIONAL ASSOCIATION, as Agent and a Lender

By: /s/ Hossein Nouri
Name: Hoss Nouri
Title: Senior Vice President

Exhibit 10.2

EXECUTION VERSION

LETTER OF CREDIT ISSUANCE AND REIMBURSEMENT AND GUARANTY AGREEMENT

PNC BANK, NATIONAL ASSOCIATION
(AS ISSUER)

WITH

BABCOCK &WILCOX ENTERPRISES, INC.

(BORROWER)

CERTAIN OF SUBSIDIARIES OF BABCOCK &WILCOX ENTERPRISES, INC.

(GUARANTORS)

June 30, 2021

LIST OF EXHIBITS AND SCHEDULES

Schedules

LETTER OF CREDIT ISSUANCE AND REIMBURSEMENT AND GUARANTY AGREEMENT

Letter of Credit Issuance and Reimbursement and Guaranty Agreement dated as of June 30, 2021, by and among BABCOCK &WILCOX ENTERPRISES, INC. (the "Parent"), a corporation organized under the laws of the State of Delaware (together with each Person which may hereafter be joined hereto as a borrower from time to time, collectively, the "Borrowers" and each, a "Borrower"), those Subsidiaries of Parent party hereto and named on the signature pages hereto as "Guarantors" (together with each Person which may hereafter be joined hereto as a guarantor from time to time, collectively, the "Guarantors", and each, a "Guarantor", and together with the Borrowers, collectively, the "Loan Parties" and each, a "Loan Party"), and PNC BANK, NATIONAL ASSOCIATION ("PNC"), in its capacity as the issuer of Letters of Credit hereunder (in such capacity, together with its successors and assigns in such capacity, the "Issuer").

IN CONSIDERATION of the mutual covenants and undertakings set forth herein, Loan Parties and Issuer hereby agree as follows:

I. DEFINITIONS.

1.1. General Terms. For purposes of this Agreement the following terms shall have the following meanings (any capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Related ABL Facility Agreement):

"ABL Revolving Advances" shall mean the "Revolving Advances" as defined and provided for under the Related ABL Facility Agreement.

"ABL Swing Loans" shall mean the "Swing Loans" as defined and provided for under the Related ABL Facility Agreement.

"Affiliate" of any Person shall mean (a) any Person which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person, or (b) any Person who is a director, manager, member, managing member, general partner or officer (i) of such Person, (ii) of any Subsidiary of such Person or (iii) of any Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (x) to vote ten percent (10%) or more of the Equity Interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for any such Person, or (y) to direct or cause the direction of the management and policies of such Person whether by ownership of Equity Interests, contract or otherwise.

"Agreement" shall mean this Letter of Credit Reimbursement and Guaranty Agreement, dated as of the date hereof, as the same may be amended, modified, supplemented, renewed, restated, or replaced from time to time.

"Anti-Corruption Laws" shall mean the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, and any other similar anti-corruption laws or regulations administered or enforced in any jurisdiction in which the Borrower or any of its Subsidiaries conduct business.

"Anti-Terrorism Laws" means any Law in force or hereinafter enacted related to terrorism, money laundering, or economic sanctions, including Executive Order No. 13224, the USA PATRIOT Act, the International Emergency Economic Powers Act, 50 U.S.C. 1701, et. seq., the Trading with the Enemy Act, 50 U.S.C. App. 1, et. seq., 18 U.S.C. § 2332d, and 18 U.S.C. § 2339B, and any regulations or directives promulgated under these provisions.

"Applicable Law" shall mean all Laws applicable to the Person, conduct, transaction, covenant, Other Document or contract in question, all provisions of all applicable state, federal and foreign constitutions, statutes, rules, regulations, treaties, directives and orders of any Governmental Body, and all orders, judgments and decrees of all courts and arbitrators.

"Approved Electronic Communication" shall mean each notice, demand, communication, information, document and other material transmitted, posted or otherwise made or communicated by e-mail, E-Fax, the Credit Management Module of PNC's PINACLE® system, or any other equivalent electronic service agreed to by Issuer, whether owned, operated or hosted by Issuer, any of its Affiliates or any other Person, that any party is obligated to, or otherwise chooses to, provide to Issuer pursuant to this Agreement or any Other Document, including any financial statement, financial and other report, notice, request, certificate and other information material; provided that Approved Electronic Communications shall not include any notice, demand, communication, information, document or other material that Issuer specifically instructs a Person to deliver in physical form.

"Approved LC Foreign Currencies" shall mean (x) Canadian Dollars, British Pounds Sterling, Danish Kroner, and Euros (collectively, the "Approved Anticipated LC Foreign Currencies") and (y) such other currencies other than Dollars and other than the Approved Anticipated LC Foreign Currencies as Issuer shall approve in its sole discretion from time to time (any such other approved currencies, the "Approved Additional LC Foreign Currencies").

"Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy," as in effect from time to time, or any successor statute.

"Beneficial Owner" shall mean, for each Loan Party, each of the following: (a) each individual, if any, who, directly or indirectly, owns 25% or more of such Loan Party's Equity Interests; and (b) a single individual with significant responsibility to control, manage, or direct such Loan Party.

"Borrower" or "Borrowers" shall have the meaning set forth in the preamble to this Agreement and shall include the successors and permitted assigns of each applicable Person.

"Borrowers' Account" shall have the meaning set forth in Section 2.10 hereof.

"Borrowing Agent" shall mean the Parent.

"Business Day" shall mean any day other than Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by Law to be closed for business in East Brunswick, New Jersey, and, if the applicable Business Day relates to any LIBOR Rate Loans, such day must also be a day on which dealings are carried on in the London interbank market.

"Certificate of Beneficial Ownership" shall mean, for each Loan Party, a certificate in form and substance acceptable to Issuer (as amended or modified by Issuer from time to time in its sole discretion), certifying, among other things, the Beneficial Owner of such Loan Party.

"Claims" shall have the meaning given to such term in Section 16.5 hereof.

"Closing Date" shall mean later of (x) the date of this Agreement and (y) the date upon which all of the conditions precedent in Section 8.1 shall have been satisfied (or waived in accordance with the terms hereof).

"Code" shall mean the Internal Revenue Code of 1986, as the same may be amended, modified, or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

"Collateral" shall mean and include all right, title and interest of each Loan Party in all of the following property and assets of such Loan Party, in each case whether now existing or hereafter arising or created and whether now owned or hereafter acquired and wherever located:

(a) all Receivables (as such term is defined in the Related ABL Facility Agreement) and all supporting obligations relating thereto;

(b) all equipment and fixtures;

(c) all general intangibles (including all payment intangibles and all software) and all supporting obligations related thereto;

(d) all Inventory (as such term is defined in the Related ABL Facility Agreement);

(e) all Subsidiary Equity Interests (as such term is defined in the Related ABL Facility Agreement), securities, Investment Property (as such term is defined in the Related ABL Facility Agreement), and financial assets;

(f) all Material Real Property (as such term is defined in the Related ABL Facility Agreement);

(g) [RESERVED];

(h) all contract rights, rights of payment which have been earned under a contract rights, chattel paper (including electronic chattel paper and tangible chattel paper), commercial tort claims (whether now existing or hereafter arising); documents (including all warehouse receipts and bills of lading), deposit accounts, goods, instruments (including promissory notes), letters of credit (whether or not the respective letter of credit is evidenced by a writing) and letter-of-credit rights, cash, certificates of deposit, insurance proceeds (including hazard, flood and credit insurance), security agreements, eminent domain proceeds, condemnation proceeds, tort claim proceeds and all supporting obligations;

(i) all ledger sheets, ledger cards, files, correspondence, records, books of account, business papers, computers, computer software (owned by any Loan Party or in which it has an interest), computer programs, tapes, disks and documents, including all of such property relating to the property described in clauses (a) through and including (h) of this definition; and

(j) all proceeds and products of the property described in clauses (a) through and including (i) of this definition, in whatever form.

It is the intention of the parties that if Issuer shall fail to have a perfected Lien in any particular property or assets of any Loan Party for any reason whatsoever, but the provisions of this Agreement and/or of the Other Documents, together with all financing statements and other public filings relating to Liens filed or recorded by Issuer against Loan Parties, would be sufficient to create a perfected Lien in any property or assets that such Loan Party may receive upon the sale, lease, license, exchange, transfer or disposition of such particular property or assets, then all such "proceeds" of such particular property or assets shall be included in the Collateral as original collateral that is the subject of a direct and original grant of a security interest as provided for herein and in the Other Documents (and not merely as proceeds (as defined in Article 9 of the Uniform Commercial Code) in which a security interest is created or arises solely pursuant to Section 9-315 of the Uniform Commercial Code).

Notwithstanding the foregoing, Collateral shall not include any Excluded Property (as such term is defined in the Related ABL Facility Agreement).

"Commitment" shall mean the obligation of Issuer to issue Letters of Credit hereunder in an aggregate amount of the Dollar Equivalent of the aggregate Maximum Undrawn Amounts for all such Letters of Credit not to exceed the Commitment Amount.

"Commitment Amount" shall mean $110,000,000.

"Companies" shall mean, collectively, Parent and each of its Subsidiaries, and "Company" shall mean each and any of them.

"Compliance Certificate" shall mean a compliance certificate substantially in the form of Exhibit 1.2(b) hereto to be signed by the Chief Executive Officer, Chief Financial Officer, Treasurer or Controller of Borrowing Agent.

"Consents" shall mean all filings and all licenses, permits, consents, approvals, authorizations, qualifications and orders of Governmental Bodies and other third parties, domestic or foreign, necessary to carry on any Company's business or necessary (including to avoid a conflict or breach under any agreement, instrument, other document, license, permit or other authorization) for the execution, delivery or performance of this Agreement, the Other Documents, the Related ABL Facility Documents, or the Reimbursement/Cash Collateral Facility Documents, including any Consents required under all applicable federal, state or other Applicable Law.

"Consortium" shall have the meaning given to such term in the Related ABL Facility Agreement.

"Contractual Obligation" shall mean, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise.

"Controlling" and "Controlled" have meanings correlative thereto.

"Control Agreement" shall mean a deposit account control agreement or securities account control agreement or commodities account control agreement or blocked account agreement, as applicable, entered into by any one or more Loan Parties, an applicable bank or other depository institution or securities intermediary or commodity intermediary, and Issuer that is sufficient to provide Issuer with "control" (for purposes of Articles 8 and/or Article 9 of the Uniform Commercial Code, as applicable) over the deposit account(s) or securities accounts(s) (and/or the investment property and/or financial assets maintained therein or credited thereto) or commodity account(s) (and/or the commodity contracts carried therein) subject thereto maintained with such applicable bank or other depository institution or securities intermediary or commodity intermediary, and otherwise in form and substance reasonably acceptable to Issuer in their Permitted Discretion.

"Covered Entity" shall mean (a) each Loan Party, each of each Loan Party's Subsidiaries and all pledgors of Collateral and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the direct or indirect (x) ownership of, or power to vote, 25% or more of the issued and outstanding Equity Interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of Equity Interests, contract or otherwise.

"Default" shall mean an event, circumstance or condition which, with the giving of notice or passage of time or both, would constitute an Event of Default.

"Dollar" and the sign "$" shall mean lawful money of the United States of America.

"Dollar Equivalent" means at any time (i) as to any amount denominated in Dollars, the amount thereof at such time, and (ii) as to any amount denominated in any other currency, the equivalent amount in Dollars calculated by the Issuer in good faith at such time using the Exchange Rate in effect on the day of determination.

"Dollar Equivalent Drawing Amount" shall have the meaning set forth in Section 2.4(a) hereof.

"Eligible Letter of Credit" shall mean a Letter of Credit that:

(i) provides for the payment of sight drafts, or other written demands for payment, or acceptances of usance drafts when presented for honor thereunder in accordance with the terms thereof and when accompanied by the documents described therein,

(ii) has an expiry date (both at the time of the initial issuance thereof and at the time of any renewal or extension thereof) (x) not later than twelve (12) months after such Letter of Credit's date of issuance and (y) in no event later than thirty (30) days prior to the last day of the Term,

(iii) has a Maximum Undrawn Amount no greater than the Dollar Equivalent (at the time of the issuance thereof) of (1) $20,000,00 (or such greater amount in any particular case as may be approved in advance and in writing by Issuer and the Third Party Cash Pledgor) for any individual proposed Letter of Credit and (2) $35,000,000 (or such greater amount in any particular case as may be approved in advance and in writing by Issuer and the Third Party Cash Pledgor) in the aggregate, when taken together with the Dollar Equivalent (at the time of the issuance thereof) of the total sum of the Maximum Undrawn Amounts of all other Letters of Credit issued under this Agreement and outstanding at the time of the issuance of such proposed Letter of Credit such that are: (x) issued to the same beneficiary and/or its Affiliates as the proposed Letter of Credit and (y) in support of the same Contractual Obligation as the proposed Letter of Credit;

(iv) is denominated in Dollars or an Approved LC Foreign Currency; and

(v) would be eligible and otherwise would qualify to be issued as a "Letter of Credit" under the Related ABL Facility Agreement (other than with respect to any letter of credit or currency sublimits with respect to letters of credit issued under the Related ABL Facility Agreement);

provided that, no Letter of Credit shall be an Eligible Letter of Credit hereunder if such Letter of Credit is issued more than three (3) Business Days' after Issuer has received a Third Party Facility Default Notice (unless Reimbursement/Cash Collateral Agent shall thereafter give a written notice (in accordance with the provisions of Section 16.6 hereof) to Issuer referencing and attaching a copy of such Third Party Facility Default and stating that Reimbursement/Cash Collateral Agent thereby revokes such Third Party Facility Default).

"Embargoed Property" means any property (a) in which a Sanctioned Person holds an interest; (b) beneficially owned, directly or indirectly, by a Sanctioned Person; (c) that is due to or from a Sanctioned Person; (d) that is located in a Sanctioned Jurisdiction; or (e) that would otherwise cause any actual or possible violation by the Lenders or Agent of any applicable Anti-Terrorism Law if the Lenders were to obtain an encumbrance on, lien on, pledge of or security interest in such property or provide services in consideration of such property.

"Equity Interests" shall have the meaning given to such term in the Related ABL Facility Agreement.

"Equity Interest Equivalents" shall have the meaning given to such term in the Related ABL Facility Agreement.

"Event of Default" shall have the meaning set forth in Article X hereof.

"Exchange Rate" shall mean, with respect to any calculation of the Dollar Equivalent of any amount denominated in any currency other than Dollars on any date of determination (including the Maximum Undrawn Amount of any Foreign Currency Letter of Credit outstanding on such date of determination), the prevailing spot rate of exchange for the conversion of such other currency into Dollars as determined by Issuer's foreign exchange department (in the exercise of its ordinary business practices regarding foreign currency exchange for customers of the Issuer similarly situated to Borrowers) as of the close of business for Issuer's foreign exchange department on the Business Day immediately preceding such date of determination; provided that, notwithstanding the foregoing, in the context of any actual conversion by Issuer of any funds received by Issuer (whether as a payment made by any Loan Party or the proceeds of any Collateral (including any collections on any accounts receivable received by Issuer)) from one currency to another for the purpose of applying such funds to the Obligations in accordance with the terms of this Agreement, "Exchange Rate" means the spot-buying or spot-selling (as the case may be) rate of exchange at which Issuer is actually able to exchange the one currency for the other in the exercise of its ordinary business practices regarding foreign currency exchange at the time of such actual conversion.

"Excluded Hedge Liabilities" shall have the meaning given to such term in the Related ABL Facility Agreement.

"Facility Fees" shall have the meaning set forth in Section 3.2(b) hereof.

"Foreign Currency Letter of Credit" shall have the meaning set forth in Section 2.1(a) hereof.

"Foreign Currency Letter of Credit Sublimit - Approved Additional LC Foreign Currencies" shall mean $5,000,000.

"Foreign Currency Letter of Credit Sublimit - Approved Anticipated LC Foreign Currencies" shall mean $100,000,000.

"Foreign Subsidiary" shall mean any Subsidiary of any Person that is not organized or incorporated in the United States, any state or territory thereof, or the District of Columbia; provided that, any Subsidiary of Parent that is a Loan Party shall not, except as otherwise expressly provided for herein or in any Other Document, constitute a Foreign Subsidiary.

"GAAP" shall mean generally accepted accounting principles in the United States of America in effect from time to time.

"Governmental Acts" shall mean any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Body.

"Governmental Body" shall mean any nation or government, any state or other political subdivision thereof or any entity, authority, agency, division or department exercising the executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to a government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

"Guaranteed Obligations" shall have the meaning set forth in Section 17.1 hereof.

"Guarantor" shall have the meaning set forth in the preamble to this Agreement and shall extend to each Person which may hereafter guarantee payment or performance of the whole or any part of the Obligations, and shall also extend to all successors and permitted and assigns of such Persons, and "Guarantors" shall mean collectively all such Persons.

"Guarantor Security Agreement" shall mean any security agreement executed by any Guarantor in favor of Issuer securing the Obligations or the Guaranty of such Guarantor, in form and substance satisfactory to Issuer, including with respect to Guarantors that are parties hereto, the provisions of Article IV of this Agreement; as each may be amended, modified, supplemented, renewed, restated, or replaced from time to time.

"Guaranty" shall mean any guaranty of the Obligations executed by a Guarantor in favor of Issuer, in form and substance satisfactory to Issuer, including, with respect to Guarantors that are parties hereto, the provisions of Article XVII hereof.

"Insolvency Law" shall mean as applicable, (a) the Bankruptcy Code and (b) any other federal, state, provincial or foreign Law regarding insolvency or bankruptcy or for the relief or reorganization or administration or receivership or liquidation of debtors and/or their assets or liabilities or affecting creditors' rights generally.

"Insolvency Proceeding" shall mean (a) any voluntary or involuntary case, receivership, administration, liquidation, or other similar case or proceedings under any Insolvency Law (whether or not of an interim nature) with respect to any Person or with respect to a material portion of its assets, (b) any liquidation, dissolution, or winding up of any Person whether voluntary or involuntary and whether or not involving any Insolvency Law or (c) any assignment for the benefit of any creditors or any other marshaling of assets or liabilities of any Person.

"Intercreditor Agreement" shall mean that certain Intercreditor Agreement dated as of the Closing Date among Issuer, PNC, as the "Agent" under the Related ABL Facility Agreement, and the Reimbursement/Cash Collateral Facility Agent, and acknowledged by Loan Parties, as such agreement may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Joint Venture" shall have the meaning given to such term in the Related ABL Facility Agreement.

"Law(s)" shall mean any law(s) (including common law and equitable principles), constitution, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, code, release, ruling, order, executive order, injunction, writ, decree, bond judgment authorization or approval, lien or award of or any settlement arrangement, by agreement, consent or otherwise, with any Governmental Body, foreign or domestic.

"L/C Obligations" shall mean the Obligations.

"Letters of Credit" shall have the meaning set forth in Section 2.1 hereof.

"Letter of Credit Administration Fees" shall have the meaning set forth in Section 3.1(a) hereof.

"Letter of Credit Application" shall have the meaning set forth in Section 2.2(a) hereof.

"Letter of Credit Borrowing" shall have the meaning set forth in Section 2.4(b) hereof.

"Letter of Credit Fees" shall have the meaning set forth in Section 3.1(a) hereof.

"Letter of Credit Fronting Fees" shall have the meaning set forth in Section 3.1(a) hereof.

"Letter of Credit Interest Rate" shall mean, as of any date, the "Default Rate of Interest" as provided for under the Related ABL Facility Agreement that would be applicable to any "Domestic Rate Loan" (as defined in the Related ABL Facility Agreement) outstanding on such date.

"Lien" shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, security interest, lien (whether statutory or otherwise), charge, claim or encumbrance, or preference, priority or other security agreement or preferential arrangement held or asserted in respect of any asset of any kind or nature whatsoever including any conditional sale or other title retention agreement, any lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction.

"Line Cap" shall mean, as of any date, the amount in Dollars equal to the lesser of (i) the Commitment Amount as in effect at such time or (ii) the amount of the Pledged Cash Collateral held by Issuer at such time.

"Loan Party" and "Loan Parties" shall have the meanings set forth in the preamble to this Agreement and shall include their successors and permitted assigns.

"Loan Parties Cash Collateral" shall have the meaning set forth in Section 4.2(b) hereof.

"Loan Parties Cash Collateral Account" shall have the meaning set forth in Section 4.2(b) hereof.

"Loan Parties Cash Pledge Agreement" shall have the meaning set forth in Section 4.2(b) hereof.

"Material Adverse Effect" shall mean a material adverse effect on (a) the condition (financial or otherwise), results of operations, assets, business or properties of Loan Parties taken as a whole, (b) the ability of the Loan Parties, taken as a whole, to duly and punctually pay or perform the Obligations in accordance with the terms thereof, (c) the value of the Collateral, or Issuer's Liens on the Collateral or the priority of any such Lien or (d) the practical realization of the benefits of Issuer's rights and remedies under this Agreement and the Other Documents.

"Material Contract" shall mean any contract, agreement, instrument, permit, lease or license, written or oral, of any Company, which is material to any Company's business or which the failure to comply with could reasonably be expected to result in a Material Adverse Effect.

"Maximum Undrawn Amount" shall mean, with respect to any outstanding Letter of Credit as of any date, the amount of such Letter of Credit that is or may become available to be drawn, including all automatic increases provided for in such Letter of Credit, whether or not any such automatic increase has become effective.

"Non-Loan Party" shall mean any Company that is not a Loan Party.

"Obligations" shall mean and include any and all advances, debts, liabilities, obligations (including without limitation all reimbursement obligations and cash collateralization obligations with respect to Letters of Credit issued hereunder and all Letter of Credit Borrowings), covenants and duties owing by any Loan Party under this Agreement or any Other Document (and any as the same may be amended, modified, supplemented, increased, renewed, restated, or replaced from time to time), to Issuer of any kind or nature, present or future: (i) any interest or other amounts accruing thereon, (ii) any fees accruing thereon or under or in connection with this Agreement or any Other Document (and any as the same may be amended, modified, supplemented, increased, renewed, restated, or replaced from time to time), (iii) any costs and expenses of any Person payable/reimbursable by any Loan Party under this Agreement or any Other Document (and any as the same may be amended, modified, supplemented, increased, renewed, restated, or replaced from time to time), and (iv) any indemnification obligations or other amounts or charges payable by any Loan Party under this Agreement or any Other Document (and any as the same may be amended, modified, supplemented, increased, renewed, restated, or replaced from time to time), in each such case arising or payable after maturity, or after the filing or commencement of any Insolvency Proceeding relating to any Loan Party, whether or not a claim for post-Insolvency Proceeding interest, fees, payment/reimbursement obligations for costs and expenses, indemnification, or other amounts or charges is allowable or allowed in such Insolvency Proceeding (all collectively under this parenthetical, the "Post-Petition Obligations"), whether direct or indirect (including those acquired by assignment or participation), absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, contractual or tortious, liquidated or unliquidated, regardless of how such indebtedness or liabilities arise including all costs and expenses of Issuer incurred in the documentation, negotiation, modification, enforcement, collection or otherwise in connection with any of the foregoing, including but not limited to reasonable attorneys' fees and expenses and all obligations of any Loan Party to Issuer to perform acts or refrain from taking any actions.

Notwithstanding anything to the contrary contained in the foregoing, the Obligations shall not include any Excluded Hedge Liabilities.

"Obligations Receipts" shall have the meaning set forth in Section 11.5(a) hereof.

"Organizational Documents" shall mean, with respect to any Person, any charter, articles or certificate of incorporation, certificate of organization, registration or formation, certificate of partnership or limited partnership, bylaws, operating agreement, limited liability company agreement, or partnership agreement of such Person and any and all other applicable documents relating to such Person's formation, organization or entity governance matters (including any shareholders' or equity holders' agreement or voting trust agreement) and specifically includes, without limitation, any certificates of designation for preferred stock or other forms of preferred equity.

"Other Documents" shall mean the Perfection Certificates, any Guaranty, any Guarantor Security Agreement, the Intercreditor Agreement, each Letter of Credit Application, the Third Party Cash Pledge Agreement, any Loan Parties Cash Pledge Agreement, and any and all other agreements, instruments and documents, including intercreditor agreements, guaranties, pledge agreements, mortgages, powers of attorney, consents, and all other agreements, documents and instruments heretofore, now or hereafter executed by any Loan Party and/or delivered to Issuer in respect of the transactions contemplated by this Agreement, in each case together with all amendments, modifications, supplements, extensions, renewals, substitutions, restatements and replacements thereto and thereof.

"Participant" shall mean each Person who shall be granted the right by Issuer to participate in any of the Advances and who shall have entered into a participation agreement in form and substance satisfactory to Issuer.

"Payment in Full" or "Paid in Full" means, as to the Obligations:

(i) the termination of all commitments of Issuer to extend credit under this Agreement,

(ii) the payment in full in cash/immediately available funds of all of the Obligations (including Post-Petition Obligations) owing at the applicable time (not including (1) contingent indemnification obligations as to which no claim or demand has been made, and (2) Obligations with respect to any Letters of Credit),

(iii) without duplication of any amount paid under clause (ii) of this definition above, the payment in full in cash/immediately available funds of all of the Obligations relating to Letters of Credit then owing (including any Letter of Credit Fees accrued but unpaid at the applicable time), and

(iv) either (x) the expiration in accordance with their respective terms, drawing in full upon, and/or return and termination/cancellation (with the consent of the applicable beneficiary) of all Letters of Credit issued hereunder and/or (y) Agent having received and continuing to hold Pledged Cash Collateral pursuant to the Third Party Cash Pledge Agreement and/or any Loan Parties Cash Pledge Agreement in respect of the L/C Obligations in an amount equal to 105% of the Dollar Equivalent of the aggregate of the Maximum Undrawn Amounts of all such outstanding Letters of Credit.

"Payment Office" shall mean initially Two Tower Center Boulevard, East Brunswick, New Jersey 08816; thereafter, such other office of Issuer, if any, which it may designate by notice to Borrowing Agent to be the Payment Office.

"Permitted Discretion" shall mean a determination made in good faith and in the exercise (from the perspective of a secured asset-based lender) of commercially reasonable business judgment.

"Person" shall mean any individual, sole proprietorship, partnership, corporation, business trust, joint stock company, trust, unincorporated organization, association, limited liability company, limited liability partnership, institution, public benefit corporation, joint venture, entity or Governmental Body (whether federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

"Permitted Encumbrance" shall have the meaning given to such term in the Related ABL Facility Agreement.

"Pledged Cash Collateral" shall mean, collectively and at any time, the aggregate of (and aggregate amount in Dollars of) (i) the Third Party Cash Collateral held by Issuer at such time and (ii) any Loan Parties Cash Collateral held by Issuer at such time.

"PNC" shall have the meaning set forth in the preamble to this Agreement and shall include all of its successors and assigns.

"Post-Petition Obligations" shall have the meaning set forth in the definition of "Obligations".

"Register" shall have the meaning set forth in Section 16.3(e) hereof.

"Reimbursement Obligation" shall have the meaning set forth in Section 2.14(b) hereof.

"Reimbursement/Cash Collateral Facility" shall mean that certain secured facility for the providing of cash collateral for the benefit of Loan Parties provided for under the Related L/C Facility Agreement.

"Reimbursement/Cash Collateral Facility Agent" shall mean MSD PCOF Partners XLV, LLC, as agent under the Reimbursement/Cash Collateral Facility Documents, together with its successors and assigns in such capacity.

"Reimbursement/Cash Collateral Facility Agreement" shall mean the Reimbursement, Guaranty, and Security Agreement dated as of the Closing Date among Parent, as Borrower, the Guarantors, as Guarantors, the financial institutions party thereto from time to time as "Cash Collateral Providers", and Reimbursement/Cash Collateral Facility Agent, as it may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Reimbursement/Cash Collateral Facility Documents" shall mean the Reimbursement/Cash Collateral Facility Agreement and all reimbursement agreements, credit facility agreements, security agreements, promissory notes, and other agreements, contracts, instruments, and documents executed in connection therewith, in each case as such agreement, contract, instrument, or document may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Reimbursement/Cash Collateral Facility Obligations" shall mean the "Obligations" as defined under the Related L/C Facility Agreement.

"Related ABL Facility" shall mean that certain secured revolving credit facility provided for under the Related ABL Facility Agreement.

"Related ABL Facility Agreement" shall mean that certain Revolving Loan, Guaranty, and Security Agreement dated as of the date hereof among Loan Parties, the lenders party thereto from time to time, and PNC, as agent for such lenders, as it may be amended, modified, supplemented, renewed, restated or replaced from time to time.

Related ABL Facility Documents" shall mean, collectively, the Related ABL Facility Agreement and the "Other Documents" (as defined in the Related ABL Facility Agreement") relating thereto, in each case as it may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Related ABL Facility L/C Reserve" shall mean the "Related L/C Facility Letter of Credit Reserve" as defined under the Related ABL Facility Agreement.

"Related ABL Facility Line Cap" shall mean, at any time, the "Line Cap" as defined under and in effect on such date under the Related ABL Facility Agreement.

"Related ABL Facility Obligations" shall mean all "Obligations" as defined clause (a) of the definition of such term in the Related ABL Facility Agreement.

"Related ABL Facility Reserves" shall mean the "Reserves" as defined under the Related ABL Facility Agreement.

"Reportable Compliance Event" shall mean that (1) any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, custodially detained, penalized or the subject of an assessment for a penalty or enters into a settlement with an Governmental Body in connection with any sanctions or other Anti-Terrorism Law or Anti-Corruption law, or any predicate crime to any Anti-Terrorism Law or Anti-Corruption Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations represents a violation of any Anti-Terrorism Law. or Anti-Corruption Law; (2) any Covered Entity engages in a transaction that has caused or may cause the Lenders or Agent to be in violation of any Anti-Terrorism Law, including a Covered Entity's use of any proceeds of the credit facility to fund any operations in, finance any investments or activities in, or, make any payments to, directly or knowingly indirectly, a Sanctioned Jurisdiction or Sanctioned Person; or (3) any Collateral becomes Embargoed Property.

"Responsible Officer" shall mean, as to any Person, any Chief Executive Officer, Chief Financial Officer, Treasurer, or President of such Person (or any equivalent senior executive officer), any general partner of such Person, or any managing member of such Person.

"Sanctioned Jurisdiction" shall mean a country, territory, region, or government that is the subject or target of sanctions administered by OFAC (which, as of the Closing date, is the Crimea region of Ukraine, Cuba, Iran, North Korea, Syria, and Venezuela)..

"Sanctioned Person" shall mean (a) a Person that is the subject of sanctions administered by OFAC or the U.S. Department of State ("State"), including by virtue of being (i) named on OFAC's list of "Specially Designated Nationals and Blocked Persons"; (ii) organized under the laws of, ordinarily resident in, or physically located in a Sanctioned Jurisdiction (except transactions with a Person that are authorized by OFAC); (iii) owned or controlled 50% or more in the aggregate, by one or more Persons that are the subject of sanctions administered by OFAC; (b) a Person that is the subject of sanctions maintained by the European Union ("E.U."), including by virtue of being named on the E.U.'s "Consolidated list of persons, groups and entities subject to E.U. financial sanctions" or other, similar lists; (c) a Person that is the subject of sanctions maintained by the United Kingdom ("U.K."), including by virtue of being named on the "Consolidated List Of Financial Sanctions Targets in the U.K." or other, similar lists; or (d) a Person that is the subject of sanctions imposed by any Governmental Body of a jurisdiction whose laws apply to this Agreement.

"Secured Parties" shall mean, collectively, Issuer and each other holder of any of the Obligations, and the respective successors and assigns of each of them.

"Solvent" means, with respect to any Person, that the value of the assets of such Person (both at fair value and present fair saleable value) is, on the date of determination, greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person as of such date and that, as of such date, such Person is able to pay all liabilities of such Person as such liabilities are expected to mature and does not have unreasonably small capital for its then current business activities. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Subsidiary" shall mean of any Person a corporation or other entity of whose Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the directors of such corporation, or other Persons performing similar functions for such entity, are owned, directly or indirectly, by such Person.

"Subsidiary Equity Interests" shall have the meaning given to such term in the Related ABL Facility Agreement.

"Term" shall have the meaning set forth in Section 13.1 hereof.

"Third Party Cash Collateral" shall have the meaning set forth in Section 4.2(a) hereof.

"Third Party Cash Collateral Account" shall mean that certain blocked deposit account #8026497613 maintained by Third Party Cash Pledgor with Issuer for the purpose of holding the Third Party Cash Collateral, which such account, as provided for in the Third Party Cash Pledge Agreement, shall at all times be subject to the sole and complete dominion and control of Issuer.

"Third Party Cash Pledge Agreement" shall mean that certain Pledge Agreement (Bank Deposits) dated as of the Closing Date between Third Party Cash Pledgor and Issuer, as such agreement may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Third Party Cash Pledgor" shall mean MSD PCOF Partners XLV, LLC.

"Third Party Facility Default Notice" shall mean a written notice, given by the Reimbursement/Cash Collateral Facility Agent to Issuer, in accordance with the provisions of Section 16.6 hereof, that (x) such notice is a "Notice of Default" with respect to this Agreement as contemplated by the definition of Eligible Letter of Credit forth herein, (y) a "Default" or "Event of Default" under and as defined in the Reimbursement/Cash Collateral Facility Agreement has occurred and is continuing and as a result thereof, Reimbursement/Cash Collateral Agent has elected to direct that no further Eligible Letters of Credit may be issued while such notice is outstanding, and (z) no further Eligible Letters of Credit may be issued under this Agreement unless and until such time as Issuer shall receive a further written notice (in accordance with the provisions of Section 16.6 hereof) that such notice has been revoked.

"Third Party Facility Termination Notice" shall mean a written notice, given by the Reimbursement/Cash Collateral Facility Agent to Issuer, in accordance with the provisions of Section 16.6 hereof, that (x) such notice is a "Notice of Default" with respect to this Agreement as contemplated by the definition of Eligible Letter of Credit forth herein, (y) a "Default" or "Event of Default" under and as defined in the Reimbursement/Cash Collateral Facility Agreement has occurred and is continuing and as a result thereof, Reimbursement/Cash Collateral Agent has elected to accelerate the Reimbursement/Cash Collateral Facility Obligations and/or to terminate the Reimbursement/Cash Collateral Facility Agreement, and (z) no further Eligible Letters of Credit may be issued under this Agreement unless and until such time as Issuer shall receive a further written notice (in accordance with the provisions of Section 16.6 hereof) that such notice has been revoked.

"Transferee" shall have the meaning set forth in Section 16.3(d) hereof.

"Uniform Commercial Code" shall mean the Uniform Commercial Code as adopted in the State of New York from time to time.

"Unsecured Notes" shall mean, collectively, (x) those certain 8.125% Senior Notes due 2026 issued by Parent under the Unsecured Notes Indenture, in an aggregate principal amount of $172,881,575 as of the Closing Date, and (y) any additional unsecured Senior Notes issued under the Unsecured Notes Indenture by Parent made in accordance with the terms hereof.

"Unsecured Notes Documents" shall mean, collectively, the Unsecured Notes, the Unsecured Notes Indenture, and all agreements, contracts, instruments, and documents executed in connection therewith, in each case as such agreement, contract, instrument, or document may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Unsecured Notes Indenture" shall mean, collectively, (x) that certain Indenture dated February 12, 2021 between Parent and the Bank of New York Mellon Trust Company, N.A., as trustee (in such capacity, the "Unsecured Notes Trustee"), (y) that certain First Supplemental Indenture dated February 12, 2021 between Parent and Unsecured Notes Trustee executed in connection with such Indenture dated February 12, 2021, and (z) any further supplemental indenture entered into by Parent and the Unsecured Notes Trustee pursuant to such Indenture from time to time after the Closing Date in connection with any issuance of Indebtedness by Parent made in accordance with the terms hereof (as any such agreement or indenture may be may be amended, modified, supplemented, renewed, restated or replaced from time to time).

"USA PATRIOT Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, amended, modified, renewed, extended or replaced.

"Valuation Date" shall mean (i) the last Business Day of any calendar quarter during which Letters of Credit are outstanding, (ii) each day on which a Letter of Credit is issued, amended, renewed, or extended, and (iii) as selected by the Issuer, any day an Event of Default is outstanding.

1.2. Certain Matters of Construction. The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. All references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement. Any pronoun used shall be deemed to cover all genders. Wherever appropriate in the context, terms used herein in the singular also include the plural and vice versa. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. Unless otherwise provided, all references to any instruments or agreements to which Issuer is a party, including references to any of the Other Documents, shall include any and all modifications, supplements or amendments thereto, any and all restatements or replacements thereof and any and all extensions or renewals thereof. Except as otherwise expressly provided for herein, all references herein to the time of day shall mean the time in New York, New York. Whenever the words "including" or "include" shall be used, such words shall be understood to mean "including, without limitation" or "include, without limitation". A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Issuer. Any Lien referred to in this Agreement or any of the Other Documents as having been created in favor of Issuer, any agreement entered into by Issuer pursuant to this Agreement or any of the Other Documents, any payment made by or to or funds received by Issuer pursuant to or as contemplated by this Agreement or any of the Other Documents, or any act taken or omitted to be taken by Issuer, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of Issuer. Wherever the phrase "to the best of Loan Parties' knowledge" or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or Other Documents, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if he/she had engaged in a good faith and diligent performance of his/her duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

II. LETTERS OF CREDIT.

2.1. Letters of Credit.

(a) Subject to the terms and conditions hereof, Issuer shall issue or cause the issuance of standby letters of credit denominated in Dollars or an Approved LC Foreign Currency ("Letters of Credit" , and any Letter of Credit denominated in any currency other than Dollars is a "Foreign Currency Letter of Credit") for the account of any Company, Joint Venture, or Consortium so long as such letter of credit would be an Eligible Letter of Credit once issued and except to the extent that the issuance thereof would then cause:

(A) the Dollar Equivalent of the sum of (x) the aggregate of the Maximum Undrawn Amounts of all Letters of Credit already outstanding plus (y) the Maximum Undrawn Amount of the Letter of Credit to be issued to exceed the Line Cap at the time of issuance,

(B) in the case of any issuance of a Foreign Currency Letter of Credit denominated in an Approved Anticipated LC Foreign Currency, the Dollar Equivalent of the sum of (x) the aggregate of the Maximum Undrawn Amounts of all Foreign Currency Letters of Credit denominated in the Approved Anticipated LC Foreign Currencies already outstanding plus (y) the Maximum Undrawn Amount of the Foreign Currency Letter of Credit to be issued to exceed the Foreign Currency Letter of Credit Sublimit - Approved Anticipated LC Foreign Currencies,

(C) in the case of any issuance of a Foreign Currency Letter of Credit denominated in an Approved Additional LC Foreign Currency, the Dollar Equivalent of the sum of (x) the aggregate of the Maximum Undrawn Amounts of all Foreign Currency Letters of Credit denominated in the Approved Additional LC Foreign Currencies already outstanding plus (y) the Maximum Undrawn Amount of the Foreign Currency Letter of Credit to be issued to exceed the Foreign Currency Letter of Credit Sublimit - Approved Additional LC Foreign Currencies, or

(D) the Dollar Equivalent of the sum of (i) the principal amount of the ABL Revolving Advances plus the ABL Swing Loans outstanding at such time, plus (ii) the "Maximum Undrawn Amount" (as defined in the Related ABL Facility Agreement) of all ABL Letters of Credit outstanding at such time to exceed the Related ABL Facility Line Cap (after giving effect to the additional Related ABL Facility L/C Reserve and any other applicable Related ABL Facility Reserves instituted by ABL Issuer with respect to the Letter of Credit to be issued).

Letters of Credit that have not been drawn upon shall not bear interest (but fees shall accrue in respect of outstanding Letters of Credit as provided in Section 3.1 hereof).

(b) Notwithstanding any provision of this Agreement, Issuer shall not be under any obligation to issue any Letter of Credit if (i) any order, judgment or decree of any Governmental Body or arbitrator shall by its terms purport to enjoin or restrain Issuer from issuing any Letter of Credit, or any Law applicable to Issuer or any request or directive (whether or not having the force of law) from any Governmental Body with jurisdiction over Issuer shall prohibit, or request that Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date, and which Issuer in good faith deems material to it, or (ii) the issuance of the Letter of Credit would violate one or more policies of Issuer applicable to letters of credit generally.

2.2. Issuance of Letters of Credit.

(a) Borrowing Agent may request Issuer to issue or cause the issuance of a Letter of Credit for the account of any Company, Joint Venture, or Consortium by delivering to Issuer, at the Payment Office, prior to 1:00 p.m., at least five (5) Business Days prior to the proposed date of issuance, such Issuer's form of Letter of Credit Application (the "Letter of Credit Application") completed to the satisfaction of Issuer and Issuer; and, such other certificates, documents and other papers and information as Issuer may reasonably request. Issuer shall not issue any requested Letter of Credit one or more of the applicable conditions set forth in Section 8.2 hereof have not been satisfied or the Commitment has been terminated for any reason.

(b) Each Letter of Credit shall be subject either to the Uniform Customs and Practice for Documentary Credits as most recently published by the International Chamber of Commerce at the time a Letter of Credit is issued (the "UCP") or the International Standby Practices (International Chamber of Commerce Publication Number 590) (the "ISP98 Rules"), or any subsequent revision thereof at the time a Letter of Credit is issued, as determined by Issuer.

2.3. Requirements For Issuance of Letters of Credit.

(a) Borrowing Agent shall authorize and direct any Issuer to name the applicable Company, Joint Venture, or Consortium as the "Applicant" or "Account Party" of each Letter of Credit.

2.4. Disbursements, Reimbursement.

(a) In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, Issuer will promptly notify Borrowing Agent and Third Party Cash Pledgor. Regardless of whether Borrowing Agent shall have received such notice, Borrowers shall be automatically obligated to reimburse (such obligation to reimburse Issuer shall sometimes be referred to as a "Reimbursement Obligation") Issuer prior to 12:00 Noon on each date that an amount is paid by Issuer under any Letter of Credit (each such date, a "Drawing Date") in an amount equal to the Dollar Equivalent of the amount so paid by Issuer (the "Dollar Equivalent Drawing Amount"); provided that, upon the payment by Issuer of any amount in respect of any drawing under any Eligible Letter of Credit, Issuer shall automatically and immediately draw upon the Pledged Cash Collateral in an amount equal to the applicable Dollar Equivalent Drawing Amount and apply such funds to satisfy the resulting Reimbursement Obligation (and further provided that, in any such case, to the extent that Issuer is holding any Loan Parties Cash Collateral on any such Drawing Date, then, so long as Issuer shall not be prohibited from doing so by any stay of action under any Insolvency Law as the result of any pending Insolvency Proceeding with respect to any one or more of the Loan Parties or by any other Applicable Law, Issuer shall first draw upon the Loan Parties Cash Collateral to the full extent thereof before drawing upon the Third Party Cash Collateral).

(b) With respect to any Reimbursement Obligation which is not paid and satisfied in cash in full by 5:00 p.m. on the Drawing Date (either because any Applicable Law shall have prevented Issuer from drawing funds from the Third Party Cash Collateral and/or the Loan Parties Cash Collateral, because the Reimbursement Obligation did not arise from an Eligible Letter of Credit, or otherwise), Borrowers shall be deemed to have incurred from Issuer a borrowing (each a "Letter of Credit Borrowing") in the amount of such Dollar Equivalent Drawing Amount. Such Letter of Credit Borrowing shall be due and payable on demand (together with interest) and, until paid, shall bear interest at the Letter of Credit Interest Rate.

2.5. Documentation. Each Loan Party agrees to be bound by the terms of the Letter of Credit Application and by Issuer's interpretations of any Letter of Credit issued on behalf of any Borrower and by Issuer's written regulations and customary practices relating to letters of credit, though Issuer's interpretations may be different from such Loan Parties' own. In the event of a conflict between the Letter of Credit Application and this Agreement, this Agreement shall govern. It is understood and agreed that, except in the case of gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), Issuer shall not be liable for any error, negligence and/or mistakes, whether of omission or commission, in following Borrowing Agent's or any Loan Party's instructions or those contained in the Letters of Credit or any modifications, amendments or supplements thereto.

2.6. Determination to Honor Drawing Request. In determining whether to honor any request for drawing under any Letter of Credit by the beneficiary thereof, Issuer shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit and that any other drawing condition appearing on the face of such Letter of Credit has been satisfied in the manner so set forth.

2.7. Nature of Participation and Reimbursement Obligations. The obligation of Borrowers to reimburse Issuer upon a draw under a Letter of Credit, shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Section 2.7 under all circumstances, including the following circumstances:

(i) any set-off, counterclaim, recoupment, defense or other right which such any Loan Party, Company, Joint Venture, or Consortium, as the case may be, may have against Issuer or any Loan Party, Company, Joint Venture, or Consortium, as the case may be, or any other Person for any reason whatsoever;

(ii) any lack of validity or enforceability of any Letter of Credit;

(iii) any claim of breach of warranty that might be made by any Loan Party, Company, Joint Venture, or Consortium or Issuer against the beneficiary of a Letter of Credit, or the existence of any claim, set-off, recoupment, counterclaim, cross-claim, defense or other right which any Loan Party, Company, Joint Venture, or Consortium or Issuer may have at any time against a beneficiary, any successor beneficiary or any transferee of any Letter of Credit or assignee of the proceeds thereof (or any Persons for whom any such transferee or assignee may be acting), any Loan Party, Company, Joint Venture, or Consortium or Issuer, or any other Person, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between any Loan Party, Company, Joint Venture, or Consortium or any Subsidiaries of such Loan Party, Company, Joint Venture, or Consortium and the beneficiary for which any Letter of Credit was procured);

(iv) the lack of power or authority of any signer of (or any defect in or forgery of any signature or endorsement on) or the form of or lack of validity, sufficiency, accuracy, enforceability or genuineness of any draft, demand, instrument, certificate or other document presented under or in connection with any Letter of Credit, or any fraud or alleged fraud in connection with any Letter of Credit, or the transport of any property or provision of services relating to a Letter of Credit, in each case even if Issuer or any of Issuer's Affiliates has been notified thereof;

(v) payment by Issuer under any Letter of Credit against presentation of a demand, draft or certificate or other document which is forged or does not fully comply with the terms of such Letter of Credit (provided that the foregoing shall not excuse Issuer from any obligation under the terms of any applicable Letter of Credit to require the presentation of documents that on their face appear to satisfy any applicable requirements for drawing under such Letter of Credit prior to honoring or paying any such draw);

(vi) the solvency of, or any acts or omissions by, any beneficiary of any Letter of Credit, or any other Person having a role in any transaction or obligation relating to a Letter of Credit, or the existence, nature, quality, quantity, condition, value or other characteristic of any property or services relating to a Letter of Credit;

(vii) any failure by Issuer or any of Issuer's Affiliates to issue any Letter of Credit in the form requested by Borrowing Agent, unless Issuer has received written notice from Borrowing Agent of such failure within three (3) Business Days after Issuer shall have furnished to Borrowing Agent a copy of such Letter of Credit and such error is material and no drawing has been made thereon prior to receipt of such notice;

(viii) the occurrence of any Material Adverse Effect;

(ix) any breach of this Agreement or any Other Document by any party thereto;

(x) the occurrence or continuance of an Insolvency Proceeding with respect to any Loan Party;

(xi) the fact that a Default or an Event of Default shall have occurred and be continuing;

(xii) the fact that the Term shall have expired or this Agreement or the Commitments have been terminated;

(xiii) with respect to any Foreign Currency Letter of Credit, any fluctuation in the Exchange Rates between Dollars and the Approved LC Foreign Currency in which such Foreign Currency Letter of Credit over time and from time to time is denominated; and

(xiv) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

2.8. Liability for Acts and Omissions.

(a) As between Loan Parties and Issuer, each Loan Party assumes all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, Issuer shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for an issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged (even if Issuer or any of its Affiliates shall have been notified thereof); (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) the failure of the beneficiary of any such Letter of Credit, or any other party to which such Letter of Credit may be transferred, to comply fully with any conditions required in order to draw upon such Letter of Credit or any other claim of any Loan Party, Company, Joint Venture, or Consortium against any beneficiary of such Letter of Credit, or any such transferee, or any dispute between or among any Loan Party, Company, Joint Venture, or Consortium and any beneficiary of any Letter of Credit or any such transferee; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, facsimile, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of Issuer, including any Governmental Acts, and none of the above shall affect or impair, or prevent the vesting of, any of Issuer's rights or powers hereunder. Nothing in the preceding sentence shall relieve Issuer from liability for Issuer's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment) in connection with actions or omissions described in such clauses (i) through (viii) of such sentence. In no event shall Issuer's Affiliates be liable to any Loan Party, Company, Joint Venture, or Consortium for any indirect, consequential, incidental, punitive, exemplary or special damages or expenses (including without limitation attorneys' fees), or for any damages resulting from any change in the value of any property relating to a Letter of Credit.

(b) Without limiting the generality of the foregoing, Issuer and each of its Affiliates: (i) may rely on any oral or other communication believed in good faith by Issuer or such Affiliate to have been authorized or given by or on behalf of the applicant for a Letter of Credit; (ii) may honor any presentation if the documents presented appear on their face substantially to comply with the terms and conditions of the relevant Letter of Credit; (iii) may honor a previously dishonored presentation under a Letter of Credit, whether such dishonor was pursuant to a court order, to settle or compromise any claim of wrongful dishonor, or otherwise, and shall be entitled to reimbursement to the same extent as if such presentation had initially been honored, together with any interest paid by Issuer or its Affiliates; (iv) may honor any drawing that is payable upon presentation of a statement advising negotiation or payment, upon receipt of such statement (even if such statement indicates that a draft or other document is being delivered separately), and shall not be liable for any failure of any such draft or other document to arrive, or to conform in any way with the relevant Letter of Credit; (v) may pay any paying or negotiating bank claiming that it rightfully honored under the laws or practices of the place where such bank is located; and (vi) may settle or adjust any claim or demand made on Issuer or its Affiliate in any way related to any order issued at the applicant's request to an air carrier, a letter of guarantee or of indemnity issued to a steamship agent or carrier or any document or instrument of like import (each an "Order") and honor any drawing in connection with any Letter of Credit that is the subject of such Order, notwithstanding that any drafts or other documents presented in connection with such Letter of Credit fail to conform in any way with such Letter of Credit.

(c) In furtherance and extension and not in limitation of the specific provisions set forth above, any action taken or omitted by Issuer under or in connection with the Letters of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith and without gross negligence (as determined by a court of competent jurisdiction in a final non-appealable judgment), shall not put Issuer under any resulting liability to any Loan Party, Company, Joint Venture, or Consortium.

2.9. Use of Proceeds.

(a) Borrowers shall cause the Letters of Credit to be issued: (i) on the Closing Date, in connection with the repayment of the Indebtedness owing under and termination of the Existing BAML Credit Facility, and (ii) following the Closing Date to provide for general corporate purposes of the Companies, Joint Ventures, and Consortiums.

(b) Without limiting the generality of Section 2.9(a) above, neither the Loan Parties nor any other Person which may in the future become party to this Agreement or the Other Documents as a Borrower or Guarantor, intends to cause any Letter of Credit to be issued for any purpose in violation of Applicable Law.

2.10. Statement of Account. Issuer shall maintain, in accordance with its customary procedures, a facility account ("Borrowers' Account") in the name of Borrowers in which shall be recorded the date and amount of each Letter of Credit issued hereunder, the date and amount of each drawing thereunder and each payment in respect of any such drawing thereunder, and each payment in respect of any Reimbursement Obligation with respect to any such Letter of Credit arising and becoming liquidated due to any such payment in respect any such drawing; provided, however, the failure by Issuer to record any such information in the Borrowers' Account shall not adversely affect Issuer. Each month, Issuer shall send to Borrowing Agent (with a copy to the Third Party Cash Pledgor sent to the notice address provided for in the Third Party Cash Pledge Agreement) a statement showing the accounting for the Letters of Credit issued, drawing made thereunder and payments made in respect of such drawings, and payments in respect of Reimbursement Obligations arising and becoming liquidated as a result thereof, and other transactions between Issuer and Borrowers and the other Loan Parties during such month. The monthly statements shall be deemed correct and binding upon Borrowers in the absence of manifest error and shall constitute an account stated between Issuer and Borrowers unless Issuer receives a written statement of Borrowers' specific exceptions thereto within thirty (30) days after such statement is received by Borrowing Agent. The records of Issuer with respect to Borrowers' Account shall be conclusive evidence absent manifest error.

III. FEES.

3.1. Letter of Credit Fees.

(a) Borrowers shall pay (x) to Issuer administrative fees for each outstanding Letter of Credit for the period from and excluding the date of issuance of same to and including the date of expiration or termination, equal to the aggregate daily face amount of all outstanding Letters of Credit multiplied by three-quarters of one percent (0.75%) and (y) to Issuer a fronting fee of one quarter of one percent (0.25%) per annum times the daily face amount of each outstanding Letter of Credit for the period from and excluding the date of issuance of same to and including the date of expiration or termination (all of the foregoing fees, the "Letter of Credit Fees"; the fees pursuant to the foregoing clause (x) are the "Letter of Credit Administration Fees" and the fees pursuant to the foregoing clause (y) are the "Letter of Credit Fronting Fees"), all such Letter of Credit Fees to be calculated on the basis of a 360-day year for the actual number of days elapsed and to be payable quarterly in arrears on the first day of each calendar quarter and on the last day of the Term (provided that, in the event that at any time, Payment in Full of the Obligations has occurred but any Letters of Credit remain outstanding, all Letter of Credit Fees provided for in this sentence shall continue to accrue with respect to each such Letter of Credit until such time as such Letter of Credit has expired in accordance with its terms, been drawn in full, and returned for cancellation with the consent of the applicable beneficiary or beneficiaries under such Letters of Credit). In addition, Borrowers shall pay to Issuer, for the benefit of Issuer, any and all administrative, issuance, amendment, payment and negotiation charges with respect to Letters of Credit and all fees and expenses as agreed upon by Issuer and the Borrowing Agent in connection with any Letter of Credit, including in connection with the opening, amendment or renewal of any such Letter of Credit and any acceptances created thereunder, all such charges, fees and expenses, if any, shall be payable on demand and shall be deemed earned in full on the date when the same are due and payable hereunder and shall not be subject to rebate or pro-ration upon the termination of this Agreement for any reason. Any such charge in effect at the time of a particular transaction shall be the charge for that transaction, notwithstanding any subsequent change in Issuer's prevailing charges for that type of transaction.

3.2. Closing Fee and Facility Fees.

(a) Borrowers shall pay to Issuer a closing fee of $1,100,000, which such fee shall be due and payable, and fully-earned and non-refundable under any circumstances upon the execution and delivery of this Agreement by all parties hereto.

(b) If, for any day in each calendar quarter during the Term, the aggregate amount of the Dollar Equivalent of the Maximum Undrawn Amount of all outstanding Letters of Credit (the "Usage Amount") does not equal the Commitment Amount, then Borrowers shall pay to Issuer an unused commitment fee at a rate equal to 0.375% per annum for each such day on the amount by which the Commitment Amount on such day exceeds such Usage Amount (the "Facility Fee"). Such Facility Fee shall be payable to Issuer in arrears on the first Business Day of calendar quarter with respect to each day in the previous calendar quarter (including the first Business Day of the first calendar quarter beginning after the Closing Date, in which case the Facility Fee shall be paid with respect to the period from the Closing Date through and including the last day of the calendar quarter in which the Closing Date occurs) and on the last day of the Term with respect to the period from the end of the previous calendar quarter through and including the last day of the Term.

3.3. Computation of Interest and Fees. Interest and fees hereunder shall be computed on the basis of a year of 360 days and for the actual number of days elapsed. If any payment to be made hereunder becomes due and payable on a day other than a Business Day, the due date thereof shall be extended to the next succeeding Business Day (and, in the case of any Letter of Credit Borrowing, interest thereon shall be payable at the Letter of Credit Interest Rate during such extension).

3.4. Maximum Charges. In no event whatsoever shall interest and other charges charged hereunder (including those in respect of Letter of Credit Borrowings) exceed the highest rate permissible under Applicable Law. In the event interest and other charges as computed hereunder would otherwise exceed the highest rate permitted under Applicable Law: (i) the rates hereunder will be reduced to the maximum rate permitted under Applicable Law; (ii) such excess amount shall be first applied to any unpaid principal or principal equivalent portion of the Obligations owed by Borrowers; and (iii) if the then remaining excess amount is greater than the previously unpaid principal or principal equivalent portion of the Obligations, Issuer shall promptly refund such excess amount to Borrowers and the provisions hereof shall be deemed amended to provide for such permissible rate.

IV. COLLATERAL.

4.1. Security Interest in the Collateral. To secure the prompt payment and performance to Issuer and each other Secured Party of the Obligations, each Loan Party hereby assigns, pledges and grants to Issuer for its benefit and for the ratable benefit of each other Secured Party, a continuing security interest in and to and Lien on all of its Collateral, whether now owned or existing or hereafter created, acquired or arising and wheresoever located. Each Loan Party shall mark its books and records as may be necessary or appropriate to evidence, protect and perfect Issuer's security interest and shall cause its financial statements to reflect such security interest. Each Loan Party shall provide Issuer with written notice of all commercial tort claims promptly upon the occurrence of any events giving rise to any such claims (regardless of whether legal proceedings have yet been commenced), such notice to contain a brief description of the claim(s), the events out of which such claims arose and the parties against which such claim(s) may be asserted and, if applicable in any case where legal proceedings regarding such claim(s) have been commenced, the case title together with the applicable court and docket number. Upon delivery of each such notice, such Loan Party shall be deemed to thereby grant to Issuer a security interest and lien in and to such commercial tort claims described therein and all proceeds thereof. Each Loan Party shall provide Issuer with written notice promptly upon becoming the beneficiary under any letter of credit or otherwise obtaining any right, title or interest in any letter of credit rights, and at Issuer's request shall take such actions as Issuer may reasonably request for the perfection of Issuer's security interest therein.

4.2. Pledged Cash Collateral.

(a) On the Closing Date, the Third Party Cash Pledgor has delivered to Issuer cash in the amount of $110,000,000 to be held by Issuer as cash collateral for and to secure the L/C Obligations of any Eligible Letter of Credit (such cash collateral, together with any further cash collateral (if any) provided at any time or from time to time by Third Party Cash Pledgor to secure the L/C Obligations, the "Third Party Cash Collateral"), which such cash collateral shall be held by Issuer in the Third Party Cash Collateral Account pursuant to, subject to the terms and conditions of, and as provided for in the Third Party Cash Pledge Agreement, and such cash collateral shall be applied by Issuer to the payment and satisfaction of any L/C Obligations of any Eligible Letters of Credit if, as, and when applicable as provided for in Section 2.4(a) of this Agreement and in the Third Party Cash Pledge Agreement.

(b) If, at any time after the Closing Date, the amount of Pledged Cash Collateral held by Issuer shall be less than the Commitment Amount (whether as a result of any application of any of the Third Party Cash Collateral or any other Pledged Cash Collateral to satisfy any matured Reimbursement Obligation resulting from the payment by Issuer of any amount in respect of a draw by a beneficiary under any Eligible Letter of Credit, any written agreement by Issuer in its sole discretion (after obtaining the prior written consent thereto of the Third Party Cash Pledgor to the extent required under the Third Party Cash Pledge Agreement) subsequent to the Closing Date to increase the Commitment Amount, or otherwise), Borrowers shall have the right to (x) request that the Third Party Cash Pledgor provide additional Third Party Cash Collateral to be held by Issuer under the Third Party Cash Pledge Agreement (which such request may be declined by the Third Party Cash Pledgor in its sole discretion) or (y) cause cash of any one or more Loan Parties to be provided to Issuer, to be held by Issuer as cash collateral for and to secure the L/C Obligations (any such cash collateral provided by Loan Parties at any time or from time to time to secure the L/C Obligations, the "Loan Parties Cash Collateral") pursuant to, subject to the terms and conditions of, and as provided for in a cash collateral pledge agreement in form and substance satisfactory to Issuer in its discretion (any such agreement, a "Loan Parties Cash Pledge Agreement") in a deposit account maintained by Loan Parties with Issuer and, pursuant to the Loan Parties Cash Pledge Agreement, subject to the sole and complete dominion and control of Issuer (any such account, a "Loan Parties Cash Collateral Account"), and such cash collateral shall be applied by Issuer to the payment and satisfaction of any L/C Obligations if, as, and when applicable as provided for in Section 2.4(a) of this Agreement and in any Loan Parties Cash Pledge Agreement.

(c) If on any Valuation Date, the Dollar Equivalent of the aggregate of the Maximum Undrawn Amounts of all Letters of Credit then outstanding exceeds the amount of Pledged Cash Collateral held by Issuer on such Valuation Date (whether as a result of any fluctuations in any of the Exchange Rates with respect to any of the currencies in which any Foreign Currency Letters of Credit then outstanding may be denominated or otherwise) (the amount of any such excess as to any Valuation Date, as rounded up to the next highest increment of $10,000, the "Cash Collateral Shortfall Amount") Borrowers shall, no later than the close of business on the fifth (5^{th}) Business Day following such Valuation Date (or, if no Loan Parties Cash Collateral Account has been established and no Loan Parties Cash Pledge Agreement has been entered into prior to such Valuation Date, the fifteenth (15^{th}) Business Day following such Valuation Date) either (x) request that the Third Party Cash Pledgor provide additional Third Party Cash Collateral to be held by Issuer under the Third Party Cash Pledge Agreement (which such request may be declined by the Third Party Cash Pledgor in its sole discretion) and/or (y) cause any one or more Loan Parties to provide Loan Parties Cash Collateral to be held by Issuer pursuant to a Loan Parties Cash Pledge Agreement, in an aggregate amount under both clauses (x) and/or (y) equal to the Cash Collateral Shortfall Amount for such Valuation Date (provided that, Loan Parties shall not be obligated to cause additional Pledged Cash Collateral to be provided in any case where the Cash Collateral Shortfall Amount (prior to any rounding) is less than $10,000).

(d) Notwithstanding any termination of this Agreement and/or any termination of Issuer's Commitment hereunder that may occur at any time for any reason, Third Party Cash Pledgor may not at any time withdraw or have the right to withdraw any of the Third Party Cash Collateral provided by it from time to time, and the Third Party Cash Pledgors shall not be entitled to any return of any Third Party Cash Collateral provided by it from time to time except as expressly provided for under the Third Party Cash Pledge Agreement.

(e) Notwithstanding any termination of this Agreement and/or any termination of Issuer's Commitment hereunder that may occur at any time for any reason, no Loan Party may at any time withdraw or have the right to withdraw any of any Loan Parties Cash Collateral provided by any one or more of them from time to time, and no Loan Party shall be entitled to any return of any Loam Parties Cash Collateral provided by it from time to time except upon the occurrence of all of the following: (x) Payment in Full of the L/C Obligations; (y) the expiration, drawing in full, and/or return for cancellation with the consent of the applicable beneficiaries of all Letters of Credit and (without duplication of any amount paid pursuant to the preceding clause (x), payment in full of all L/C Obligations with respect to any Letters of Credit that may have arisen subsequent to any Payment in Full of the Obligations (including without limitation any Reimbursement Obligations arising in respect of any draws with respect to any Letters of Credit made subsequent to such Payment in Full and any Letter of Credit Fees or other charges that may have accrued hereunder with respect to any Letters of Credit that remained outstanding at any time following such Payment in Full;)) and (z) termination of this Agreement.

V. REPRESENTATIONS AND WARRANTIES.

Each Loan Party represents and warrants as follows:

5.1. Authority. Each Loan Party has full power, authority and legal right to enter into this Agreement and the Other Documents to which it is a party and to perform all its respective Obligations hereunder and thereunder. This Agreement and the Other Documents to which it is a party have been duly executed and delivered by each Loan Party, and this Agreement and the Other Documents to which it is a party constitute the legal, valid and binding obligation of such Loan Party enforceable in accordance with their terms, except as such enforceability may be limited by any Insolvency Law. The execution, delivery and performance of this Agreement and of the Other Documents to which it is a party (a) are within such Loan Party's corporate or company powers, as applicable, have been duly authorized by all necessary corporate or company action, as applicable, are not in contravention of law or the terms of such Loan Party's Organizational Documents or to the conduct of such Loan Party's business or of any Material Contract or undertaking to which such Loan Party is a party or by which such Loan Party is bound, including the Reimbursement/Cash Collateral Facility Documents or the Unsecured Notes Documents, (b) will not conflict with or violate any law or regulation, or any judgment, order or decree of any Governmental Body, (c) will not require the Consent of any Governmental Body, any party to a Material Contract or any other Person, except those Consents set forth on Schedule 5.1 hereto, all of which will have been duly obtained, made or compiled prior to the Closing Date and which are in full force and effect and (d) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Encumbrances upon any asset of such Loan Party under the provisions of any agreement, instrument, or other document to which such Loan Party is a party or by which it or its property is a party or by which it may be bound including the Reimbursement/Cash Collateral Facility Documents or the Unsecured Notes Documents.

5.2. Formation and Qualification.

(a) Each Company is duly incorporated or formed, as applicable, and in good standing under the laws of the state listed on Schedule 5.2(a) hereto and is qualified to do business and is in good standing in the states listed on Schedule 5.2(a) hereto which constitute all states in which qualification and good standing are necessary for such Company to conduct its business and own its property and where the failure to so qualify could reasonably be expected to have a Material Adverse Effect on such Company. Each Loan Party has delivered to Issuer true and complete copies of its Organizational Documents and will promptly notify Issuer of any amendment or changes thereto.

(b) The only Subsidiaries of each Loan Party are listed on Schedule 5.2(b) hereto.

5.3. Survival of Representations and Warranties. All representations and warranties of such Loan Party set forth in this Agreement and the Other Documents to which it is a party shall be true at the time of such Loan Party's execution of this Agreement and the Other Documents to which it is a party, and shall survive the execution, delivery and acceptance thereof by the parties thereto and the closing of the transactions described therein or related thereto.

5.4. Entity Names. No Loan Party has been known by any other company or corporate name, as applicable, in the past five (5) years and does not sell Inventory under any other name except as set forth on Schedule 5.6 hereto, nor has any Loan Party been the surviving corporation or company, as applicable, of a merger or consolidation or acquired all or substantially all of the assets of any Person during the preceding five (5) years.

5.5. Solvency; No Litigation, Violation of Law, Material Adverse Effect.

(a) On the Closing Date, after giving effect to the Transactions, and also on the date each Letter of Credit is issued hereunder, Loan Parties, taken as a whole, are and will be Solvent.

(b) Except as set forth on Schedule 5.5(b) hereto, no Company has any pending or threatened litigation, arbitration, actions or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, $1,000,000. None of the pending or threatened litigation, arbitration, actions or proceedings set forth on Schedule 5.8(b) hereto could reasonably be expected to have a Material Adverse Effect.

(c) No Company is in violation of any applicable statute, law, rule, regulation or ordinance in any respect which could reasonably be expected to have a Material Adverse Effect, nor is any Company in violation of any order of any court, Governmental Body or arbitration board or tribunal.

(d) Since December 31. 2020, there has occurred any event, condition or state of facts which could reasonably be expected to have a Material Adverse Effect.

5.6. Certificate of Beneficial Ownership. The Certificate of Beneficial Ownership executed and delivered to Issuer for each Loan Party on or prior to the date of this Agreement, as updated from time to time in accordance with this Agreement, is accurate, complete and correct as of the date hereof and as of the date any such update is delivered. Each Loan Party acknowledges and agrees that the Certificate of Beneficial Ownership is one of the Other Documents.

5.7. Disclosure. No representation or warranty made by any Loan Party in this Agreement or any Other Document or in any financial statement, report, certificate or any other document delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not misleading. There is no fact known to any Loan Party or which reasonably should be known to such Loan Party which such Loan Party has not disclosed to Issuer in writing with respect to the Transactions which could reasonably be expected to have a Material Adverse Effect.

5.8. Sanctions and other Anti-Terrorism Laws. No (a) Covered Entity: (i) is a Sanctioned Person, nor to its knowledge any employees, officers, directors, affiliates, consultants, brokers or agents acting on a Covered Entity's behalf in connection with this Agreement is a Sanctioned Person; (ii) directly, or indirectly through any third party, engages in any transactions or other dealings with any Sanctioned Person or Sanctioned Jurisdiction, or which otherwise are prohibited by any Laws of the United States or laws of other applicable jurisdictions relating to economic sanctions and other Ant-Terrorism Laws; (b) Collateral may be deemed Embargoed Property.

5.9. Anti-Corruption Laws. Each Covered Entity has (a) conducted its business in compliance with all Anti-Corruption Laws and (b) has instituted and maintains policies and procedures designed to ensure compliance with such Laws.

5.10. Margin Regulations. No Company is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect. No part of the proceeds of any Advance will be used for "purchasing" or "carrying" "margin stock" as defined in Regulation U of such Board of Governors.

5.11. Investment Company Act. No Company is an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, nor is it controlled by such a company.

VI. AFFIRMATIVE COVENANTS.

Each Loan Party shall, and shall cause each of its Subsidiaries to, until the Payment in Full of the Obligations, the termination of the Commitments and the termination of this Agreement:

6.1. Compliance with Laws. Comply with all Applicable Laws with respect to the Collateral or any part thereof or to the operation of such Company's business the non-compliance with which could reasonably be expected to have a Material Adverse Effect (except to the extent any separate provision of this Agreement shall expressly require compliance with any particular Applicable Law(s) pursuant to another standard).

6.2. Conduct of Business and Maintenance of Existence and Assets. (a) Conduct continuously and operate actively its business according to good business practices and maintain all of its properties useful or necessary in its business in good working order and condition (reasonable wear and tear excepted and except as may be disposed of in accordance with the terms of this Agreement), including all Intellectual Property (as defined in the Related ABL Facility Agreement) and, except if the failure to do so would not, individually or in the aggregate, reasonable be expected to result in a Material Adverse Effect and take all actions that are reasonably deemed necessary by such Loan Party within its sole discretion to enforce and protect the validity of material intellectual property included in the Collateral; (b) keep in full force and effect its existence and comply in all material respects with the laws and regulations governing the conduct of its business where the failure to do so could reasonably be expected to have a Material Adverse Effect; and (c) make all such reports and pay all such franchise and other similar taxes and license fees and do all such other acts and things as may be lawfully required to maintain its rights, licenses, leases, powers and franchises under the laws of the United States or any political subdivision thereof where the failure to do so could reasonably be expected to have a Material Adverse Effect.

6.3. Books and Records. Keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to its business and affairs (including without limitation accruals for taxes, assessments, levies and claims, allowances against doubtful accounts receivable and accruals for depreciation, obsolescence or amortization of assets), all in accordance with, or as required by, GAAP consistently applied in the opinion of such independent public accountant as shall then be regularly engaged by Companies.

6.4. Payment of Taxes. Pay, when due, all taxes, assessments and other governmental charges lawfully levied or assessed upon such Company or any of the Collateral, including real and personal property taxes, assessments and charges and all franchise, income, employment, social security benefits, withholding, and sales taxes, except (i) such taxes, assessments, fees and other governmental charges that are being Properly Contested and (ii) immaterial local taxes, assessments and other governmental charges. If any tax by any Governmental Body is or may be imposed on or as a result of any transaction between any Company and Agent or any Lender which Agent or any Lender may be required to withhold or pay or if any taxes, assessments, or other charges remain unpaid after the date fixed for their payment, or if any claim shall be made which, in the opinion of Agent, may possibly create a valid Lien on the Collateral, Agent may, with prior written notice to the Loan Parties, pay the taxes, assessments or other charges and each Company hereby indemnifies and holds Agent and each Lender harmless in respect thereof. Agent will not pay any taxes, assessments or charges to the extent that any applicable Company has Properly Contested those taxes, assessments or charges. The amount of any payment by Agent under this Section 6.4 shall be charged to Borrowers' Account as a Revolving Advance maintained as a Domestic Rate Loan and added to the Obligations and, until Companies shall provide Agent with an indemnity therefor (or supply Agent with evidence satisfactory to Agent that due provision for the payment thereof has been made), Agent may hold without interest any balance standing to Companies' credit and Agent shall retain its security interest in and Lien on any and all Collateral held by Agent.

6.5. Execution of Supplemental Instruments. Execute and deliver to Issuer from time to time, upon demand, such supplemental agreements, statements, assignments and transfers, or instructions or documents relating to the Collateral, and such other instruments as Issuer may request, in order that the full intent of this Agreement may be carried into effect.

6.6. Additional Collateral and Guaranties; After-Acquired Real Property.

(a) To the extent any Person is joined to the Related ABL Facility Agreement as a "Loan Party" thereunder, cause such Person to be joined as a Borrower or Guarantor hereunder (as applicable corresponding to the capacity in which such Person is joined to the Related ABL Facility Agreement) and to fulfill, mutatis mutandis, the requirement of Section 6.12(a) of the Related ABL Facility Agreement in favor of Issuer with respect to this Agreement and the Other Documents as to such Person.

(b) To the extent any Loan Party acquires any First-Tier Foreign Subsidiary (as defined in the Related ABL Facility Agreement), Loan Parties shall fulfill, mutatis mutandis, the requirement of Section 6.12(b) of the Related ABL Facility Agreement in favor of Issuer with respect to this Agreement and the Other Documents as to the Subsidiary Equity Interests of such Person.

(c) To the extent that any Issuer shall so request, in the exercise of its sole discretion, Loan Parties shall fulfill, mutatis mutandis, the requirements of Section 6.12(c) of the Related ABL Facility Agreement in favor of Issuer with respect to this Agreement as to any Material Real Property of any Loan Party.

6.7. Certificate of Beneficial Ownership and Other Additional Information. Provide to Issuer: (i) as may be requested by Issuer from time to time, confirmation of the accuracy of the information set forth in the most recent Certificate of Beneficial Ownership provided to the Issuer; (ii) a new Certificate of Beneficial Ownership, in form and substance acceptable to Issuer, when the individual(s) to be identified as a Beneficial Owner have changed; and (iii) such other information and documentation as may reasonably be requested by Issuer from time to time for purposes of compliance by Issuer with applicable laws (including without limitation the USA Patriot Act and other "know your customer" and anti-money laundering rules and regulations), and any policy or procedure implemented by Issuer to comply therewith.

6.8. Sanctions and other Anti-Terrorism Laws; Anti-Corruption Laws. (a) The Loan Parties covenant and agree that (A) they shall immediately notify the Agent and each of the Lenders in writing upon the occurrence of a Reportable Compliance Event; and (B) if, at any time, any Collateral becomes Embargoed Property, in addition to all other rights and remedies available to the Agent and each of the Lenders, upon request by the Agent or any of the Lenders, the Loan Parties shall provide substitute Collateral acceptable to the Lenders that is not Embargoed Property.

(b) Each Covered Entity shall conduct their business in compliance with all Anti-Corruption Laws and maintain policies and procedures designed to ensure compliance with such Laws.

VII. NEGATIVE COVENANTS.

No Loan Party shall, nor shall it permit any of its Subsidiaries to, until the Payment in Full of the Obligations, the termination of the Commitments and the termination of this Agreement:

7.1. Amendment of Organizational Documents. In the case of any Loan Party, (a) change its legal name, (b) change its form of legal entity (e.g., converting from a corporation to a limited liability company or vice versa), (c) change its jurisdiction of organization or become (or attempt or purport to become) organized in more than one jurisdiction, or (d) otherwise amend, modify or waive any term or material provision of its Organizational Documents, unless required by law, in any manner that would be materially adverse to the interest of Secured Parties or the continued perfection of any Liens of Agent on the Collateral or would obligate any Loan Party to take any action that could reasonably be expected (under any reasonably foreseeable circumstances) to require such Loan Party make any Restricted Payment other than a Permitted Restricted Payment or enter into any transaction in in violation of Section 7.10 hereof, in any such case without (x) giving at least ten (10) days prior written notice of such intended change to Agent, (y) having received from Agent confirmation that Agent has taken all steps necessary for Agent to continue the perfection of and protect the enforceability and priority of its Liens in the Collateral belonging to such Loan Party and in the Equity Interests of such Loan Party (other than Parent) and (z) in any case under clause (d), having received the prior written consent of Agent to such amendment, modification or waiver.

7.2. Sanctions and other Anti-Terrorism Laws. Each loan party hereby covenants and agrees that until the last day of the Term, the loan party will not, and will not permit any of its Subsidiaries to:(a) [reserved], (b) directly, or knowingly indirectly through a third party, engage in any transactions or other dealings with any Sanction Person or Sanctioned Jurisdiction, including any use of the proceeds of the Loans to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctions Person or Sanctioned Jurisdiction; (c) repay the Loans with funds derived from any unlawful activity; (d) [reserved], (e) engage in any transactions or other dealings with any Sanctioned Person or Sanctioned Jurisdiction prohibited by any applicable laws of the United States or other applicable jurisdictions relating to economic sanctions and any Anti-Terrorism Laws; or (f) cause any Lender or Agent to violate any sanctions administered by OFAC.

7.3. Anti-Corruption Laws. Each Loan Party hereby covenants and agrees that until the last day of the Term, the Loan Party will not, and will not permit any of its Subsidiaries to, directly or knowingly indirectly, use the Letters of Credit or any proceeds thereof for any purpose which would breach any Anti-Corruption Laws in any jurisdiction in which any Covered Entity conducts business

VIII. CONDITIONS PRECEDENT.

8.1. Conditions to Initial Advances. The effectiveness of this Agreement and agreement of Issuer to issue the initial Letters of Credit requested to be made on the Closing Date is subject to the satisfaction (or waiver by Issuer in its sole discretion) of the following conditions precedent:

(a) Loan Documents. Issuer shall have received on or before the Closing Date the following, each in form and substance reasonably satisfactory to the Issuer and, unless indicated otherwise, dated as of the Closing Date:

(i) this Agreement, duly executed and delivered by each Credit Party; and

(ii) the Third Party Cash Pledge Agreement;

(b) Closing Certificate. Issuer shall have received a closing certificate signed by a Responsible Officer of Parent, dated as of the Closing Date, stating that (i) all representations and warranties set forth in this Agreement and the Other Documents are true and correct on and as of such date, (ii) on such date no Default or Event of Default has occurred or is continuing, and (ii) all of the conditions set forth in Sections 8.1(g), (h), and (i) have been satisfied.

(c) Closing Date Transactions

(i) Third Party Cash Collateral. Third Party Cash Pledgor shall have established the Third Party Cash Pledge Account with Issuer and shall have delivered and deposited into such Third Party Cash Pledge Account the initial Third Party Cash Collateral in the amount of $110,000,000; and

(ii) Related ABL Facility. All of the conditions precedent set forth in Section 8.1 of the Related ABL Facility Agreement (subject to any applicable provisions of Section 8.3 of the Related ABL Facility Agreement) shall have occurred.

(d) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code financing statement and Uniform Commercial Code termination statements) required by this Agreement, any of the Other Documents or under Applicable Law or reasonably requested by Issuer to be filed, registered or recorded in order to create, in favor of Issuer, a perfected security interest in or lien upon the Collateral and in order to terminate the perfected security interest in or lien upon the Collateral of Existing Issuer shall have been properly filed, registered or recorded in each jurisdiction in which the filing, registration or recordation thereof is so required or requested, and Issuer shall have received an acknowledgment copy, or other evidence satisfactory to it, of each such filing, registration or recordation and satisfactory evidence of the payment of any necessary fee, tax or expense relating thereto

(e) Secretary's Certificates, Authorizing Resolutions and Good Standings of Loan Parties. Issuer shall have received, in form and substance satisfactory to Issuer, a certificate of the Secretary or Assistant Secretary (or other equivalent officer, partner or manager) of each Loan Party dated as of the Closing Date which shall certify (i) copies of resolutions, in form and substance satisfactory to Issuer, of the board of directors (or other equivalent governing body, member or partner) of such Loan Party authorizing (x) as to Borrowers, the execution, delivery and performance of this Agreement and each Other Document to which each such Borrower is a party (including authorization of the requesting of Letters of Credit on a joint and several basis with all Borrowers as provided for herein), (y) as to Guarantors, the execution, delivery and performance of this Agreement and each Other Document to which each such Guarantor is a party (including authorization of the giving of a guaranty of the Guaranteed Obligations on a joint and several basis with all Guarantors as provided for herein), and (y) the granting by such Loan Party of the security interests in and liens upon the Collateral to secure the Obligations and/or Guaranteed Obligations (and such certificate shall state that such resolutions have not been amended, modified, revoked or rescinded as of the date of such certificate), (ii) the incumbency and signature of the officers of such Loan Party authorized to execute this Agreement and the Other Documents, (iii) true, correct, and complete copies of the Organizational Documents of such Loan Party as in effect on such date, complete with all amendments thereto, and (iv) the good standing (or equivalent status) of such Loan Party in its jurisdiction of organization and each applicable jurisdiction where the conduct of such Loan Party's business activities or the ownership of its properties necessitates qualification, as evidenced by good standing certificates (or the equivalent thereof issued by any applicable jurisdiction) dated not more than thirty (30) days prior to the Closing Date, issued by the Secretary of State or other appropriate official of each such jurisdiction;

(f) Legal Opinion. Agent shall have received (i) the executed legal opinion of King & Spalding LLP and (ii) the executed legal opinion of John J. Dziewisz, internal counsel to the Borrower, in each case, in form and substance satisfactory to Agent which shall cover such matters incident to the Transactions as Agent may reasonably require and each Loan Party hereby authorizes and directs such counsel to deliver such opinions to Agent and Lenders.

(g) No Litigation. No litigation, investigation or proceeding before or by any arbitrator or Governmental Body shall be continuing or threatened against any Loan Party or Joint Venture or against the officers or directors of any Loan Party or Joint Venture (A) in connection with this Agreement, the Other Documents, the Related ABL Facility, the Reimbursement/Cash Collateral Facility, or any of the Transactions and which, in the reasonable opinion of Issuer, is deemed material or (B) which could, in the reasonable opinion of Issuer, have a Material Adverse Effect; and (ii) no injunction, writ, restraining order or other order of any nature materially adverse to any Loan Party or the conduct of its business or inconsistent with the due consummation of the Transactions shall have been issued by any Governmental Body;

(h) Consents. Issuer shall have received any and all Consents necessary to permit the effectuation of the transactions contemplated by this Agreement and the Other Documents; and, Issuer shall have received such Consents and waivers of such third parties as might assert claims with respect to the Collateral, as Issuer and their counsel shall deem necessary;

(i) No Adverse Material Change. (i) Since December 31, 2020, no event, condition or state of facts which could reasonably be expected to have a Material Adverse Effect shall have occurred and (ii) no representations made or information supplied to Issuer shall have been proven to be inaccurate or misleading in any material respect;

(j) Certificate of Beneficial Ownership; USA Patriot Act Diligence. Issuer shall have received, in form and substance acceptable to Issuer an executed Certificate of Beneficial Ownership for each Loan Party and such other documentation and other information requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act; and

(b) Other. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the Transactions shall be satisfactory in form and substance to Issuer.

8.2. Conditions to Each Advance. The agreement of Issuer to issue any Letter of Credit requested to be issued on any date (including the initial Letters of Credit), is subject to the satisfaction of the following conditions precedent as of the date such Letter of Credit is issued:

(a) Representations and Warranties. Each of the representations and warranties made by any Loan Party in or pursuant to this Agreement and/or the Other Documents shall be true and correct in all material respects (except in the case of any such representation or warranty that is qualified as to materiality or as to the occurrence of (or the absence of the occurrence of) a Material Adverse Effect (specifically including without limitation the representations set forth in Section 5.5(d) hereof), each of which such representations and warranties shall be true and correct in all respects) on and as of such date as if made on and as of such date (except to e extent any such representation or warranty expressly relates only to any earlier and/or specified date, in which case such representation or warranty shall have been true and correct in all material respects (except in the case of any such representation or warranty that is qualified as to materiality or as to the occurrence of (or the absence of the occurrence of) a Material Adverse Effect (specifically including limitation the representations set forth in Section 5.5(d) hereof), each of which such representations and warranties shall have been true and correct in all respects) on and as of such earlier and/or specified date); and

(b) No Default. No Event of Default or Default shall have occurred and be continuing on such date, or would exist after giving effect to the Letter(s) of Credit requested to be issued, on such date and, in the case of the initial Letters of Credit, after giving effect to the consummation of the Transactions; provided, however that Issuer, in its sole discretion, may continue to issue Letters of Credit notwithstanding the existence of an Event of Default or Default and that any Letters of Credit so issued shall not be deemed a waiver of any such Event of Default or Default; and

(c) Maximum Advances. After giving effect to the Letter(s) of Credit requested, all of the limitations on the issuance of Letters of Credit provided for under Section 2.1(a) shall be satisfied.

Each request for an Letter of Credit by Borrowing Agent or Borrowers hereunder shall constitute a representation and warranty by each Borrower and each other Loan Party as of the date of request for and the date of the issuance of such Letter of Credit that the conditions set forth in this Section shall have been satisfied. Notwithstanding any provision to the contrary set forth in this Section 8.2, in no event shall the conditions set forth in this Section 8.2 be deemed to have been met during the continuance of any Cure Period (as defined in the Related ABL Facility.

IX. INFORMATION AS TO LOAN PARTIES.

Each Loan Party shall, or (except with respect to Section 9.5 hereof) shall cause Borrowing Agent on its behalf to, until the Payment in Full of the Obligations, the termination of the Commitments and the termination of this Agreement:

9.1. Litigation. Promptly notify Issuer in writing of any claim, litigation, suit or administrative proceeding affecting any Company or Joint Venture, whether or not the claim is covered by insurance, and of any litigation, suit or administrative proceeding, which in any such case affects the Collateral or which could reasonably be expected to have a Material Adverse Effect.

9.2. Annual Financial Statements. Deliver to Issuer within ninety (90) days after the end of each fiscal year of Parent, (A) financial statements of Parent and its Subsidiaries on a consolidated basis including, but not limited to, statements of income, stockholders' equity, and cash flow from the beginning of the current fiscal year to the end of such fiscal year and the balance sheet as at the end of such fiscal year, which such financial statements shall be true, complete and correct in all material respects and fairly present, in all material respects, the financial position of Parent and its Subsidiaries on a consolidated basis as of the date thereof and the results of operations for Parent and its Subsidiaries on a consolidated basis for such fiscal year and prepared in accordance with GAAP applied on a basis consistent with prior practices, and in reasonable detail, and shall be reported upon without qualification by an independent certified public accounting firm selected by Loan Parties and satisfactory to Issuer in its Permitted Discretion (the "Accountants"); provided that, it is agreed by the parties hereto that Deloitte & Touche LLP shall be acceptable as the Accountants. The reports shall be accompanied by a Compliance Certificate and (B) unaudited balance sheets of Parent and its Subsidiaries on a consolidating basis and unaudited statements of income, stockholders' equity, and cash flow of Parent and its Subsidiaries on a consolidating basis reflecting results of operations from the beginning of the current fiscal year to the end of such fiscal year and the balance sheet as at the end of such fiscal year, which such financial statements shall be true, complete and correct in all material respects and fairly present, in all material respects, the financial position of Parent and its Subsidiaries on a consolidated basis as of the date thereof and the results of operations for Parent and its Subsidiaries on a consolidated basis for such fiscal quarter and year-to-date period and prepared in accordance with GAAP applied on a basis consistent with prior practices.

9.3. Quarterly Financial Statements. Deliver to Issuer within forty-five (45) days after the end of each fiscal quarter, unaudited balance sheet of Parent and its Subsidiaries on a consolidated and consolidating basis and unaudited statements of income, stockholders' equity, and cash flow of Parent and its Subsidiaries on a consolidated and consolidating basis reflecting results of operations from the beginning of the fiscal year to the end of such quarter and for such quarter and setting forth in comparative form the respective financial statements for the corresponding date and period in the previous fiscal year and the budget delivered pursuant to Section 9.12 of the Related ABL Facility Agreement, which such financial statements shall be true, complete and correct in all material respects and fairly present, in all material respects, the financial position of Parent and its Subsidiaries on a consolidated and consolidating basis as of the date thereof and the results of operations for Parent and its Subsidiaries on a consolidated basis and consolidating for such fiscal quarter and year-to-date period and prepared in accordance with GAAP applied on a basis consistent with prior practices, and in reasonable detail, subject to normal and recurring year-end adjustments that individually and in the aggregate are not material to Loan Parties' business. The reports shall be accompanied by a Compliance Certificate.

9.4. Monthly Financial Statements. Deliver to Issuer within thirty (30) days after the end of each month, an unaudited balance sheet of Parent and its Subsidiaries on a consolidated basis and unaudited statements of income, and cash flow of Parent and its Subsidiaries on a consolidated basis reflecting results of operations from the beginning of the fiscal year to the end of such month and for such month, which such financial statements shall be true, complete and correct in all material respects and fairly present, in all material respects, the financial position of Parent and its Subsidiaries on a consolidated basis as of the date thereof and the results of operations for Parent and its Subsidiaries on a consolidated basis for fiscal month and year-to-date period and prepared in accordance with GAAP applied on a basis consistent with prior practices, and in reasonable detail, subject to normal and recurring year-end adjustments that individually and in the aggregate are not material to Loan Parties' business. The reports shall be accompanied by a Compliance Certificate.

9.5. Additional Information.

(a) Promptly upon request, deliver to Issuer such other information concerning the business, properties, condition (financial or otherwise), or operations, of any Company or Joint Venture as Issuer may from time to time may reasonably request or as Issuer may reasonably request as an ongoing supplement to any regularly scheduled period financial delivery, including without limitation, current copies of the Material Contracts, and

(b) without limiting the generality of the foregoing Section 9.11(a), promptly upon request by Issuer at reasonable intervals, deliver to Issuer, a corporate organizational chart or other equivalent list, current as of the date of delivery of such annual financial statements, in form and substance reasonably acceptable to Issuer and certified as true, correct and complete by an Responsible Officer of Issuer, setting forth, for each of the Loan Parties, all Persons subject to Section 6.12 and all Subsidiaries of any of them and any joint venture (including Joint Ventures) or Consortium entered into by any of the foregoing, (i) its full legal name, (ii) its jurisdiction of organization and organizational number (if any) and (iii) the number of shares of each class of its Equity Interests authorized (if applicable), the number outstanding as of the date of delivery, and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by Parent.

X. EVENTS OF DEFAULT.

The occurrence of any one or more of the following events shall constitute an "Event of Default":

10.1. Nonpayment. Failure by any Loan Party to pay when due (a) any principal on the Obligations, or (b) any interest or any other fee, charge, amount or liability provided for herein or in any Other Document and such failure continues for a period of three (3) Business Days, in each case whether at maturity, by reason of acceleration pursuant to the terms of this Agreement, by notice of intention to prepay or by required prepayment.

10.2. Breach of Representation. Except as provided in Section 10.9 hereof, any representation or warranty made or deemed made by any Loan Party in this Agreement, any of the Other Documents or any related agreement, document, certificate or financial or other statement provided at any time in connection herewith or therewith shall prove to have been incorrect or misleading in any material respect on the date when made or deemed to have been made;

10.3. Financial Information. Failure by any Loan Party to (a) deliver financial information when due hereunder or, if no due date is specified herein, within fifteen (15) days following a request therefor (as such deadline may be extended by consent of Agent upon request of Loan Parties, such consent not to be unreasonably withheld, conditioned or delayed), or (b) permit the inspection of its books or records or access to its premises for audits and appraisals in accordance with the terms hereof;

10.4. Noncompliance. Except as otherwise provided for in Sections 10.1, 10.3, 10.4(b) and 10.9 hereof, any (a) failure or neglect of any Loan Party or any Person to perform, keep or observe any term, provision, condition, covenant herein contained, or contained in any Other Document or any other agreement or arrangement, now or hereafter entered into between any Loan Party or such Person, and Issuer, or (b) failure or neglect of any Loan Party to perform, keep or observe any term, provision, condition or covenant, contained in Sections 4.5, 6.1, 6.3, or 6.5 hereof which is not cured within thirty (30) days from the occurrence of such failure or neglect;

10.5. Bankruptcy. Any Loan Party, any Subsidiary or Affiliate of any Loan Party shall (a) apply for, consent to or suffer the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar fiduciary of itself or of all or a substantial part of its property, (b) admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business, (c) make a general assignment for the benefit of creditors, (d) commence a voluntary case under any state or federal bankruptcy or receivership laws (as now or hereafter in effect), (e) be adjudicated a bankrupt or insolvent (including by entry of any order for relief in any involuntary Insolvency Proceeding commenced against it), (f) file a petition seeking to take advantage of any other law providing for the relief of debtors, (g) acquiesce to, or fail to have dismissed, within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (h) take any action for the purpose of effecting any of the foregoing;

10.6. Default under Related ABL Facility. The occurrence of any "Event of Default" as defined in and provided for under the Related ABL Facility Agreement;

10.7. Breach of Guaranty, Guarantor Security Agreement; Third Party Cash Pledge Agreement.

(a) Termination or breach of any Guaranty, Guarantor Security Agreement, or similar agreement executed and delivered to Issuer in connection with the Obligations, or if any Guarantor or pledgor attempts to terminate, challenges the validity of, or its liability under, any such Guaranty, Guarantor Security Agreement or similar agreement;

(b) The occurrence of any "Pledge Event of Default" (as defined in the Third Party Cash Pledge Agreement) under clause (vi) of Section 4.1 of the Third Party Cash Pledge Agreement;

(c) Termination of, or occurrence of any other "Pledge Event of Default" (as defined in the Third Party Cash Pledge Agreement) under, the Third Party Cash Pledge Agreement, or if Third Party Cash Pledgor attempts to terminate, challenges the validity of, challenges its liability under, or challenges the creation, attachment, or perfection of any Lien created under, the Third Party Cash Pledge Agreement; or

(d) Termination of, or occurrence of any event of default (as provided in any Loan Parties Cash Pledge Agreement) under, any Loan Parties Cash Pledge Agreement, or if any Company attempts to terminate, challenges the validity of, challenges its liability under, or challenges the creation, attachment, or perfection of any Lien created under, any Loan Parties Cash Pledge Agreement;

10.8. Invalidity. Any material provision of this Agreement or any Other Document shall, for any reason, cease to be valid and binding on any Loan Party, or any Loan Party shall so claim in writing to Issuer or any Loan Party challenges the validity of or its liability under this Agreement or any Other Document;

10.9. Anti-Money Laundering/International Trade Law Compliance. (x) Any representation, warranty or covenant contained in Sections 5.8, 5.9, 6.8, 7.2 and 7.3 is or becomes false or misleading at any time, (y) any Company or any employees, officers, directors, affiliates, consultants, brokers, and agents of any Company shall become a Sanctioned Person, or (y) any Collateral shall become Embargoed Property.

XI. ISSUER'S RIGHTS AND REMEDIES AFTER DEFAULT.

11.1. Rights and Remedies.

(a) Upon the occurrence of: (i) an Event of Default pursuant to Section 10.5 hereof or Section 10.7(b) hereof, all Obligations shall be immediately due and payable and this Agreement and the Commitments shall be deemed terminated, (ii) any of the other Events of Default and at any time thereafter, at the option of Issuer, all Obligations shall be immediately due and payable and Issuer shall have the right to terminate this Agreement and to terminate the Commitments; and (iii) without limiting Section 8.2 hereof, upon any Default under Sections 10.5(g) or 10.7(b)(g) hereof, the obligation of Issuer to issue Letters of Credit hereunder shall be suspended until such time as such involuntary petition shall be dismissed. Upon the occurrence of any Event of Default, Issuer shall have the right to exercise any and all rights and remedies provided for herein, under the Other Documents, under the Uniform Commercial Code and at law or equity generally, including the right to foreclose the security interests granted herein and to realize upon any Collateral by any available judicial procedure and/or to take possession of and sell any or all of the Collateral with or without judicial process, and Issuer shall have all the rights with respect to the Collateral and/or the Loan Parties provided for under Section 11.1 of the Related ABL Facility Agreement, mutatis mutandis. Without limiting the generality of the foregoing, upon the occurrence of any Event of Default, Issuer shall have the right to exercise any and all rights and remedies provided for under the Third Party Cash Pledge Agreement and any Loan Parties Cash Pledge Agreement. If any deficiency shall arise, Loan Parties shall remain liable to Issuer therefor.

11.2. Issuer's Discretion. Issuer shall have the right to determine which rights, Liens, security interests or remedies Issuer may at any time pursue, relinquish, subordinate, or modify, which procedures, timing and methodologies to employ, and what any other action to take with respect to any or all of the collateral and in what order, thereto and such determination will not in any way modify or affect any of Issuer's rights hereunder as against Loan Parties or each other.

11.3. Setoff. In addition to any other rights which Issuer may have under Applicable Law, upon the occurrence of an Event of Default hereunder, Issuer shall have a right, immediately and without notice of any kind, to apply any Loan Party's property held by Issuer or any of their Affiliates to reduce the Obligations and to exercise any and all rights of setoff which may be available to Issuer with respect to any deposits held by Issuer. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of Default hereunder without any action of the Issuer, although the Issuer may enter such setoff on its books and records at a later time.

11.4. Rights and Remedies not Exclusive. The enumeration of the foregoing rights and remedies is not intended to be exhaustive and the exercise of any rights or remedy shall not preclude the exercise of any other right or remedies provided for herein or otherwise provided by law, all of which shall be cumulative and not alternative.

11.5. Allocation of Payments and Proceeds of Collateral after Event of Default. Notwithstanding any provisions of this Agreement to the contrary:

(a) After the occurrence and during the continuance of an Event of Default, all amounts collected or received by Issuer on account of the Obligations or in respect of the Collateral (including without limitation any and all payments paid by or on behalf of any Loan Party (including any and all payments by or on behalf of any Guarantor in respect of its obligations and liabilities under its Guaranty), any and all proceeds of Collateral, any amounts paid by or on behalf of any Loan Party (or any Subsidiary of any Loan Party) on account of any of Cash Management Liabilities or Hedge Liabilities, any and all amount obtained by Issuer in respect of the Obligations by exercise of any rights of setoff or recoupment, any and all adequate protection payments payable to Issuer, and any and all distributions to Issuer under a plan of reorganization) (all of the foregoing, the "Obligations Receipts") may be, at Issuer's discretion, applied or paid over as follows:

FIRST, to the payment until paid in full of (x) all out-of-pocket costs and expenses (including without limitation all legal expenses and reasonable attorneys' fees) of Issuer to the extent payable and/or reimbursable by Loan Parties under the provisions of Section 16.9 hereof and/or any other applicable provisions hereof or of any Other Document, including all such costs and expenses incurred by Issuer in connection with enforcing the rights and remedies of Issuer, and (y) all indemnification obligations owing to Issuer to the extent payable by Loan Parties under the provisions of Section 16.5 hereof and/or any other applicable provisions hereof or of any Other Document;

SECOND, to the payment until paid in full of all Obligations arising under this Agreement and the Other Documents consisting of and accrued and unpaid fees (including but not limited to all Letter of Credit Fees) accrued and unpaid interest;

THIRD, to the payment until paid in full of the outstanding principal amount of the Obligations arising under this Agreement and the Other Documents, including the payment or cash collateralization of any outstanding Letters of Credit;

FOURTH, to the payment until paid in full of all other Obligations arising under this Agreement and the Other Documents which shall have become due and payable and not repaid pursuant to clauses "FIRST" through "THIRD" above; and

FIFTH, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, and subject in all cases to the other provisions of this Section 11.5, amounts received shall be applied in the numerical order provided until exhausted and each applicable category is paid in full prior to application to the next succeeding category.

(b) For the avoidance of doubt, for all purposes under this Section 11.5, as applied to any category of Obligations and/or any clause under Section 11.5(a) hereof, "paid in full" means payment in cash of all amounts owing hereunder and under the Other Documents in respect of such Obligations and/or such clause of Section 11.5(a) hereof according to the terms hereof and of the Other Documents, including loan fees, service fees, professional fees and interest, default interest calculated at default rates, interest on interest and expense reimbursements, whether or not the same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding, and specifically including without limitation in the case of each clause under Section 11.5(a) hereof all Obligations of the type described in such clause 11.5(a) constituting Post-Petition Obligations.

XII. WAIVERS AND JUDICIAL PROCEEDINGS.

12.1. Waiver of Notice. Each Loan Party hereby waives notice of non-payment of any of the Receivables, demand, presentment, protest and notice thereof with respect to any and all instruments, notice of acceptance hereof, notice of loans or advances made, credit extended, Collateral received or delivered, or any other action taken in reliance hereon, and all other demands and notices of any description, except such as are expressly provided for herein.

12.2. Delay. No delay or omission on Issuer's part in exercising any right, remedy or option shall operate as a waiver of such or any other right, remedy or option or of any Default or Event of Default.

12.3. Jury Waiver. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, COUNTERCLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT, ANY OTHER DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, ANY OTHER DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HEREBY CONSENTS THAT ANY SUCH CLAIM, COUNTERCLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

XIII. EFFECTIVE DATE AND TERMINATION.

13.1. Term. This Agreement, which shall inure to the benefit of and shall be binding upon the respective successors and permitted assigns of each Loan Party and Issuer, shall become effective on the Closing Date and shall continue in full force and effect until the earliest of (1) the fourth anniversary of the Closing Date, (2) any voluntary termination by the Borrowers of the Commitment hereunder, (3) either (1) the termination of the Reimbursement/Cash Collateral Facility Agreement or (2) the acceleration of the Reimbursement/Cash Collateral Facility Obligations upon or following the occurrence of any "Event of Default" as defined in and provided for under the Reimbursement/Cash Collateral Facility Agreement, and, in either case (1) or (2), the delivery by the Reimbursement/Cash Collateral Facility Agent of a Third Party Facility Termination Notice to Issuer in accordance with the provisions of Section 16.6 hereof, or (4) either (x) any voluntary termination by Borrowers of the revolving credit commitments under the Related ABL Facility or (y) any termination of the Related ABL Facility or following the occurrence of any "Event of Default" as defined in and provided for under the Related ABL Facility Agreement (the "Term"), unless sooner terminated as herein provided. Borrowers may terminate this Agreement at any time upon fifteen (15) days prior written notice to Issuer upon Payment in Full of the Obligations.

13.2. Termination. The termination of this Agreement shall not affect Issuer's rights, or any Obligations which pursuant to the terms hereof continue to accrue after such date, and the provisions hereof shall continue to be fully operative until all transactions entered into, rights or interests created and all of the Obligations have been Paid in Full. The security interests, Liens and rights granted to Issuer hereunder and the financing statements filed in connection herewith shall continue in full force and effect, notwithstanding the termination of this Agreement or the fact that Borrowers' Account may from time to time be temporarily in a zero or credit position, until (a) all of the Obligations have Paid in Full, the Commitments and this Agreement and the Other Documents have been terminated and each Loan Party has provided Issuer with an indemnification satisfactory to Issuer with respect thereto, and (b) all of the Loan Parties have released Issuer from and against any and all claims of any nature whatsoever that any Loan Party may have against Issuer pursuant to a release in form and substance acceptable to Issuer. Accordingly, each Loan Party waives any rights which it may have under the Uniform Commercial Code to demand the filing of termination statements with respect to the Collateral, and Issuer shall not be required to send such termination statements to each Loan Party, or to file them with any filing office, unless and until this Agreement shall have been terminated in accordance with its terms, all Obligations have been Paid in Full, and all of the Loan Parties have released Issuer from and against any and all claims of any nature whatsoever that any Loan Party may have against Issuer pursuant to a release in form and substance acceptable to Issuer. All representations, warranties, covenants, waivers and agreements set forth herein shall survive the termination of this Agreement and the Payment in Full of the Obligations.

XIV. [RESERVED].

XV. BORROWING AGENCY.

15.1. Borrowing Agency Provisions.

(a) Each Loan Party hereby irrevocably designates Borrowing Agent to be its attorney and agent and in such capacity whether verbally, in writing or through electronic methods (including, without limitation, an Approved Electronic Communication) to (i) request the issuance of Letters of Credit, (ii) execute and deliver all instruments, documents, applications, security agreements, reimbursement agreements and letter of credit agreements for Letters of Credit and all other agreements, documents, instruments, certificates, notices, writings and further assurances now or hereafter required hereunder, (iii) give instructions regarding Letters of Credit and agree with Issuer upon any amendment, extension or renewal of any Letter of Credit and (iv) otherwise take action under and in connection with this Agreement and the Other Documents, all on behalf of and in the name of such Loan Party or Loan Parties, and hereby authorizes Issuer to pay over or credit all loan proceeds hereunder in accordance with the request of Borrowing Agent.

(b) The handling of this credit facility as a co-borrowing facility with a borrowing agent in the manner set forth in this Agreement is solely as an accommodation to Loan Parties and at their request. Issuer shall not incur liability to Loan Parties as a result thereof. To induce Issuer to do so and in consideration thereof, each Loan Party hereby indemnifies Issuer and holds Issuer harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against Issuer by any Person arising from or incurred by reason of the handling of the financing arrangements of Loan Parties as provided herein, reliance by Issuer on any request or instruction from Borrowing Agent or any other action taken by Issuer with respect to this Section 15.1 except due to willful misconduct or gross (not mere) negligence by the indemnified party (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

(c) All Obligations shall be joint and several, and each Borrower shall make payment upon the maturity of the Obligations by acceleration or otherwise, and such obligation and liability on the part of each Borrower shall in no way be affected by any extensions, renewals and forbearance granted by Issuer to any Loan Party, failure of Issuer to give any Loan Party notice of borrowing or any other notice, any failure of Issuer to pursue or preserve its rights against any Loan Party, the release by Issuer of any Collateral now or thereafter acquired from any Loan Party, and such agreement by each Borrower to pay upon any notice issued pursuant thereto is unconditional and unaffected by prior recourse by Issuer to the other Loan Parties or any Collateral for such Borrower's Obligations or the lack thereof. Each Borrower waives all suretyship defenses.

15.2. Waiver of Subrogation. Each Loan Party expressly waives any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution of any other claim which such Loan Party may now or hereafter have against the other Loan Parties or any other Person directly or contingently liable for the Obligations hereunder, or against or with respect to any other Loan Party's property (including, without limitation, any property which is Collateral for the Obligations), arising from the existence or performance of this Agreement, until the termination of the Commitments, the termination of this Agreement and the Payment in Full of the Obligations.

15.3. Common Enterprise. The successful operation and condition of each of the Loan Parties and other Companies is dependent on the continued successful performance of the functions of the group of Loan Parties and other Companies as a whole and the successful operation of each Loan Parties and other Companies is dependent on the successful performance and operation of each other Loan Party and each other Company. Each of the Borrowers expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly or indirectly, from successful operations of Parent, each of the other Borrowers, each of the other Loan Parties, and the other Companies. Each Borrower expects to derive benefit (and the board of directors or other governing body of each such Borrower have determined that it may reasonably be expected to derive benefit), directly and indirectly, from the credit extended by the Issuer to the Borrowers hereunder, both in their separate capacities and as members of the group of Companies. Each Borrower has determined that execution, delivery, and performance of this Agreement and any Other Documents to be executed by such Borrower is within its corporate purpose, will be of direct and indirect benefit to such Borrower, and is in its best interest.

XVI. MISCELLANEOUS.

16.1. Governing Law. This Agreement and each Other Document (unless and except to the extent expressly provided otherwise in any such Other Document), and all matters relating hereto or thereto or arising herefrom or therefrom (whether arising under contract law, tort law or otherwise) shall, in accordance with Section 5-1401 of the General Obligations Law of the State of New York, be governed by and construed in accordance with the laws of the State of New York. Any judicial proceeding brought by or against any Loan Party with respect to any of the Obligations, this Agreement or any of the Other Documents may be brought in any court of competent jurisdiction in the State of New York, United States of America, and, by execution and delivery of this Agreement, each Loan Party accepts for itself and in connection with its properties, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. 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 or registered mail (return receipt requested) directed to Borrowing Agent at its address set forth in Section 16.6 hereof and service so made shall be deemed completed five (5) days after the same shall have been so deposited in the mails of the United States of America, or, at Issuer's option, by service upon Borrowing Agent which each Loan Party irrevocably appoints as such Loan Party's Issuer for the purpose of accepting service within the State of New York. Nothing herein shall affect the right to serve process in any manner permitted by law or shall limit the right of Issuer to bring proceedings against any Loan Party in the courts of any other jurisdiction. Each Loan Party waives any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon forum non conveniens. Each Loan Party waives the right to remove any judicial proceeding brought against such Loan Party in any state court to any federal court. Any judicial proceeding by any Loan Party against Issuer involving, directly or indirectly, any matter or claim in any way arising out of, related to or connected with this Agreement or any of the Other Documents shall be brought only in a federal or state court located in the County of New York, State of New York.

16.2. Entire Understanding.

(a) This Agreement and the documents executed concurrently herewith contain the entire understanding between each Loan Party and Issuer and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. Any promises, representations, warranties or guarantees not herein contained and hereinafter made shall have no force and effect unless in writing, signed by each Loan Party's and Issuer's respective officers. Neither this Agreement nor any portion or provisions hereof may be amended, modified, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged. Notwithstanding the foregoing, Issuer may modify this Agreement or any of the Other Documents for the purposes of completing missing content or correcting erroneous content of an administrative nature, without the need for a written amendment, provided that Issuer shall send a copy of any such modification to Loan Parties (which copy may be provided by electronic mail). Each Loan Party acknowledges that it has been advised by counsel in connection with the execution of this Agreement and Other Documents and is not relying upon oral representations or statements inconsistent with the terms and provisions of this Agreement. In the case of any waiver, Loan Parties and Issuer shall be restored to their former positions and rights, and any Event of Default waived shall be deemed to be cured and not continuing, but no waiver of a specific Event of Default shall extend to any subsequent Event of Default (whether or not the subsequent Event of Default is the same as the Event of Default which was waived), or impair any right consequent thereon.

16.3. Successors and Assigns; Participations.

(a) This Agreement shall be binding upon and inure to the benefit of Loan Parties, Issuer, all future holders of the Obligations and their respective successors and assigns, except that no Loan Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Issuer.

(b) Each Loan Party acknowledges that in the regular course of commercial banking business Issuer may at any time and from time to time sell participating interests in the Letters of Credit to other Persons (each such transferee or purchaser of a participating interest, a "Participant"). Each Participant may exercise all rights of payment (including rights of set-off) with respect to the portion of such Letters of Credit held by it or other Obligations payable hereunder as fully as if such Participant were the direct holder thereof provided that (i) Borrowers shall not be required to pay to any Participant more than the amount which it would have been required to pay to Issuer had Issuer retained such interest in the Letters of Credit hereunder or other Obligations payable hereunder unless the sale of the participation to such Participant is made with Borrower's prior written consent, and (ii) in no event shall Borrowers be required to pay any such amount arising from the same circumstances and with respect to the same Letters of Credit or other Obligations payable hereunder to both Issuer and such Participant. Each Loan Party hereby grants to any Participant a continuing security interest in any deposits, moneys or other property actually or constructively held by such Participant as security for the Participant's interest in the Letters of Credit.

(c) Issuer may sell, assign or transfer all or any part of its rights and obligations under or relating to any of the Letters of Credit or the Commitment under this Agreement and the Other Documents in whole or in part; provided, however, that the consent of Borrowers (such consent not to be unreasonably withheld or delayed) shall be required unless an Event of Default has occurred and is continuing at the time of such assignment; provided that Borrowers shall be deemed to have consented to any such assignment unless Borrowing Agent shall object thereto by written notice to Issuer within five (5) Business Days after having received prior notice thereof.

(d) Each Loan Party authorizes Issuer to disclose to any prospective assignee any and all financial information in Issuer's possession concerning such Loan Party which has been delivered to Issuer by or on behalf of such Loan Party pursuant to this Agreement or in connection with Issuer's credit evaluation of such Loan Party.

(e) Notwithstanding anything to the contrary set forth in this Agreement, Issuer may at any time and from time to time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of Issuer, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release Issuer from any of its obligations hereunder or substitute any such pledgee or assignee for Issuer as a party hereto.

16.4. Application of Payments. Issuer shall have the continuing and exclusive right to apply or reverse and re-apply any payment and any and all proceeds of Collateral to any portion of the Obligations. To the extent that any Loan Party makes a payment or Issuer or Issuer receives any payment or proceeds of the Collateral for any Loan Party's benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the Obligations or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by Issuer.

16.5. Indemnity. Each Loan Party shall defend, protect, indemnify, pay and save harmless Issuer and each of its officers, directors, Affiliates, attorneys, employees and agents (each an "Indemnified Party") for and from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, actions, judgments, suits, costs, charges, expenses and disbursements of any kind or nature whatsoever (including fees and disbursements of counsel) (collectively, "Claims") which may be imposed on, incurred by, or asserted against any Indemnified Party in arising out of or in any way relating to or as a consequence, direct or indirect, of: (i) this Agreement, the Other Documents, the Advances and other Obligations and/or the transactions contemplated hereby including the Transactions, (ii) any action or failure to act or action taken only after delay or the satisfaction of any conditions by any Indemnified Party in connection with and/or relating to the negotiation, execution, delivery or administration of the Agreement and the Other Documents, the credit facilities established hereunder and thereunder and/or the transactions contemplated hereby including the Transactions, (iii) any Loan Party's failure to observe, perform or discharge any of its covenants, obligations, agreements or duties under or breach of any of the representations or warranties made in this Agreement and the Other Documents, (iv) the enforcement of any of the rights and remedies of Issuer under the Agreement and the Other Documents, (v) any threatened or actual imposition of fines or penalties, or disgorgement of benefits, for violation of any Anti-Terrorism Law by any Loan Party or any Affiliate or Subsidiary of any Loan Party, and (vi) any claim, litigation, proceeding or investigation instituted or conducted by any Governmental Body or instrumentality, any Loan Party, any Affiliate or Subsidiary of any Loan Party or any other Person with respect to any aspect of, or any transaction contemplated by, or referred to in, or any matter related to, this Agreement or the Other Documents, whether or not Issuer is a party thereto. Without limiting the generality of any of the foregoing, each Loan Party shall defend, protect, indemnify, pay and save harmless each Indemnified Party from (x) any Claims which may be imposed on, incurred by, or asserted against any Indemnified Party arising out of or in any way relating to or as a consequence, direct or indirect, of the issuance of any Letter of Credit hereunder and (y) any Claims which may be imposed on, incurred by, or asserted against any Indemnified Party under any Environmental Laws with respect to or in connection with any Real Property owned or leased by any Company, any Hazardous Discharge, the presence of any Hazardous Materials affecting such Real Property (whether or not the same originates or emerges from such Real Property or any contiguous real estate), including any Claims consisting of or relating to the imposition or assertion of any Lien on any of such Real Property under any Environmental Laws and any loss of value of such Real Property as a result of the foregoing except to the extent such loss, liability, damage and expense is attributable to any Hazardous Discharge resulting from actions on the part of Issuer. Loan Parties' obligations under this Section 16.5 shall arise upon the discovery of the presence of any Hazardous Materials at any Real Property owned or leased by any Company, whether or not any federal, state, or local environmental agency has taken or threatened any action in connection with the presence of any Hazardous Materials, in each such case except to the extent that any of the foregoing arises out of the gross negligence or willful misconduct of the Indemnified Party (as determined by a court of competent jurisdiction in a final and non-appealable judgment). Without limiting the generality of the foregoing, this indemnity shall extend to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including fees and disbursements of counsel) asserted against or incurred by any of the Indemnified Parties by any Person under any Environmental Laws or similar laws by reason of any Loan Party's or any other Person's failure to comply with laws applicable to solid or hazardous waste materials, including Hazardous Materials and Hazardous Waste, or other Toxic Substances. This Section 16.5 shall not apply to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from a non-Tax claim.

16.6. Notice. Any notice or request hereunder may be given to Borrowing Agent or any Loan Party or to Issuer at their respective addresses set forth below or at such other address as may hereafter be specified in a notice designated as a notice of change of address under this Section. Any notice, request, demand, direction or other communication (for purposes of this Section 16.6 only, a "Notice") to be given to or made upon any party hereto under any provision of this Agreement shall be given or made by telephone or in writing (which includes by means of electronic transmission (i.e., "e-mail") or facsimile transmission or by setting forth such Notice on a website to which Loan Parties are directed (an "Internet Posting") if Notice of such Internet Posting (including the information necessary to access such site) has previously been delivered to the applicable parties hereto by another means set forth in this Section 16.6) in accordance with this Section 16.6. Any such Notice must be delivered to the applicable parties hereto at the addresses and numbers set forth under their respective names set forth below in this Section 16.6 or in accordance with any subsequent unrevoked Notice from any such party that is given in accordance with this Section 16.6. Any Notice shall be effective:

(a) In the case of hand-delivery, when delivered;

(b) If given by mail, four (4) days after such Notice is deposited with the United States Postal Service, with first-class postage prepaid, return receipt requested;

(c) In the case of a telephonic Notice, when a party is contacted by telephone, if delivery of such telephonic Notice is confirmed no later than the next Business Day by hand delivery, a facsimile or electronic transmission, an Internet Posting or an overnight courier delivery of a confirmatory Notice (received at or before 12:00 Noon on such next Business Day);

(d) In the case of a facsimile transmission, when sent to the applicable party's facsimile machine's telephone number, if the party sending such Notice receives confirmation of the delivery thereof from its own facsimile machine;

(e) In the case of electronic transmission, when actually received;

(f) In the case of an Internet Posting, upon delivery of a Notice of such posting (including the information necessary to access such site) by another means set forth in this Section 16.6; and

(g) If given by any other means (including by overnight courier), when actually received.

(A) If to Issuer or PNC at:

PNC Bank, National Association
2 International Place, 29th Floor
Boston, MA 02110

Attention: Relationship Manager – Babcock & Wilcox

and

Katie Belchere
Vice President, CTP
International Product Advisor | Business Credit
The PNC Financial Services Group, Inc.
1600 Market Street
Philadelphia, PA 19103
215-585-6650 (office)
240-595-1940 (mobile)
215-585-7934 (fax)
Katherine.belchere@pnc.com

Kathleen D. Speirs
Vice President & Sr. Implementation Specialist
TM International Trade Product Delivery
PNC Bank, National Association
500 First Avenue, P7-PFSC-02-T
Pittsburgh, PA 15219

412-768-1507 (phone)
412-762-5960 (fax)
kathleen.speirs@pnc.com

Jared Fuhs
Operations manager
PNC Bank N.A.
500 First Ave, P7-PFSC-02-T
Pittsburgh, Pa 15219
412 762-7230

with a copy to:

Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103
Attention: Michael Graziano, Esq.
Facsimile: (215) 832-5387
Email: Graziano@blankrome.com

(B) If to Borrowing Agent or any Loan Party:

Babcock & Wilcox Enterprises, Inc.
1200 East Market Street
Akron, Ohio 44305
Attention: Lou Salamone
Telephone: 919-280-7343
Email: lsalamone@babcock.com

and-

Babcock & Wilcox Enterprises, Inc.
1200 East Market Street
Akron, Ohio 44305
Attention: John Dziewisz
Email: jjdziewisz@babcock.com

with a copy to:

King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309
Attention: Sarah Borders
Telephone: (404) 572-3596
Email: sborders@kslaw.com

16.7. Survival. The obligations of Loan Parties under Sections 2.5, 2.6, 2.8, 16.5 and 16.9 hereof shall survive the termination of this Agreement and the Other Documents and the Payment in Full of the Obligations.

16.8. Severability. If any part of this Agreement is contrary to, prohibited by, or deemed invalid under Applicable Laws, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given effect so far as possible.

16.9. Expenses. The Loan Parties shall pay (a) all out-of-pocket expenses incurred by Issuer and its Affiliates (including the reasonable fees, charges and disbursements of counsel for each of Issuer), and shall pay all fees and time charges and disbursements for attorneys who may be employees of Issuer, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the Other Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (b) all reasonable out-of-pocket expenses incurred by Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, (c) all reasonable out-of-pocket expenses incurred by Issuer (including the fees, charges and disbursements of any counsel for Issuer), and shall pay all fees and time charges for attorneys who may be employees of Issuer, in connection with the enforcement or protection of its rights (i) in connection with this Agreement and the Other Documents, including its rights under this Section, or (ii) in connection with the Advances made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit, and (d) all reasonable out-of-pocket expenses of Issuer's regular employees and agents engaged periodically to perform audits of the Loan Parties' books, records and business properties; properties; provided for this Section 16.9, that any expenses for counsel shall be limited to one lead counsel and one local counsel in each relevant jurisdiction, and one specialty counsel in any relevant area of the law, for Agent and Lenders as a group.

16.10. Injunctive Relief. Each Loan Party recognizes that, in the event any Loan Party fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, or threatens to fail to perform, observe or discharge such obligations or liabilities, any remedy at law may prove to be inadequate relief to Lenders; therefore, Issuer, if Issuer so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving that actual damages are not an adequate remedy.

16.11. Consequential Damages. Neither Issuer, nor any agent or attorney for Issuer, shall be liable to any Loan Party (or any Affiliate of any Loan Party) for indirect, punitive, exemplary or consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Obligations or as a result of any transaction contemplated under this Agreement or any Other Document.

16.12. Captions. The captions at various places in this Agreement are intended for convenience only and do not constitute and shall not be interpreted as part of this Agreement.

16.13. Counterparts; Facsimile Signatures. This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature hereto.

16.14. Construction. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, schedules or exhibits thereto.

16.15. Confidentiality; Sharing Information. Issuer shall hold all non-public information obtained by Issuer pursuant to the requirements of this Agreement in accordance with Issuer's customary procedures for handling confidential information of this nature; provided, however, Issuer may disclose such confidential information (a) to its examiners, Affiliates, directors, officers, partners, employees agents, current and prospective financing sources and investors, outside auditors, counsel and other professional advisors, (b) to Issuer or to any prospective transferees, (c) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any of the Other Documents, and (d) as required or requested by any Governmental Body or representative thereof or pursuant to legal process; provided, further that (i) unless specifically prohibited by Applicable Law, Issuer shall use its reasonable best efforts prior to disclosure thereof, to notify the applicable Loan Party of the applicable request for disclosure of such non-public information (A) by a Governmental Body or representative thereof (other than any such request in connection with an examination of the financial condition of Issuer by such Governmental Body) or (B) pursuant to legal process and (ii) in no event shall Issuer be obligated to return any materials furnished by any Loan Party other than those documents and instruments in possession of Issuer in order to perfect its Lien on the Collateral once the Obligations have been Paid in Full, the Commitments have been terminated and this Agreement has been terminated. Each Loan Party acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to such Loan Party or one or more of its Affiliates (in connection with this Agreement or otherwise) by Issuer or by one or more Subsidiaries or Affiliates of Issuer and each Loan Party hereby authorizes Issuer to share any information delivered to Issuer by such Loan Party and its Subsidiaries pursuant to this Agreement, or in connection with the decision of Issuer to enter into this Agreement, to any such Subsidiary or Affiliate of Issuer, it being understood that any such Subsidiary or Affiliate of Issuer receiving such information shall be bound by the provisions of this Section 16.15 as if it were the Issuer hereunder. Such authorization shall survive the repayment of the other Obligations and the termination of this Agreement. Notwithstanding any non-disclosure agreement or similar document executed by Issuer in favor of any Loan Party or any of any Loan Party's affiliates, the provisions of this Agreement shall supersede such agreements.

16.16. Publicity. Each Loan Party hereby authorizes Issuer to make appropriate announcements of the financial arrangement entered into among Loan Parties and Issuer, including announcements which are commonly known as tombstones, in such advertising, print media, and promotional materials (including, without limitation, on any of the Issuer's websites) and to such selected parties as Issuer shall in its sole and absolute discretion deem appropriate.

16.17. USA PATRIOT Act.

(a) [RESERVED].

(b) The USA PATRIOT Act requires all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, Issuer may from time to time request, and each Loan Party shall provide to Issuer, such Loan Party's name, address, tax identification number and/or such other identifying information as shall be necessary for Issuer to comply with the USA PATRIOT Act and any other Anti-Terrorism Law.

XVII. GUARANTY AND SURETYSHIP AGREEMENT

17.1. Guaranty and Suretyship Agreement. Each Guarantor hereby guarantees, and becomes surety for the prompt payment and performance when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of (a) all of the Obligations owing by the Loan Parties to Issuer, including all of the costs and expenses and all of the indemnities owing to Issuer or other Indemnitee under the provisions of Sections 16.5 and 16.9 hereof, and (b) the costs and expenses of Issuer in enforcing the provisions of this Article XVII (the "Guaranteed Obligations"). The obligations and liabilities of the Guarantors under this Article XVII are joint and several, and each Guarantor hereby acknowledges and accepts such joint and several liability and further acknowledges and agrees that the joint and several liabilities of Guarantors under the provisions of this Article XVII shall be primary and direct liabilities and not secondary liabilities.

17.2. Guaranty of Payment and Not Merely Collection. The provisions of this Article XVII constitute a guaranty of payment and not of collection and Issuer shall not be required, as a condition of any Guarantor's liability hereunder, to make any demand upon or to pursue any of their rights against any Loan Parties and/or any of the Collateral, or to pursue any rights which may be available to Issuer with respect to any other person who may be liable for the payment of the Guaranteed Obligations and/or any other collateral or security available to Issuer therefor.

17.3. Guarantor and Suretyship Waivers.

(a) The provisions of this Article XVII constitute an absolute, unconditional, irrevocable and continuing guaranty and will remain in full force and effect until all of the Guaranteed Obligations have been Paid in Full. The provisions of this Article XVII will remain in full force and effect even if there are no Guaranteed Obligations outstanding at a particular time or from time to time. The provisions of this Article XVII will not be affected (i) by any surrender, exchange, acceptance, compromise or release by Issuer of any other party, or any other guaranty or any Collateral or other collateral or security held by it for any of the Guaranteed Obligations, (ii) by any failure of Issuer to take any steps to perfect or maintain their Liens or security interest in or to preserve their rights in or to any Collateral or any other security or other collateral for the Guaranteed Obligations or any guaranty, or (iii) by any irregularity, unenforceability or invalidity of the Guaranteed Obligations or any part thereof or any security therefor or other guaranty thereof, and the provisions of this Article XVII will not be affected by any other facts, events, occurrences or circumstances (except Payment in Full of the Guaranteed Obligations) that might otherwise give rise to any "guarantor" or "suretyship" defenses to which any Guarantor might otherwise be entitled, all of which such "guarantor" or "suretyship" defenses are hereby waived by each Guarantor. The obligations of each Guarantor hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense of any kind, including any such counterclaim, set-off, deduction or defense based upon any claim such Guarantor may have against any Borrower or Issuer (or any of their respective Affiliates), or based upon any claim any Borrower or any other guarantor or surety may have against Issuer (or any of its Affiliates), except the Payment in Full of the Guaranteed Obligations.

(b) Notice of acceptance of the agreement to guaranty provided for under the provisions of this Article XVII, notice of extensions of credit to Loan Parties from time to time, notice of default, diligence, presentment, notice of dishonor, protest, demand for payment, and any defense based upon any Issuer's failure to comply with the notice requirements of §§ 9-611, 9-612 and 9-613 of the Uniform Commercial Code are hereby waived to the fullest extent permitted by law. Each Guarantor hereby waives all defenses based on suretyship or impairment of collateral to the fullest extent permitted by law.

(c) Issuer may at any time and from time to time, without impairing or releasing, discharging or modifying any Guarantor's liabilities hereunder and (for purposes of this Article XVII only) without notice to or the consent of any Guarantor: (i) change the manner, place, time or terms of payment or performance of or interest rates or other fees on, or other terms relating to (including the maturity thereof), any of the Guaranteed Obligations; (ii) renew, extend, substitute, modify, amend or alter or refinance, or grant consents or waivers relating to any of the terms and provisions of this Agreement or any of the Other Documents or of the Guaranteed Obligations, or of any other guaranties, or any security for the Obligations or guaranties, (iii) increase (without limit of any kind) or decrease the Guaranteed Obligations (including all loans and extensions of credit thereunder) or modify the terms on which loans and extensions of credit may be made to Loan Parties (including without limitation by making available to Loan Parties under this Agreement and/or any Other Document and as part of the Guaranteed Obligations any new loans, advances or other extensions of credit of any kind, including any such new loans, advances or extension of credit of a new or different type or nature (including any new Cash Management Products and Services of any kind, Foreign Currency Hedges of any kind and/or Interest Rate Hedge of any kind) as compared to the loans, advances and extensions of credit available to Loan Parties hereunder as of the Closing Date); (iv) apply any and all payments by whomever paid or however realized including any proceeds of the Collateral or any other collateral or security, to any Guaranteed Obligations in such order, manner and amount as Issuer may determine in its sole discretion in accordance with the terms of this Agreement; (v) settle, compromise or deal with any other Person, including any Borrower or any other guarantor, with respect to the Guaranteed Obligations in such manner as Issuer deems appropriate in its sole discretion; (vi) substitute, exchange, subordinate, sell, compromise or release any security or guaranty for the Guaranteed Obligations; or (vii) take such actions and exercise such remedies hereunder as provided herein.

17.4. Repayments or Recovery from Issuer. If any demand or claim is made at any time upon Issuer for the repayment or recovery of any amount received by it in payment or on account of the Guaranteed Obligations (including any such demand or claim made in respect of or arising out of any laws relating to fraudulent transfers, fraudulent conveyances or preferences) and if Issuer repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body in respect of such demand or claim, or by reason of any settlement or compromise of any such demand or claim, the joint and several liability of Guarantors with respect to such portion of the Guaranteed Obligations previously satisfied by the payment of the amount so repaid or recovered shall be reinstated and revived and Guarantors will be and remain jointly and severally liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by Issuer. The provisions of this Section 17.4 shall survive any release and/or termination of this Agreement (and/or of any Guarantor's liability under this Article XVII) and will be and remain effective notwithstanding any contrary action which may have been taken by Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to Issuer's rights hereunder and any such release and/or termination will be deemed to have been conditioned upon such payment having become final and irrevocable.

17.5. Enforceability of Obligations. No modification, limitation or discharge of the Guaranteed Obligations arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law with respect to any Borrower or any other guarantor or surety for the Guaranteed Obligations will affect, modify, limit or discharge Guarantors' liability in any manner whatsoever and the provisions of this Article XVII will remain and continue in full force and effect and will be enforceable against each Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. Each Guarantor hereby waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the Guaranteed Obligations that may result from any such proceeding.

17.6. Guaranty Payable upon Event of Default; Remedies.

(a) Upon the occurrence and during the continuance of any Event of Default under this Agreement: (i) Guarantors shall pay to Issuer, immediately upon Issuer's demand therefore (except in the case of any Event of Default under Section 10.7, in which case Guarantors shall pay to Issuer immediately, without any demand or notice whatsoever), the full amount of the Guaranteed Obligations; (ii) Issuer in its discretion may exercise with respect to any Collateral of any Guarantor or any other collateral or security for the Guaranteed Obligations any one or more of the rights and remedies provided a secured party under the Uniform Commercial Code or any other applicable law or at equity (all of which such rights and remedies are hereby deemed incorporated herein and confirmed and ratified by Guarantors as if expressly set forth and granted and agreed to by Guarantors herein); and/or (iii) Issuer in its discretion may exercise from time to time any other rights and remedies available to it at law, in equity or otherwise.

(b) The Guarantors jointly and severally agree that, as between the Guarantors and Issuer, the Obligations of Loan Parties under this Agreement and the Other Documents may be declared to be forthwith due and payable as provided in Section 11.1 hereof (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 11.1) for purposes of this Article XVII (specifically including Section 17.1 hereof), notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Loan Parties and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such Obligations (whether or not due and payable by Loan Parties) shall forthwith become due and payable by the Guarantors for purposes of this Article XVII (specifically including Section 17.1 hereof).

(c) Each Guarantor hereby acknowledges that the guarantee provided for under the provisions of this Article XVII constitutes an instrument for the payment of money, and consents and agrees that Issuer, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

17.7. Waiver of Subrogation. Until the Guaranteed Obligations are Paid in Full and this Agreement and the Commitments have been terminated, each Guarantor waives in favor of Issuer any and all rights which such Guarantor may have to (a) assert any claim against any Borrower or any other Guarantor based on subrogation, restitution, reimbursement or contribution rights with respect to payments made under the provisions of this Article XVII, and (b) any realization on any property of any Borrower or any other Guarantor, including participation in any marshalling of any Borrower's or any other Guarantor's assets.

17.8. Continuing Guaranty and Suretyship Agreement. The provisions of this Article XVII shall constitute a continuing guaranty and suretyship obligation of each Guarantor with respect to all Guaranteed Obligations from time to time outstanding, arising or incurred, and shall continue in effect, and Issuer may continue to act in reliance hereon, until all of the Guaranteed Obligations have been Paid in Full and this Agreement and the Commitments have been terminated, and until such time, no Guarantor shall have any right to terminate or revoke the provisions of this Article XVII nor any of the guarantee and surety agreements and other covenants and undertakings provided for herein.

17.9. General Limitation on Guarantee Obligations. If, in the course of any legal action or proceeding under any applicable law, including any Insolvency Proceedings with respect to any Guarantor, the obligations of any Guarantor under the provisions of this Article XVII would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under the provisions of this Article XVII, then, notwithstanding any other provision to the contrary, the amount of such liabilities of such Guarantor under the provisions of this Article XVII shall, without any further action by such Guarantor, Issuer or any other person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 17.10 hereof) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding. Absent any such determination in any such legal action or proceeding, the provisions of this Section 17.9 shall in no respect limit the obligations and liabilities of any Guarantor to Issuer, and each Guarantor shall remain liable to Issuer for the full amount guaranteed by such Guarantor hereunder.

17.10. Right of Contribution. Each Guarantor hereby agrees that to the extent that any Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 17.7 hereof. The provisions of this Section 17.10 shall in no respect limit the obligations and liabilities of any Guarantor to Issuer, and each Guarantor shall remain liable to Issuer for the full amount guaranteed by such Guarantor hereunder.

17.11. Keepwell. Without limiting any other provision of this Article XVII or otherwise limiting the provisions of Section 6.15 hereof as to the Loan Parties generally, each Guarantor hereby agrees that, for the purposes of this Article XVII as an absolute, unconditional, irrevocable and continuing guaranty agreement, the provisions of Section 6.15 hereof are hereby incorporated and restated in this Article XVII as an obligation of each Guarantor that is and/or may hereafter be a Qualified ECP Loan Party from time to time.

[Remainder of Page Intentionally Left Blank]

Each of the parties has signed this Agreement as of the day and year first above written.

BORROWER:

BABCOCK & WILCOX ENTERPRISES, INC.

By: /s/ Rodney Carlson
Name: Rodney Carlson
Title: Treasurer

GUARANTORS:

AMERICON EQUIPMENT SERVICES, INC.
AMERICON, LLC
BABCOCK & WILCOX CONSTRUCTION CO., LLC
BABCOCK & WILCOX EBENSBURG POWER, LLC
BABCOCK & WILCOX EQUITY INVESTMENTS, LLC
BABCOCK & WILCOX HOLDINGS, LLC,
BABCOCK & WILCOX INDIA HOLDINGS, INC.
BABCOCK & WILCOX INTERNATIONAL SALES AND SERVICE CORPORATION
BABCOCK & WILCOX INTERNATIONAL, INC.
THE BABCOCK & WILCOX COMPANY
BABCOCK & WILCOX TECHNOLOGY, LLC
DELTA POWER SERVICES, LLC
DIAMOND OPERATING CO., INC.
DIAMOND POWER AUSTRALIA HOLDINGS, INC.
DIAMOND POWER CHINA HOLDINGS, INC.
DIAMOND POWER EQUITY INVESTMENTS, INC.
DIAMOND POWER INTERNATIONAL, LLC
EBENSBURG ENERGY, LLC
O&M HOLDING COMPANY
POWER SYSTEMS OPERATIONS, INC.
SOFCO – EFS HOLDINGS LLC
BABCOCK & WILCOX SPIG, INC.
BABCOCK & WILCOX CANADA CORP.

By: /s/ Rodney Carlson
Name: Rodney Carlson
Title: Treasurer

PNC BANK, NATIONAL ASSOCIATION, as Issuer

By: /s/Hossein Nouri
Name: Hossein Nouri
Title: Senior Vice President

Exhibit 10.3

Execution Copy

REIMBURSEMENT, GUARANTY
AND
SECURITY AGREEMENT

MSD PCOF PARTNERS XLV, LLC
(AS AGENT)

AND THE CASH COLLATERAL PROVIDERS PARTY HERETO

WITH

BABCOCK &WILCOX ENTERPRISES, INC.

(BORROWER)

CERTAIN OF SUBSIDIARIES OF BABCOCK &WILCOX ENTERPRISES, INC.

(GUARANTORS)

June 30, 2021

TABLE OF CONTENTS

LIST OF EXHIBITS AND SCHEDULES

Exhibits

Schedules

REIMBURSEMENT, GUARANTY AND SECURITY AGREEMENT

Reimbursement Credit, Guaranty and Security Agreement dated as of June 30, 2021, by and among BABCOCK &WILCOX ENTERPRISES, INC. (the "Parent"), a corporation organized under the laws of the State of Delaware (together with each Person which may hereafter be joined hereto as a borrower from time to time, collectively, the "Borrowers" and each, a "Borrower"), those Subsidiaries of Parent party hereto and named on the signature pages hereto as "Guarantors" (together with each Person which may hereafter be joined hereto as a guarantor from time to time, collectively, the "Guarantors", and each, a "Guarantor", and together with the Borrowers, collectively, the "Loan Parties" and each, a "Loan Party"), the financial institutions which are now or hereafter become parties hereto (collectively, the "Cash Collateral Providers" and each a "Cash Collateral Provider"), and MSD PCOF Partners XLV, LLC ("MSD"), in its capacity as agent for the Cash Collateral Providers (in such capacity, together with its successors and assigns in such capacity, the "Agent").

IN CONSIDERATION of the mutual covenants and undertakings set forth herein, Loan Parties, Cash Collateral Providers and Agent hereby agree as follows:

I. DEFINITIONS.

1.1. Accounting Terms. As used in this Agreement, the Other Documents or any certificate, report or other document made or delivered pursuant to this Agreement, all accounting terms not defined in Section 1.2 hereof or elsewhere in this Agreement (or partly defined in Section 1.2 hereof to the extent not defined) shall have the respective meanings given to such terms under GAAP; provided, however that, whenever such accounting terms are used for the purposes of determining compliance with financial covenants in this Agreement, such accounting terms shall be defined in accordance with GAAP as applied in preparation of the audited financial statements of Parent and its consolidated subsidiaries for the fiscal year ended December 31, 2020. If there occurs after the Closing Date any change in GAAP that affects in any respect the calculation of any covenant set forth in this Agreement or the definition of any term defined under GAAP used in such calculations, Agent, Cash Collateral Providers and Loan Parties shall negotiate in good faith to amend the provisions of this Agreement that relate to the calculation of such covenants with the intent of having the respective positions of Agent, Cash Collateral Providers and Loan Parties after such change in GAAP conform as nearly as possible to their respective positions as of the Closing Date; provided further, that, until any such amendments have been agreed upon, the covenants in this Agreement shall be calculated as if no such change in GAAP had occurred and Loan Parties shall provide additional financial statements or supplements thereto, attachments to Compliance Certificates and/or calculations regarding financial covenants as Agent may reasonably require in order to provide the appropriate financial information required hereunder with respect to Loan Parties both reflecting any applicable changes in GAAP and as necessary to demonstrate compliance with the financial covenants before giving effect to the applicable changes in GAAP. Notwithstanding the foregoing, leases (including leases entered into or renewed after the Closing Date) shall be classified and accounted for (and the interest component thereof calculated) on a basis consistent with that reflected in the audited financial statements for the fiscal year ended December 31, 2019 for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto.

1.2. General Terms. For purposes of this Agreement the following terms shall have the following meanings:

"ABL Agent" shall mean PNC, as agent under the ABL Facility Agreement.

"ABL Facility" shall mean that certain revolving credit facility provided for under the ABL Facility Agreement.

"ABL Facility Agreement" shall mean that certain Revolving Credit, Guaranty, and Security Agreement, dated as of the date hereof, among the Loan Parties, the lenders party thereto and PNC, agent, as it may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"ABL Facility Obligations" shall mean all "Obligations" as defined in the ABL Facility Agreement as in effect on the Closing Date.

"ABL Loan Documents" shall mean the ABL Facility Agreement, the Related L/C Facility Agreement and any and all other agreements, instruments and documents, including intercreditor agreements, guaranties, pledges, powers of attorney, consents, and all other agreements, documents and instruments heretofore, now or hereafter executed by any Loan Party and/or delivered to the agent or Issuer thereunder in respect of the transactions contemplated by the ABL Facility Agreement or the Related L/C Facility Agreement, in each case together with all amendments, modifications, supplements, extensions, renewals, substitutions, restatements and replacements thereto and thereof.

"Accountants" shall have the meaning set forth in Section 9.7 hereof.

"Acquired Indebtedness" shall mean Indebtedness of a Person whose assets or Equity Interests are acquired by a Company in a Permitted Acquisition or any other Acquisition or Investment permitted hereunder or consummated with the consent of Required Cash Collateral Providers; provided that such Indebtedness: (a) was in existence prior to the date of such transaction and (b) was not incurred in connection with, or in contemplation of, such transaction.

"Acquisition" shall mean any transaction (or series of related transactions) for the purchase or other acquisition, by merger or otherwise, by any Company of (a) Equity Interests in any Person having ordinary voting power to elect at least a majority of the directors of such Person or other governing body performing similar functions for such Person (or otherwise conferring similar control over the governance and policies of such Person), or (b) all or substantially all the assets of any Person (or all or substantially all the assets constituting a business unit, division, product line or line of business of any Person), but not any other type of Investment in any Person (any such Person and/or assets and/or business unit, division, product line or line of business of any Person in any such transaction, the "target").

"Administrative Questionnaire" means the administrative questionnaire completed by each Cash Collateral Provider in a form supplied by the Agent.

"Advances" shall mean and include the Cash Collateral Reimbursement Obligations and Delayed Draw Term Loans.

"Affiliate" of any Person shall mean (a) any Person which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person, or (b) any Person who is a director, manager, member, managing member, general partner or officer (i) of such Person, (ii) of any Subsidiary of such Person or (iii) of any Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (x) to vote ten percent (10%) or more of the Equity Interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for any such Person, or (y) to direct or cause the direction of the management and policies of such Person whether by ownership of Equity Interests, contract or otherwise.

"Affiliate Agreements" means, collectively, the agreements listed on Schedule 1.01(a) hereto.

"Agent" shall have the meaning set forth in the preamble to this Agreement and shall include its successors and assigns.

"Agreement" shall mean this Reimbursement, Guaranty and Security Agreement, as the same may be amended, modified, supplemented, renewed, restated, or replaced from time to time.

"Alternate Base Rate" shall mean, for any day, a rate per annum equal to the highest of (a) the Base Rate in effect on such day, (b) the sum of the Overnight Bank Funding Rate in effect on such day plus one half of one percent (0.5%), and (c) the sum of the Daily LIBOR Rate in effect on such day plus one percent (1.0%), so long as a Daily LIBOR Rate is offered, ascertainable and not unlawful. Any change in the Alternate Base Rate (or any component thereof) shall take effect at the opening of business on the day such change occurs.

"Alternate Source" shall have the meaning set forth in the definition of Overnight Bank Funding Rate.

"Anti-Corruption Laws" shall mean the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, and any other similar anti-corruption laws or regulations administered or enforced in any jurisdiction in which the Borrower or any of its Subsidiaries conduct business.

"Anti-Terrorism Laws" means any Law in force or hereinafter enacted related to terrorism, money laundering, or economic sanctions, including Executive Order No. 13224, the USA PATRIOT Act, the International Emergency Economic Powers Act, 50 U.S.C. 1701, et. seq., the Trading with the Enemy Act, 50 U.S.C. App. 1, et. seq., 18 U.S.C. § 2332d, and 18 U.S.C. § 2339B, and any regulations or directives promulgated under these provisions.

"Applicable Law" shall mean all Laws applicable to the Person, conduct, transaction, covenant, Other Document or contract in question, all provisions of all applicable state, federal and foreign constitutions, statutes, rules, regulations, treaties, directives and orders of any Governmental Body, and all orders, judgments and decrees of all courts and arbitrators.

"Applicable Margin" shall mean, with respect to each Delayed Draw Term Loan and also with respect to Cash Collateral Commitment Fees, the applicable percentage as follows:

Domestic Rate Delayed Draw Term Loans	LIBOR Rate Delayed Draw Term Loans	Domestic Rate Cash Collateral Commitment Fees	LIBOR Rate Cash Collateral Commitment Fees
6.50%	7.50%	6.50%	7.50%

"Application Date" shall have the meaning set forth in Section 2.8(b) hereof.

"Appraisal Costs" shall have the meaning set forth in Section 3.4(c) hereof.

"Approvals" shall have the meaning set forth in Section 5.7(b) hereof.

"Approved Electronic Communication" shall mean each notice, demand, communication, information, document and other material transmitted, posted or otherwise made or communicated by e-mail, E-Fax, or any other equivalent electronic service agreed to by Agent, whether owned, operated or hosted by Agent, any Cash Collateral Provider, any of their Affiliates or any other Person, that any party is obligated to, or otherwise chooses to, provide to Agent pursuant to this Agreement or any Other Document, including any financial statement, financial and other report, notice, request, certificate and other information material; provided that Approved Electronic Communications shall not include any notice, demand, communication, information, document or other material that Agent specifically instructs a Person to deliver in physical form.

"Approved LC Foreign Currencies" shall mean (x) Canadian Dollars, British Pounds Sterling, Danish Kroner, and Euros (collectively, the "Approved Anticipated LC Foreign Currencies") and (y) such other currencies other than Dollars and other than the Approved Anticipated LC Foreign Currencies as Issuer and Agent shall approve in their sole discretion from time to time (any such other approved currencies, the "Approved Additional LC Foreign Currencies").

"Approved Fund" shall mean any Fund that is administered, advised, managed, underwritten, or sub-advised by (a) a Cash Collateral Provider, (b) an Affiliate of a Cash Collateral Provider, or (c) an entity or an Affiliate of an entity that administers, advises, manages, underwrites, or sub-advises a Cash Collateral Provider.

"Approved Supply Chain Customer" shall mean each Customer of any Company participating in an Approved Supply Chain Financing.

"Approved Supply Chain Financing" shall mean each Supply Chain Financing offered by a Customer of any Company and in which such Customer has requested that such Company participate: (x) which has been approved in writing by Agent (acting reasonably) as to the applicable Customer, the applicable bank or other financial institution, and the terms of such Supply Chain Financing and (y) in the case of any such Approved Supply Chain Financing that will involve any Disposition of Receivables by any Loan Party, with respect to which Agent, PNC and the applicable bank or other financial institution shall have entered into a Supply Chain Lien Agreement reasonably acceptable to Agent.

"Availability" shall mean "Availability" as defined in the ABL Facility Agreement as in effect on the Closing Date.

"Available Amount" shall mean, as of any date of determination, the amount equal to:

(a) the sum of (without duplication): (i) $105,000,000 plus (ii) the Net Cash Proceeds of any issuances of Equity Interests (other than Disqualified Equity Interests and Specified Equity Contributions) by Parent made after the Closing Date plus (iii) the Net Cash Proceeds of any issuances of Permitted Indebtedness pursuant to clause (h) of the definition of that term made after the Closing Date, minus

(b) the sum of (without duplication): (i) all Permitted Acquisitions made after the Closing Date but prior to such date of determination under and/or in reliance on clause (d) of the definition of such term, (ii) all Permitted Investments made after the Closing Date but prior to such date of determination under and/or in reliance on clause (e) of the definition of Permitted Intercompany Advances and clause (g) of the definition of Permitted Investments, and (e) all Permitted Investments made after the Closing Date but prior to such date of determination under and/or in reliance on clause (j) of the definition of Permitted Investments (provided that, to avoid any "double counting", the amount of any Permitted Acquisition made by any Non-Loan Party under/in reliance on clause (d) of the definition of such term or any Permitted Investment made by any Non-Loan Party under/in reliance on clause (j) of such term shall be deemed, for purposes of the calculation of the Available Amount, to be net of the amount of any proceeds of any Permitted Intercompany Advance that is made under and/or in reliance on clause (e) of such term to such Non-Loan Party for the purpose of (and actually used for the purpose of) funding any portion of such Permitted Acquisition or Permitted Investment), plus

(c) sum of (without duplication): (i) all repayments of principal actually paid in cash by any Non-Loan Parties after the Closing Date but prior to such date of determination in respect of any Permitted Intercompany Advances made by Loan Parties to Non-Loan Parties after the Closing Date but prior to such date of determination under and/or in reliance on clause (e) of the definition of Permitted Intercompany Advances and clause (g) of the definition of Permitted Investments, (ii) all repayments of principal actually paid in cash by any Joint Ventures after the Closing Date but prior to such date of determination in respect of any Permitted Investments constituting loans or advances made by Loan Parties to Joint Ventures after the Closing Date but prior to such date of determination under and/or in reliance on clause (j) of the definition of Permitted Investments, and (iii) all dividends, distributions, and returns of capital actually paid in cash by any Joint Ventures after the Closing Date but prior to such date of determination in respect of any Permitted Investments (to the extent not constituting loans or advances) made by Loan Parties to Joint Ventures after the Closing Date but prior to such date of determination under and/or in reliance on clause (j) of the definition of Permitted Investments.

"Average Undrawn Availability" shall mean "Average Undrawn Availability" as defined in the ABL Facility Agreement as in effect on the Closing Date.

"B. Riley Fee Letter" shall mean that certain Fee Letter, dated as of the Closing Date, among the Loan Parties and B. Riley.

"B. Riley Guarantee" shall mean that certain Guaranty Agreement, made on the Closing Date by B. Riley Financial, Inc. in favor of Agent and the Cash Collateral Providers.

"B. Riley Guarantee Reimbursement Agreement" shall mean that certain Reimbursement Agreement, to be entered into by the Loan Parties in favor of B. Riley Financial, Inc. after the Closing Date.

"Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy," as in effect from time to time, or any successor statute.

"Base Rate" shall mean a fluctuating rate per annum equal to the highest of (a) the Effective Federal Funds Rate plus 1/2 of 1% and (b) the rate last quoted by *The Wall Street Journal* as the "Prime Rate". When used in reference to any Advance, "Base Rate" refers to whether such Advance is bearing interest at a rate determined by reference to the Base Rate. Any change in such "Prime Rate" published by *The Wall Street Journal* shall take effect at the opening of business on the day specified in the public announcement of such change.

"Benefited Cash Collateral Provider" shall have the meaning set forth in Section 2.6(e) hereof.

"Blocked Account" has the meaning set forth in the ABL Facility Agreement as in effect on the date hereof.

"Borrower" or "Borrowers" shall have the meaning set forth in the preamble to this Agreement and shall include the successors and permitted assigns of each applicable Person.

"Borrowing Agent" shall mean the Parent.

"Business Day" shall mean any day other than Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by Law to be closed for business in New York, New York, and, if the applicable Business Day relates to any LIBOR Rate Advances, such day must also be a day on which dealings are carried on in the London interbank market.

"Canadian Dollar" and the sign "CDN$" shall mean lawful money of Canada.

"Capital Expenditures" shall mean expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements (or of any replacements or substitutions thereof or additions thereto) which have a useful life of more than one year and which, in accordance with GAAP, would be classified as capital expenditures (but excluding any Permitted Acquisition or other Acquisition made in accordance with the terms hereof). Capital Expenditures for any period shall include the principal portion of Capitalized Lease Obligations paid in such period.

"Capitalized Lease Obligation" shall mean any Indebtedness of any Company represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP. Notwithstanding the foregoing, leases that were treated as operating leases before giving effect to Accounting Standards Codification Topic 842 shall continue to be treated as operating leases.

"Captive Insurance Subsidiary" shall mean, as of any date of determination, a regulated Subsidiary of Parent primarily engaged in the business of providing insurance and insurance-related services to Parent, its other Subsidiaries and certain other Persons.

"Cash Collateral" shall mean all amounts deposited as cash collateral by Agent, on behalf of the Cash Collateral Providers, to secure the repayment of any draws on Eligible Letters of Credit in accordance with Section 2.1 of this Agreement and the terms of the Cash Collateral Agreement.

"Cash Collateral Account" shall mean the "Cash Collateral Account" as defined in the Cash Collateral Agreement as in effect as of the Closing Date.

"Cash Collateral Reimbursement Obligations" has the meaning set forth in Section 2.1.

"Cash Collateral Agreement" shall mean the "Third Party Cash Pledge Agreement" as defined in the Related L/C Facility Agreement as in effect as of the Closing Date.

"Cash Collateral Commitment" shall mean the obligation of each applicable Cash Collateral Provider (as provided for on Schedule 1.1 hereto (as such Schedule may be amended and restated from time to time in accordance herewith) and/or in any assignment of any Cash Collateral Commitment to such Cash Collateral Provider pursuant to Section 16.3(c) or (d) hereof) to make deposits of Cash Collateral pursuant to Section 2.1.

"Cash Collateral Commitment Amount" shall mean, as to any Cash Collateral Provider, the cash collateral commitment amount set forth opposite such Cash Collateral Provider's name on Schedule 1.1 hereto (as such Schedule may be amended and restated from time to time in accordance herewith) (or, in the case of any Cash Collateral Provider that became party to this Agreement after the Closing Date as a result of any assignment of any Cash Collateral Commitment to such Cash Collateral Provider pursuant to Section 16.3(c) or (d) hereof, the Cash Collateral Commitment Amount of such Cash Collateral Provider as set forth in the applicable Commitment Transfer Supplement); as such Cash Collateral Commitment Amount may be increased or decreased from time to time upon any assignment of any Cash Collateral Commitment by or to such Cash Collateral Provider pursuant to Section 16.3(c) or (d) hereof.

"Cash Collateral Commitment Fee Rate" shall mean (a) with respect to Cash Collateral Reimbursement Obligations that are Domestic Rate Advances, a rate per annum equal to the sum of the Applicable Margin plus the Alternate Base Rate, and (b) with respect to Cash Collateral Reimbursement Obligations that are accruing fees as LIBOR Rate Advances for any particular Interest Period, a rate per annum equal to the sum of the Applicable Margin plus the LIBOR Rate for such LIBOR Rate Advance for such Interest Period.

"Cash Collateral Commitment Fees" shall have the meaning set forth in Section 3.2(a) hereof.

"Cash Collateral Commitment Percentage" shall mean, as to any Cash Collateral Provider prior to the termination of the Cash Collateral Commitment of such Cash Collateral Provider and/or the Cash Collateral Commitments of all Cash Collateral Providers in accordance with the terms hereof, the percentage equal to (a) the Cash Collateral Commitment Amount of such Cash Collateral Provider *divided by* (b) the Maximum Cash Collateral Amount as in effect at the applicable time of determination (and after any termination of the Cash Collateral Commitments of all Cash Collateral Providers in accordance with the terms hereof, the Cash Collateral Commitment Percentage of each Cash Collateral Provider shall be the percentage equal to (x) aggregate amount of the outstanding balance of all Cash Collateral Reimbursement Obligations of such Cash Collateral Provider *divided by* (y) aggregate amount of the outstanding balance of all Cash Collateral Reimbursement Obligations of all Cash Collateral Providers).

"Cash Collateral Provider" and "Cash Collateral Providers" shall have the meanings given to such terms in the preamble to this Agreement and shall include all of the transferees, successor, and permitted assigns of each such Person in its capacity as a Cash Collateral Provider under this Agreement.

"Cash Equivalents" shall mean (a) marketable direct obligations or securities issued by, or fully guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof in each case maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's, (c) commercial paper that, at the time of acquisition, has a rating of at least A-1 or AAA from S&P or at least P-1 or Aaa from Moody's and, in each case, having a term of not more than one year, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any foreign bank or any branch or agency of any of the foregoing having at the date of acquisition thereof combined capital and surplus of not less than $500,000,000 or a minimum rating at the time of investment of A-3 by S&P or P-3 by Moody's, (e) deposit accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank either (i) that are fully collateralized or (ii) satisfying the requirements of clause (d)(ii) of this definition or recognized securities dealer having combined capital and surplus of not less than $500,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, (h) obligations issued or fully guaranteed by the government or by a governmental agency of Canada, Japan, Australia, Switzerland, the United Kingdom or a country belonging to the European Union, in each case maturing within one year from the date of acquisition thereof, but only so long as the country credit rating of any such country issuing or guaranteeing (or whose governmental agency issues or guarantees) any obligation of the type specified in this clause (h) above shall be AA or higher by S&P or an equivalent rating or higher by another generally recognized rating agency providing country credit ratings, (i) municipal issued debt securities, including notes and bonds that, at the time of acquisition, has a rating of at least A-1 or AAA from S&P or at least P-1 or Aaa from Moody's, and in each case having a term of not more than one year, (j) (i) shares of any money market fund that has net assets of not less than $500,000,000 and satisfies the requirements of rule 2a-7 under the Investment Company Act of 1940 and (ii) shares of any offshore money market fund that has net assets of not less than $500,000,000 and a $1 net asset mandate, and (l) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (i) above.

"Cash Interest Expense" means, with respect to any Person for any period, the Interest Expense of such Person for such period less, to the extent included in the calculation of Interest Expense of such Person for such period, (a) the amount of debt discount and debt issuance costs amortized, (b) charges relating to write-ups or write-downs in the book or carrying value of existing Financial Covenant Debt, and (c) interest payable in evidences of Indebtedness or by addition to the principal of the related Indebtedness.

"Cash Dominion Event" shall mean all "Cash Dominion Event" as defined in the ABL Facility Agreement as in effect on the Closing Date.

"Cash Management Liabilities" shall mean the indebtedness, obligations, and liabilities of any Loan Party or any of their respective Subsidiaries to the provider of any Cash Management Products and Services (including all obligations and liabilities owing to such provider in respect of any returned items deposited with such provider) (including any applicable Post-Petition Obligations).

"Cash Management Products and Services" shall mean agreements or other arrangements under which PNC, any "Lender" under the ABL Facility or any Affiliate thereof provides any of the following products or services to any Loan Party and/or any of their respective Subsidiaries: (a) credit cards; (b) credit card processing services; (c) debit cards and stored value cards; (d) commercial cards; (e) ACH transactions; and (f) cash management and treasury management services and products, including without limitation controlled disbursement accounts or services, lockboxes, automated clearinghouse transactions, overdrafts, interstate depository network services.

"Casualty Event" shall mean the occurrence of (x) any damage to or destruction of any assets or property of any kind or nature of any Company (excluding ordinary wear and tear) covered by any policy of property/casualty insurance, or (y) any taking or condemnation of any assets or property of any kind or nature of any Company by any Government Body.

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

"CFTC" shall mean the Commodity Futures Trading Commission.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601 et seq.

"Change in Law" shall mean the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Applicable Law; (b) any change in any Applicable Law or in the administration, implementation, interpretation or application thereof by any Governmental Body; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Body; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of Applicable Law) and (y) all requests, rules, regulations, guidelines, interpretations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (whether or not having the force of Law), in each case pursuant to Basel III, shall in each case be deemed to be a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

"Change of Control" shall mean:

(a) the failure of Parent to (x) own and control, directly or indirectly, all voting rights with respect to 100% of the Voting Equity Interest, and also each of the non-voting classes of Equity Interests, of each Loan Party and each other Collateral Jurisdiction Subsidiary or (y) otherwise Control each Loan Party and each other Collateral Jurisdiction Subsidiary,

(b) the occurrence of any event (whether in one or more transactions) which results in any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding (i) any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan and (ii) underwriters in the course of their distribution of Voting Equity Interest in an underwritten registered public offering provided such underwriters shall not hold such Equity Interest for longer than five Business Days) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of more than 30%, on a fully-diluted basis, of the Voting Equity Interest of Parent; provided that it shall not be deemed to be a Change of Control under this clause (b) if B. Riley FBR, Inc. or a related "person" or "group" acceptable to Agent and the Required Cash Collateral Providers becomes the beneficial owner of more than 30% of such Voting Equity Interest of Parent, or

(c) during any period of twelve consecutive calendar months, a majority of the members of the board of directors or other equivalent governing body of Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

"CIP Regulations" shall have the meaning set forth in Section 14.12 hereof.

"Claims" shall have the meaning given to such term in Section 16.5 hereof.

"Closing Date" shall mean later of (x) the date of this Agreement and (y) the date upon which all of the conditions precedent in Section 8.1 shall have been satisfied (or waived in accordance with the terms hereof).

"Code" shall mean the Internal Revenue Code of 1986, as the same may be amended, modified, or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

"Collateral" shall mean and include all right, title and interest of each Loan Party in all of the following property and assets of such Loan Party, in each case whether now existing or hereafter arising or created and whether now owned or hereafter acquired and wherever located:

(d) all Receivables and all supporting obligations relating thereto;

(e) all equipment and fixtures;

(f) all general intangibles (including all payment intangibles and all software) and all supporting obligations related thereto;

(g) all Inventory;

(h) all Subsidiary Equity Interest, securities, Investment Property and financial assets;

(i) all Material Real Property;

(j) [RESERVED];

(k) all contract rights, rights of payment which have been earned under a contract rights, chattel paper (including electronic chattel paper and tangible chattel paper), commercial tort claims (whether now existing or hereafter arising); documents (including all warehouse receipts and bills of lading), deposit accounts, goods, instruments (including promissory notes), letters of credit (whether or not the respective letter of credit is evidenced by a writing) and letter-of-credit rights, cash, certificates of deposit, insurance proceeds (including hazard, flood and credit insurance), security agreements, eminent domain proceeds, condemnation proceeds, tort claim proceeds and all supporting obligations;

(l) all ledger sheets, ledger cards, files, correspondence, records, books of account, business papers, computers, computer software (owned by any Loan Party or in which it has an interest), computer programs, tapes, disks and documents, including all of such property relating to the property described in clauses (a) through and including (h) of this definition;

(m) all commercial tort claims in which a security interest is granted by a Loan Party pursuant to Section 4.1; and

(n) all proceeds and products of the property described in clauses (a) through and including (m) of this definition, in whatever form.

It is the intention of the parties that if Agent shall fail to have a perfected Lien in any particular property or assets of any Loan Party for any reason whatsoever, but the provisions of this Agreement and/or of the Other Documents, together with all financing statements and other public filings relating to Liens filed or recorded by Agent against Loan Parties, would be sufficient to create a perfected Lien in any property or assets that such Loan Party may receive upon the sale, lease, license, exchange, transfer or disposition of such particular property or assets, then all such "proceeds" of such particular property or assets shall be included in the Collateral as original collateral that is the subject of a direct and original grant of a security interest as provided for herein and in the Other Documents (and not merely as proceeds (as defined in Article 9 of the Uniform Commercial Code) in which a security interest is created or arises solely pursuant to Section 9-315 of the Uniform Commercial Code).

Notwithstanding the foregoing, Collateral shall not include any Excluded Property.

"Collateral Jurisdiction Subsidiary" shall mean any Company that is organized or incorporated under the laws of (i) the United States, any state thereof, or the District of Columbia, (ii) Canada or any province or territory thereof, (iii) any jurisdiction in the United Kingdom, or (iv) Luxembourg.

"Commitments" shall mean, collectively, the Cash Collateral Commitments.

"Commitment Transfer Supplement" shall mean a document in the form of Exhibit 16.3 hereto, properly completed and otherwise in form and substance satisfactory to Agent by which the Purchasing Cash Collateral Provider purchases and assumes a portion of the Cash Collateral Commitments and the obligation of Cash Collateral Providers to make Delayed Draw Term Loans under this Agreement.

"Companies" shall mean, collectively, Parent and each of its Subsidiaries, and "Company" shall mean each and any of them.

"Compliance Certificate" shall mean a compliance certificate substantially in the form of Exhibit 1.2(b) hereto to be signed by the Chief Executive Officer, Chief Financial Officer, Treasurer or Controller of Borrowing Agent.

"Consents" shall mean all filings and all licenses, permits, consents, approvals, authorizations, qualifications and orders of Governmental Bodies and other third parties, domestic or foreign, necessary to carry on any Company's business or necessary (including to avoid a conflict or breach under any agreement, instrument, other document, license, permit or other authorization) for the execution, delivery or performance of this Agreement or the Other Documents, the ABL Facility Agreement, and the Related L/C Facility Agreement, including any Consents required under all applicable federal, state or other Applicable Law.

"Consigned Inventory" shall mean Inventory of any Loan Party that is in the possession of another Person on a consignment, sale or return, or other basis that does not constitute a final sale and acceptance of such Inventory.

"Consolidated Net Income" means, for any period, the net income (or loss) of Loan Parties on a Consolidated Basis for such period determined in accordance with GAAP.

"Consolidated Tangible Assets" means, as of any date of determination, the difference of (a) the consolidated total assets of the Borrower and its Subsidiaries as of such date, determined in accordance with GAAP, minus (b) all Intangible Assets of the Borrower and its Subsidiaries on a consolidated basis as of such date.

"Consortium" means any joint venture, consortium or other similar arrangement that is not a separate legal entity entered into by Parent or any of its Subsidiaries and one or more third parties, provided that no Loan Party shall, whether pursuant to the Constituent Documents of such joint venture or otherwise, be under any Contractual Obligation to make Investments or incur Guaranty Obligations after the Closing Date, or, if later, at the time of, or at any time after, the initial formation of such joint venture, consortium or similar arrangement that would be in violation of any provision of this Agreement.

"Contractual Obligation" shall mean, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise.

"Controlling" and "Controlled" have meanings correlative thereto.

"Control Agreement" shall mean a deposit account control agreement or securities account control agreement or commodities account control agreement or blocked account agreement, as applicable, entered into by any one or more Loan Parties, an applicable bank or other depository institution or securities intermediary or commodity intermediary, ABL Agent and Agent that is sufficient to provide Agent with "control" (for purposes of Articles 8 and/or Article 9 of the Uniform Commercial Code, as applicable) over the deposit account(s) or securities accounts(s) (and/or the investment property and/or financial assets maintained therein or credited thereto) or commodity account(s) (and/or the commodity contracts carried therein) subject thereto maintained with such applicable bank or other depository institution or securities intermediary or commodity intermediary, and otherwise in form and substance reasonably acceptable to Agent.

"Controlled Group" shall mean, at any time, each Company and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with any Company, are treated as a single employer under Section 414 of the Code.

"Controlled Investment Affiliate" shall mean, with respect to any Person (for this definition, the "sponsor"), any other Person that is (a) controlled by, or is under common control with, such sponsor and (b) engaged solely in the business of making equity or debt investments in the ordinary course of business. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"Covered Entity" shall mean (a) each Loan Party, each of each Loan Party's Subsidiaries and all pledgors of Collateral and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the direct or indirect (x) ownership of, or power to vote, 25% or more of the issued and outstanding Equity Interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of Equity Interests, contract or otherwise.

"Cure Period" shall have the meaning set forth in Section 6.5(d) hereof.

"Cure Right" shall have the meaning set forth in Section 6.5(d) hereof.

"Customer" shall mean and include the account debtor with respect to any Receivable and/or the prospective purchaser of goods, services or both with respect to any contract or contract right, and/or any party who enters into or proposes to enter into any contract or other arrangement with any Company, pursuant to which such Company is to deliver any personal property or perform any services.

"Daily LIBOR Rate" shall mean, for any day, the rate per annum determined by Agent by dividing (x) the Published Rate by (y) a number equal to 1.00 minus the Reserve Percentage; provided, however, that if the Daily LIBOR Rate determined as provided above would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

"Debt Payments" shall mean for any Person for any period, in each case: (a) the Cash Interest Expense of such Person for such period, plus (b) all amortization payments and other payments in respect of principal with respect of any Indebtedness for borrowed money (excluding the Advances hereunder) paid or payable in cash by such Person during such period, plus (c) without duplication of any amounts under the foregoing clauses (a) and (b), all payments in respect of Capitalized Lease Obligations paid or payable in cash by such Person during such period, plus (d) all payments paid or payable in cash with respect to any Pension Benefit Plan (including any Multiemployer Plan) or Multiple Employer Plan (or with respect to any similar defined benefit employee pension plans or employee retirement plans (including any such similar multi-employer plans or multiple-employer plans or any statutory pension or employee retirement scheme or funds) under the laws of any other jurisdiction in which any Company is organized or formed) by such Person during such period plus (e) all amounts paid or payable in cash by such Person under the B. Riley Fee Letter. For the avoidance of doubt, the term "Debt Payments" shall not include any payments with respect to (a) Performance Guarantees and (b) Indebtedness of the Borrower or any Subsidiary of the Borrower that is owed to the Borrower or any Subsidiary of the Borrower.

"Default" shall mean an event, circumstance or condition which, with the giving of notice or passage of time or both, would constitute an Event of Default.

"Default Rate" shall have the meaning set forth in Section 3.1 hereof.

"Deferred PBGC Payments" means pension payments deferred by the Parent with the consent of the Internal Revenue Service and PBGC pursuant to the Pension Funding Waivers in an amount no greater than $18,000,000.

"Depository Accounts" shall have the meaning set forth in Section 4.8(h) hereof.

"Designated Cash Collateral Provider" shall have the meaning set forth in Section 16.2(d) hereof.

"Disposition" shall mean any sale, conveyance, transfer, license, lease, or other disposition (including any sale and leaseback transaction) of any assets or property (or any interests in any such assets or property) by any Person, including any sale, conveyance, assignment, transfer, factoring or other disposition, with or without recourse and whether before, at, or after maturity, of any notes or Receivables or any rights or claims associated therewith, or in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Equity Interests or Equity Interests Equivalent, and "Dispose" shall have a cognate meaning (it being acknowledged and agreed that the collection of Receivables in the Ordinary Course of Business does not constitute a Disposition).

"Disqualified Equity Interests" shall mean any Equity Interests which, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are exchangeable), or upon the happening of any event or condition, (a) mature or are mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or are redeemable at the option of the holder thereof, in whole or in part (excluding any provisions requiring redemption upon a "change of control" or similar event; provided that such "change of control" or similar event results in the Payment in Full of the Obligations), (b) provide for regularly scheduled cash payments of dividends or distributions with respect thereto and/or the accrual and/or payment of dividends or distributions payable in cash at a stated percentage/rate and/or in a stated amount and/or amount determined by a stated formula, in any such case prior to the time that the Obligations are Paid in Full, unless, in any such case, the actual payment in cash (not including any accrual without cash payment and/or payment in kind) of such dividends or distributions is subject to the discretion of the Board of Directors (or similar governing person/body) of the Person issuing such Equity Interests (provided that, for the avoidance of doubt, any requirement that any and/or all such dividends or distributions be paid in cash prior to any other dividends or distributions being paid with respect to any other class or series of Equity Interests of such Person shall not, by itself, result in any Equity Interests constituting Disqualified Equity Interest under this clause (b)), or (c) are convertible into or exchangeable for (i) debt securities or (ii) any Equity Interests referred to in (a) or (b) above, in each case, at any time.

"Document" shall have the meaning given to the term "document" in the Uniform Commercial Code.

"Dollar" and the sign "$" shall mean lawful money of the United States of America.

"Domestic Loan Parties" shall mean, collectively, Borrower and each Domestic Subsidiary of Parent that is also a Loan Party.

"Domestic Rate Advance" shall mean any Advance that bears interest based upon the Alternate Base Rate.

"Domestic Subsidiary" shall mean any Subsidiary of any Person that is organized or incorporated in the United States, any State or territory thereof, or the District of Columbia.

"EBITDA" means, for any period,

(a) Consolidated Net Income for such period;

plus

(b) the sum of, in each case (other than clauses (xi) and (xii) below) to the extent deducted in the calculation of (or, in the case of clause (vii), otherwise reducing) such Consolidated Net Income but without duplication,

(i) any provision for income taxes,

(ii) Interest Expense,

(iii) depreciation expense,

(iv) amortization of intangibles or financing or acquisition costs,

(v) all non-cash charges (including impairment of intangible assets and goodwill) and non-cash losses for such period, including non-cash employee compensation pursuant to any equity-based compensation plan (excluding any non-cash item to the extent it represents an accrual of, or reserve for, cash disbursements for any period ending prior to the last day of the Term) including, for the avoidance of doubt, any non-cash charges or expenses relating to pension or benefits plans of the Loan Parties and their Subsidiaries, including mark-to-market adjustments;

(vi) unrealized foreign exchange losses of Parent and its Subsidiaries resulting from the impact of foreign currency changes on the valuation of assets and liabilities;

(vii) fees, costs, and expenses with respect to the Transactions paid from and after July 1, 2021 through December 31, 2021 in an amount not to exceed $5,000,000 in the aggregate;

(viii) non-recurring charges incurred by the Borrower or its Subsidiaries (other than those provided for in clause (vii)) in respect of business restructurings to the extent disclosed in writing (and in detail and with support reasonably acceptable) to Agent, provided that the aggregate amount added back to Consolidated Net Income pursuant to this clause (viii) with respect to any such charges shall not exceed (x) $10,000,000 during the period from the Closing Date through the first anniversary of the Closing Date and (y) $5,000,000 in any subsequent (12) month period (in each case, as such amounts may be increased by any additional amount, if any, that Agent shall approve in its sole discretion);

(ix) all professional advisory fees and expenses (other than those provided for in clause (vii)) to the extent disclosed in writing (and in detail and with support reasonably acceptable) to Agent and solely with respect to measurement periods ending on or prior to December 31, 2022, provided that (A) the aggregate amount added back to Consolidated Net Income pursuant to this clause (ix) with respect to any such charges incurred the period commencing on July 1, 2021 through December 31, 2021 shall not exceed $10,000,000 in the aggregate, and (B) the aggregate amount added back to Consolidated Net Income pursuant to this clause (ix) with respect to any such charges incurred the period commencing on January 1, 2022 through December 31, 2022 shall not exceed $7,5000,000 in the aggregate;

(x) any aggregate net loss from the sale, exchange or other disposition of business units by the Borrower or its Subsidiaries,

(xi) any expenses or charge for such period to the extent covered by, and solely to the extent actually reimbursed in cash by, insurance (to the extent not otherwise included in Consolidated Net Income);

(xii) pro forma "run rate" cost savings, operating expense reductions, operating synergies, and operating improvements, cost savings initiatives and other similar initiatives and actions resulting from or relating to or taken in connection with any Acquisition consummated in accordance with the terms of this Agreement, in each case, reasonably identifiable and factually supportable and projected by the Borrower, in good faith, to result from actions taken or with respect to which substantial steps have been taken within eighteen (18) months after the end of such Acquisition or Investment, mergers and other business combinations, Dispositions, cost savings initiatives and other similar initiatives and actions (calculated on a pro forma basis as though such cost savings, operating expense reductions, operating synergies and operative improvements were realizing during the entirety of such period), net of the amount of actual benefits realized during such period from such actions (all such adjustments, the "Cost Savings Adjustments") but only if and to the extent that Agent in its reasonable discretion shall be satisfied with the projections and supporting data regarding such proposed Cost Saving Adjustments and shall approve the proposed amount of such Cost Saving Projections; provided that no Cost Savings Adjustments shall be added back pursuant to this clause (xii) to the extent duplicative of any expenses or charges otherwise added back to EBITDA, whether through a pro forma adjustment or otherwise, for such period; provided, further, that without limiting the generality of Agent's discretion under this clause (xii), the aggregate amount of Cost Savings Adjustments added back pursuant to this clause (xii) for any four consecutive fiscal quarter period shall not exceed twenty percent (20%) of EBITDA for such period (calculated prior to giving effect to the addback of such Cost Savings Adjustments);

provided, that, to the extent that all or any portion of the income or gains of any Person is deducted pursuant to any of clauses (c)(iv) and (v) below for a given period, any amounts set forth in any of the preceding clauses (b)(i) through (b)(xii) that are attributable to such Person shall not be included for purposes of this clause (b) for such period,

minus

(c) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income but without duplication,

(i) any credit for income tax,

(ii) non-cash interest income,

(iii) any other non-cash gains or other items which have been added in determining Consolidated Net Income (other than any such gain or other item that has been deducted in determining EBITDA for a prior period) including, for the avoidance of doubt, any non-cash gains relating to pension or benefits plans of the Loan Parties and their Subsidiaries, including mark-to-market adjustments,

(iv) the income of any Subsidiary or Joint Venture to the extent that the declaration or payment of dividends or similar distributions or transfers or loans by such Subsidiary or Joint Venture, as applicable, of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, statute, rule or governmental regulation applicable to such Subsidiary or Joint Venture, as applicable,

(v) the income of any Person (other than a Subsidiary) in which any other Person (other than the Borrower or a Wholly-Owned Subsidiary or any director holding qualifying shares in accordance with applicable law) has an interest, except to the extent of the amount of dividends or other distributions or transfers or loans actually paid to the Borrower or a Wholly-Owned Subsidiary by such Person during such period,

(vi) any aggregate net gain from the sale, exchange or other disposition of business units by the Borrower or its Subsidiaries,

(vii) unrealized foreign exchange gains of the Borrower and its Subsidiaries resulting from the impact of foreign currency changes on the valuation of assets and liabilities, and

(viii) any income on account of any settlement of or payment in respect of any property or casualty insurance claim of Parent or any Subsidiary or professional liability insurance claims of Parent or any Subsidiary or any taking or condemnation proceeding relating to any asset of the Borrower or any Subsidiary.

For any period of measurement that includes any Permitted Acquisition or any sale, exchange or disposition of any Subsidiary or business unit of the Borrower or any Subsidiary, EBITDA (and the relevant elements thereof) shall be computed on a *pro forma* basis for each such transaction as if it occurred on the first day of the period of measurement thereof, so long as the Borrower provides to the Agent reasonably acceptable to Agent in its reasonable discretion reconciliations and other detailed information relating to adjustments to the relevant financial statements (including copies of financial statements of the acquired Person or assets in any Permitted Acquisition) used in computing EBITDA (and the relevant elements thereof) sufficient to demonstrate such *pro forma* calculations in reasonable detail.

For certain purposes hereunder where pre-Closing Date EBITDA is necessary, EBITDA for Loan Parties on a Consolidated Basis shall deemed to be $15,020,746, $7,989,027, $16,309,570 and $25,355,808, respectively for the single fiscal quarters ended June 30, 2021, March 31, 2021, December 31, 2020 and September 30, 2020; provided, that, upon delivery of the quarterly financial statements and Compliance Certificate for the fiscal quarter ended June 30, 2021, EBITDA for Loan Parties on a Consolidated Basis for the fiscal quarter ended June 30, 2021 shall be determined based upon such financial statements and Compliance Certificate.

"Effective Federal Funds Rate" means for any day the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1%) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Effective Federal Funds Rate" as of the date of this Agreement; provided that if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the "Effective Federal Funds Rate" for such day shall be the Effective Federal Funds Rate for the last day on which such rate was announced. Notwithstanding the foregoing, if the Effective Federal Funds Rate as determined under any method above would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

"Eligible Letter of Credit" shall mean a Letter of Credit that (a) is issued by the Issuer for the account of a Loan Party under the Related L/C Facility, (b) is not issued or renewed at a time when an Event of Default is continuing hereunder that Issuer has been provided notice of, (c) has a face amount no greater than (1) $20,000,00 for any individual Letter of Credit (or such higher amount as the Agent and the ABL Agent may both reasonably agree) and (2) $35,000,000 in the aggregate when taken together with the face amount of all other Letters of Credit issued under Related L/C Facility Agreement (or such higher amount as the Agent and the ABL Agent may both reasonably agree), in each case, (x) to the same beneficiary and/or its Affiliates and (y) in support of the same Contractual Obligation, (e) is denominated in Dollars or an Approved LC Foreign Currency, (f) has an expiration date no later thirty (30) days prior to the last day of the Term, and (g) would be eligible and otherwise would qualify to be issued under the ABL Facility Agreement (other than with respect to any letter of credit or currency sublimits with respect to letters of credit issued under the ABL Facility Agreement).

"Eligible Line of Business" shall have the meaning set forth in Section 5.20(a) hereof.

"Embargoed Property" means any property (a) in which a Sanctioned Person holds an interest; (b) beneficially owned, directly or indirectly, by a Sanctioned Person; (c) that is due to or from a Sanctioned Person; (d) that is located in a Sanctioned Jurisdiction; or (e) that would otherwise cause any actual or possible violation by the Cash Collateral Providers or Agent of any applicable Anti-Terrorism Law if the Cash Collateral Providers were to obtain an encumbrance on, lien on, pledge of or security interest in such property or provide services in consideration of such property.

"Environmental Complaint" shall have the meaning set forth in Section 9.3(b) hereof.

"Environmental Laws" shall mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation Laws relating to the protection of the environment, human health and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state, international and local governmental agencies and authorities with respect thereto.

"Equity Interests" shall mean, with respect to any Person, any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, member interests, participation or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act), including in each case all of the following rights relating to such Equity Interests, whether arising under the Organizational Documents of the Person issuing such Equity Interests (the "issuer") or under the applicable Laws of such issuer's jurisdiction of organization relating to the formation, existence and governance of corporations, limited liability companies or partnerships or business trusts or other legal entities, as the case may be (all of the following rights, as to any applicable Equity Interests, the "Related Equity Interest Rights"): (i) all economic rights (including all rights to receive dividends and distributions) relating to such Equity Interests; (ii) all voting rights and rights to consent to any particular action(s) by the applicable issuer; (iii) all management rights with respect to such issuer; (iv) in the case of any Equity Interests consisting of a general partner interest in a partnership, all powers and rights as a general partner with respect to the management, operations and control of the business and affairs of the applicable issuer; (v) in the case of any Equity Interests consisting of the membership/limited liability company interests of a managing member in a limited liability company, all powers and rights as a managing member with respect to the management, operations and control of the business and affairs of the applicable issuer; (vi) all rights to designate or appoint or vote for or remove any officers, directors, manager(s), general partner(s) or managing member(s) of such issuer and/or any members of any board of members/managers/partners/directors that may at any time have any rights to manage and direct the business and affairs of the applicable issuer under its Organizational Documents as in effect from time to time or under Applicable Law; (vii) all rights to amend the Organizational Documents of such issuer, (viii) in the case of any Equity Interests in a partnership or limited liability company, the status of the holder of such Equity Interests as a "partner", general or limited, or "member" (as applicable) under the applicable Organizational Documents and/or Applicable Law; and (ix) all certificates evidencing such Equity Interests.

"Equity Interest Equivalents" means all securities convertible into or exchangeable for Equity Interests and all warrants, options or other rights to purchase or subscribe for any Equity Interests, whether or not presently convertible, exchangeable or exercisable.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended or supplemented from time to time and the rules and regulations promulgated thereunder.

"Erroneous Payment" has the meaning assigned to it in Section 14.14(a).

"Erroneous Payment Deficiency Assignment" has the meaning assigned to it in Section 14.14(d).

"Erroneous Payment Impacted Class" has the meaning assigned to it in Section 14.14(d).

"Erroneous Payment Return Deficiency" has the meaning assigned to it in Section 14.14(d).

"Erroneous Payment Subrogation Rights" has the meaning assigned to it in Section 14.14(d).

"Event of Default" shall have the meaning set forth in Article X hereof.

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

"Excluded Deposit Account" means (a) any deposit account that is used solely for payment of taxes, payroll, bonuses, other compensation and related expenses, in each case, for employees or former employees, (b) fiduciary or trust accounts, (c) zero-balance accounts, so long as the balance in such account is zero at the end of each Business Day and (d) any other deposit account with an average daily balance on deposit not exceeding $100,000 individually or $500,000 in the aggregate for all such accounts excluded pursuant to this clause (d).

"Excluded Property" shall mean (i) any asset of any Loan Party that shall be deemed environmental waste or an environmental hazard under any Applicable Law, (ii) any real property other than Material Real Property, (iii) any lease, license, contract or agreement to which any Loan Party is a party, and any of its rights or interests thereunder, if and to the extent that a security interest therein is prohibited by or in violation of (x) any Applicable Law, or (y) a term, provision or condition of any such lease, license, contract or agreement (unless in each case, such Applicable Law, term, provision or condition would be rendered ineffective with respect to the creation of such security interest pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law or principles of equity), provided, however, that the foregoing shall cease to be treated as "Excluded Property" (and shall constitute Collateral) immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, such security interest shall attach immediately to any portion of such lease, license, contract or agreement not subject to the prohibitions specified in (x) or (y) above, and provided, further the foregoing exclusion shall in no way be construed any time so as to limit, impair or otherwise affect Agent's unconditional continuing security interest in and liens upon, and Excluded Property shall not include, any rights or interests of a Loan Party in or to the proceeds of, or any monies due or to become due under, any such license, contract or agreement, (iv) cash used to cash collateralize existing letters of credit under the Existing BAML Credit Facility during the period of time such cash is used as cash collateral, (v) any intent-to-use United States trademark applications for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051(c) or 15 U.S.C. § 1051(d), respectively, or if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a) or examined and accepted, respectively, by the United States Patent and Trademark Office, provided that that the foregoing (and all goodwill of the businesses of the applicable Loan Parties associated therewith) shall cease to be treated as "Excluded Property" (and shall constitute Collateral) immediately upon such amendment filing and acceptance, and provided, further the foregoing exclusion shall in no way be construed at any time as to limit, impair or otherwise affect Agent's unconditional continuing security interest in and liens upon, and Excluded Property shall not include, any rights or interests of a Loan Party in or to the proceeds of, or any Receivables due or to become due in connection with, any such intent-to-use United States trademark applications (and all goodwill of the businesses of the applicable Loan Parties associated therewith), (vi) any property to the extent that such grant of a security interest is prohibited by a Governmental Body, or requires a consent not obtained of any Governmental Body; (vii) assets subject to capital leases and/or purchase money financing to the extent such capital leases and/or purchase money financing are permitted to be outstanding pursuant to this Agreement and to the extent that the operative lease and/or financing documents for such capital leases and/or purchase money financing prohibit the granting and/or existing of Liens in favor of Agent on such assets (but assets described in this clause (vii) shall only be Excluded Property until such time as such capital lease and/or purchase money financing is paid in full, at which time such assets shall automatically become part of the Collateral and subject to the security interests created in favor of Agent hereunder and under the Other Documents), and (viii) vehicles, trailers and other goods subject to certificate of title laws in any applicable jurisdiction(s) that do not constitute rolling stock.

"Excluded Taxes" shall mean the following Taxes imposed on or with respect to Agent, any Cash Collateral Provider or Participant or required to be deducted or withheld from any payment to be made by or on account of any Obligations of any Company to any Cash Collateral Provider, (a) taxes imposed on or measured by its overall net income (however denominated), branch profits tax, and franchise taxes imposed on it (in lieu of net income taxes), in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office or, in the case of any Cash Collateral Provider or Participant, in which its applicable lending office is located, or (ii) that are Other Connection Taxes, (b) in the case of a Foreign Cash Collateral Provider or Participant, any U.S. federal withholding tax that is imposed on amounts payable to such Foreign Cash Collateral Provider or Participant at the time such Foreign Cash Collateral Provider or Participant becomes a party hereto (other than pursuant to an assignment made pursuant to Section 3.11) or, in the case of a Foreign Cash Collateral Provider, designates a new lending office, except to the extent that such Foreign Cash Collateral Provider or Participant (or its assignor or seller of a participation, if any) was entitled, at the time of designation of a new lending office in the case of such Cash Collateral Provider (or assignment or sale of a participation), to receive additional amounts with respect to such withholding tax pursuant to Section 3.10(a) hereof, (c) any withholding tax attributable to any Foreign Cash Collateral Provider's failure to comply with Section 3.10(e) hereof or (d) any withholding Taxes imposed under FATCA.

"Existing BAML Credit Facility" shall mean, collectively if applicable, the credit facility or facilities made available to Parent under that certain Amended and Restated Credit Agreement dated as of May 14, 2020, as amended, among Parent, as borrower, the lenders party thereto, and Bank of America, N.A., as administrative agent.

"Existing BAML Credit Facility Payoff Letter" shall have the meaning set forth in Section 8.1(j) hereof.

"Fair Market Value" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party; provided that, for any determination of Fair Market Value in connection with an Disposition to be made pursuant to clause (o) of the definition of Permitted Dispositions in which the estimated fair market value of the properties disposed of in such Disposition exceeds $10,000,000, Loan Parties shall provide evidence reasonably satisfactory to Agent with respect to the calculation of such Fair Market Value.

"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 thereunder 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 Bodies entered into in connection with the implementation of such Sections of the Code.

"Federal Funds Effective Rate" shall mean, for any day, the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1%) calculated by the Federal Reserve Bank of New York (or any successor), based on such day's federal funds transactions by depositary institutions, as determined in such manner as such Federal Reserve Bank (or any successor) shall set forth on its public website from time to time, and as published on the next succeeding Business Day by such Federal Reserve Bank as the "Federal Funds Effective Rate"; provided that if such Federal Reserve Bank (or its successor) does not publish such rate on any day, the "Federal Funds Effective Rate" for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.

"Financial Covenant Debt" shall mean, for any Person, without duplication, Indebtedness of the type specified in clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (k), (l), and (m) (with respect to clause (m), to the extent due and payable), in each case of the definition of "Indebtedness" and, with respect to the Companies, also including (without duplication) (x) the aggregate amount of the Cash Collateral in the Cash Collateral Account and the aggregate principal amount of Delayed Draw Term Loans outstanding under this Agreement and (y) PBGC Secured Obligations to the extent in excess of $17,300,000. For the avoidance of doubt, the term "Financial Covenant Debt" shall not include (a) reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees and (b) Indebtedness of the Borrower or any Subsidiary of the Borrower that is owed to the Borrower or any Subsidiary of the Borrower.

"First-Tier Foreign Subsidiary" shall mean a Foreign Subsidiary whose Equity Interest is wholly owned directly by one or more Loan Parties.

"Fixed Charge Coverage Ratio" shall mean, with respect to Loan Parties on a Consolidated Basis for any applicable fiscal measurement period, the ratio of (a) the result of (i) EBITDA for such period, minus (ii) Unfunded Capital Expenditures made during such period, minus (iii) distributions and dividends (including any Permitted Tax Distributions and Permitted Restricted Payments described in clauses (f), and (g) (but not, for the avoidance of doubt, (h)) of the definition of such term, in each case as applicable) made during such period, minus (iv) cash taxes paid during such period, to (b) the amount of all Debt Payments for such period.

"Flood Laws" shall mean all Applicable Laws relating to policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and other Applicable Laws related thereto.

"Flood Requirement Standards" means, with respect to any parcel of owned Real Property to be subject to a Mortgage, (a) the delivery to Agent of a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each such parcel of owned real property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the applicable Loan Party relating to such parcel of owned Real Property), (b) maintenance, if available, of fully paid flood hazard insurance on all such owned Real Property that is located in a special flood hazard area from such providers and on such terms and in such amounts as required by Flood Disaster Protection Act, The National Flood Insurance Reform Act of 1994 or as otherwise reasonably required by Agent and (c) delivery to Agent of evidence of such compliance in form and substance reasonably acceptable to Agent.

"Foreign Currency Hedge" shall mean any foreign exchange transaction, including spot and forward foreign currency purchases and sales, listed or over-the-counter options on foreign currencies, non-deliverable forwards and options, foreign currency swap agreements, currency exchange rate price hedging arrangements, and any other similar transaction providing for the purchase of one currency in exchange for the sale of another currency entered into by any Loan Party and/or any of their respective Subsidiaries.

"Foreign Cash Collateral Provider" shall mean any Cash Collateral Provider that is organized under the Laws of a jurisdiction other than that in which Loan Parties are resident for tax purposes. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Subsidiary" shall mean any Subsidiary of any Person that is not organized or incorporated in the United States, any state or territory thereof, or the District of Columbia; provided that, any Subsidiary of Parent that is a Loan Party shall not, except as otherwise expressly provided for herein or in any Other Document, constitute a Foreign Subsidiary.

"Fund" shall mean any Person that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" shall mean generally accepted accounting principles in the United States of America in effect from time to time.

"Governmental Acts" shall mean any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Body.

"Governmental Body" shall mean any nation or government, any state or other political subdivision thereof or any entity, authority, agency, division or department exercising the executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to a government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

"Guaranteed Obligations" shall have the meaning set forth in Section 17.1 hereof.

"Guarantor" shall have the meaning set forth in the preamble to this Agreement and shall extend to each Person which may hereafter guarantee payment or performance of the whole or any part of the Obligations, and shall also extend to all successors and permitted and assigns of such Persons, and "Guarantors" shall mean collectively all such Persons.

"Guarantor Security Agreement" shall mean any security agreement executed by any Guarantor in favor of Agent securing the Obligations or the Guaranty of such Guarantor, in form and substance satisfactory to Agent, including with respect to Guarantors that are parties hereto, the provisions of Article IV of this Agreement; as each may be amended, modified, supplemented, renewed, restated, or replaced from time to time.

"Guaranty" shall mean any guaranty of the Obligations executed by a Guarantor in favor of Agent for its benefit and for the ratable benefit of Cash Collateral Providers, in form and substance satisfactory to Agent, including, with respect to Guarantors that are parties hereto, the provisions of Article XVII hereof.

"Guaranty Obligation" means, as applied to any Person, without duplication, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Indebtedness of another Person, if the purpose of such Person in incurring such liability is to provide assurance to the obligee of such Indebtedness that such Indebtedness will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of Indebtedness of another Person and (b) any liability of such Person for Indebtedness of another Person through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such Indebtedness or any security therefor, or to provide funds for the payment or discharge of such Indebtedness (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another Person, (iii) to make take-or-pay or similar payments, regardless of non-performance by any other party or parties to an agreement, (iv) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss or (v) to supply funds to, or in any other manner invest in, such other Person (including to pay for property or services irrespective of whether such property is received or such services are rendered), if (and only if) in the case of any agreement described under clause (b)(i), (ii), (iii), (iv) or (v) above the primary purpose or intent thereof is to provide assurance to the obligee of Indebtedness of any other Person that such Indebtedness will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof. The amount of any Guaranty Obligation shall be equal to the amount of the Indebtedness so guaranteed or otherwise supported or, if such amount is not stated or otherwise determinable, the maximum reasonable anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. For the avoidance of doubt, the term "Guaranty Obligation" shall not include reimbursement or other obligations with respect to unmatured or undrawn, as applicable Performance Guarantees.

"Hazardous Discharge" shall have the meaning set forth in Section 9.3(b) hereof.

"Hazardous Materials" shall mean any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, Hazardous Wastes, hazardous or Toxic Substances or related materials as defined in or subject to regulation under Environmental Laws.

"Hazardous Wastes" shall mean all waste materials subject to regulation under CERCLA, RCRA or applicable state law, and any other applicable Federal and state laws now in force or hereafter enacted relating to hazardous waste disposal.

"Indebtedness" shall mean, without duplication, as to any Person at any time, any and all indebtedness, obligations or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) of such Person for or in respect of: (a) borrowed money (including the obligation to repay Delayed Draw Term Loans); (b) amounts received under or liabilities in respect of any note purchase or acceptance credit facility, and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments; (c) all matured reimbursement obligations with respect to letters of credit, bankers' acceptances, surety bonds, performance bonds, bank guarantees, and other similar obligations; (d) all other obligations with respect to letters of credit, bankers' acceptances, surety bonds, performance bonds, bank guarantees and other similar obligations, whether or not matured other than unmatured or undrawn, as applicable, obligations with respect to Performance Guarantees, (e) all indebtedness for the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business that are not overdue by more than 90 days or are being disputed in good faith, (f) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement (other than operating leases) with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (g) all Capitalized Lease Obligations of such Person, (h) all Guaranty Obligations of such Person, (i) all Disqualified Equity Interests (and all obligations and liabilities of such Person with respect thereto), (j) obligations under any Interest Rate Hedge, Foreign Currency Hedge, or other interest rate management device, foreign currency exchange agreement, currency swap agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement; (k) any other advances of credit made to or on behalf of such Person or other transaction (including forward sale or purchase agreements and conditional sales agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements including to finance the purchase price of property or services; (l) all indebtedness, obligations or liabilities secured by a Lien on any asset of such Person, whether or not such indebtedness, obligations or liabilities are otherwise an obligation of such Person; (m) all obligations of such Person for "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts; (n) off-balance sheet liabilities and/or pension plan liabilities of such Person; and (o) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business. For the avoidance of doubt, Indebtedness includes the obligation of the Borrowers to cash collateralize the Cash Collateral Providers for their contingent reimbursement obligations in respect of the Cash Collateral.

"Indemnified Taxes" shall mean Taxes other than Excluded Taxes.

"Ineligible Security(ies)" shall mean any security which may not be underwritten or dealt in by member banks of the Federal Reserve System under Section 16 of the Banking Act of 1933 (12 U.S.C. Section 24, Seventh), as amended.

"Insolvency Event" shall mean, with respect to any Person such Person or such Person's direct or indirect parent company (a) becomes the subject of an Insolvency Proceeding (including any proceeding under the Bankruptcy Code), or regulatory restrictions, (b) has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it or has called a meeting of its creditors, (c) admits in writing its inability, or be generally unable, to pay its debts as they become due or ceases operations of its present business, (d) [reserved], or (e) in the good faith determination of Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment of a type described in clauses (a) or (b), provided that an Insolvency Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person or such Person's direct or indirect parent company by a Governmental Body or instrumentality thereof if, and only if, such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Body or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Insolvency Law" shall mean as applicable, (a) the Bankruptcy Code and (b) any other federal, state, provincial or foreign Law regarding insolvency or bankruptcy or for the relief or reorganization or administration or receivership or liquidation of debtors and/or their assets or liabilities or affecting creditors' rights generally.

"Insolvency Proceeding" shall mean (a) any voluntary or involuntary case, receivership, administration, liquidation, or other similar case or proceedings under any Insolvency Law (whether or not of an interim nature) with respect to any Person or with respect to a material portion of its assets, (b) any liquidation, dissolution, or winding up of any Person whether voluntary or involuntary and whether or not involving any Insolvency Law or (c) any assignment for the benefit of any creditors or any other marshaling of assets or liabilities of any Person.

"Intellectual Property" shall mean property constituting a patent, copyright, trademark (or any application in respect of the foregoing), service mark, trade name, mask work, trade secrets (including source code), design right, invention, domain name, assumed name or other intellectual property right arising under Applicable Law.

"Intellectual Property Collateral" shall mean all Collateral constituting Intellectual Property.

"Intellectual Property Claim" shall mean the assertion, by any means, by any Person of a claim that any Company's ownership, use, marketing, sale or distribution of any Inventory, equipment, Intellectual Property or other property or asset is violative of any ownership of or right to use any Intellectual Property of such Person.

"Intercompany Subordinated Debt Payment" means any payment or prepayment, whether required or optional, of principal, interest or other charges on or with respect to any Subordinated Debt of the Borrower or any Subsidiary of the Borrower, so long as (a) such Subordinated Debt is owed to the Borrower or a Subsidiary of the Borrower and (b) no Event of Default shall have occurred and be continuing.

"Intercreditor Agreement" shall mean that certain Intercreditor Agreement dated as of the Closing Date among Agent and PNC, as agent under the ABL Facility Agreement, and acknowledged by the Loan Parties, as such agreement may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Interest Expense" shall mean, for any Person for any period, total interest expense of such Person for such period, as determined in accordance with GAAP and including, in any event (without duplication for any period or any amount included in any prior period), (a) net costs under Interest Rate Hedges for such period, (b) all interest payments in respect of the Advances or any other Indebtedness for borrowed money paid or payable in cash by such Person during such period, (c) any commitment fee (including, in the case of Parent and its Subsidiaries, the Cash Collateral Commitment Fees hereunder) accrued, accreted or paid by such Person during such period, (d) any fees and other obligations (other than reimbursement obligations), including any fronting fees, with respect to letters of credit and bankers' acceptances (whether or not matured) accrued, accreted or paid by such Person for such period, (e) any facility fee accrued, accreted or paid by such Person during such period, (f) fees and costs for Performance Guarantees (including, for the avoidance of doubt, bilateral bank guarantees and surety bonds) accrued, accreted or paid by such Person during such period, and (g) any fees, commissions, and charges not described in the foregoing clauses (a) through (f) paid or payable in cash hereunder or under the Related L/C Facility or under the ABL Facility by such Person during such period. For purposes of the foregoing, interest expense shall (i) be determined after giving effect to any net payments made or received by Parent and its Subsidiaries with respect to Interest Rate Hedges, (ii) exclude interest expense accrued, accreted or paid by Parent and its Subsidiaries to each other, and (iii) exclude credits to interest expense resulting from capitalization of interest related to amounts that would be reflected as additions to property, plant or equipment on a consolidated balance sheet of Parent and its Subsidiaries prepared in conformity with GAAP.

"Interest Period" shall mean the period provided for any LIBOR Rate Advance pursuant to Section 2.2(b) hereof.

"Interest Rate" shall mean (a) with respect to Delayed Draw Term Loans that are Domestic Rate Advances, an interest rate per annum equal to the sum of the Applicable Margin plus the Alternate Base Rate, and (b) with respect to Delayed Draw Term Loans that are accruing interest as LIBOR Rate Advances for any particular Interest Period, an interest rate per annum equal to the sum of the Applicable Margin plus the LIBOR Rate for such LIBOR Rate Advance for such Interest Period.

"Interest Rate Hedge" shall mean an interest rate exchange, collar, cap, swap, floor, adjustable strike cap, adjustable strike corridor, cross-currency swap or similar agreements entered into by any Loan Party or its Subsidiaries in order to provide protection to, or minimize the impact upon, such Loan Party and/or its Subsidiaries of increasing floating rates of interest applicable to Indebtedness.

"Inventory" shall mean and include as to each Person all of such Person's inventory (as defined in Article 9 of the Uniform Commercial Code) and all of such Person's goods, merchandise and other personal property, wherever located, to be furnished under any consignment arrangement, contract of service or held for sale or lease, all raw materials, work in process, finished goods and materials and supplies of any kind, nature or description which are or might be used or consumed in such Person's business or used in selling or furnishing such goods, merchandise and other personal property, and all Documents of such Person.

"Investment" means, as to any Person, (a) any purchase or similar acquisition by such Person of (i) any Security issued by, (ii) a beneficial interest in any Security issued by, or (iii) any other equity ownership interest in, any other Person, (b) any purchase by such Person of all or substantially all of the assets of a business conducted by any other Person, or all or substantially all of the assets constituting what is known to the Borrower to be the business of a division, branch or other unit operation of any other Person, (c) any loan, advance (other than deposits with financial institutions available for withdrawal on demand, prepaid expenses, accounts receivable and similar items made or incurred in the ordinary course of business) or capital contribution by such Person to any other Person, including all Indebtedness of any other Person to such Person arising from a sale of property by such Person other than in the ordinary course of its business and (d) any Guaranty Obligation incurred by such Person in respect of Indebtedness of any other Person. For the avoidance of doubt, the term "Investment" shall not include reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees.

"Investment Property" shall mean and include, with respect to any Person, all of such Person's now owned or hereafter acquired securities (whether certificated or uncertificated), securities entitlements, securities accounts, commodities contracts and commodities accounts, and any other asset or right that would constitute "investment property" under the Uniform Commercial Code.

"Issuer" shall mean (a) PNC in its capacity as issuer of Letters of Credit under the Related L/C Facility Agreement and (b) any other Issuer acceptable to Agent which issues a Letter of Credit under the Related L/C Facility Agreement.

"Joint Venture" means any Person (a) in which Parent, directly or indirectly, owns any Equity Interests or Equity Interests of such Person and (b) that is not a Subsidiary of the Borrower, provided that (i) Agent, on behalf of the Secured Parties, has a valid, perfected, first priority security interest in the Equity Interests and Equity Interests Equivalents in such joint venture owned directly by any Loan Party except where (x) the Constituent Documents of such joint venture prohibit such a security interest to be granted to the Agent or (y) such joint venture has incurred Indebtedness the terms of which either (A) require security interests in such Equity Interests and Equity Interests Equivalents to be granted to secure such Indebtedness or (B) prohibit such a security interest to be granted to Agent, and (ii) no Loan Party shall, whether pursuant to the Organizational Documents of such joint venture or otherwise, be under any obligation to make Investments or incur Guaranty Obligations after the Closing Date, or, if later, at the time of, or at any time after, the initial formation of such joint venture, that would be in violation of any provision of this Agreement.

"Landlord/Bailee" shall mean any Person (including any applicable landlord, warehouseman, logistics services provider, bailee, processor, or mortgagee) who (x) owns, operates, or occupies, or holds a senior mortgage with respect to, premises at which any Collateral may be located from time to time or (y) is otherwise in possession of or has control of or over any Collateral from time to time.

"Law(s)" shall mean any law(s) (including common law and equitable principles), constitution, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, code, release, ruling, order, executive order, injunction, writ, decree, bond judgment authorization or approval, lien or award of or any settlement arrangement, by agreement, consent or otherwise, with any Governmental Body, foreign or domestic.

"Leasehold Interests" shall mean all of each Loan Party's right, title and interest in and to, and as lessee of, the premises identified as leased Real Property on Schedule 4.4 hereto.

"Letters of Credit" shall mean "Letters of Credit" issued under the Related L/C Facility.

"LIBOR Alternate Source" shall have the meaning set forth in the definition of "LIBOR Rate".

"LIBOR Rate" shall mean for any LIBOR Rate Advance for the then current Interest Period relating thereto, the interest rate per annum determined by Agent by dividing (the resulting quotient rounded upwards, if necessary, to the nearest 1/100th of 1% per annum) (a) the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by Agent as an authorized information vendor for the purpose of displaying rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market (a "LIBOR Alternate Source"), at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period as the London interbank offered rate for U.S. Dollars for an amount comparable to such LIBOR Rate Advance and having a borrowing date and a maturity comparable to such Interest Period (or (x) if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any LIBOR Alternate Source, a comparable replacement rate determined by Agent at such time (which determination shall be conclusive absent manifest error), (y) if the LIBOR Rate is unascertainable as set forth in Section 3.8.2(i) hereof, a comparable replacement rate determined in accordance with Section 3.8.2 hereof) by (b) a number equal to 1.00 minus the Reserve Percentage; provided, however, that if the LIBOR Rate determined as provided above would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement. The LIBOR Rate shall be adjusted with respect to any LIBOR Rate Loan that is outstanding on the effective date of any change in the Reserve Percentage as of such effective date. Agent shall give reasonably prompt notice to the Borrowing Agent of the LIBOR Rate as determined or adjusted in accordance herewith, which determination shall be conclusive absent manifest error.

"LIBOR Rate Advance" shall mean any Advance that bears interest based on the LIBOR Rate.

"License Agreement" shall mean any agreement between any Company and a Licensor pursuant to which such Company is authorized to use any Intellectual Property in connection with the manufacturing, marketing, sale or other distribution of any Inventory of such Company or otherwise in connection with such Company's business operations.

"Licensor" shall mean any Person from whom any Company obtains the right to use (whether on an exclusive or non-exclusive basis) any Intellectual Property in connection with such Company's manufacture, marketing, sale or other distribution of any Inventory or otherwise in connection with such Company's business operations.

"Licensor/Agent Agreement" shall mean an agreement between Agent and a Licensor, in form and substance satisfactory to Agent, by which Agent is given the right, vis-a-vis such Licensor, to enforce Agent's Liens with respect to and to dispose of any Loan Party's Inventory with the benefit of any Intellectual Property applicable thereto, irrespective of such Loan Party's default under any License Agreement with such Licensor.

"Lien" shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, security interest, lien (whether statutory or otherwise), claim or encumbrance, or preference, priority or other security agreement or preferential arrangement held or asserted in respect of any asset of any kind or nature whatsoever including any conditional sale or other title retention agreement, any lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction.

"Lien Waiver Agreement" means an agreement between Agent and a Landlord/Bailee, in form and substance satisfactory to Agent in its reasonable discretion, by which such Person shall agree to a customary waiver and/or subordination and enforcement standstill as to any liens (statutory, contractual, or otherwise) which such Person may now have or hereafter obtain in any Collateral and agree to provide Agent with customary access rights to such premises and the Collateral located on such premises in order for Agent exercise its rights as a secured creditor with respect to such Collateral.

"Liquidity" shall mean, as of any date, the aggregate amount equal to the sum of (x) Undrawn Availability as of such date and (y) unrestricted cash and Cash Equivalents on the consolidated balance sheet of Loan Parties on a Consolidated Basis as of such date.

"LLC Division" shall mean, in the event a Company is a limited liability company, (a) the division of any such Company into two or more newly formed limited liability companies (whether or not such Company is a surviving entity following any such division) pursuant to Section 18-217 of the Delaware Limited Liability Company Act or any similar provision under any similar act governing limited liability companies organized under the laws of any other State or Commonwealth or of the District of Columbia, or (b) the adoption of a plan contemplating, or the filing of any certificate with any applicable Governmental Body that results or may result in, any such division.

"Loan Party" and "Loan Parties" shall have the meanings set forth in the preamble to this Agreement and shall include their successors and permitted assigns.

"Loan Parties on a Consolidated Basis" shall mean the consolidation in accordance with GAAP of the accounts or other items of Parent and its Subsidiaries.

"Material Adverse Effect" shall mean a material adverse effect on (a) the condition (financial or otherwise), results of operations, assets, business or properties of Loan Parties taken as a whole, (b) the ability of the Loan Parties, taken as a whole to duly and punctually pay or perform the Obligations in accordance with the terms thereof, (c) the value of the Collateral, or Agent's Liens on the Collateral or the priority of any such Lien or (d) the practical realization of the benefits of Agent's and each Cash Collateral Provider's rights and remedies under this Agreement and the Other Documents.

"Material Contract" shall mean any contract, agreement, instrument, permit, lease or license (including the License Agreements), written or oral, of any Company, which is material to any Company's business or which the failure to comply with could reasonably be expected to result in a Material Adverse Effect.

"Material Real Property" means, any parcel of real property located in the United States and owned by any Loan Party that has a Fair Market Value in excess of $1,000,000; provided that Agent may agree, in its sole discretion, to exclude from this definition any parcel of real property (and/or the buildings and contents therein) that is located in a special flood hazard area as designated by any federal Governmental Body.

"Maximum Cash Collateral Amount" shall mean $110,000,000.

"Modified Commitment Transfer Supplement" shall have the meaning set forth in Section 16.3(d) hereof.

"MIRE Event" means any increase, extension or renewal of any Commitment, or the addition of any new commitment hereunder.

"Mortgage" shall mean, as to each Material Real Property, a mortgage or deed of trust (and any related assignment of leases and rents and other security documents) pursuant to which a Lien in favor of Agent (or any representative or trustee designated by and acting for Agent) for the benefit of the Secured Parties to secure the Obligations shall be granted, such mortgage/deed of trust (and other assignment and related documents) to be in form and substance reasonably acceptable to Agent (in each case any such mortgage/deed of trust, assignment or other document may be amended, modified, supplemented, renewed, restated or replaced from time to time).

"Multiemployer Plan" shall mean a "multiemployer plan" as defined in Section 3(37) or 4001(a)(3) of ERISA to which contributions are required or, within the preceding five plan years, were required by any Company or any member of the Controlled Group.

"Multiple Employer Plan" shall mean a Plan which has two or more contributing sponsors (including any Company or any member of the Controlled Group) at least two of whom are not under common control, as such a plan is described in Section 4063 or 4064 of ERISA.

"Net Cash Proceeds" shall mean:

(a) with respect to any Disposition of any Collateral of any Company, the cash proceeds received by Companies (including cash proceeds subsequently received (as and when received) in respect of non-cash consideration initially received) net of (i) selling expenses (including reasonable brokers' fees or commissions, legal, accounting and other professional and transactional fees and any Taxes paid or payable in connection with such Disposition); (ii) amounts provided as a reserve, in accordance with GAAP, against (x) any liabilities under any indemnification obligations associated with such Disposition or (y) any other liabilities retained by Companies associated with the properties sold in such Disposition (provided that, to the extent and at the time any such amounts are released from such reserves, such amounts shall constitute Net Cash Proceeds); and (iii) the principal amount, premium or penalty, if any, interest, and other amounts on any Indebtedness for borrowed money (other than any such Indebtedness assumed by the purchaser of such properties) which is secured by a Lien on the properties sold in such Disposition (so long as such Lien was a Permitted Encumbrance at the time of such Disposition) and which is repaid with such proceeds;

(b) with respect to any issuance of Indebtedness or any issuance of Equity Interests by any Company, the cash proceeds received by Companies in respect thereof, net of customary fees, commissions, costs and other expenses incurred in connection therewith; and

(c) with respect to any Casualty Event as to any Company, the cash insurance proceeds, condemnation awards, and other similar compensation received by Companies or Agent in respect thereof, net of all reasonable costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such event, and net of any Taxes paid, withheld, payable or withholdable in connection with such Casualty Event.

"Non-Loan Party" shall mean any Company that is not a Loan Party.

"Non-Recourse Indebtedness" means Indebtedness of any one or more Non-Loan Parties (a) that is on terms and conditions reasonably satisfactory to Agent, (b) consists solely of an asset-based working capital facility to support the working capital needs of the applicable Non-Loan Parties, (c) that is not, in whole or in part, Indebtedness of any Loan Party (and for which no Loan Party has created, maintained or assumed any Guaranty Obligation) and for which no holder thereof has or could have upon the occurrence of any contingency, any recourse against any Loan Party or the assets thereof, (d) owing to an unaffiliated third-party (which for the avoidance of doubt does not include the Parent, any Subsidiary thereof, any other Loan Party, any Joint Venture (or owner of any interest therein) or any Affiliate of any of them) and (e) the source of repayment for which is expressly limited to the assets and/or cash flows of such Non-Loan Party and/or the Equity Interests and Equity Interests Equivalents of such Non-Loan Party.

"Notes" shall mean collectively, the Delayed Draw Term Notes.

"Obligations" shall mean and include any and all loans (including without limitation, all Delayed Draw Term Loans), advances, Cash Collateral Reimbursement Obligations, debts, liabilities, obligations, covenants and duties owing by any Loan Party or any Subsidiary of any Loan Party under this Agreement or any Other Document (and any as the same may be amended, modified, supplemented, increased, renewed, restated, or replaced from time to time), to Cash Collateral Providers or Agent (or to any other direct or indirect subsidiary or Affiliate of any Cash Collateral Provider or Agent) or any other Secured Party of any kind or nature, present or future (including as to all of the foregoing: (i) any interest or other amounts accruing thereon, (ii) any fees or premiums (including Prepayment Premiums) accruing thereon or under or in connection with this Agreement or any Other Document (and any as the same may be amended, modified, supplemented, increased, renewed, restated, or replaced from time to time), (iii) any costs and expenses of any Person payable/reimbursable by any Loan Party or Subsidiary of any Loan Party under this Agreement or any Other Document (and any as the same may be amended, modified, supplemented, increased, renewed, restated, or replaced from time to time), and (iv) any indemnification obligations or other amounts or charges payable by any Loan Party or Subsidiary of any Loan Party under this Agreement or any Other Document (and any as the same may be amended, modified, supplemented, increased, renewed, restated, or replaced from time to time), in each such case arising or payable after maturity, or after the filing or commencement of any Insolvency Proceeding relating to any Loan Party or Subsidiary of any Loan Party, whether or not a claim for post-Insolvency Proceeding interest, fees, payment/reimbursement obligations for costs and expenses, indemnification, or other amounts or charges is allowable or allowed in such Insolvency Proceeding (all collectively under this parenthetical, the "Post-Petition Obligations"), whether direct or indirect (including those acquired by assignment or participation), absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, contractual or tortious, liquidated or unliquidated, regardless of how such indebtedness or liabilities arise including all costs and expenses of Agent, any Cash Collateral Provider, or any other Secured Party incurred in the documentation, negotiation, modification, enforcement, collection or otherwise in connection with any of the foregoing, including but not limited to reasonable attorneys' fees and expenses and all obligations of any Loan Party or Subsidiary of any Loan Party to Agent, any Cash Collateral Provider, or any other Secured Party to perform acts or refrain from taking any action. For the avoidance of doubt, Obligations includes the requirement by Borrowers to provide cash collateral to the Agent in an amount equal to the unused Cash Collateral that is in the Cash Collateral Accounts.

"Obligations Receipts" shall have the meaning set forth in Section 11.5(a) hereof.

"Ordinary Course of Business" shall mean, with respect to any Company, the ordinary course of such Company's business as conducted on the Closing Date and any reasonable extension thereof (or in the case of any Person that is formed and/or becomes a Company after the Closing Date, as conducted as of the date such Person in formed and/or becomes a Company).

"Organizational Documents" shall mean, with respect to any Person, any charter, articles or certificate of incorporation, certificate of organization, registration or formation, certificate of partnership or limited partnership, bylaws, operating agreement, limited liability company agreement, or partnership agreement of such Person and any and all other applicable documents relating to such Person's formation, organization or entity governance matters (including any shareholders' or equity holders' agreement or voting trust agreement) and specifically includes, without limitation, any certificates of designation for preferred stock or other forms of preferred equity.

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

"Other Documents" shall mean the Perfection Certificates, the B. Riley Guarantee, any Guaranty, any Guarantor Security Agreement, any Pledge Agreement, the Intercreditor Agreement, any Mortgage, and any and all other agreements, instruments and documents, including intercreditor agreements, guaranties, pledges, powers of attorney, consents, and all other agreements, documents and instruments heretofore, now or hereafter executed by any Loan Party and/or delivered to Agent or a Cash Collateral Provider in respect of the transactions contemplated by this Agreement, in each case together with all amendments, modifications, supplements, extensions, renewals, substitutions, restatements and replacements thereto and thereof.

"Other Taxes" shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any Other Document or from the execution, delivery, performance or enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any Other Document, except any such taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.11).

"Out-of-Formula Loans" shall mean all "Out-of-Formula Loans" as defined in the ABL Facility Agreement as in effect on the Closing Date.

"Overnight Bank Funding Rate" shall mean, for any day, the rate per annum (based on a year of 360 days and actual days elapsed) comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S. managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York, as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by such Federal Reserve Bank (or by such other recognized electronic source (such as Bloomberg) selected by Agent for the purpose of displaying such rate) (an "Alternate Source"); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by Agent at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as set forth above would be less than 1.00%, then such rate shall be deemed to be 1.00% for purposes of this Agreement. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to the Borrowers.

"Participant" shall mean each Person who shall be granted the right by any Cash Collateral Provider to participate in any of the Advances and who shall have entered into a participation agreement in form and substance satisfactory to such Cash Collateral Provider.

"Payment Conditions" shall mean, on any applicable date of determination with respect to any proposed transaction (including any proposed series of related transactions) as to which satisfaction of such Payment Conditions is a requirement under this Agreement:

(a) in each and every case, no Default or Event of Default shall exist or shall have occurred and be continuing on such date, or would occur after giving effect to such proposed transaction (and to any Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction),

(b) in each and every case, Loan Parties shall be in pro forma compliance with each of the covenants set forth in Section 6.5 hereof as of and for the four quarter fiscal measurement period ending as of the last day of the most recently ended fiscal quarter of Parent and its Subsidiaries for which the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to such fiscal quarter have been delivered to Agent, with each such pro forma calculation of the applicable financial covenant ratio with respect to such covenant being made as though such proposed transaction (and any Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction) had been consummated on the last day in such fiscal quarter,

(c) if the proposed transaction is a proposed Acquisition, then either (x) no Revolving Advance will be outstanding either immediately prior to or after giving pro forma effect to such transaction, or (y) any target entity being acquired will become a Loan Party and grant Liens on all of its Collateral to secure the Obligations (either because such target entity is required to do so under the provisions of Section 6.12 or because Loan Parties shall voluntarily elect for such target entity to be joined hereto as a Loan Party as though the provisions of Section 6.12 did apply) and/or any assets being acquired will be owned by a Subsidiary of Parent that is or will become a Loan Party that has granted Liens on all of its Collateral,

(d) if the proposed transaction is a proposed Investment (other than an Acquisition) that is being made in reliance on the Available Amount (e.g., (i) a Permitted Intercompany Advance made pursuant to both clause (e) of the definition of Permitted Intercompany Advances, and clause (g) of the definition of Permitted Investment or (ii) a Permitted Investment under clause (i) of the definition of such term), then no Revolving Advance will be outstanding either immediately prior to or after giving pro forma effect to such transaction,

(e) if the proposed transaction is a proposed prepayment of Indebtedness, no Revolving Advance will be outstanding either immediately prior to or after giving pro forma effect to such transaction,

(f) in each and every case (other than an Investment of a type described in clause (d) of this definition above), either (x) no Revolving Advance shall be requested (nor may any proceeds of any Revolving Advance made on or about the day of any such transaction be used) to fund any portion of the proposed transaction (provided that this clause (x) shall not be applicable/available as an option in the case of any proposed Acquisition unless the provisions of subclause (y) of clause (c) of this definition shall be satisfied with respect thereto or any proposed prepayment of Indebtedness), or (y) either of the following two conditions shall be complied with:

(i) after giving pro forma effect to such proposed transaction (and to any Revolving Advances being requested concurrently/substantially contemporaneously with the closing and consummation on such transaction), with such pro forma calculation being made in each case as though such proposed transaction (and to any Revolving Advances being requested concurrently/substantially contemporaneously with the closing and consummation on such transaction) had been consummated and funded on the first day of the applicable Average Undrawn Availability Period, Borrowers shall have both Availability on such date and Average Undrawn Availability for the Average Undrawn Availability Period ending on such date of not less than $20,000,000, or

(ii) both (A) after giving pro forma effect to such proposed transaction (and to any Revolving Advances being requested and/or other Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction), with such pro forma calculation being made in each case as though such proposed transaction (and to any Revolving Advances being requested and/or other Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction) had been consummated and funded on the first day of the applicable Average Undrawn Availability Period, Borrowers shall have both Availability on such date and Average Undrawn Availability for the Average Undrawn Availability Period ending on such date of not less than $12,500,000, and (B) Loan Parties on a Consolidated Basis shall have a pro forma Fixed Charge Coverage Ratio of 1.10 to 1.00 calculated as of and for the four quarter fiscal measurement period ending as of the last day of the most recently ended fiscal quarter of Parent and its Subsidiaries for which the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to such fiscal quarter have been delivered to Agent, with such pro forma calculation of the Fixed Charge Coverage Ratio of Loan Parties on a Consolidated Basis being made as though such proposed transaction (and any Revolving Advances being requested to fund any portion of such transaction) had been consummated on the last day in such fiscal quarter,

(g) if the proposed transaction is a proposed Acquisition, then as of and for the four quarter fiscal measurement period ending as of the last day of the most recently ended fiscal quarter of Parent and its Subsidiaries for which the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to such fiscal quarter have been delivered to Agent (for purposes of this clause (g), the "subject quarter"), Loan Parties on a Consolidated Basis would have a pro forma Senior Net Leverage Ratio (with such pro forma calculation of the applicable financial covenant ratio with respect to such covenant being made as though such proposed transaction (and any Indebtedness being requested and/or incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction) had been consummated on the last day in the subject quarter) either (x) of not greater than 1.62:1.00 or (y) of not greater than the Senior Net Leverage Ratio in effect immediately prior to the applicable Acquisition,

(h) if the proposed transaction is (i) any Permitted Acquisition described in clause (d) of the definition of such term, (ii) any Permitted Intercompany Advance made pursuant to both clause (e) of the definition of Permitted Intercompany Advances and clause (g) of the definition of Permitted Investments, or (iii) a Permitted Investment under clause (j) of the definition of such term, unrestricted cash and Cash Equivalents on the consolidated balance sheet of Loan Parties on a Consolidated Basis, after giving pro forma effect to such proposed transaction, shall not be less than $30,000,000;

(i) if the proposed transaction is the incurrence of any Permitted Indebtedness under clause (h) of the definition of such term, then as of and for the four quarter fiscal measurement period ending as of the last day of the most recently ended fiscal quarter of Parent and its Subsidiaries for which the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to such fiscal quarter have been delivered to Agent, Loan Parties on a Consolidated Basis would have a pro forma Total Net Leverage Ratio (with such pro forma calculation of the applicable financial covenant ratio with respect to such covenant being made as though such proposed transaction (and any other Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction) had been consummated on the last day in the such fiscal quarter) not greater than 4.00 to 1.00,

(j) if the proposed transaction is a payment of any Permitted Restricted Payments under clause (g), then as of and for the four quarter fiscal measurement period ending as of the last day of the most recently ended fiscal quarter of Parent and its Subsidiaries for which the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to such fiscal quarter have been delivered to Agent, Loan Parties on a Consolidated Basis would have a pro forma Senior Net Leverage Ratio (with such pro forma calculation of the applicable financial covenant ratio with respect to such covenant being made as though such proposed transaction (and any Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction) had been consummated on the last day in the such fiscal quarter) not greater than (i) 2.50 to 1.00, to the extent tested on or prior to September 30, 2021, (ii) and 1.50 to 1.00 thereafter, and

(k) on the date of but prior to the consummation of the proposed transaction, Loan Parties shall deliver to Agent a certificate of a Responsible Officer of Parent giving notice of the occurrence of the proposed transaction, identifying the specific provision of/basket under this Agreement under which the proposed transaction is permitted, and certifying that all of the conditions required under this definition and otherwise under this Agreement for the consummation of such proposed transaction have been satisfied (and including calculations, with supporting data, demonstrating the satisfaction of any conditions based on Borrower's Availability or any financial performance ratio and, if applicable, evidence regarding the unrestricted cash and Cash Equivalents on the consolidated balance sheet of Loan Parties on a Consolidated Basis as of the date of and after giving pro forma effect to such transaction as necessary for satisfaction of any condition).

"Payment in Full" or "Paid in Full" means, as to the Obligations:

(i) the termination of all commitments of the Cash Collateral Providers to extend credit under this Agreement; and

(ii) the payment in full in cash/immediately available funds of all of the Obligations (including Post-Petition Obligations) owing at the applicable time (including contingent obligations with respect to draws on Eligible Letters of Credit and Cash Collateral Withdrawals, but not including contingent indemnification obligations as to which no claim or demand has been made) and, without duplication of the foregoing, the return to the Agent of all unused Cash Collateral in the Cash Collateral Accounts.

"Payment Office" shall mean each office of Agent and each Cash Collateral Provider designated by notice to Borrowing Agent to be the Payment Office.

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor.

"Pension Benefit Plan" shall mean at any time any "employee pension benefit plan" as defined in Section 3(2) of ERISA (including a Multiple Employer Plan, but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Sections 412, 430 or 436 of the Code and either (i) is maintained or to which contributions are required by Company or any member of the Controlled Group or (ii) has at any time within the preceding five years been maintained or to which contributions have been required by Company or any entity which was at such time a member of the Controlled Group.

"Pension Funding Waiver" shall mean the waiver of the minimum funding standard under Section 412 of the Code by the Internal Revenue Service and the PBGC with respect to a Pension Plan for the 2018 plan year and/or the 2019 plan year.

"Perfection Certificate" shall mean the information questionnaire and the responses thereto provided by each Loan Party and delivered to Agent.

"Performance Guarantee" of any Person means (a) any letter of credit (other than a Letter of Credit), bankers acceptance, surety bond, performance bond, bank guarantee or other similar obligation issued for the account of such Person to support only trade payables or nonfinancial performance obligations of such Person, (b) any letter of credit (other than a Letter of Credit), bankers acceptance, surety bond, performance bond, bank guarantee or other similar obligation issued for the account of such Person to support any letter of credit, bankers acceptance, surety bond, performance bond, bank guarantee or other similar obligation issued for the account of a Subsidiary, a Joint Venture or a Consortium of such Person to support only trade payables or non-financial performance obligations of such Subsidiary, Joint Venture or Consortium, and (c) any parent company guarantee or other direct or indirect liability, contingent or otherwise, of such Person with respect to trade payables or non-financial performance obligations of a Subsidiary, a Joint Venture or a Consortium of such Person, if the purpose of such Person in incurring such liability is to provide assurance to the obligee that such contractual obligation will be performed, or that any agreement relating thereto will be complied with.

"Permitted Acquisitions" shall mean any Acquisition so long as and to the extent that:

(a) after giving pro forma effect to such Acquisition (and to any Revolving Advances being requested and/or other Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction), the Payment Conditions with respect thereto shall have been satisfied;

(b) either (x) the target (for purposes of this definition of Permitted Acquisition, "target" shall have the meaning given to such term in the definition of "Acquisition") shall have either positive EBITDA (or negative EBITDA of not less than $(2,000,000)) for target and any Subsidiaries on a Consolidated Basis in accordance with GAAP measured for the trailing twelve (12) fiscal month measurement period ending as of the most recently ended fiscal quarter of such target for which audited or management-prepared financial statements are available or (y) Loan Parties shall provide projected statements of income, stockholders' equity, and cash flow and projects balance sheets (on a quarterly basis) for Loan Parties on a Consolidated Basis (including the target and any Subsidiaries) for the 8 fiscal quarter period following fiscal quarter in which the proposed Acquisition will occur demonstrating that the proposed Acquisition will be accretive to the EBITDA of Loan Parties on a Consolidated Basis and such projections shall be in form and substance reasonably acceptable to Agent;

(c) with respect to any Acquisition consisting of or including an acquisition of the Equity Interests of any Person(s), if any Person(s) being acquired will be a Collateral Jurisdiction Subsidiary, each such Person (x) shall be (after giving effect to such Acquisition) a Wholly-Owned Subsidiary and (y) shall become a Loan Party under this Agreement (and such Person and the other Loan Parties shall comply with all the requirements of Section 6.12 hereof with respect to such Person);

(d) with respect to any Acquisition consisting of or including either (x) an acquisition of the Equity Interest(s) of any Person(s) that will not be a Collateral Jurisdiction Subsidiary and/or (y) any assets that will not, after giving effect to such Acquisition (and, if applicable, to the provisions of clause (c) of this definition), be owned by a Loan Party, the total consideration with respect thereto, including the purchase price and liabilities assumed (including, without limitation, all Acquired Indebtedness, Indebtedness under Permitted Seller Notes, and Permitted Earnouts), shall not exceed the Available Amount as of the date of the closing and consummation of such Acquisition;

(e) the target shall be engaged in the conduct of an Eligible Line of Business;

(f) the board of directors (or other comparable governing body) of the target being acquired shall have duly approved the transaction;

(g) at least fifteen (15) Business Days prior to the anticipated closing date of any proposed acquisition with total consideration of more than $10,000,000, Loan Parties shall have delivered to Agent: (i) written notice of the proposed Acquisition and a summary of the material terms thereof as anticipated as of the date of such notice, and (ii) to the extent available, financial statements of the acquired entity for the two most recent fiscal years then ended, in form and substance reasonably acceptable to Agent;

(h) if the total consideration, including the purchase price and liabilities assumed (including, without limitation, all Acquired Indebtedness, Indebtedness under Permitted Seller Notes and Permitted Earnouts), of any such acquisition shall exceed $25,000,000, Borrowing Agent shall have delivered to Agent a quality of earnings report performed by a third party firm reasonably acceptable to Agent; and

(i) not later than five (5) Business Days prior to the anticipated closing date of the proposed Acquisition with a total consideration of more than $10,000,000, Borrowing Agent has provided Agent with copies of the most recent drafts of the acquisition agreement and other material agreements, documents and instruments related to the proposed acquisition, including, without limitation, any related management, non-compete, employment, option or other material agreements (including all annexes, exhibits, schedules, and disclosure letters with respect thereto, the "Acquisition Documents"), and, in any event, no later than the closing and consummation of such Acquisition, Borrowing Agent shall provide Agent with true, correct and complete copies of the Acquisition Documents, in each case duly authorized, executed and delivered by the parties thereto to such Acquisition Documents.

"Permitted Assignees" shall mean: (a) Agent, any Cash Collateral Provider or any of their direct or indirect Affiliates; (b) [reserved]; (c) any Approved Fund; and (d) any Fund to whom Agent or any Cash Collateral Provider assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Agent's or Cash Collateral Provider's rights in and to a material portion of such Agent's or Cash Collateral Provider's portfolio of commercial credit facilities and shall exclude any natural person and the Loan Parties and any of their Affiliates.

"Permitted Dispositions" shall mean:

(a) the sale, lease, license, exchange, transfer or other disposition of equipment that is substantially worn, damaged or obsolete or no longer used or useful in the Ordinary Course of Business of the Loan Parties or their Subsidiaries or replaced in the Ordinary Course of Business, and leases or subleases of Real Property (not including any sale-leasebacks) that is not useful in the conduct of the business of the Loan Parties or their Subsidiaries;

(b) sales of Inventory in the Ordinary Course of Business;

(c) the use or transfer of money or Cash Equivalents in a manner that is not otherwise prohibited by the terms of this Agreement or any of the Other Documents;

(d) the licensing of patents, trademarks, copyrights, and other Intellectual Property rights in the Ordinary Course of Business (but in the case of any Intellectual Property that is material to the ongoing businesses of any one or more of the Companies, only licenses on a non-exclusive basis shall be permitted);

(e) the granting of Permitted Encumbrances;

(f) any involuntary loss, damage or destruction of property;

(g) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property (or, as long as no Event of Default exists or would result therefrom, deed in lieu thereof);

(h) the leasing or subleasing (not including any sale-leasebacks) of assets other than as described in clause (a) of this definition of any Loan Party or its Subsidiaries in the Ordinary Course of Business or as otherwise not prohibited by this Agreement or any Mortgage;

(i) (x) the sale or issuance of Equity Interests (other than Disqualified Equity Interests) of Parent, (y) the sale or issuance of Equity Interests (other than Disqualified Equity Interests) of any Wholly-Owned Subsidiary of a Loan Party that is itself a Loan Party to such Loan Party and (z) the sale or issuance of Equity Interests (other than Disqualified Equity Interests) of any Non-Loan Party to any other Non-Loan Party (unless such purchasing Non-Loan Party is the direct Subsidiary of any one or more Loan Parties);

(j) the lapse or abandonment of registered or applied for patents, trademarks, copyrights and other Intellectual Property owned by any Loan Party or its Subsidiaries that is, in the reasonable good faith judgment of such Loan Party and in the Ordinary Course of Business and consistent with past business practices, determined by such Loan Party to be immaterial to the business of such Loan Party or such Subsidiary, or no longer economically practicable or commercially desirable to maintain or used or useful in the respective business of such Loan Party or such Subsidiary;

(k) the making of Restricted Payments that are expressly permitted to be made pursuant to this Agreement;

(l) the making of Permitted Investments;

(m) subject to the provisions of Section 7.9(b) hereof, the sale, lease, license, exchange, transfer or other disposition of assets (i) from any Company to a Loan Party, (ii) any Loan Party to another Loan Party and (iii) from any Company that is not a Loan Party to any other Company that is not a Loan Party, in each case, to the extent made in accordance with Section 7.10 hereof,

(n) as long as no Default exists or would result therefrom, any other Disposition (not including any Disposition of any Inventory or Receivables of Loan Parties, except in connection with a Disposition of all of the Equity Interests of or substantially all of the assets of any Subsidiary) for Fair Market Value and where no less than 100% of the consideration received therefor is cash or Cash Equivalents (including, for purposes of this clause (n), any potential earnouts payable to any applicable Company in cash); provided however that, the Fair Market Value of all assets Disposed of pursuant in and in reliance on this clause (n) shall not exceed $20,000,000 in the aggregate;

(o) any single transaction or series of related transactions so long as neither such single transaction nor such series of related transactions involves assets having a Fair Market Value of more than $5,000,000;

(p) sale and leaseback transactions (i) of the Lancaster manufacturing facility and (ii) of the Volund Esjberg assembly facility;

(q) as long as no Default or Event of Default exists or would result therefrom, discounts, adjustments, settlements and compromises of Receivables and contract claims in the Ordinary Course of Business;

(r) Dispositions of non-core assets acquired in any Acquisition made in accordance with the terms of this Agreement, which assets have a Fair Market Value of no greater than 25% of the EBITDA of the acquired Person for the previous four fiscal quarters, made no later than the first anniversary of the closing and consummation with respect to such Acquisition; and

(s) Sales of Receivables pursuant to Approved Supply Chain Financings so long as the Net Cash Proceeds with respect to all such sales shall not exceed $12,500,000 in the aggregate in any fiscal year (provided that, (x) no Company shall enter into any Supply Chain Agreement which provides that any sale of any Receivable pursuant thereto will be effective prior to the time that the full purchase price therefor (as determined under such Supply Chain Agreement) has been paid by the applicable Supply Chain Receivables Buyer to or for the benefit of such Company) and (y) at all times when any Approved Supply Chain Financing is in effect with respect to any Loan Party, such Loan Party shall cause all payments of any kind or nature due and payable to such Loan Party under such Supply Chain Financing to be remitted by the applicable Supply Chain Receivables Buyer directly to a Blocked Account or Depositary Account (and each Loan Party shall so direct each Supply Chain Receivables Buyer));

provided that, for the avoidance of doubt, in the event that, after giving effect to any Disposition otherwise permitted under this definition, any mandatory prepayment would be required under Section 2.22(b) hereto, no such Disposition shall constitute a Permitted Disposition hereunder unless (i) the Net Cash Proceeds of such Disposition shall be at least equal to the amount of any such mandatory prepayment and (ii) Loan Parties shall cause Net Cash Proceeds of such Dispositions in an amount equal to the amount of any such mandatory prepayment to be remitted by the applicable purchaser/transferee/assignee directly to Agent for application to and satisfaction of such mandatory prepayment.

"Permitted Earnouts" shall mean, with respect to a Company, any unsecured obligations of such Company arising from a Permitted Acquisition (or other Acquisition permitted hereunder or consummated with the consent of Required Cash Collateral Providers) which are payable to the seller based on the achievement of specified financial results over time and, if payable by any Loan Party, and are subject to subordination terms (or a subordination agreement in favor of Agent) in favor of the Obligations reasonably acceptable to Agent.

"Permitted Encumbrances" shall mean:

(a) Liens in favor of Agent, for the benefit of Secured Parties securing the Obligations, and Liens in favor of the agent under the ABL Facility, for the benefit of the "Secured Parties" securing the ABL Facility Obligations;

(b) Liens for taxes, assessments or other governmental charges not delinquent or being Properly Contested;

(c) deposits or pledges of cash, and customary liens on "bonded receivables" in connection with surety, appeal, customs or performance bonds or other similar instruments, made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other types of social security benefits, taxes, assessments, statutory obligations or other similar charges or to secure the performance of bids, tenders, sales, leases, contracts (other than for the repayment of borrowed money) or in connection with surety, appeal, customs or performance bonds or other similar instruments;

(d) deposits or pledges of cash relating to escrows established in connection with the purchase or sale of property otherwise permitted hereunder and the amounts secured thereby shall not exceed the aggregate consideration in connection with such purchase or sale (whether established for an adjustment in purchase price or liabilities, to secure indemnities, or otherwise);

(e) Liens arising by virtue of the rendition, entry or issuance against any Company or any Subsidiary, or any property of any Company or any Subsidiary, of any judgment, writ, order, or decree to the extent the rendition, entry, issuance or continued existence of such judgment, writ, order or decree (or any event or circumstance relating thereto) has not resulted in the occurrence of an Event of Default under Section 10.6 hereof;

(f) inchoate, statutory or construction liens and liens of landlords', suppliers, mechanics, carriers, materialmen, warehousemen, producers, operators or workmen and or other like Liens arising by statute and in the Ordinary Course of Business with respect to obligations which are not due or which are being Properly Contested;

(g) purchase money Liens in real property, improvements thereto or equipment (including any item of equipment purchased in connection with a particular construction project that the Borrower or a Subsidiary expects to sell to its customer with respect to such project and that, pending such sale, is classified as inventory) hereafter acquired (or, in the case of improvements, constructed) or the interests of lessors under Capital Leases hereafter entered into to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the asset purchased or acquired or improved and the proceeds thereof, (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired or any Refinancing Indebtedness in respect thereof, and (iii) the initial principal amount (including the portion of any Capital Lease Obligation attributable to principal) of such Indebtedness secured thereby does not exceed the lesser of the cost or Fair Market Value of such real property, improvements or equipment at the time of such acquisition or construction of the asset that is the subject of such Lien at the time such Indebtedness is entered into;

(h) (i) Liens securing reimbursement obligations of any Foreign Subsidiary in respect of Performance Guarantees (including any obligation to make payments in connection with such performance, but excluding obligations for the payment of borrowed money) issued by a Person that is not the Borrower or an Affiliate of the Borrower; provided such Liens shall be limited to (1) any contract as to which such Performance Guarantee provides credit support, (2) any accounts receivable arising out of such contract and (3) the deposit account into which such accounts receivable are deposited (the property described in clauses (1) through (3), collectively, the "Performance Guarantee Collateral") and (ii) Liens on cash or Cash Equivalents securing reimbursement obligations in respect of Performance Guarantees and other similar obligations (including any obligation to make payments in connection with such performance, but excluding obligations for the payment of borrowed money); provided that, in each case, the aggregate outstanding amount of all such obligations and liabilities secured by such Liens shall not exceed $10,000,000;

(i) easements, rights-of-way, zoning restrictions, minor defects or irregularities in title and other charges or encumbrances with respect to any Company's Real Property, in each case, which were not incurred in connection with the borrowing of money or the obtaining of advances or credit, which do not in the aggregate materially detract from Agent's or Cash Collateral Providers' rights in and to such Real Property or the value of such Real Property which do not materially impair the use thereof in the operation of any Company's business or otherwise interfere in any material respect with the Ordinary Course of Business of Companies and their Subsidiaries;

(j) the interests of lessors (and sublessors) (and interests in the title of such lessors (and sublessors)) under operating leases (including operating leases with respect to Real Property) and non-exclusive licensors (and interests in the title of such licensors) under license agreements, and any financing statements filed with respect to any such interests of lessors (or sublessors);

(k) Liens that are replacements of Permitted Encumbrances to the extent that the original Indebtedness is the subject of permitted Refinancing Indebtedness and so long as the replacement Liens only encumber those assets that secured the original Indebtedness (or the assets of the parties whose assets secured the original Indebtedness);

(l) rights of setoff or bankers' liens upon deposits of funds and Cash Equivalents in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of bank accounts of the Loan Parties and their Subsidiaries in the Ordinary Course of Business (not incurred in connection with the borrowing of money or the obtaining of advances or credit), including any such involving pooled accounts and netting arrangements;

(m) Liens granted in the Ordinary Course of Business on the unearned portion of insurance premiums securing the financing of insurance premiums;

(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) options, put and call arrangements, rights of first refusal and similar rights (i) relating to Investments in Subsidiaries, and Joint Ventures or (ii) provided for in contracts or agreements entered into in the ordinary course of business;

(p) Liens set forth on Schedule 7.2 hereto; provided that such Liens shall secure only the Indebtedness or other obligations which they secure on the Closing Date (and any Refinancing Indebtedness in respect thereof permitted hereunder) and shall not subsequently apply to any other property or assets of any Company other than the property and assets of those Companies to which they apply as of the Closing Date;

(q) (i) Liens in favor of the Pension Benefit Guaranty Corporation securing the "Obligations" as defined in that certain Pledge and Security Agreement, dated as of November 20, 2020, made by Parent and certain of its Subsidiaries in favor of the Pension Benefit Guaranty Corporation (acting on behalf of The Retirement Plan for Employees of Babcock & Wilcox Commercial Operations) (collectively, the "PBGC Secured Obligations") and (ii) other Liens (excluding "all assets" or "blanket" Liens with respect to any Loan Party) not otherwise permitted under this definition securing obligations or other liabilities (other than Indebtedness for borrowed money) of the Parent or its Subsidiaries; provided that the aggregate outstanding amount of the all such obligations and liabilities secured by such Liens under (1) clause (q)(ii) shall not exceed $2,500,000 at any time and (2) under this clause (q) shall not exceed $20,000,000 at any time;

(r) Liens on cash collateral in the amount of the "BoA Cash Collateral Amount" (as defined in the Existing BAML Credit Facility Payoff Letter) provided under/pursuant to the Existing BAML Credit Facility Payoff Letter securing the "Bank of America L/Cs" (as defined in the Existing BAML Credit Facility Payoff Letter);

(s) Liens in favor of Companies' customers encumbering Inventory and other goods (and other property related thereto but specifically excluding any proceeds of such Inventory or goods (or any related property) or other Receivables of any Company) that are located on and/or installed (or in the process of being installed) in or on the premises of Companies' customers in connection with project contracts between any one or more of the Companies and such customers securing obligations and other liabilities of Borrowers to such customers (other than Indebtedness) pursuant to such contracts to the extent such Liens are granted or created in the Ordinary Course of Business and are consistent with past business practices of the Companies;

(t) (A) Liens on the assets of, and/or Equity Interests and Equity Interests Equivalents of, any Non-Loan Parties securing any Non-Recourse Indebtedness permitted under clause (e) of the definition of Permitted Indebtedness; provided that no such Lien shall encumber the assets of any Loan Party (other than, in the case of any such Non-Recourse Indebtedness incurred by any particular one or more such Non-Loan Parties, any Equity Interests and Equity Interests Equivalents of such Non-Loan Parties securing the Non-Recourse Indebtedness with respect to which such Non-Loan Parties are obligated/liable), and (B) Liens on the Equity Interests and Equity Interests Equivalents of any Joint Venture securing any Indebtedness with respect to which such Joint Venture is obligated/liable; and

(u) Liens (excluding Liens on Inventory or Receivables or the proceeds thereof of any Loan Party or any "all assets" or "blanket" Liens with respect to any Loan Party) securing any Acquired Indebtedness permitted under clause (i) of the definition of Permitted Indebtedness so long as, in any such case, such Liens attach only to (x) the assets of the Company or Companies that were obligated with respect to such Acquired Indebtedness immediately prior to the applicable Acquisition and (y) assets of the scope/type securing such Acquired Indebtedness immediately prior to the applicable Acquisition.

Notwithstanding the foregoing or anything to the contrary contained in herein or in any Other Document, (x) no Loan Party or Subsidiary shall pledge, cause to be pledged, or permit the pledge of, or otherwise grant any Lien on, any asset owned by any Loan Party or any other Domestic Subsidiary as credit support in favor of, or for the benefit of, any Non-Loan Party or to secured any Indebtedness of any Non-Loan Party, and (y) no Loan Party or Subsidiary shall pledge, cause to be pledged, or permit the pledge of, or otherwise grant any Lien on, any asset owned by any Company to secure, as credit support in favor of, or for the benefit of, the Unsecured Notes or any obligations, liabilities or any obligations, liabilities, or Indebtedness of any kind or nature under the B. Riley Guarantee Reimbursement Agreement.

"Permitted Indebtedness" shall mean:

(a) the Obligations;

(b) Indebtedness as of the Closing Date set forth on Schedule 7.8 hereto and any Refinancing Indebtedness in respect of such Indebtedness;

(c) Permitted Purchase Money Indebtedness (including Permitted Purchase Money Indebtedness that is also Acquired Indebtedness (up to the limitations specified in the definition of Permitted Purchase Money Indebtedness)) and any Refinancing Indebtedness in respect of such Indebtedness;

(d) Endorsement of instruments or other payment items for deposit;

(e) Non-Recourse Indebtedness of any Non-Loan Parties so long as (A) at the time such Indebtedness is incurred and after giving pro forma effect thereto, (x) no Default or Event of Default shall be outstanding and (y) Loan Parties shall be in pro forma compliance with each of the covenants set forth in Section 6.5 hereof as of and for the four quarter fiscal measurement period ending as of the last day of the most recently ended fiscal quarter of Parent and its Subsidiaries for which the financial statements and other reports, accountants' opinions, and certificates required under Section 9.8 hereof with respect to such fiscal quarter have been delivered to Agent, with each such pro forma calculation of the applicable financial covenant ratio with respect to such covenant being made as though such proposed Indebtedness had been incurred on the last day in such fiscal quarter and (B) the maximum potential principal amount with respect to all such Non-Recourse Indebtedness outstanding at any one time (including the unused portion of any revolving credit or other commitments of the lenders/financing parties providing such Non-Recourse Indebtedness) shall not exceed $25,000,000 in the aggregate;

(f) Indebtedness in respect of matured or drawn Performance Guarantees in the nature of letters of credit, bankers acceptances, bank guarantees or other similar obligations, but only so long as such Indebtedness is reimbursed or extinguished within 5 Business Days of being matured or drawn;

(g) Indebtedness in respect of matured or drawn Performance Guarantees in the nature of surety bonds, performance bonds and other similar obligations, in each case that would appear as indebtedness on a consolidated balance sheet of the Borrower prepared in accordance with GAAP, in an aggregate amount not to exceed $20,000,000 at any time outstanding (excluding, for purposes of this dollar cap, any such Indebtedness which is being Properly Contested);

(h) unsecured Indebtedness (x) of Parent pursuant to the Unsecured Notes outstanding as of the Closing Date in an aggregate principal amount not to exceed the aggregate principal amount thereof outstanding as of the Closing Date, and (y) additional unsecured Indebtedness of any one or more Loan Parties (including but not limited to any additional Unsecured Notes issued following the Closing Date) so long as, (i) at the time such additional Indebtedness under this subclause (y) is incurred, after giving pro forma effect to such Indebtedness (and any other transactions (including any Acquisition and/or Investment being consummated with the proceeds thereof) being closed and consummated concurrently/substantially contemporaneously with such incurrence), the Payment Conditions with respect thereto shall have been satisfied and (ii) such additional Indebtedness under this subclause (y) (A) shall not mature prior to the date that is 180 days after the last day of the Term as in effect at the time such additional Indebtedness is incurred, and (B) the documents governing and/or evidencing such additional Indebtedness shall not (1) contain any financial covenants or (2) be materially less favorable to Loan Parties than the terms and conditions of the Unsecured Notes Indenture as in effect on the Closing Date;

(i) Acquired Indebtedness (excluding any Acquired Indebtedness that is Permitted Purchase Money Indebtedness permitted pursuant to clause (c) hereof) and any Refinancing Indebtedness in respect of such Acquired Indebtedness in an aggregate principal amount not to exceed $25,000,000 at any time outstanding, so long as (x) no Company that was not obligated with respect to such Acquired Indebtedness immediately prior to the applicable Acquisition shall in any way (including pursuant to any Guaranty Obligation) be liable or obligated with respect thereto, and (y) no Liens shall attach to any assets or property of any kind of any Company that was not obligated with respect to such Acquired Indebtedness immediately prior to the applicable Acquisition;

(j) unsecured Indebtedness (x) constituting standard "working capital adjustment" provisions or similar provisions arising in connection with Permitted Acquisitions, (y) under Permitted Seller Notes and Permitted Earnouts arising in connection with Permitted Acquisitions, and (z) under non-compete payment obligations arising in connection with Permitted Acquisitions, provided that, such Indebtedness shall at all times be unsecured (other than, in the case of clause (x), pursuant to any escrow arrangement or holdback arrangement under the applicable purchase agreement);

(k) Indebtedness owed to any Person providing property, casualty, liability or other insurance to any Company, 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 (including premiums) of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year;

(l) Indebtedness consisting of Interest Rate Hedges and Foreign Currency Hedges that is incurred for the bona fide purpose of hedging the interest rate, commodity or foreign currency risks associated with the operations of the Companies and not for speculative purposes;

(m) Cash Management Liabilities;

(n) Indebtedness of any Company or its Subsidiaries in respect of Permitted Intercompany Advances;

(o) Indebtedness under the ABL Facility and the Related L/C Facility (less any Cash Collateral pledged therefor) in a maximum amount not to exceed the "Maximum Priority Revolving Loan Debt" as defined in the Intercreditor Agreement;

(p) Indebtedness under the B. Riley Guarantee Reimbursement Agreement;

(q) Indebtedness with respect to the "Existing Letters of Credit" as defined under the Existing BAML Credit Facility Payoff Letter; and

(r) Indebtedness (not for borrowed money) secured by the Liens permitted under clause (q) of the definition of Permitted Encumbrances.

"Permitted Intercompany Advances" shall mean:

(a) any loans and/or advances made by a Loan Party to another Loan Party or any Guaranty Obligations incurred by a Loan Party with respect to Permitted Indebtedness of another Loan Party;

(b) any loans and/or advances made by a Non-Loan Party to another Non-Loan Party or any Guaranty Obligations incurred by a Non-Loan Party with respect to Permitted Indebtedness of another Non-Loan Party;

(c) any loans and/or advances made by a Non-Loan Party to a Loan Party, provided that any such loans and/or advances must be Subordinated Debt or any Guaranty Obligations incurred by a Non-Loan Party with respect to Permitted Indebtedness of a Loan Party, provided that any reimbursement or contribution obligations of the Loan Party with respect thereto must be subordinated in favor of the Obligations; and

(d) any loans and/or advances made by a Loan Party to a Non-Loan Party so long as the aggregate amount of all such loans and/or advances made in any fiscal year, together with the aggregate amount of all loans, advances, and other Investments made in such fiscal year pursuant to clause (i) of the definition of Permitted Investments, does not exceed, in any fiscal year, the lesser of (x) $15,000,000 or (y) 25% of the EBITDA for Loan Parties on a Consolidated Basis for the fiscal year immediately preceding such fiscal year; provided that, notwithstanding anything to the contrary provided for in the foregoing, no such Investment may be made under/in reliance on this clause (d) unless, after giving pro forma effect to any such loan and/or advance (and to any other Indebtedness being incurred by any Company concurrently with the closing and consummation on such transaction), the Payment Conditions with respect thereto shall have been satisfied;

(e) any loans and/or advances made by a Loan Party to a Non-Loan Party so long as the amount of each such loan/advance does not exceed the Available Amount as of the date such loan/advance is made, provided that, notwithstanding anything to the contrary provided for in the foregoing, no such Investment may be made under/in reliance on this clause (e) unless, after giving pro forma effect to any such Investment (and to any Indebtedness being incurred by any Company concurrently with the closing and consummation on such transaction), the Payment Conditions with respect thereto shall have been satisfied; and

(f) any loans and/or advances and/or Guaranty Obligations existing as of the Closing Date set forth on Schedule 7.8 hereto and any Refinancing Indebtedness in respect of such Indebtedness.

"Permitted Investments" shall mean:

(a) Investments in cash and Cash Equivalents;

(b) Investments in negotiable instruments deposited or to be deposited for collection in the Ordinary Course of Business;

(c) the extension of trade credit by a Company to a Customer in the Ordinary Course of Business in connection with a sale of Inventory or rendition of services, in each case on open account terms, and related Investments in accounts, contract rights and chattel paper (each as defined in the UCC), notes receivable and similar items arising or acquired from such sales and renditions;

(d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the Ordinary Course of Business or owing to any Loan Party or any of its Subsidiaries in any Insolvency Proceeding involving a Customer or upon the foreclosure or enforcement of any Lien in favor of a Company;

(e) Investments owned by any Company on the Closing Date and set forth on Schedule 7.4 hereto;

(f) Guaranty Obligations permitted under the definition of Permitted Indebtedness;

(g) Permitted Intercompany Advances, so long as, at the request of Agent, (i) the applicable loan or advance is evidenced by a promissory note on terms and conditions (including terms subordinating payment of any Indebtedness evidenced by such note owing from any Loan Party to the prior Payment in Full of all of the Obligations) reasonably acceptable to Agent and (ii) if any Indebtedness thereunder is owing to any Loan Party, the original of such note has been delivered to Agent either endorsed in blank or together with an undated instrument of transfer executed in blank by the applicable the Loan Parties that are the payees on such note;

(h) Permitted Acquisitions;

(i) Investments in Joint Ventures so long as the aggregate amount of all such Investments made in any fiscal year, together with the aggregate amount of all Permitted Intercompany Advances made in such fiscal year pursuant to clause (d) of the definition of Permitted Intercompany Advances and clause (g) this the definition of Permitted Investments, does not exceed, for any fiscal year, the lesser of (x) $15,000,000 or (y) 25% of the EBITDA for Loan Parties on a Consolidated Basis for the fiscal year immediately preceding such fiscal year; provided that, notwithstanding anything to the contrary provided for in the foregoing, no such Investment may be made under/in reliance on this clause (i) unless, after giving pro forma effect to any such Investment (and to any Indebtedness being incurred by any Company concurrently with the closing and consummation on such transaction), the Payment Conditions with respect thereto shall have been satisfied;

(j) Investments in Joint Ventures so long as the amount of each such Investment does not exceed the Available Amount as of the date such loan/advance is made; provided that, notwithstanding anything to the contrary provided for in the foregoing, no such Investment may be made under/in reliance on this clause (j) unless, after giving pro forma effect to any such Investment (and to any Indebtedness being incurred by any Company concurrently with the closing and consummation on such transaction), the Payment Conditions with respect thereto shall have been satisfied;

(k) Investments in the form of capital contributions and the acquisition of Equity Interests made by any Loan Party in any other Loan Party (other than Parent);

(l) [Reserved];

(m) deposits of cash made in the Ordinary Course of Business to secure performance of operating leases;

(n) loans and advances to employees and officers of Parent or any of its Subsidiaries (or guaranties of loans and advances made by a third party to employees of Parent or any of its Subsidiaries) in the Ordinary Course of Business for any other business purpose and in an aggregate amount not to exceed $3,000,000 at any one time;

(o) Investments resulting from entering into (i) Interest Rate Hedges and Foreign Currency Hedges incurred for the bona fide purpose of hedging the interest rate, commodity or foreign currency risks associated with the operations of the Companies and not for speculative purposes or Cash Management Products and Services, or (ii) agreements relative to Indebtedness that is permitted under clause (i) of the definition of Permitted Indebtedness;

(p) Investments in the nature of, and arising directly as a result of, consideration received in connection with any Permitted Disposition;

(q) Investments held by a Person acquired in 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;

(r) any Investment by way of (i) merger, consolidation, reorganization or recapitalization, (ii) reclassification of Equity Interests; or (iii) transfer of assets, in each case solely to the extent permitted by Section 7.1 hereof; and

(s) to the extent constituting an Investment, any Restricted Payment to the extent permitted by Section 7.7 hereof.

"Permitted Purchase Money Indebtedness" shall mean (x) as of any date of determination, Purchase Money Indebtedness (other than the Obligations, but including Capitalized Lease Obligations, but excluding any Purchase Money Indebtedness that is also Acquired Indebtedness) incurred after the Closing Date in an aggregate principal amount of all such Indebtedness permitted by this clause (x) at any one time outstanding not to exceed $15,000,000 and (y) Purchase Money Indebtedness that is Acquired Indebtedness to the extent permitted under clause (i) of the definition of Indebtedness.

"Permitted Restricted Payments" shall mean, so long as, in the case of any such Restricted Payment other than any Restricted Payment pursuant to clause (a)(i) below or clause (c), (d), or (e) below, no Default or any Event of Default shall have occurred and remain outstanding at the time of the payment thereof, or would occur after giving pro forma effect to the payment thereof (and to any Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with the closing and consummation on such transaction):

(a) (i) distributions and dividends payable by any Company to any other Company (other than Parent), (ii) distributions and dividends payable by any Company to Parent in connection with and as an intermediate step in any series of substantially contemporaneous transactions ultimately resulting in an Investment that is a Permitted Investment, and (iii) distributions and dividends payable by any Company to Parent to fund (x) any Restricted Payment by Parent but only if and to the extent such Restricted Payment by Parent is a Permitted Restricted Payment hereunder or (y) any payment by Parent with respect to any Permitted Indebtedness with respect to which Parent is liable/obligated, but in each case under this subclause (y) only if and to the extent that (A) such payment by Parent in respect of such Permitted Indebtedness is not otherwise prohibited under this Agreement and (B) no Revolving Advance shall be requested (nor may any proceeds of any Revolving Advance made on or about the day of such transaction be used) to fund any portion of any such Restricted Payment under this subclause (y);

(b) distributions and dividends by any Subsidiary that is not a Wholly-Owned Subsidiary to any other direct or indirect holders of Equity Interests in such Subsidiary to the extent (i) such distributions and dividends are made simultaneously and on a *pro rata* (or on a basis more favorable to the Borrower or such Guarantor) basis among all the holders of the Equity Interests in such Subsidiary;

(c) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Stock or Stock Equivalents of the Borrower or any of its Subsidiaries (other than Specified Equity Contributions) that is deemed to occur upon the cashless exercise of stock options or warrants;

(d) distributions and dividends to Parent, to pay professional fees, franchise taxes and other Ordinary Course of Business operating expenses (excluding salaries and other employee compensation) incurred by Parent solely in its capacity as parent corporation of Companies;

(e) for so long as any Company (other than Parent) is a member of a consolidated, combined, unitary or similar type income tax group of which Parent is the common parent and files a consolidated federal income tax return in which Parent is the common parent (or, by reason of being a disregarded entity for U.S. federal income tax purposes, its income is included in such consolidated federal income tax return), distributions to Parent as will permit Parent to pay U.S. federal, state and local income taxes then due and payable, provided that the amount of any such distribution shall not exceed the amount of such taxes that are attributable to the income of such Company and its Subsidiaries (the "Permitted Tax Distributions");

(f) any Company may repurchase, redemption or other acquisition or retirement for value of any Equity Interests or Equity Interest Equivalents of Parent or any Subsidiary held by any current or former officer, director or employee pursuant to any equity-based compensation plan, equity subscription agreement, stock option agreement, shareholders' agreement or similar agreement in an aggregate amount not to exceed $4,250,000 in any fiscal year, but only if and to the extent that no Revolving Advance shall be requested (nor may any proceeds of any Revolving Advance made on or about the day of such transaction be used) to fund any portion of any such Restricted Payment under this clause (f);

(g) Parent may pay regularly scheduled cash dividends and distributions with respect to any preferred Equity Interests of Parent that do not constitute Disqualified Equity Interests at a rate not to exceed 9.00% per annum of the liquidation preference of such preferred Equity Interests so long as, after giving pro forma effect to any such payments (and to any Indebtedness being incurred and/or any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with such payments), the Payment Conditions with respect thereto shall have been satisfied; and

(h) payment of fees and other amounts to B. Riley pursuant to the B. Riley Fee Letter which may be made so long as, no Revolving Advance shall be requested (nor may any proceeds of any Revolving Advance made on or about the day of such transaction be used) to fund any portion of such amount.

"Permitted Seller Notes" shall mean, with respect to a Company, any unsecured obligations of such Company consisting of a deferred purchase price payment or other deferred consideration (excluding any standard "working capital adjustment" provisions or similar provisions) payable by such Company in connection with a Permitted Acquisition (or other Acquisition consummated with the consent of Required Cash Collateral Providers), whether evidenced by a promissory note, by the terms of the applicable acquisition purchase or merger agreement, or otherwise, in an aggregate principal amount of all such Indebtedness permitted by this clause (x) at any one time outstanding not to exceed $25,000,000 and which are subject to subordination terms (or a subordination agreement in favor of Agent) in favor of the Obligations reasonably acceptable to Agent and either (x) do not provide for any payments of principal thereunder prior to the date that is 90 days after the last day of the Term as in effect on the date such obligation is created or (y) otherwise on terms and conditions acceptable to Agent in its reasonable discretion.

"Person" shall mean any individual, sole proprietorship, partnership, corporation, business trust, joint stock company, trust, unincorporated organization, association, limited liability company, limited liability partnership, institution, public benefit corporation, joint venture, entity or Governmental Body (whether federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

"Plan" shall mean any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Benefit Plan and a Multiemployer Plan, as defined herein) maintained by any Company or any member of the Controlled Group or to which any Company or any member of the Controlled Group is required to contribute.

"Pledge Agreement" shall mean any pledge agreements executed on or subsequent to the Closing Date by any Loan Party or other Person with respect to any Subsidiary Equity Interest and/or any other Investment Property of any Company to secure the Obligations, in each case as such pledge agreement may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Pledged Equity Interest Collateral" shall have the meaning set forth in Section 4.14(a) hereof.

"Pledged Issuer" shall mean any Subsidiary of any Loan Party in its capacity as the "issuer" (as defined in the definition of "Equity Interest") of any Subsidiary Equity Interest in which any Loan Party has any right, title or interest and which is subject to a Lien in favor of Agent for the benefit of the Secured Parties created under this Agreement or any Other Document.

"PNC" shall mean PNC Bank, National Association, and shall include all of its successors and assigns.

"Post-Petition Obligations" shall have the meaning set forth in the definition of "Obligations".

"Prepayment Date" shall have the meaning set forth in Section 3.4.

"Prepayment Premium" shall have the meaning set forth in Section 3.4.

"Pro Forma Balance Sheet" shall have the meaning set forth in Section 5.5(a) hereof.

"Pro Forma Financial Statements" shall have the meaning set forth in Section 5.5(b) hereof.

"Projections" shall have the meaning set forth in Section 5.5(b) hereof.

"Properly Contested" shall mean, in the case of any Indebtedness, Lien or Taxes, as applicable, of any Person that are not paid as and when due or payable by reason of such Person's bona fide dispute concerning its liability to pay the same or concerning the amount thereof: (a) such Indebtedness, Lien or Taxes, as applicable, are being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted; (b) such Person has established appropriate reserves as shall be required in conformity with GAAP; (c) the non-payment of such Indebtedness or Taxes will not have a Material Adverse Effect or will not result in the forfeiture of any assets of such Person; (d) no Lien is imposed upon any of such Person's assets with respect to such Indebtedness or taxes unless such Lien (x) does not attach to any Receivables or Inventory, (y) is at all times junior and subordinate in priority to the Liens in favor of Agent (except only with respect to property Taxes that have priority as a matter of applicable state law) and, (z) enforcement of such Lien is stayed during the period prior to the final resolution or disposition of such dispute; and (e) if such Indebtedness or Lien, as applicable, results from, or is determined by the entry, rendition or issuance against a Person or any of its assets of a judgment, writ, order or decree, enforcement of such judgment, writ, order or decree is stayed pending a timely appeal or other judicial review.

"Published Rate" shall mean the rate of interest published each Business Day in the Wall Street Journal "Money Rates" listing under the caption "London Interbank Offered Rates" for a one month period (or, if no such rate is published therein for any reason, then the Published Rate shall be the LIBOR Rate for a one month period as published in another publication selected by Agent).

"Purchase Money Indebtedness" shall mean, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations) incurred at the time of, or within ninety (90) days after, the acquisition of or improvement of any tangible fixed assets (including any real property, improvements thereto or equipment (including any item of equipment purchased in connection with a particular construction project that the Borrower or a Subsidiary expects to sell to its customer with respect to such project and that, pending such sale, is classified as inventory)) for the purpose of financing all or any part of the cost of such acquisition or improvement.

"Purchasing CLO" shall have the meaning set forth in Section 16.3(d) hereof.

"Purchasing Cash Collateral Provider" shall have the meaning set forth in Section 16.3(c) hereof.

"Qualified Cash" shall mean, as of any date of determination, the amount of unrestricted cash and Cash Equivalents of the Loan Parties, denominated in Dollars, that is in deposit accounts or in securities accounts, or any combination thereof, which deposit accounts and securities accounts are the subject of Control Agreements and are maintained by a branch office of the applicable bank or securities intermediary located within the United States of America.

"RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as same may be amended, modified or supplemented from time to time.

"Real Property" shall mean all real property assets (whether or not owned in fee, leased, or otherwise) of any Loan Party, together with all buildings, fixtures, improvements, leases, licenses, permits, and approvals of any Loan Party with respect to any real estate asset, including all of the premises owned and leased by the Loan Parties listed on Schedule 4.4 hereto or hereafter owned or leased by any Loan Party.

"Real Property Collateral" shall mean all Collateral consisting of Real Property.

"Receivables" shall mean and include, as to any Person, all of such Person's accounts (as defined in Article 9 of the Uniform Commercial Code) and all of such Person's contract rights, instruments (including those evidencing indebtedness owed to such Person by its Affiliates), documents, chattel paper (including electronic chattel paper), general intangibles relating to accounts, contract rights, instruments, documents and chattel paper, and drafts and acceptances, credit card receivables and all other forms of obligations owing to such Person arising out of or in connection with the sale or lease of Inventory or the rendition of services, all supporting obligations, guarantees and other security therefor, whether secured or unsecured, now existing or hereafter created, and whether or not specifically sold or assigned to Agent hereunder.

"Refinancing Indebtedness" shall mean any financing, renewal or extension of Indebtedness so long as:

(a) such refinancing, renewal or extension does not result in an increase in the principal amount of the Indebtedness so refinanced, renewed or extended, other than by the amount of premiums paid thereon, accrued and unpaid interest with respect thereto, and the fees and expenses incurred in connection therewith;

(b) such refinancing, renewal or extension does not result in a shortening of the average weighted maturity (measured as of the date of the refinancing, renewal or extension) of the Indebtedness so refinanced, renewed or extended, and such refinancing, renewal or extension is not on terms or conditions that, taken as a whole, are less favorable to the interests of the Secured Parties than the terms and conditions of the Indebtedness being refinanced, renewed or extended;

(c) if the Indebtedness that is refinanced, renewed or extended was Subordinated Debt, then the terms and conditions of the refinancing, renewal or extension shall include subordination terms and conditions that are at least as favorable to the Secured Parties as those that were applicable to the refinanced, renewed or extended Indebtedness;

(d) the refinancing, renewal or extension is not recourse to any Person that is liable on account of the Obligations, other than those Persons which were obligated (as permitted by Sections 7.3 and/or 7.8 hereof) with respect to the Indebtedness that was refinanced, renewed or extended;

(e) the refinancing, renewal or extension is not secured by Liens on any assets of any Company or any other assets or property subject to a Lien in favor of Agent for benefit of any of the Secured Parties to secure any of the Obligations other than any such assets of any applicable Company (or other Person) that were subject to a Permitted Encumbrance with respect to the Indebtedness that was refinanced, renewed or extended, and if such Liens were subordinated in favor of Liens held by the Agent, then the terms and conditions of the refinancing, renewal or extension shall include subordination terms and conditions as to such Liens that are at least as favorable to the Secured Parties as those that were applicable to the refinanced, renewed or extended Indebtedness; and

(f) such refinancing, renewal or extension shall not otherwise be on terms and conditions that are materially less favorable to the applicable Companies (taking into account current market conditions at the time of such refinancing, renewal or extension).

"Register" shall have the meaning set forth in Section 16.3(e) hereof.

"Related Equity Interest Rights" shall have the meaning set forth in the definition of "Equity Interests".

"Related L/C Facility" shall mean that certain secured letter of credit issuance facility provided for under the Related L/C Facility Agreement.

"Related L/C Facility Agreement" shall mean that certain Letter of Credit Issuance and Reimbursement and Guaranty Agreement dated as of the date hereof among Loan Parties and Issuer, as it may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Related L/C Facility Obligations" shall mean all "Obligations" as defined in the Related L/C Facility Agreement as in effect as of the Closing Date.

"Release" shall have the meaning set forth in Section 5.7(c)(i) hereof.

"Reportable Compliance Event" shall mean that (1) any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, custodially detained, penalized or the subject of an assessment for a penalty or enters into a settlement with an Governmental Body in connection with any sanctions or other Anti-Terrorism Law or Anti-Corruption law, or any predicate crime to any Anti-Terrorism Law or Anti-Corruption Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations represents a violation of any Anti-Terrorism Law. or Anti-Corruption Law; (2) any Covered Entity engages in a transaction that has caused or may cause the Cash Collateral Providers or Agent to be in violation of any Anti-Terrorism Law, including a Covered Entity's use of any proceeds of the credit facility to fund any operations in, finance any investments or activities in, or, make any payments to, directly or knowingly indirectly, a Sanctioned Jurisdiction or Sanctioned Person; or (3) any Collateral becomes Embargoed Property.

"Reportable ERISA Event" shall mean a reportable event described in Section 4043(c) of ERISA or the regulations promulgated thereunder for which the 30 day notice has not been waived by the PBGC.

"Required Cash Collateral Providers" shall mean Cash Collateral Providers holding more than fifty percent (50.00%) of the aggregate of all Advances.

"Reserve Percentage" shall mean as of any day the maximum effective percentage in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as "Eurocurrency Liabilities").

"Responsible Officer" shall mean, as to any Person, any Chief Executive Officer, Chief Financial Officer, Treasurer or President of such Person (or any equivalent senior executive officer), any general partner of such Person, or any managing member of such Person.

"Restricted Payment" shall mean (a) the declaration or payment of any dividend or the making of any other payment or distribution, directly or indirectly, on account of Equity Interests issued by any Company (including any payment in connection with any merger or consolidation involving any Company) or to the direct or indirect holders of Equity Interests issued by any Company in their capacity as such holders (other than dividends or distributions payable in Qualified Equity Interests issued by Parent), (b) the purchase, redemption or making of any sinking fund or similar payment, or otherwise acquisition or retirement for value (including in connection with any merger or consolidation involving any Loan Party) any Equity Interests issued by any Company, or (c) the making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of any Company now or hereafter outstanding; provided that dividends payable solely in Stock or Stock Equivalents (other than Disqualified Stock) shall not constitute Restricted Payments.

"Revolving Loan" shall mean "Revolving Loan" as defined in the ABL Facility Agreement as in effect on the Closing Date.

"Sanctioned Jurisdiction" mean a country, territory, region, or government that is the subject or target of sanctions administered by OFAC (which, as of the Closing date, is the Crimea region of Ukraine, Cuba, Iran, North Korea, Syria, and Venezuela).

"Sanctioned Person" shall mean (a) a Person that is the subject of sanctions administered by OFAC or the U.S. Department of State ("State"), including by virtue of being (i) named on OFAC's list of "Specially Designated Nationals and Blocked Persons"; (ii) organized under the laws of, ordinarily resident in, or physically located in a Sanctioned Jurisdiction (except with a Person that is authorized by OFAC); (iii) owned or controlled 50% or more in the aggregate, by one or more Persons that are the subject of sanctions administered by OFAC; (b) a Person that is the subject of sanctions maintained by the European Union ("E.U."), including by virtue of being named on the E.U.'s "Consolidated list of persons, groups and entities subject to E.U. financial sanctions" or other, similar lists; (c) a Person that is the subject of sanctions maintained by the United Kingdom ("U.K."), including by virtue of being named on the "Consolidated List Of Financial Sanctions Targets in the U.K." or other, similar lists; or (d) a Person that is the subject of sanctions imposed by any Governmental Body of a jurisdiction whose laws apply to this Agreement.

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

"Secured Parties" shall mean, collectively, Agent and Cash Collateral Providers, together with each other holder of any of the Obligations, and the respective successors and assigns of each of them.

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

"Security" means any Equity Interests, Equity Interest Equivalents, voting trust certificate, bond, debenture, promissory note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, or any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, but shall not include any evidence of the Obligations.

"Senior Financial Covenant Indebtedness" shall mean, collectively, (x) all Financial Covenant Debt of Loan Parties on a Consolidated Basis that is secured by a Lien on any assets or properties of any Company, and (y) all other Financial Covenant Debt of Loan Parties on a Consolidated Basis owing by any Non-Loan Party and/or with respect to which any Non-Loan Party is obligated (and, for the avoidance of doubt, including in all cases any Non-Recourse Indebtedness).

"Senior Net Leverage Ratio" shall mean, with respect to Loan Parties on a Consolidated Basis as of any applicable testing date, the ratio of (a) the result of (x) Senior Financial Covenant Indebtedness outstanding as of such testing date ***minus*** (y) the lesser of (1) Qualified Cash of Loan Parties as of such testing date and (2) $20,000,000, to (b) EBITDA for the four (4) fiscal quarter measurement period ending as of such testing date (or such other fiscal measurement period ending as of such testing date as may be explicitly stated in case); provided that, for purposes of testing the Senior Net Leverage Ratio of Loan Parties on a Consolidated Basis to determine compliance with Section 6.5 or any other provision hereof other than clause (g) of the definition of "Payment Conditions", in each case for measurement periods ending on or prior to March 31, 2022: (x) for the fiscal quarter ending date occurring on September 30, 2021, the EBITDA for Loan Parties on a Consolidated Basis shall be measured for the single fiscal quarter measurement period ending on such date, multiplied by four (4), (y) for the fiscal quarter ending date occurring on December 31, 2021, the EBITDA for Loan Parties on a Consolidated Basis shall be measured for the two fiscal quarter measurement period ending on such date, multiplied by two (2), and (z) for the fiscal quarter ending date occurring on March 31, 2022, the EBITDA for Loan Parties on a Consolidated Basis shall be measured for the three fiscal quarter measurement period ending on such date, multiplied by four-thirds (4/3).

"Solvent" means, with respect to any Person, that the value of the assets of such Person (both at fair value and present fair saleable value) is, on the date of determination, greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person as of such date and that, as of such date, such Person is able to pay all liabilities of such Person as such liabilities are expected to mature and does not have unreasonably small capital for its then current business activities. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Specified Equity Contribution" shall have the meaning set forth in Section 6.5(c).

"Subordinated Debt" means Indebtedness of Parent or any of its Subsidiaries pursuant to terms and conditions acceptable to Agent and the Required Cash Collateral Providers in their respective sole discretion that is, by its terms, expressly subordinated to the prior Payment in Full of the Obligations pursuant to subordination terms and conditions acceptable to Agent and the Required Cash Collateral Providers in their respective sole discretion. The terms of any Subordinated Debt may permit Intercompany Subordinated Debt Payments.

"Subsidiary" shall mean of any Person a corporation or other entity of whose Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the directors of such corporation, or other Persons performing similar functions for such entity, are owned, directly or indirectly, by such Person.

"Subsidiary Equity Interest" shall mean (a) with respect to the Equity Interests issued to a Loan Party by any Subsidiary (other than a Foreign Subsidiary), 100% of such issued and outstanding Equity Interests, and (b) with respect to any Equity Interests issued to a Loan Party by any First-Tier Foreign Subsidiary (i) 100% of such issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956(c)(2)) and (ii) 100% of such issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)); provided that the Subsidiary Equity Interests shall not include any Equity Interests of a Foreign Subsidiary that is not a First-Tier Foreign Subsidiary.

"Supply Chain Agreement" shall mean, as to any Approved Supply Chain Financing, the supplier agreement(s), receivables purchase agreement(s), and/or other agreement(s)/master terms that govern the terms and conditions of such Approved Supply Chain Financing as between the applicable Borrower(s) and the applicable Supply Chain Receivables Buyer.

"Supply Chain Financing" shall mean a program offered by a Customer of any Company and a bank or other financial institution providing financing to such Customer whereby such bank or other financial institution shall purchase from the applicable Company and/or make payment to the applicable Company in respect of certain Receivables owing by such Customer to such Company in advance of the original due date for such Receivables at an agreed-upon discounted rate.

"Supply Chain Lien Agreement" shall mean, as to any Approved Supply Chain Financing, an agreement (reasonably acceptable to Agent) regarding the respective Liens and rights of Agent and such bank/financial institutions as to the applicable Receivables.

"Supply Chain Receivables" shall mean and any all Receivables owing to any Company from any Approved Supply Chain Customer.

"Supply Chain Receivables Buyer" shall mean the bank or other financial institution participating in any Approved Supply Chain Financing as the buyer of or party making payment with respect to the applicable Receivables of the applicable Approved Supply Chain Customer.

"Supply Chain Purchased Receivable" shall mean each Receivable of an Approved Supply Chain Customer that has either (x) been sold and transferred by an applicable Company to the applicable Supply Chain Receivables Buyer and with respect to which the full purchase price (as determined by the applicable Supply Chain Agreement) has been paid for the benefit of the applicable Company in cash into a Blocked Account or Depositary Account and title has been transferred to the applicable Supply Chain Receivables Buyer, or (y) been paid by the applicable Supply Chain Receivables Buyer and with respect to which the full payment amount (as determined by the applicable Supply Chain Agreement) has been paid for the benefit of the applicable Company in cash into a Blocked Account or Depositary Account, in each case, all in accordance with and subject to the terms of the applicable Supply Chain Agreement and the applicable Supply Chain Lien Agreement.

"Swap" shall mean any "swap" as defined in Section 1a(47) of the CEA and regulations thereunder other than (a) a swap entered into on, or subject to the rules of, a board of trade designated as a contract market under Section 5 of the CEA, or (b) a commodity option entered into pursuant to CFTC Regulation 32.3(a).

"Tax Affiliate" means, with respect to any Person, (a) any Subsidiary of such Person, and (b) any Affiliate of such Person with which such Person files or is eligible to file consolidated U.S. federal income tax returns or consolidated, combined, unitary or similar tax returns for state, local or foreign tax purposes.

"Taxes" shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Body, including any interest, additions to tax or penalties applicable thereto.

"Term" shall have the meaning set forth in Section 13.1 hereof.

"Termination Event" shall mean: (a) a Reportable ERISA Event with respect to any Pension Benefit Plan; (b) the withdrawal of any Company or any member of the Controlled Group from a Pension Benefit Plan 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; (c) the providing of notice of intent to terminate a Pension Benefit Plan in a distress termination described in Section 4041(c) of ERISA; (d) the commencement of proceedings by the PBGC to terminate a Pension Benefit Plan; (e) any event or condition (i) which would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Benefit Plan, or (ii) that would reasonably be expected to result in the termination of a Multiemployer Plan pursuant to Section 4041A of ERISA; (f) the partial or complete withdrawal within the meaning of Section 4203 or 4205 of ERISA, of any Company or any member of the Controlled Group from a Multiemployer Plan; (g) notice that a Multiemployer Plan is subject to Section 4245 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent, upon any Company or any member of the Controlled Group. Notwithstanding the foregoing or anything in this Agreement to the contrary, a 'Termination Event' shall not include (i) an application for waiver of the minimum funding standard under Section 412 of the Code for a Pension Benefit Plan for the 2018 or 2019 plan years if and to the extent such application was approved and resulted in a Pension Funding Waiver (ii) the failure to make any required contribution to a Pension Benefit Plan or to meet the minimum funding standard of Section 430 of the Code with respect to a Pension Benefit Plan for the 2018 or 2019 plan years if and to the extent such failure is subject to a Pension Funding Waiver, nor (iii) the Deferred PBGC Payments; provided, however, that the failure of the Company or any member of the Controlled Group to comply in all material respects with the terms and conditions of any Pension Funding Waiver, including, without limitation, the timely payment of any amortization installments required by such Pension Funding Waivers, shall constitute a 'Termination Event.

"Total Net Leverage Ratio" shall mean, with respect to Loan Parties on a Consolidated Basis as of any applicable testing date, the ratio of (a) the result of (x) Financial Covenant Debt outstanding as of such testing date ***minus*** (y) the excess, if any, of (1) the amount of unrestricted cash and Cash Equivalents on the consolidated balance sheet of Loan Parties on a Consolidated Basis as of such testing date over (2) $30,000,000, to (b) EBITDA for the four (4) fiscal quarter measurement period ending as of such testing date (or such other fiscal measurement period ending as of such testing date as may be explicitly stated in case); provided that, for purposes of testing the Total Net Leverage Ratio of Loan Parties on a Consolidated Basis under this Agreement for measurement periods ending on or prior to March 31, 2022: (x) for the fiscal quarter ending date occurring on September 30, 2021, the EBITDA for Loan Parties on a Consolidated Basis shall be measured for the single fiscal quarter measurement period ending on such date, multiplied by four (4), (y) for the fiscal quarter ending date occurring on December 31, 2021, the EBITDA for Loan Parties on a Consolidated Basis shall be measured for the two fiscal quarter measurement period ending on such date, multiplied by two (2), and (z) for the fiscal quarter ending date occurring on March 31, 2022, the EBITDA for Loan Parties on a Consolidated Basis shall be measured for the three fiscal quarter measurement period ending on such date, multiplied by four-thirds (4/3).

"Toxic Substance" shall mean and include any material present on any Real Property (including the Leasehold Interests) which has been shown to have significant adverse effect on human health or which is subject to regulation under the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., applicable state law, or any other applicable Federal or state laws now in force or hereafter enacted relating to toxic substances. "Toxic Substance" includes but is not limited to asbestos, polychlorinated biphenyls (PCBs) and lead-based paints.

"Transactions" shall mean (i) the closing under and becoming effective of this Agreement and the delivery of any Cash Collateral to PNC pursuant to the terms of this Agreement and the Cash Collateral Agreement on the Closing Date, (ii) the closing under and becoming effective of the ABL Facility, (iii) the closing under and becoming effective of the Related L/C Facility and the issuance thereunder of the initial Letters of Credit requested by Borrower to be issued on the Closing Date, (iv) the repayment in full of the Existing BAML Credit Facility (excluding certain letters of credit that shall remain outstanding and shall be cash collateralized or backstopped by Letters of Credit issued under this Agreement or under the Related L/C Facility Credit Agreement), and (v) the payment of all fees, premiums, costs, and expenses payable by the Loan Parties on the Closing Date in connection with any and all of the foregoing.

"Transferee" shall have the meaning set forth in Section 16.3(d) hereof.

"Undrawn Availability" shall mean "Undrawn Availability" as defined in the ABL Facility Agreement as in effect on the Closing Date.

"Unfunded Capital Expenditures" shall mean, as to any Company, without duplication, a Capital Expenditure funded (a) from such Loan Party's internally generated cash flow or (b) with the proceeds of loans made under the ABL Facility.

"Uniform Commercial Code" shall have the meaning set forth in Section 1.3 hereof.

"Unsecured Notes" shall mean, collectively, (x) those certain 8.125% Senior Notes due 2026 issued by Parent under the Unsecured Notes Indenture, in an aggregate principal amount of $172,881,575 as of the Closing Date, and (y) any additional unsecured Senior Notes issued under the Unsecured Notes Indenture by Parent made in accordance with the terms hereof.

"Unsecured Notes Documents" shall mean, collectively, the Unsecured Notes, the Unsecured Notes Indenture, and all agreements, contracts, instruments, and documents executed in connection therewith, in each case as such agreement, contract, instrument, or document may be amended, modified, supplemented, renewed, restated or replaced from time to time.

"Unsecured Notes Indenture" shall mean, collectively, (x) that certain Indenture dated February 12, 2021 between Parent and the Bank of New York Mellon Trust Company, N.A., as trustee (in such capacity, the "Unsecured Notes Trustee"), (y) that certain First Supplemental Indenture dated February 12, 2021 between Parent and Unsecured Notes Trustee executed in connection such Indenture dated February 12, 2021, and (z) any further supplemental indenture entered into by Parent and the Unsecured Notes Trustee pursuant to such Indenture from time to time after the Closing Date in connection with any issuance of Indebtedness by Parent made in accordance with the terms hereof (as any such agreement or indenture may be may be amended, modified, supplemented, renewed, restated or replaced from time to time).

"USA PATRIOT Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, amended, modified, renewed, extended or replaced.

"Voting Equity Interest" means Equity Interests of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or similar controlling Persons, of such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency).

"Wholly-Owned" means, in respect of any Subsidiary of any Person, a circumstance where all of the Stock of such Subsidiary (other than director's qualifying shares, and the like, as may be required by applicable law) is owned by such Person, either directly or indirectly through one or more Wholly-Owned Subsidiaries thereof.

1.3. Uniform Commercial Code Terms. All terms used herein and defined in the Uniform Commercial Code as adopted in the State of New York from time to time (the "Uniform Commercial Code") shall have the meaning given therein unless otherwise defined herein. Without limiting the foregoing, the terms "accounts", "chattel paper" (and "electronic chattel paper" and "tangible chattel paper"), "commercial tort claims", "deposit accounts", "documents", "equipment", "financial asset", "fixtures", "general intangibles", "goods", "instruments", "inventory", "investment property", "letter-of-credit rights", "payment intangibles", "proceeds", "promissory note" "securities", "software" and "supporting obligations" as and when used in the description of Collateral shall have the meanings given to such terms in Articles 8 or 9 of the Uniform Commercial Code. To the extent the definition of any category or type of collateral is expanded by any amendment, modification or revision to the Uniform Commercial Code, such expanded definition will apply automatically as of the date of such amendment, modification or revision.

1.4. Certain Matters of Construction. The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. All references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement. Any pronoun used shall be deemed to cover all genders. Wherever appropriate in the context, terms used herein in the singular also include the plural and vice versa. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. Unless otherwise provided, all references to any instruments or agreements to which Agent is a party, including references to any of the Other Documents, shall include any and all modifications, supplements or amendments thereto, any and all restatements or replacements thereof and any and all extensions or renewals thereof. Except as otherwise expressly provided for herein, all references herein to the time of day shall mean the time in New York, New York. Unless otherwise provided, all financial calculations shall be performed with Inventory valued on a first-in, first-out basis. Whenever the words "including" or "include" shall be used, such words shall be understood to mean "including, without limitation" or "include, without limitation". A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Required Cash Collateral Providers. Any Lien referred to in this Agreement or any of the Other Documents as having been created in favor of Agent, any agreement entered into by Agent pursuant to this Agreement or any of the Other Documents, any payment made by or to or funds received by Agent pursuant to or as contemplated by this Agreement or any of the Other Documents, or any act taken or omitted to be taken by Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of Agent and Cash Collateral Providers. Wherever the phrase "to the best of Loan Parties' knowledge" or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or Other Documents, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if he/she had engaged in a good faith and diligent performance of his/her duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

1.5. LIBOR Notification. Section 3.8.2. of this Agreement provides a mechanism for determining an alternate rate of interest in the event that the London interbank offered rate is no longer available or in certain other circumstances. The Agent does not warrant or accept any responsibility for and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of LIBOR Rate or with respect to any alternative or successor rate thereto, or replacement rate therefor.

II. CASH COLLATERAL; DELAYED DRAW TERM LOANS.

2.1. Cash Collateral for Letter of Credit Drawings.

(a) Subject to the terms and conditions set forth in this Agreement, on the Closing Date the Borrowers hereby request, and each Cash Collateral Provider, severally and not jointly, agrees to deliver, Cash Collateral in an aggregate amount equal to such Cash Collateral Provider's Cash Collateral Commitment Amount (the Loan Parties' joint and several obligation to reimburse each Cash Collateral Provider for the Cash Collateral delivered pursuant hereto (to the extent not converted into Delayed Draw Term Loans pursuant to Section 2.2), the "Cash Collateral Reimbursement Obligations"). Such Cash Collateral shall be delivered by the Cash Collateral Providers to Agent on or prior to the Closing Date pursuant to Section 2.8, and shall be deposited on the Closing Date by Agent in the Cash Collateral Account pursuant to the terms and conditions of the Cash Collateral Agreement. Subject to the terms and conditions set forth in the Cash Collateral Agreement, the Cash Collateral shall secure and the Issuer shall have the right to withdraw sums from the Cash Collateral Account as reimbursement for draws on Eligible Letters of Credit, and any such withdrawal (each, a "Cash Collateral Withdrawal") shall result in (x) a ratable reduction to the Loan Parties' Cash Collateral Reimbursement Obligations and (y) the conversion of Cash Collateral into Delayed Draw Term Loans in accordance with Section 2.2. Cash Collateral Reimbursement Obligations are further reduced ratably by any return of Cash Collateral to the Agent in accordance with the terms of the Cash Collateral Agreement.

2.2. Cash Collateral Withdrawals; Delayed Draw Term Loans.

(a) In the event of any draw on any Letter of Credit and any resulting Cash Collateral Withdrawal, Borrowing Agent shall promptly notify Agent. Regardless of whether Agent shall have received such notice, Borrowers shall be obligated to reimburse Agent for the amount of any Cash Collateral Withdrawal relating to such draw.

(b) Such reimbursement obligation shall be automatically converted without any further action of any Loan Party into Delayed Draw Term Loans held by the Cash Collateral Providers (ratably, in accordance with their Cash Collateral Commitment Amounts) in the amount of such Cash Collateral Withdrawal. The Delayed Draw Term Loans shall, upon the request of any Cash Collateral Provider, be evidenced by one or more secured promissory notes (collectively, the "Delayed Draw Term Note") substantially in the form attached hereto as Exhibit 2.1.

2.3. Cash Collateral Account. Loan Parties hereby covenant and agree that:

(a) The Cash Collateral is owned by the Agent (for its benefit and the benefit of the Cash Collateral Providers) and no Loan Party has any direct or indirect ownership interest in the Cash Collateral Account or the funds therein.

(b) No Loan Party will assert any right to or claim against the Cash Collateral Account or the funds therein, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect thereto.

2.4. Procedures for Selection of Applicable Rates for Advances.

(a) Each Delayed Draw Term Loan shall initially bear interest at the rate per annum applicable to a Delayed Draw Term Loan maintained as a Domestic Rate Advance.

(b) Notwithstanding the provisions of subsection (a) above, in the event Borrowers desires that any Delayed Draw Term Loan shall accrue interest at the LIBOR Rate, Borrowing Agent shall give Agent written notice in accordance with Section 2.4(e), specifying (i) the date that the relevant Interest Period is to begin (which shall be a Business Day), (ii) the amount of such Delayed Draw Term Loan, and (iii) the duration of the Interest Period therefor. Interest Periods for LIBOR Rate Advances shall be for one or three months; provided that, if an Interest Period would end on a day that is not a Business Day, it shall end on the next succeeding Business Day unless such day falls in the next succeeding calendar month in which case the Interest Period shall end on the next preceding Business Day. Any Interest Period that begins on the last Business Day of a calendar month (or a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. Upon and after the occurrence of an Event of Default, and during the continuation thereof, at the option of Agent or at the direction of the Required Cash Collateral Providers, upon notice to Borrowing Agent, all LIBOR Rate Advances then in effect shall be converted to Domestic Rate Advances. After giving effect to each requested LIBOR Rate Advance converted from a Domestic Rate Advance, there shall not be outstanding at any one time more than five (5) LIBOR Rate Advances, in the aggregate at any time.

(c) Each Interest Period of a LIBOR Rate Advance shall commence on the date such LIBOR Rate Advance is made and shall end on such date as Borrowing Agent may elect as set forth in subsection (b)(iii) above, provided that the exact length of each Interest Period shall be determined in accordance with the practice of the interbank market for offshore Dollar deposits and no Interest Period shall end after the last day of the Term.

(d) Until such time as Borrowing Agent shall elect the Interest Period applicable to any Delayed Draw Term Loan by its notice of conversion given to Agent pursuant to Section 2.4(e) hereof, such Advance shall be a Domestic Rate Advance. Borrowing Agent shall elect the duration of each succeeding Interest Period by giving irrevocable written notice to Agent of such duration not later than 3:00 p.m. on the day which is three (3) Business Days prior to the last day of the then current Interest Period applicable to such LIBOR Rate Advance. If Agent does not receive timely notice of the Interest Period elected by Borrowing Agent, Borrowing Agent shall be deemed to have elected to convert such LIBOR Rate Advance to a Domestic Rate Advance as of the last day of the Interest Period applicable to such LIBOR Rate Advance subject to Section 2.4(e) below.

(e) Provided that no Default or Event of Default shall have occurred and be continuing, Borrowing Agent may, on the last Business Day of the then current Interest Period applicable to any outstanding LIBOR Rate Advance, or on any Business Day with respect to Domestic Rate Advances, convert any such Delayed Draw Term Loan into a Delayed Draw Term Loan of another type in the same aggregate principal amount provided that any conversion of a LIBOR Rate Advance shall be made only on the last Business Day of the then current Interest Period applicable to such LIBOR Rate Advance. If Borrowing Agent desires to convert a Delayed Draw Term Loan, Borrowing Agent shall give Agent written notice by no later than 3:00 p.m. (i) on the day which is three (3) Business Days prior to the date on which such conversion is to occur with respect to a conversion from a Domestic Rate Advance to a LIBOR Rate Advance, or (ii) on the day which is one (1) Business Day prior to the date on which such conversion is to occur (which date shall be the last Business Day of the Interest Period for the applicable LIBOR Rate Advance) with respect to a conversion from a LIBOR Rate Advance to a Domestic Rate Advance, specifying, in each case, the date of such conversion, the loans to be converted and if the conversion is to a LIBOR Rate Advance, the duration of the first Interest Period therefor.

(f) At its option and upon written notice given prior to 3:00 p.m. at least three (3) Business Days prior to the date of such prepayment, Borrowers may, subject to Sections 2.4(g), 2.22 and 3.4 hereof, prepay the Delayed Draw Term Loans in whole at any time or in part from time to time with accrued interest and any applicable Prepayment Premium on the principal being prepaid on the date of such repayment. Borrowers shall specify the date of prepayment of Delayed Draw Term Loans which are LIBOR Rate Advances and the amount of such prepayment. In the event that any prepayment of a LIBOR Rate Advance is required or permitted on a date other than the last Business Day of the then current Interest Period with respect thereto, Borrowers shall indemnify Agent and Cash Collateral Providers therefor in accordance with Section 2.4(g) hereof.

(g) Each Borrower shall indemnify Agent and Cash Collateral Providers and hold Agent and Cash Collateral Providers harmless from and against any and all losses or expenses that Agent and Cash Collateral Providers may sustain or incur as a consequence of any prepayment, conversion of or any default by any Borrower in the payment of the principal of or interest on any LIBOR Rate Advance or failure by Borrowers to complete a borrowing of, a prepayment of or conversion of or to a LIBOR Rate Advance after notice thereof has been given, including, but not limited to, any interest payable by Agent or Cash Collateral Providers to Cash Collateral Providers of funds obtained by it in order to make or maintain its LIBOR Rate Advances hereunder. A certificate as to any additional amounts payable pursuant to the foregoing sentence submitted by Agent or any Cash Collateral Provider to Borrowing Agent shall be conclusive absent manifest error.

(h) Notwithstanding any other provision hereof, if any Applicable Law, treaty, regulation or directive, or any change therein or in the interpretation or application thereof, including without limitation any Change in Law, shall make it unlawful for Cash Collateral Providers or any Cash Collateral Provider (for purposes of this subsection (h), the term "Cash Collateral Provider" shall include any Cash Collateral Provider and the office or branch where any Cash Collateral Provider or any Person controlling such Cash Collateral Provider makes or maintains any LIBOR Rate Advances) to make or maintain its LIBOR Rate Advances, the obligation of Cash Collateral Providers (or such affected Cash Collateral Provider) to make LIBOR Rate Advances hereunder shall forthwith be cancelled and Borrowers shall, if any affected LIBOR Rate Advances are then outstanding, promptly upon request from Agent, either pay all such affected LIBOR Rate Advances or convert such affected LIBOR Rate Advances into loans of another type. If any such payment or conversion of any LIBOR Rate Advance is made on a day that is not the last day of the Interest Period applicable to such LIBOR Rate Advance, Borrowers shall pay Agent, upon Agent's request, such amount or amounts set forth in clause (g) above. A certificate as to any additional amounts payable pursuant to the foregoing sentence submitted by Cash Collateral Providers to Borrowing Agent shall be conclusive absent manifest error.

(i) Anything to the contrary contained herein notwithstanding, neither any Agent nor any Cash Collateral Provider, nor any of their participants, is required actually to acquire LIBOR deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate. The provisions set forth herein shall apply as if each Cash Collateral Provider or its participants had match funded any Obligation as to which interest is accruing based on the LIBOR Rate by acquiring LIBOR deposits for each Interest Period in the amount of the LIBOR Rate Advances.

2.5. [Reserved].

2.6. [Reserved].

2.7. [Reserved].

2.8. Making and Settlement of Advances.

(a) The delivery of Cash Collateral on the Closing Date hereunder shall be made and each Cash Collateral Withdrawal shall be automatically converted into a Delayed Draw Term Loan according to the applicable Cash Collateral Commitment Percentages of the respective Cash Collateral Providers.

(b) On or prior to the Closing Date each Cash Collateral Provider shall remit an amount equal to its Cash Collateral Commitment Amount to Agent such that Agent is able to, and Agent shall, to the extent the applicable Cash Collateral Providers have made funds available to it for such purpose and subject to Section 8.1 hereof, fund such Cash Collateral to the Cash Collateral Account on the Closing Date in U.S. Dollars and immediately available funds.

(c) [Reserved].

(d) [Reserved].

(e) Subject to any separate written agreement among any applicable Cash Collateral Providers, if any Cash Collateral Provider or Participant (a "Benefited Cash Collateral Provider") shall at any time receive any payment of all or part of its Advances, or interest thereon, or receive any Collateral in respect thereof (whether voluntarily or involuntarily or by set-off) in a greater proportion than any such payment to and Collateral received by any other Cash Collateral Provider, if any, in respect of such other Cash Collateral Provider's Advances, or interest thereon, and such greater proportionate payment or receipt of Collateral is not expressly permitted hereunder, such Benefited Cash Collateral Provider shall purchase for cash from the other Cash Collateral Providers a participation in such portion of each such other Cash Collateral Provider's Advances, or shall provide such other Cash Collateral Provider with the benefits of any such Collateral, or the proceeds thereof, as shall be necessary to cause such Benefited Cash Collateral Provider to share the excess payment or benefits of such Collateral or proceeds ratably with each of the other Cash Collateral Providers; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Cash Collateral Provider, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that each Cash Collateral Provider so purchasing a portion of another Cash Collateral Provider's Advances may exercise all rights of payment (including rights of set-off) with respect to such portion as fully as if such Cash Collateral Provider were the direct holder of such portion, and the obligations owing to each such purchasing Cash Collateral Provider in respect of such participation and such purchased portion of any other Cash Collateral Provider's Advances shall be part of the Obligations secured by the Collateral, and the obligations owing to each such purchasing Cash Collateral Provider in respect of such participation and such purchased portion of any other Cash Collateral Provider's Advances shall be part of the Obligations secured by the Collateral.

2.9. [Reserved].

2.10. Manner and Repayment of Advances.

(a) The Cash Collateral Reimbursement Obligations and Delayed Draw Term Loans shall be due and payable in full on the last day of the Term subject to earlier prepayment as herein provided. Notwithstanding the foregoing, all Advances shall be subject to earlier repayment upon (x) acceleration upon the occurrence of an Event of Default under this Agreement or (y) termination of this Agreement. Subject to the provisions of Section 11.5 hereof and also to any separate written agreements among any applicable Cash Collateral Providers, each payment (including each prepayment) by on behalf of any Loan Party on account of the principal of and/or interest or other amount on the Advances shall be applied, first to the interest, fees and Prepayment Premium accrued and unpaid on any outstanding Cash Collateral Reimbursement Obligations and Delayed Draw Term Loans, second, to the principal of any Delayed Draw Term Loans and third, to the Cash Collateral Reimbursement Obligations pro rata according to the applicable Cash Collateral Commitment Percentages of the Cash Collateral Providers.

(b) [Reserved].

(c) All payments to be made by the Borrowers shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. All payments of principal, interest, fees and other amounts payable hereunder, or under any of the Other Documents shall be made directly to the applicable Cash Collateral Providers at the applicable Payment Offices not later than 1:00 p.m. on the due date therefor in Dollars in federal funds or other funds immediately available to such Cash Collateral Provider in accordance with wire instructions provided to the Borrowing Agent by such Cash Collateral Provider.

(d) Except as expressly provided herein, all payments (including prepayments) to be made by Borrowers on account of principal, interest, fees and other amounts payable hereunder shall be made without deduction, setoff or counterclaim and shall be made to directly to the applicable Cash Collateral Provider to the applicable Payment Offices in accordance with wire instructions provided by such Cash Collateral Provider in writing from time to time, in each case on or prior to 1:00 p.m., in Dollars and in immediately available funds.

2.11. [Reserved].

2.12. [Reserved].

2.13. [Reserved].

2.14. [Reserved].

2.15. [Reserved].

2.16. [Reserved].

2.17. [Reserved].

2.18. [Reserved].

2.19. [Reserved].

2.20. [Reserved].

2.21. Liability for Acts and Omissions.

(a) As between Loan Parties, Agent and Cash Collateral Providers, each Loan Party assumes all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, neither Agent nor Cash Collateral Providers shall be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for an issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged (even if Issuer or any of its Affiliates shall have been notified thereof); (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) the failure of the beneficiary of any such Letter of Credit, or any other party to which such Letter of Credit may be transferred, to comply fully with any conditions required in order to draw upon such Letter of Credit or any other claim of any Loan Party against any beneficiary of such Letter of Credit, or any such transferee, or any dispute between or among any Loan Party and any beneficiary of any Letter of Credit or any such transferee; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, facsimile, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of Agent or Cash Collateral Providers, including any Governmental Acts, and none of the above shall affect or impair, or prevent the vesting of, any of Agent's or the Cash Collateral Providers' rights or powers hereunder. In no event shall Agent, any Cash Collateral Provider, or any of their Affiliates be liable to any Loan Party for any indirect, consequential, incidental, punitive, exemplary or special damages or expenses (including without limitation attorneys' fees), or for any damages resulting from any change in the value of any property relating to a Letter of Credit.

2.22. Prepayments

(a) Voluntary Prepayments of Advances. Borrowers may voluntarily prepay the Delayed Draw Term Loans and Cash Collateral Reimbursement Obligations in whole or part at any time and from time to time subject to payment of the Prepayment Premium in accordance with Sections 2.4(g) and 3.4. All such prepayments shall be accompanied by all accrued interest and fees on the amount prepaid. Once prepaid Advances hereunder may not be reborrowed.

(b) Mandatory Prepayments.

(i) Concurrently with (x) any Disposition (excluding any Permitted Disposition described in any of clause (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (q) or (s) of such definition) or (y) any Casualty Event, (A) to the extent that any Delayed Draw Term Loans are outstanding at such time, Borrowers shall prepay the Advances in an amount equal to the Net Cash Proceeds of such event, such prepayment to be due and payable no later than five (5) Business Day following receipt of such Net Cash Proceeds (and until the date of payment, such proceeds shall be held in trust for Secured Parties), and any such prepayment under this Section 2.22(b) shall be applied to the repayment of the Obligations in accordance with Section 2.22(c) hereof below and (B) if no Delayed Draw Term Loans are outstanding at such time, then, the provisions of this Section 2.22(b)(i) shall not apply to any such transaction (or series of related transactions) resulting in aggregate Net Cash Proceeds of less than $5,000,000 in any year; provided, that, with respect to clause (B) above, such Net Cash Proceeds shall not be required to be so applied, so long as no Event of Default shall have occurred and be continuing, if Borrower, at its option by notice in writing to the Agent, which such notice shall be received within thirty (30) days of the receipt of the Net Cash Proceeds, applies such Net Cash Proceeds in assets to be used in the business, so long as such Net Cash Proceeds are in fact so reinvested within three hundred sixty-five (365) days following the receipt of such Net Cash Proceeds, with the amount of Net Cash Proceeds unused after such period to be applied as set forth in 2.22(c). The foregoing shall not be deemed to be implied consent to any such sale otherwise prohibited by the terms and conditions hereof.

(ii) [reserved].

(iii) Concurrently with the incurrence of any Indebtedness by any Loan Party or any of its Subsidiaries (other than Indebtedness permitted under Section 7.8), Borrowers shall prepay the Advances in an amount equal to one hundred percent (100%) of such Net Cash Proceeds, to be applied as set forth in Section 2.22(c). The foregoing shall not be deemed to be implied consent to any such sale otherwise prohibited by the terms and conditions hereof.

(c) All prepayments of the Obligations and the Advances under Section 2.22 shall, subject to the provisions of Section 11.5 hereof, be applied first, to the repayment in full of the outstanding principal amount of any Delayed Draw Term Loans, second, to the repayment of the Cash Collateral Reimbursement Obligations (which may take the form of cash collateralizing the Agent or providing substitute cash collateral to the Issuer in accordance with the terms of the Related L/C Facility Agreement and the Cash Collateral Agreement) and third, to the repayment in full of all other outstanding Obligations in accordance with the terms hereof. All such prepayments shall be accompanied by accrued interest and fees on the amount prepaid, as well as any applicable Prepayment Premium. Any prepayment of Cash Collateral Reimbursement Obligations under this Section 2.22 may be effected by delivering additional cash collateral to the Issuer in the amount of the applicable prepayment (together with all accrued and unpaid interest, fees and premiums in respect thereof), to be held by the Issuer as "Loan Parties Cash Collateral" (as defined in the Related L/C Facility Agreement as in effect on the Closing Date, in replacement of an equivalent amount of any Cash Collateral (which amount of Cash Collateral shall thereupon be returned to the Agent for the benefit of the Cash Collateral Providers), in each case in accordance with the terms of the Related L/C Facility Documents. Notwithstanding the foregoing, each Cash Collateral Provider may reject all or a portion of its *pro rata* share of any mandatory prepayment (such declined amounts, the "Declined Proceeds") required to be made pursuant to clauses (b) (other than in respect of Refinancing Debt) by providing written notice (each, a "Rejection Notice") to Agent and Borrower Representative no later than 5:00 p.m. ET five (5) Business Days after the date of such Cash Collateral Provider's receipt of notice from Agent regarding such prepayment. Each Rejection Notice from a Cash Collateral Provider shall specify the amount of the mandatory prepayment to be rejected by such Cash Collateral Provider. If a Cash Collateral Provider fails to deliver a Rejection Notice to Agent within the time frame specified above or such Rejection Notice fails to specify the amount of the prepayment to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment. Any Declined Proceeds shall be retained by Borrowers.

(d) Notwithstanding anything to the contrary contained herein, if Net Cash Proceeds in respect of Revolving Loan Priority Collateral (as such term is defined in the Intercreditor Agreement) are required to prepay the Advances in accordance with clause (b)(i) above at a time when either (x) "Out-of-Formula Loans" (as such term is defined in the ABL Facility Agreement as in effect on the Closing Date) are outstanding under the ABL Facility Agreement or (y) a "Cash Dominion Period" (as such term is defined in the ABL Facility Agreement as in effect on the Closing Date) is continuing, then, (I) in the case of clause (x) above, such Net Cash Proceeds shall instead be used to prepay such Out-of-Formula Loans (until paid in full) and then shall be applied in accordance with Section 2.22(c) and (II) in the case of clause (y) above, such Net Cash Proceeds shall instead be used to prepay the ABL Facility in accordance with its terms.

2.23. Use of Proceeds.

(a) The proceeds of the Cash Collateral shall be used solely to provide cash collateral for the issuance of Eligible Letters of Credit for the account of the Borrowers and their Subsidiaries.

(b) Without limiting the generality of Section 2.23(a) above, neither the Loan Parties nor any other Person which may in the future become party to this Agreement or the Other Documents as a Borrower or Guarantor, intends to use nor shall they use any portion of the proceeds of the Advances, directly or indirectly, for any purpose in violation of Applicable Law.

2.24. [Reserved].

2.25. [Reserved].

III. INTEREST AND FEES.

3.1. Interest. Interest on Delayed Draw Term Loans shall be payable in arrears on the last day of each fiscal quarter, provided that all accrued and unpaid interest shall be due and payable at the end of the Term. Interest charges shall accrue on a daily basis and shall be computed on the actual principal amount of Delayed Draw Term Loans outstanding for each day during each fiscal quarter at a rate per annum equal to the applicable Interest Rate. Except as expressly provided otherwise in this Agreement, any Obligations that are not paid when due shall accrue interest at the Interest Rate for Domestic Rate Advances, subject to the provision of the final sentence of this Section 3.1 regarding the Default Rate. Whenever, subsequent to the Closing Date, the Alternate Base Rate is increased or decreased, the applicable Interest Rate with respect to any Domestic Rate Advances shall be similarly changed without notice or demand of any kind by an amount equal to the amount of such change in the Alternate Base Rate during the time such change or changes remain in effect. The LIBOR Rate with respect to any LIBOR Rate Loans shall be adjusted with respect to LIBOR Rate Loans without notice or demand of any kind on the effective date of any change in the Reserve Percentage as of such effective date. Upon and after the occurrence of an Event of Default and during the continuation thereof, the interest rate applicable to the Delayed Draw Term Loans and all other Obligations shall immediately and automatically be at a rate per annum equal to the applicable Interest Rate (or with respect to Cash Collateral Reimbursement Obligations, the Cash Collateral Commitment Fee Rate) plus two percent (2%) per annum (as applicable, the "Default Rate").

3.2. Cash Collateral Fees. Borrowers shall pay to Agent, for the ratable benefit of the Cash Collateral Providers, fees on all outstanding Cash Collateral (the "Cash Collateral Commitment Fees") in arrears on the last day of each fiscal quarter, provided that all accrued and unpaid Cash Collateral Commitment Fees shall be due and payable at the end of the Term. Cash Collateral Commitment Fees shall accrue on a daily basis and shall be computed on the actual amount of Cash Collateral outstanding for each day during each fiscal quarter at a rate per annum equal to the applicable Cash Collateral Commitment Fee Rate. Whenever, subsequent to the Closing Date, the Alternate Base Rate is increased or decreased, the applicable Cash Collateral Commitment Fee Rate with respect to any Domestic Rate Advances shall be similarly changed without notice or demand of any kind by an amount equal to the amount of such change in the Alternate Base Rate during the time such change or changes remain in effect. Upon and after the occurrence of an Event of Default and during the continuation thereof, the Cash Collateral Commitment Fee rate applicable to the outstanding Cash Collateral shall be at a rate per annum equal to the Default Rate.

3.3. Closing Fee. Borrowers shall pay to Agent, for the ratable benefit of Cash Collateral Providers, a closing fee of $2,750,000, which such fee shall be due and payable, and fully-earned and non-refundable under any circumstances upon the execution and delivery of this Agreement by all parties hereto.

3.4. Prepayment Premium. In the event that the Cash Collateral Reimbursement Obligations or Delayed Draw Term Loans are prepaid (whether voluntarily or mandatorily by Borrowers, whether automatically and/or at the election of Agent or Required Cash Collateral Providers upon the occurrence or during the continuance of any Event of Default (including upon acceleration, which acceleration shall be deemed to be prepayment of the Advances accelerated or otherwise becoming due), or otherwise, and, for the avoidance of doubt, with respect to Cash Collateral Reimbursement Obligations, the terms "prepayment" and "prepay" shall include cash collateralizing the Agent or providing substitute cash collateral to the Issuer, in each case in respect of Cash Collateral Reimbursement Obligations, in accordance with the terms of the Related L/C Facility Agreement and the Cash Collateral Agreement) in part or in whole prior to the last day of the Term (the date of any such prepayment, a "Prepayment Date"), Borrowers shall pay to Agent, for the ratable benefit of Cash Collateral Providers, a prepayment fee (the "Prepayment Premium") on each such Prepayment Date in an amount equal to (1) if the applicable Prepayment Date occurs on or after the Closing Date but prior to or on the date immediately preceding the first anniversary of the Closing Date, an amount equal to two and a quarter percent (2.25%) of the amount prepaid, (2) if the applicable Prepayment Date occurs on or after the first anniversary of the Closing Date but prior to or on the date immediately preceding the second anniversary of the Closing Date, an amount equal to two percent (2.00%) of the amount prepaid, (3) if the applicable Prepayment Date occurs on or after the second anniversary of the Closing Date but prior to or on the date immediately preceding the third anniversary of the Closing Date, an amount equal to one and a quarter percent (1.25%) of the amount prepaid, and (4) if the applicable Prepayment Date occurs on or after the third anniversary of the Closing Date, zero ($0), which such fee shall be will be due and payable and fully-earned and non-refundable immediately upon the occurrence of each such prepayment event described above and shall constitute part of the Obligations for all purposes herein at all times from and thereafter. EACH OF THE LOAN PARTIES EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE APPLICABLE LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF ANY SUCH PREPAYMENT PREMIUM PURSUANT TO THE TERMS HEREOF IN CONNECTION WITH ANY PAYMENT INCLUDING UPON ACCELERATION OR FORECLOSURE, IF APPLICABLE. The Loan Parties expressly agree that (A) the Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (B) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made, (C) there has been a course of conduct between Cash Collateral Providers and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Prepayment Premium, (D) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this Section 3.4, (E) the Loan Parties' agreement to pay the Prepayment Premium is a material inducement to the Cash Collateral Providers' agreement to provide the Commitments and make the Advances provided for herein, and (F) the Prepayment Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Cash Collateral Providers and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Cash Collateral Providers or profits lost by the Cash Collateral Providers as a result of such prepayment.

3.5. Computation of Interest and Fees. Interest and fees hereunder shall be computed on the basis of a year of 360 days and for the actual number of days elapsed (which will result in more interest being paid than if computed on the basis of a 365-day year). If any payment to be made hereunder becomes due and payable on a day other than a Business Day, the due date thereof shall be extended to the next succeeding Business Day and interest thereon shall be payable at the applicable Interest Rate during such extension.

3.6. Maximum Charges. In no event whatsoever shall interest and other charges charged hereunder exceed the highest rate permissible under Applicable Law. In the event interest and other charges as computed hereunder would otherwise exceed the highest rate permitted under Applicable Law: (i) the interest rates hereunder will be reduced to the maximum rate permitted under Applicable Law; (ii) such excess amount shall be first applied to any unpaid principal balance owed by Borrowers; and (iii) if the then remaining excess amount is greater than the previously unpaid principal balance, Cash Collateral Providers shall promptly refund such excess amount to Borrowers and the provisions hereof shall be deemed amended to provide for such permissible rate.

3.7. Increased Costs. In the event that any Applicable Law or any Change in Law or compliance by any Cash Collateral Provider (for purposes of this Section 3.7, the term "Cash Collateral Provider" shall include Agent, the Cash Collateral Providers and any corporation or bank controlling Agent, the Cash Collateral Providers and the office or branch where Agent and the Cash Collateral Providers make or maintain any LIBOR Rate Advances) with any request or directive (whether or not having the force of law) from any central bank or other financial, monetary or other authority, shall:

(a) subject Agent or any Cash Collateral Provider to any tax of any kind whatsoever with respect to this Agreement or any LIBOR Rate Advance, or change the basis of taxation of payments to Agent or such Cash Collateral Provider in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.10 hereof and the imposition of, or any change in the rate of, any Excluded Tax described in clauses (b) through (d) of the definition of Excluded Tax payable by Agent or such Cash Collateral Provider);

(b) impose, modify or deem applicable any reserve, special deposit, assessment, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, or deposits in or for the account of, advances or loans by, or other credit extended by, any office of Agent or any Cash Collateral Provider, including pursuant to Regulation D of the Board of Governors of the Federal Reserve System; or

(c) impose on Agent or any Cash Collateral Provider, or the London interbank market, any other condition, loss or expense (other than Taxes) affecting this Agreement or any Other Document or any Advance made by any Cash Collateral Provider;

and the result of any of the foregoing is to increase the cost to Agent or any Cash Collateral Provider of making, converting to, continuing, renewing or maintaining its Advances hereunder by an amount that Agent or such Cash Collateral Provider deems to be material or to reduce the amount of any payment (whether of principal, interest, fees or otherwise) in respect of any of the Advances by an amount that Agent or such Cash Collateral Provider deems to be material, then, in any case Borrowers shall promptly pay Agent or such Cash Collateral Provider, upon its demand, such additional amount as will compensate Agent or such Cash Collateral Provider for such additional cost or such reduction, as the case may be, provided that the foregoing shall not apply to increased costs which are reflected in the LIBOR Rate, as the case may be. Agent or such Cash Collateral Provider shall certify the amount of such additional cost or reduced amount to Borrowing Agent, and such certification shall be conclusive absent manifest error.

3.8. Alternate Rate of Interest.

3.8.1. Interest Rate Inadequate or Unfair. In the event that Agent or any Cash Collateral Provider shall have determined that:

(a) reasonable means do not exist for ascertaining the LIBOR Rate applicable pursuant to Section 2.2 hereof for any Interest Period;

(b) Dollar deposits in the relevant amount and for the relevant maturity are not available in the London interbank LIBOR market, with respect to an outstanding LIBOR Rate Advance, a proposed LIBOR Rate Advance, or a proposed conversion of a Domestic Rate Advance into a LIBOR Rate Advance;

(c) the making, maintenance or funding of any LIBOR Rate Advance has been made impracticable or unlawful by compliance by Agent or such Cash Collateral Provider in good faith with any Applicable Law or any interpretation or application thereof by any Governmental Body or with any request or directive of any such Governmental Body (whether or not having the force of law), or

(d) the LIBOR Rate will not adequately and fairly reflect the cost to such Cash Collateral Provider of the establishment or maintenance of any LIBOR Rate Advance,

then Agent shall give Borrowing Agent prompt written or telephonic notice of such determination. If such notice is given prior to Benchmark Replacement Date (as defined below), (i) any such requested LIBOR Rate Advance shall be made as a Domestic Rate Advance, unless Borrowing Agent shall notify Agent no later than 1:00 p.m. two (2) Business Days prior to the date of such proposed borrowing, that its request for such borrowing shall be cancelled or made as an unaffected type of LIBOR Rate Advance, (ii) any Domestic Rate Advance or LIBOR Rate Advance which was to have been converted to an affected type of LIBOR Rate Advance shall be continued as or converted into a Domestic Rate Advance, or, if Borrowing Agent shall notify Agent, no later than 1:00 p.m. two (2) Business Days prior to the proposed conversion, shall be maintained as an unaffected type of LIBOR Rate Advance, and (iii) any outstanding affected LIBOR Rate Advances shall be converted into a Domestic Rate Advance, or, if Borrowing Agent shall notify Agent, no later than 1:00 p.m. two (2) Business Days prior to the last Business Day of the then current Interest Period applicable to such affected LIBOR Rate Advance, shall be converted into an unaffected type of LIBOR Rate Advance, on the last Business Day of the then current Interest Period for such affected LIBOR Rate Advances (or sooner, if any Cash Collateral Provider cannot continue to lawfully maintain such affected LIBOR Rate Advance). Until such notice has been withdrawn, Cash Collateral Providers shall have no obligation to make an affected type of LIBOR Rate Advance or maintain outstanding affected LIBOR Rate Advances and no Borrower shall have the right to convert a Domestic Rate Advance or an unaffected type of LIBOR Rate Advance into an affected type of LIBOR Rate Advance.

3.8.2. Benchmark Replacement Setting. (a) Announcements Related to LIBOR. On March 5, 2021, the ICE Benchmark Administration, the administrator of LIBOR (the **"**IBA**"**) and the U.K. Financial Conduct Authority, the regulatory supervisor for the IBA, announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12-month USD LIBOR tenor settings (collectively, the **"**Cessation Announcements**"**). The parties hereto acknowledge that, as a result of the Cessation Announcements, a Benchmark Transition Event occurred on March 5, 2021 with respect to USD LIBOR under clauses (1) and (2) of the definition of Benchmark Transition Event below; provided however, no related Benchmark Replacement Date occurred as of such date.

(b) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any Other 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 Other 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 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 Other Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Cash Collateral Providers without any amendment to, or further action or consent of any other party to, this Agreement or any Other Document so long as the Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Cash Collateral Providers comprising the Required Cash Collateral Providers.

(c) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, 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 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 Document.

(d) Notices; Standards for Decisions and Determinations. Agent will promptly notify the Borrowers and the Cash Collateral Providers of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to paragraph (e) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent or, if applicable, any Cash Collateral Provider (or group of Cash Collateral Providers) pursuant to this Section 3.8.2, 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 Document, except, in each case, as expressly required pursuant to this Section 3.8.2.

(e) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any Other 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 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 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 Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Benchmark Unavailability Period. Upon the Borrowers' receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrowers may revoke any request for an Advance bearing interest based on USD LIBOR, conversion to or continuation of an Advance bearing interest based on USD LIBOR to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrowers will be deemed to have converted any such request into a request for an Advance of or conversion to Advances bearing interest under the Alternate Base Rate option. 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 the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

(g) Term SOFR Transition Event. Notwithstanding anything to the contrary herein or in any Other Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (i) the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Other Document in respect of such Benchmark setting (the **"**Secondary Term SOFR Conversion Date**"**) and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any Other Document; and (ii) Advances outstanding on the Secondary Term SOFR Conversion Date bearing interest based on the then-current Benchmark shall be deemed to have been converted to Advances bearing interest at the Benchmark Replacement with a tenor approximately the same length as the interest payment period of the then-current Benchmark; provided that, this paragraph (g) shall not be effective unless Agent has delivered to the Cash Collateral Providers and the Borrower a Term SOFR Notice. For the avoidance of doubt, Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion.

(h) Certain Defined Terms. As used in this Section 3.8.2:

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then current Benchmark is a term rate or is based on a term rate, any tenor for such Benchmark 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 paragraph (e) of this Section titled "Benchmark Replacement Setting", or (y) if the then current Benchmark is not a term rate nor based on a term rate, any payment period for interest calculated with reference to such Benchmark pursuant to this Agreement as of such date

"Benchmark" means, initially, USD LIBOR; provided that if a Benchmark Transition Event a Term SOFR 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 paragraph (b) of this Section titled "Benchmark Replacement Setting."

"Benchmark Replacement" means, for any Available Tenor, the first alternative set forth in the order below that can be determined by 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 Agent and the Borrowers 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 U.S. 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 Agent in its reasonable discretion; provided, further, that, with respect to a Term SOFR Transition Event, on the applicable Benchmark Replacement Date, the "Benchmark Replacement" shall revert to and shall be determined as set forth in clause (1) of this definition. 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 Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable 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 applicable amount(s) set forth below:

Available Tenor	Benchmark Replacement Adjustment*
One-Week	0.03839% (3.839 basis points)
One-Month	0.11448% (11.448 basis points)
Two-Months	0.18456% (18.456 basis points)
Three-Months	0.26161% (26.161 basis points)
Six-Months	0.42826% (42.826 basis points)
* These values represent the ARRC/ISDA recommended spread adjustment values available here: https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf	

(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 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 U.S. dollar-denominated syndicated credit facilities;

provided that, if the then-current Benchmark is a term rate, more than one tenor of such Benchmark is available as of the applicable Benchmark Replacement Date and the applicable Unadjusted Benchmark Replacement will not be a term rate, the Available Tenor of such Benchmark for purposes of this definition of "Benchmark Replacement Adjustment" shall be deemed to be the Available Tenor that has approximately the same length (disregarding business day adjustments) as the payment period for interest calculated with reference to such Unadjusted Benchmark Replacement.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Alternate Base Rate," 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, and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as Agent decides is reasonably necessary in connection with the administration of this Agreement and the Other 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 determined by Agent, which date shall promptly follow the date of the public statement or publication of information referenced therein;

(3) in the case of a Term SOFR Transition Event, the date that is set forth in the Term SOFR Notice provided to the Cash Collateral Providers and the Borrower pursuant to this Section titled "Benchmark Replacement Setting", which date shall be at least 30 days from the date of the Term SOFR Notice; or

(4) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Cash Collateral Providers, so long as Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Cash Collateral Providers, written notice of objection to such Early Opt-in Election from Cash Collateral Providers comprising the Required Cash Collateral Providers.

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 an Official Body having jurisdiction over the Agent, the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, 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) or an Official Body having jurisdiction over Agent 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 Other Document in accordance with this Section titled "Benchmark Replacement Setting" and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Other Document in accordance with this Section titled "Benchmark Replacement Setting."

"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 Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for business loans; provided, that if Agent decides that any such convention is not administratively feasible for Agent, then 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:

(1) a notification by Agent to (or the request by the Borrower to Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a 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 Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by Agent of written notice of such election to the Cash Collateral Providers.

"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 or, if no floor is specified, 1.00%.

"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 Agent in its reasonable discretion.

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

"Term SOFR Notice" means a notification by Agent to the Cash Collateral Providers and the Borrowers of the occurrence of a Term SOFR Transition Event.

"Term SOFR Transition Event" means the determination by Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, and is determinable for each Available Tenor, (b) the administration of Term SOFR is administratively feasible for Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section titled "Benchmark Replacement Setting" that is not Term SOFR.

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

"USD LIBOR" means the London interbank offered rate for U.S. dollars.

3.9. Capital Adequacy.

(a) In the event that Agent or any Cash Collateral Provider shall have determined that any Applicable Law or guideline regarding capital adequacy, or any Change in Law or any change in the interpretation or administration thereof by any Governmental Body, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Agent or any Cash Collateral Provider (for purposes of this Section 3.9, the term "Cash Collateral Provider" shall include Agent and any corporation or bank controlling Agent or any Cash Collateral Provider and the office or branch where Agent or any Cash Collateral Provider (as so defined) makes or maintains any LIBOR Rate Advances) 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, has or would have the effect of reducing the rate of return on Agent's or any Cash Collateral Provider's capital as a consequence of its obligations hereunder to a level below that which Agent or such Cash Collateral Provider could have achieved but for such adoption, change or compliance (taking into consideration Agent's and each Cash Collateral Provider's policies with respect to capital adequacy) by an amount deemed by Agent or any Cash Collateral Provider to be material, then, from time to time, Borrowers shall pay upon demand to Agent or such Cash Collateral Provider such additional amount or amounts as will compensate Agent or such Cash Collateral Provider for such reduction. In determining such amount or amounts, Agent or such Cash Collateral Provider may use any reasonable averaging or attribution methods. The protection of this Section 3.9 shall be available to Agent and each Cash Collateral Provider regardless of any possible contention of invalidity or inapplicability with respect to the Applicable Law, rule, regulation, guideline or condition.

(b) A certificate of Agent or such Cash Collateral Provider setting forth such amount or amounts as shall be necessary to compensate Agent or such Cash Collateral Provider with respect to Section 3.9(a) hereof when delivered to Borrowing Agent shall be conclusive absent manifest error.

3.10. Taxes.

(a) Any and all payments by or on account of any Obligations hereunder or under any Other Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, except as required by Applicable Law. If Loan Parties (or other applicable withholding agent) shall be required by Applicable Law to deduct or withhold any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable by the Loan Parties shall be increased as necessary so that after such deductions or withholdings (including deductions and withholdings applicable to additional sums payable under this Section) Agent, Cash Collateral Provider or Participant, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) Loan Parties (or other applicable withholding agent) shall make such deductions or withholdings and (iii) Loan Parties (or other applicable withholding agent) shall timely pay the full amount deducted or withheld to the relevant Governmental Body in accordance with Applicable Law.

(b) Without limiting the provisions of Section 3.10(a) above, Loan Parties shall timely pay any Other Taxes to the relevant Governmental Body in accordance with Applicable Law.

(c) Each Loan Party shall indemnify Agent, each Cash Collateral Provider, and any Participant, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or by Agent, such Cash Collateral Provider, or such Participant, as the case may be, and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to Loan Parties by any Cash Collateral Provider or Participant (with a copy to Agent), or by Agent on its own behalf or on behalf of a Cash Collateral Provider, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by any Loan Party to a Governmental Body, Loan Parties shall deliver to Agent the original or a certified copy of a receipt issued by such Governmental Body evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Agent.

(e) Any Foreign Cash Collateral Provider that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any Loan Party is resident for tax purposes, or under any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any Other Document shall deliver to Loan Parties (with a copy to Agent), at the time or times prescribed by Applicable Law or reasonably requested by Loan Parties or Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. Notwithstanding the submission of such documentation claiming a reduced rate of or exemption from U.S. withholding tax, Agent shall be entitled to withhold United States federal income taxes at the full 30% withholding rate if in its reasonable judgment it is required to do so under the due diligence requirements imposed upon a withholding agent under §1.1441-7(b) of the United States Income Tax Regulations or other Applicable Law. Further, Agent is indemnified under §1.1461-1(e) of the United States Income Tax Regulations against any claims and demands of any Cash Collateral Provider or assignee or participant of a Cash Collateral Provider for the amount of any tax it deducts and withholds in accordance with regulations under §1441 of the Code. In addition, any Cash Collateral Provider, if requested by Loan Parties or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Loan Parties or Agent as will enable Loan Parties or Agent to determine whether or not such Cash Collateral Provider is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in this Section 3.10(e), the completion, execution and submission of any documentation (other than such documentation set forth in Section 3.10(e)(i), (ii), (iii), and (v) and Section 3.10(f)) shall not be required if in the Cash Collateral Provider's reasonable judgment such completion, execution or submission would subject such Cash Collateral Provider to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Cash Collateral Provider. Without limiting the generality of the foregoing, in the event that any Loan Party is resident for tax purposes in the United States of America, any Foreign Cash Collateral Provider (or other Cash Collateral Provider) shall deliver to Loan Parties and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Cash Collateral Provider (or other Cash Collateral Provider) becomes a Cash Collateral Provider under this Agreement (and from time to time thereafter upon the request of Loan Parties or Agent, but only if such Foreign Cash Collateral Provider (or other Cash Collateral Provider) is legally entitled to do so), whichever of the following is applicable:

(i) executed copies of IRS Form W-8BEN or W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(ii) executed copies of IRS Form W-8ECI,

(iii) in the case of a Foreign Cash Collateral Provider claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Cash Collateral Provider is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of Loan Parties within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) executed copies of IRS Form W-8BEN or W-8BEN-E,

(iv) any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by Applicable Law to permit Loan Parties or Agentto determine the withholding or deduction required to be made, or

(v) To the extent that any Cash Collateral Provider is not a Foreign Cash Collateral Provider and is a resident for tax purposes in the United States of America, such Cash Collateral Provider shall submit to Loan Parties and Agent executed copies of an IRS Form W-9 or any other form prescribed by Applicable Law certifying that such Cash Collateral Provider is exempt from United States federal backup withholding tax.

(f) If a payment made to a Cash Collateral Provider or Agent under this Agreement or any Other Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Person fails 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 Cash Collateral Provider or Agent shall deliver to Agent (in the case of a Cash Collateral Provider) and Loan Parties such documentation prescribed by Applicable Law or reasonably requested by Agent or any Loan Party sufficient for Agent and Loan Parties to comply with their obligations under FATCA and to determine that Cash Collateral Provider or Agent has complied with such applicable reporting requirements or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 3.10(f), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Each Cash Collateral Provider and Agent, as applicable, agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Loan Parties and Agent in writing of its legal inability to do so.

(g) If Agent, a Cash Collateral Provider, or a Participant determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by Loan Parties or with respect to which Loan Parties have paid additional amounts pursuant to this Section, it shall pay to Loan Parties an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Loan Parties under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund); net of all out-of-pocket expenses (including Taxes) of Agent, such Cash Collateral Provider, or Participant, as the case may be, and without interest (other than any interest paid by the relevant Governmental Body with respect to such refund), provided that Loan Parties, upon the request of Agent, such Cash Collateral Provider, or Participant, agrees to repay the amount paid over to Loan Parties (plus any penalties, interest or other charges imposed by the relevant Governmental Body) to Agent, such Cash Collateral Provider, or Participant in the event Agent, such Cash Collateral Provider, or Participant is required to repay such refund to such Governmental Body. Notwithstanding anything to the contrary in this Section 3.10(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3.10(g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section shall not be construed to require Agent, any Cash Collateral Provider, or Participant to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Loan Parties or any other Person.

(h) The rights and duties of the parties under this Section 3.10 shall survive the termination of this Agreement and the payment of the amounts payable hereunder until expiry of the applicable statute of limitations.

IV. COLLATERAL: GENERAL TERMS

4.1. Security Interest in the Collateral. To secure the prompt payment and performance to Agent and each other Secured Party of the Obligations, each Loan Party hereby assigns, pledges and grants to Agent for its benefit and for the ratable benefit of each other Secured Party, a continuing security interest in and to and Lien on all of its Collateral, whether now owned or existing or hereafter created, acquired or arising and wheresoever located. Each Loan Party shall mark its books and records as may be necessary or appropriate to evidence, protect and perfect Agent's security interest and shall cause its financial statements to reflect such security interest. Each Loan Party shall provide Agent with written notice of all commercial tort claims promptly upon the occurrence of any events giving rise to any such claims (regardless of whether legal proceedings have yet been commenced), such notice to contain a brief description of the claim(s), the events out of which such claims arose and the parties against which such claim(s) may be asserted and, if applicable in any case where legal proceedings regarding such claim(s) have been commenced, the case title together with the applicable court and docket number and a grant to Agent of a security interest and lien in and to such commercial tort claims described therein and all proceeds thereof, such security interest to be Collateral under the terms of this Agreement. Each Loan Party shall provide Agent with written notice promptly upon becoming the beneficiary under any letter of credit or otherwise obtaining any right, title or interest in any letter of credit rights, and at Agent's request shall take such actions as Agent may reasonably request for the perfection and priority of Agent's security interest therein.

4.2. Perfection of Security Interest. Each Loan Party shall take all action that may be necessary or desirable, or that Agent may request, so as at all times to maintain the validity, perfection, enforceability and priority of Agent's security interest in and Lien on the Collateral or to enable Agent to protect, exercise or enforce its rights hereunder and in the Collateral, including, but not limited to, (a) immediately discharging all Liens other than Permitted Encumbrances, (b) obtaining Lien Waiver Agreements, (c) delivering to Agent, endorsed or accompanied by such instruments of assignment as Agent may specify, and stamping or marking, in such manner as Agent may specify, any and all chattel paper, instruments, letters of credit and advices thereof and documents evidencing or forming a part of the Collateral, (d) entering into warehousing, lockbox, customs and freight agreements and other custodial arrangements satisfactory to Agent, and (e) executing and delivering financing statements, Control Agreements, instruments of pledge, mortgages, notices and assignments, in each case in form and substance satisfactory to Agent, relating to the creation, validity, perfection, maintenance or continuation of Agent's security interest and Lien under the Uniform Commercial Code or other Applicable Law (including without limitation as to each Real Property owned by any Loan Party that does not constitute Excluded Property: (i) execution and delivery of a Mortgage in form and substance reasonably acceptable to Agent in its reasonable discretion, (ii) providing to Agent a mortgagee title insurance policy (in standard ALTA form, issued by a title insurance company satisfactory to Agent in its reasonable discretion, in an amount equal to not less than the purchase price of such Real Property) insuring such Mortgage to create a valid Lien on such Real Property with no exceptions which Agent shall not have approved in writing in its discretion (it being understood that Agent shall not approve any exceptions with respect to any Lien that is not a Permitted Encumbrance) and no survey exception, (iii) provide to Agent such customary legal opinions regarding such Mortgage (including customary opinions as to such Mortgage under the laws of the jurisdiction in which the applicable real estate is located) as Agent may reasonably require in its reasonable discretion, and (iv) if requested by Agent, providing to Agent a copy of a customary survey of such Real Property reasonably satisfactory to Agent in its reasonable discretion). By its signature hereto, each Loan Party hereby authorizes Agent to file, and ratifies any such filings made prior to the date hereof, against such Loan Party, one or more financing, continuation or amendment statements pursuant to the Uniform Commercial Code in form and substance satisfactory to Agent (which statements may have a description of collateral which is broader than that set forth herein, including without limitation a description of Collateral as "all assets" and/or "all personal property" of any Loan Party). All charges, expenses and fees Agent may incur in doing any of the foregoing, and any local taxes relating thereto shall be paid by Loan Parties to Agent for its benefit and for the ratable benefit of Cash Collateral Providers immediately upon demand.

4.3. Preservation of Collateral. Following the occurrence of a Default or an Event of Default, in addition to the rights and remedies set forth in Section 11.1 hereof, Agent: (a) may at any time take such steps as Agent deems necessary to protect Agent's interest in and to preserve the Collateral, including the hiring of security guards or the placing of other security protection measures as Agent may deem appropriate; (b) may employ and maintain at any of any Loan Party's premises a custodian who shall have full authority to do all acts necessary to protect Agent's interests in the Collateral; (c) may lease warehouse facilities to which Agent may move all or part of the Collateral; (d) may use any Loan Party's owned or leased lifts, hoists, trucks and other facilities or equipment for handling or removing the Collateral; and (e) shall have, and is hereby granted, a right of ingress and egress to the places where the Collateral is located, and may proceed over and through any of Loan Parties' owned or leased property. During an Event of Default, each Loan Party shall cooperate fully with all of Agent's efforts to preserve the Collateral and will take such actions to preserve the Collateral as Agent may direct. All of Agent's expenses of preserving the Collateral, including any expenses relating to the bonding of a custodian, shall be paid by Loan Parties to Agent for its benefit and for the ratable benefit of Cash Collateral Providers immediately upon demand.

4.4. Ownership and Location of Collateral.

(a) With respect to the Collateral, at the time the Collateral becomes subject to Agent's security interest: (i) each Loan Party shall be the sole owner of and fully authorized and able to sell, transfer, pledge and/or grant a first priority security interest in each and every item of its respective Collateral to Agent, subject to the Intercreditor Agreement; and, except for Permitted Encumbrances the Collateral shall be free and clear of all Liens whatsoever; (ii) each document and agreement executed by each Loan Party or delivered to Agent or any Cash Collateral Provider in connection with this Agreement shall be true and correct in all respects; and (iii) all signatures and endorsements of each Loan Party that appear on such documents and agreements shall be genuine and each Loan Party shall have full capacity to execute same.

(b) (i) There is no location at which any Loan Party has any Inventory (except for Inventory in transit) or other Collateral with a value equal to $500,000 or greater other than those locations listed on Schedule 4.4 hereto (as such Schedule may be updated from time to time in accordance with this Agreement); (ii) Schedule 4.4 hereto (as such Schedule may be updated from time to time in accordance with this Agreement) contains a true, correct, and complete list of the legal names and addresses of all warehouses at which Inventory of any Loan Party with a value equal to $500,000 or greater is stored; none of the receipts received by any Loan Party from any warehouse states that the goods covered thereby are to be delivered to bearer or to the order of a named Person or to a named Person and such named Person's assigns; (iii) Schedule 4.4 hereto (as such Schedule may be updated from time to time in accordance with this Agreement) sets forth a true, correct, and complete list of (A) the chief executive office of each Loan Party, (B) each business location at which any unique books and records of any Loan Party (not duplicated at the applicable corporate headquarters of such Loan Party) are kept, and (C) each business location of any Loan Party or third-party warehouse/bailee/processor of any Loan Party (excluding any Foreign Unsecured Loan Party) at which tangible Collateral with a fair market value, as to each such location, in excess of $500,000 is located, and (iv) Schedule 4.4 hereto (as such Schedule may be updated from time to time in accordance with this Agreement) sets forth a true, correct, and complete list of the location, by state and street address, of all Real Property owned or leased by each Loan Party, identifying which Real Properties are owned and which are leased, together with the names and addresses of any landlords or other third parties in possession, custody or control of any Collateral with a value equal to $500,000 or greater.

4.5. Defense of Agent's and Cash Collateral Providers' Interests. Until (a) Payment in Full of all of the Obligations and (b) the termination of the Commitments and the termination of this Agreement, Agent's interests in the Collateral shall continue in full force and effect. During such period no Loan Party shall, without Agent's prior written consent, pledge, sell (except for sales or other dispositions otherwise permitted in Section 7.1(b) hereof), assign, transfer, create or suffer to exist a Lien upon or encumber or allow or suffer to be encumbered in any way except for Permitted Encumbrances, any part of the Collateral. Each Loan Party shall defend Agent's interests in the Collateral against any and all Persons whatsoever. At any time following demand by Agent for payment of all Obligations, Agent shall have the right to take possession of the indicia of the Collateral and the Collateral in whatever physical form contained, including: labels, stationery, documents, instruments and advertising materials. If Agent exercises this right to take possession of the Collateral, each Loan Party shall, upon demand, assemble it in the best manner possible and make it available to Agent at a place reasonably convenient to Agent. In addition, with respect to all Collateral, Agent and Cash Collateral Providers shall be entitled to all of the rights and remedies set forth herein and further provided by the Uniform Commercial Code or other Applicable Law. Each Loan Party shall, and Agent may, instruct all suppliers, carriers, forwarders, warehousemen or others receiving or holding cash, checks, Inventory, documents or instruments in which Agent holds a security interest to deliver same to Agent and/or subject to Agent's order and if they shall come into any Loan Party's possession, they, and each of them, shall be held by such Loan Party in trust as Agent's trustee, and such Loan Party will immediately deliver them to Agent in their original form together with any necessary endorsement.

4.6. Inspection of Premises. At all reasonable times and from time to time as often as Agent shall elect in its reasonable discretion, Agent and each Cash Collateral Provider shall have full access to and the right to audit, check, inspect and make abstracts and copies from each Loan Party's books, records, audits, correspondence and all other papers relating to the Collateral and the operation of each Loan Party's business. Agent, any Cash Collateral Provider and their agents may enter upon any premises of any Loan Party at any time during business hours and at any other reasonable time, and from time to time as often as Agent shall elect, for the purpose of inspecting the Collateral and any and all records pertaining thereto and the operation of such Loan Party's business.

4.7. Appraisals. Agent may, in its reasonable discretion, exercised in a commercially reasonable manner, at any time after the Closing Date and from time to time, engage the services of an independent appraisal firm or firms of reputable standing, satisfactory to Agent, for the purpose of appraising then current values of Loan Parties' assets. Unless an Event of Default shall have occurred and be continuing at such time, Agent shall consult with Loan Parties as to the identity of any such firm.

4.8. Receivables; Deposit Accounts and Securities Accounts.

(a) Each of the Receivables shall be a bona fide and valid account representing a bona fide indebtedness incurred by the Customer therein named, for a fixed sum as set forth in the invoice relating thereto (provided immaterial or unintentional invoice errors shall not be deemed to be a breach hereof) with respect to an absolute sale or lease and delivery of goods upon stated terms of a Loan Party, or work, labor or services theretofore rendered by a Loan Party as of the date each Receivable is created. Same shall be due and owing in accordance with the applicable Loan Party's standard terms of sale without dispute, setoff or counterclaim except as may be stated on the accounts receivable schedules delivered by Loan Parties to Agent.

(b) Each Customer, to the best of each Loan Party's knowledge, as of the date each Receivable is created, is and will be solvent and able to pay all Receivables on which the Customer is obligated in full when due. With respect to such Customers of any Loan Party who are not solvent, such Loan Party has set up on its books and in its financial records bad debt reserves adequate to cover such Receivables.

(c) Each Loan Party's chief executive office is located as set forth on Schedule 4.4 hereto. Until written notice is given to Agent by Borrowing Agent of any other office at which any Loan Party keeps its records pertaining to Receivables, all such records shall be kept at such executive office.

(d) Loan Parties shall instruct their Customers to deliver all remittances upon Receivables (whether paid by check or by wire transfer of funds) to such Blocked Account(s) and/or Depository Accounts (and any associated lockboxes) as Agent shall designate from time to time as contemplated by Section 4.8(h) hereof or as otherwise agreed to from time to time by Agent. Notwithstanding the foregoing, to the extent any Loan Party directly receives any remittances upon Receivables, such Loan Party shall, at such Loan Party's sole cost and expense, but on Agent's behalf and for Agent's account, collect as Agent's property and in trust for Agent all amounts received on Receivables, and shall not commingle such collections with any Loan Party's funds or use the same except to pay Obligations, and shall as soon as possible and in any event no later than one (1) Business Day after the receipt thereof (i) in the case of remittances paid by check, deposit all such remittances in their original form (after supplying any necessary endorsements) and (ii) in the case of remittances paid by wire transfer of funds, transfer all such remittances, in each case, into such Blocked Accounts(s) and/or Depository Account(s). Each Loan Party shall deposit in the Blocked Account and/or Depository Account or, upon request by Agent, deliver to Agent, in original form and on the date of receipt thereof, all checks, drafts, notes, money orders, acceptances, cash and other evidences of Indebtedness.

(e) At any time following the occurrence and during the continuance of an Event of Default or a Default, Agent shall have the right to send notice of the assignment of, and Agent's security interest in and Lien on, the Receivables to any and all Customers or any third party holding or otherwise concerned with any of the Collateral. Thereafter, at any time after the occurrence and during the continuance of an Event of Default, Agent shall have the sole right to collect the Receivables, take possession of the Collateral, or both. Agent's actual collection expenses, including, but not limited to, stationery and postage, telephone and facsimile, secretarial and clerical expenses and the salaries of any collection personnel used for collection, may be added to the Obligations.

(f) Agent shall have the right to receive, endorse, assign and/or deliver in the name of Agent or any Loan Party any and all checks, drafts and other instruments for the payment of money relating to the Receivables, and each Loan Party hereby waives notice of presentment, protest and non-payment of any instrument so endorsed. Each Loan Party hereby constitutes Agent or Agent's designee as such Loan Party's attorney with power (i) at any time: (A) to endorse such Loan Party's name upon any notes, acceptances, checks, drafts, money orders or other evidences of payment or Collateral; (B) to sign such Loan Party's name on any invoice or bill of lading relating to any of the Receivables, drafts against Customers, assignments and verifications of Receivables; (C) to send verifications of Receivables to any Customer; (D) to sign such Loan Party's name on all financing statements, agreements, documents or instruments deemed necessary or appropriate by Agent to preserve, protect, or perfect Agent's interest in the Collateral and to file same; and (E) to receive, open and dispose of all mail addressed to any Loan Party at any post office box/lockbox maintained by Agent for Loan Parties or at any other business premises of Agent; and (ii) at any time following the occurrence and during the continuance of an Event of Default: (A) to demand payment of the Receivables; (B) to enforce payment of the Receivables by legal proceedings or otherwise; (C) to exercise all of such Loan Party's rights and remedies with respect to the collection of the Receivables and any other Collateral; (D) to sue upon or otherwise collect, extend the time of payment of, settle, adjust, compromise, extend or renew the Receivables; (E) to settle, adjust or compromise any legal proceedings brought to collect Receivables; (F) to prepare, file and sign such Loan Party's name on a proof of claim in bankruptcy or similar document against any Customer; (G) to prepare, file and sign such Loan Party's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Receivables; (H) to accept the return of goods represented by any of the Receivables; (I) to change the address for delivery of mail addressed to any Loan Party to such address as Agent may designate; and (J) to do all other acts and things necessary to carry out this Agreement. All acts of such attorney or designee are hereby ratified and approved, and such attorney or designee shall not be liable for any acts of omission or commission nor for any error of judgment or mistake of fact or of law, unless done maliciously or with gross (not mere) negligence (as determined by a court of competent jurisdiction in a final non-appealable judgment); this power being coupled with an interest is irrevocable while any of the Obligations remain unpaid.

(g) Subject only to the non-waivable provisions of Part 6 of Article 9 of the Uniform Commercial Code, neither Agent nor any Cash Collateral Provider shall, under any circumstances or in any event whatsoever, have any liability for any error or omission or delay of any kind occurring in the settlement, collection or payment of any of the Receivables or any instrument received in payment thereof, or for any damage resulting therefrom.

(h) [Reserved].

(i) [Reserved].

(j) All deposit accounts (including all Blocked Accounts and Depository Accounts), securities accounts and investment accounts of each Borrower and its Subsidiaries as of the Closing Date are set forth on Schedule 4.8(j). No Loan Party shall open any new deposit account, securities account or investment account with a bank, depository institution or securities intermediary that is not the Agent unless (i) Loan Parties shall have given at least ten (10) days prior written notice to Agent, and (2) such bank, depository institution or securities intermediary, each applicable Loan Party, ABL Agent and Agent shall have entered into an Control Agreement with respect to such account prior to or contemporaneously with the opening thereof (and, if such account is a Blocked Account, such Control Agreement shall also comply with the requirements of Section 4.8(h)); provided that, notwithstanding anything to the contrary contained herein, Borrowers shall not be required to obtain a Control Agreement or to otherwise give "control" to Agent with respect to any Excluded Deposit Accounts.

4.9. Inventory. To the extent Inventory held for sale or lease has been produced by any Loan Party, it has been and will be produced by such Loan Party in accordance with the Federal Fair Labor Standards Act of 1938, as amended, modified or supplemented and all applicable rules, regulations and orders thereunder, in all material respects.

4.10. Maintenance of Equipment. The equipment of Loan Parties shall be maintained in good operating condition and repair (reasonable wear and tear excepted) and all necessary replacements of and repairs thereto shall be made so that the value and operating efficiency of the equipment shall be maintained and preserved. No Loan Party shall use or operate its equipment in material violation of any material law, statute, ordinance, code, rule or regulation.

4.11. Exculpation of Liability. Nothing set forth herein shall be construed to constitute Agent or any Cash Collateral Provider as any Loan Party's agent for any purpose whatsoever, nor shall Agent or any Cash Collateral Provider be responsible or liable for any shortage, discrepancy, damage, loss or destruction of any part of the Collateral wherever the same may be located and regardless of the cause thereof. Neither Agent nor any Cash Collateral Provider, whether by anything herein or in any assignment or otherwise, assume any of any Loan Party's obligations under any contract or agreement assigned to Agent or such Cash Collateral Provider, and neither Agent nor any Cash Collateral Provider shall be responsible in any way for the performance by any Loan Party of any of the terms and conditions thereof.

4.12. Financing Statements. Except with respect to the financing statements filed by Agent, financing statements described on Schedule 7.2 hereto and financing statements filed in connection with Permitted Encumbrances, no financing statement covering any of the Collateral or any proceeds thereof is or will be on file in any public office.

4.13. Investment Property Collateral. Except as set forth in Article XI and, with respect to Subsidiary Equity Interest, Section 4.14(h) hereof, (i) the Loan Parties will have the right to exercise all voting rights with respect to the Investment Property and (ii) the Loan Parties will have the right to receive all cash dividends and distributions, interest and premiums declared and paid on the Investment Property to the extent otherwise permitted under this Agreement. In the event any additional Equity Interests (other than Excluded Property) are issued to or acquired any Loan Party, whether as a result any new purchase by or transfer or assignment to such Loan Party, as a result of a stock dividend or distribution or in lieu of interest on any of the Investment Property, as a result of any split of any of the Investment Property, by reclassification, or otherwise, any certificates evidencing any such additional Equity Interests will be delivered to Agent within thirty (30) days and such shares will be subject to this Agreement and a part of the Investment Property to the same extent as the original Investment Property of such Loan Party on the Closing Date.

4.14. Provisions Regarding Pledged Equity Interests. Without limiting the generality of Sections 4.1 or 4.13 hereof or of any Pledge Agreement that may from time to time be in effect, and as a supplement to and expansion of (and without any intention to limit or contradict) the other provisions of this Article IV and/or any provisions of any such Pledge Agreement:

(a) Each Loan Party, for the purpose of granting a continuing lien and security interest to secure the Obligations for the benefit of Agent and each other Secured Party, does hereby collaterally assign to Agent (for the benefit of Agent and each other Secured Party), and pledge to Agent (for the benefit of Agent and each other Secured Party), and grant such a continuing lien and security interest to Agent (for the benefit of Agent and each other Secured Party) in, all of such Loan Party's right, title and interest in and to all of the following property, together with any additions, exchanges, replacements and substitutions therefor, dividends and distributions with respect thereto, and the proceeds thereof (collectively, as to all Loan Parties, the "Pledged Equity Interest Collateral"; provided that, notwithstanding anything to the contrary provided in this Section 4.14, the Pledged Equity Interest Collateral shall not at any time include any Excluded Property):

(i) all Equity Interests of any Person of any kind or nature held by such Loan Party consisting of Subsidiary Equity Interest, whether now owned or hereafter acquired by such Loan Party or in which such Loan Party now or hereafter has any rights, options or warrants, including without limitation: (1) all of the capital stock, capital shares and other Equity Interests in those Subsidiaries consisting of corporations, companies and other business entities (other than the business entities of the types listed in the following clauses (2) and (3)), including such corporations, companies and entities listed on Schedule 4.14 hereto (as such Schedule may be amended and/or updated from time to time in accordance herewith), (2) all of the partnership interests and other Equity Interests in those in those Subsidiaries consisting of limited partnerships and general partnerships, including such partnerships listed on Schedule 4.14 hereto (as such Schedule may be amended and/or updated from time to time in accordance herewith), and (3) all of the membership/limited liability company interests and other Equity Interests in those in those Subsidiaries consisting of limited liability companies, including such limited liability companies listed on Schedule 4.14 hereto (as such Schedule may be amended and/or updated from time to time in accordance herewith), in each case (1) through (3) together with all certificates representing such Equity Interests and all rights (but none of the obligations) under or arising out of the applicable Organizational Documents of such Subsidiaries, and specifically including without limitation, with respect to each such partnership Subsidiary, all rights and remedies of such Loan Party as a general partner or limited partner with respect to the respective partnership interests and other Equity Interests of such Loan Party in each such partnership Subsidiary under the respective Organizational Documents of such partnership and under the partnership laws of the state in which each such partnership is organized, and, with respect to each such limited liability company Subsidiary, all rights and remedies of the such Loan Party as a member or manager or managing member with respect to the respective membership interests and other Equity Interests of such Loan Party in each such limited liability company Subsidiary (under the respective Organizational Documents of such limited liability company and under the limited liability company laws of the state in which each such limited liability company is organized); and

(ii) all Related Equity Interest Rights related to any such Equity Interests described in the foregoing clause (i).

(b) The pledge and security interest described in this Section 4.14 shall continue in effect to secure all Obligations under this Agreement and the Other Documents from time to time incurred or arising (a) for so long as this Agreement is in effect and (b) until the Commitments have terminated and the Obligations are Paid in Full.

(c) Pledge Representations and Warranties: Each Loan Party hereby represents and warrants as follows:

(i) Such Loan Party has not sold, assigned, transferred, pledged or granted any option or security interest in or otherwise hypothecated the Pledged Equity Interest Collateral in any manner whatsoever, and the Pledged Equity Interest Collateral is pledged herewith free and clear of any and all Liens, encumbrances, claims, pledges, restrictions, legends, options and other claims and charges, other than Permitted Encumbrances of the type described in clauses (a), (b) and (e) of the definition thereof.

(ii) The execution, delivery and performance of this Agreement and the pledge of the Pledged Equity Interest Collateral referred to herein, and all other terms and provisions hereof (specifically including Section 4.14(h) hereof and the powers and proxies granted to Agent thereunder) are not in violation of and shall not create any default under any Organizational Documents of any Pledged Issuer.

(iii) There are no restrictions upon the pledge or transfer of, nor on the voting rights associated with, or the transfer of, any of the Pledged Equity Interest Collateral, except as provided by applicable federal and state laws and the terms of the Organizational Documents of the applicable Pledged Issuer and/or as stated on the face of any applicable certificates evidencing any such Pledged Equity Interest Collateral.

(iv) The Pledged Equity Interest Collateral has been validly authorized and issued by each Pledged Issuer thereof and, if applicable, such Pledged Equity Interest Collateral is fully paid for and non-assessable.

(v) Each Loan Party has delivered to Agent all certificates representing or evidencing the Pledged Equity Interest Collateral, if any, accompanied by duly executed instruments of transfer or assignments in blank, to be held by Agent.

(d) Each Loan Party, in its capacity as a pledgor of its Pledged Equity Interest Collateral under this Section 4.14, hereby irrevocably instructs each of its direct Subsidiaries, in such direct Subsidiary's present and/or future capacity (if, as, and when applicable) as a Pledged Issuer that has issued or at any time and/or from time to time hereafter may issue any Pledged Equity Interest Collateral now or hereafter held by such pledging Loan Party, to comply with any instructions originated by Agent with respect to the interests of such pledging Loan Party in any such Pledged Equity Interest Collateral now or hereafter issued by such Pledged Issuer that is now or at any time and/or from time to time hereafter held by such pledging Loan Party without further consent of such pledging Loan Party and each such pledging Loan Party agrees that each such Pledged Issuer shall be fully protected in so complying. Each Loan Party that is a direct Subsidiary of another Loan Party, in present and/or future capacity (if, as, and when applicable) as a Pledged Issuer that has issued or at any time and/or from time to time hereafter may issue any Pledged Equity Interest Collateral to any one or more other Loan Parties, hereby irrevocably agrees to comply with any such instructions originated by Agent with respect to any interests of any other Loan Party in any such Pledged Equity Interest Collateral now or hereafter issued by such Loan Party as such a Pledged Issuer that is now or at any time and/or from time to time hereafter held by any such pledging Loan Party without further consent of such pledging Loan Party. However, Agent agrees it shall not issue any such instructions with respect to the Pledged Collateral held by any Loan Party in any Pledged Issuer unless an Event of Default shall have occurred and be continuing. Each Loan Party acknowledges and agrees that Agent shall be authorized at any time to provide a copy of this Agreement to any Pledged Issuer as evidence that such Loan Party has given the foregoing instructions.

(e) In addition to all other rights granted to Agent in this Agreement or any Other Document, under the Uniform Commercial Code or otherwise available at law or in equity, Agent shall have the following rights, each of which may be exercised at Agent's discretion (but without any obligation to do so (but subject to any written to any separate written agreement among any applicable Cash Collateral Providers)), at any time following the occurrence and during the continuance of an Event of Default hereunder, without further consent of any Loan Party: (i) transfer the whole or any part of the Pledged Equity Interest Collateral into the name of Agent or its nominee or to conduct a sale of the Pledged Equity Interest Collateral pursuant to the Uniform Commercial Code or pursuant to any other applicable law; (ii) vote the Pledged Equity Interest Collateral in whole or in part as more fully provided for in Section 4.14(h) hereof; (iii) notify the persons obligated on any of the Pledged Equity Interest Collateral to make payment to Agent of any amounts due or to become due thereon; and (iv) release, surrender or exchange any of the Pledged Equity Interest Collateral at any time, or to compromise any dispute with respect to the same. Agent may proceed against the Pledged Equity Interest Collateral, or any other Collateral securing the Obligations, in any order, and against any Loan Party pledging any of the Pledged Equity Interest Collateral and any other obligor (including without limitation, any one or more other Loan Parties), jointly and/or severally, in any order to satisfy the Obligations. Each Loan Party waives and releases any right to require Agent to first collect any of the Obligations secured by the Pledged Equity Interest Collateral from any other Collateral of such Loan Party or any other party (including without limitation, any one or more other Loan Parties) securing the Obligations under any theory of marshalling of assets, or otherwise. Any and all dividends, distributions, interest declared, distributed or paid and any proceeds of the Pledged Equity Interest Collateral which are received by any Loan Party following the occurrence and continuance of an Event of Default under this Agreement shall be received in trust for the benefit of Agent and the Secured Parties; segregated from the other property and funds of such Loan Party; and forthwith upon demand delivered to Agent as Pledged Equity Interest Collateral in the same form as received (with any necessary documents, endorsements or assignments in blank with guaranteed signatures). All rights and remedies of Agent are cumulative, not alternative. For so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations have been Paid in Full, each Loan Party hereby irrevocably appoints Agent, or Agent's nominee or any other person whom Agent may designate, as such Loan Party's attorney-in-fact, subject to the terms of this Section 4.14, following the occurrence and during the continuance of an Event of Default, with the power, at Agent's option, (i) to effectuate the transfer of any of the Pledged Equity Interest Collateral on the books of each Pledged Issuer thereof to the name of Agent or to the name of Agent's nominee, designee or transferee; (ii) to endorse and collect checks payable to such Loan Party representing distributions or other payments on any of the Pledged Equity Interest Collateral; and (iii) to carry out the terms and provisions of this Section 4.14. Each Loan Party acknowledges and agrees that Agent shall be authorized at any time to provide a copy of this Agreement to any Pledged Issuer as evidence that Agent has been given the foregoing power of attorney.

(f) Each Loan Party recognizes that Agent may be unable to effect, or may effect only after such delay which would adversely affect the value that might be realized from the Pledged Equity Interest Collateral, a public sale of all or part of the Pledged Equity Interest Collateral by reason of certain prohibitions contained in the Securities Act or other applicable securities legislation in any other applicable jurisdiction and may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such securities for their own account, for investment and not with a view to the distribution or resale thereof. Each Loan Party agrees that any such private sale may be at prices and on terms less favorable to Agent or the seller than if sold at public sales, and therefore recognizes and confirms that such private sales shall not be deemed to have been made in a commercially unreasonable manner solely because they were made privately. Each Loan Party agrees that Agent has no obligation to delay the sale of any such securities for the period of time necessary to permit any Pledged Issuer of such securities to register such securities for public sale under the Securities Act or other applicable securities legislation in any other applicable jurisdiction.

(g) In the event that (x) any Loan Party shall acquire any Equity Interests of any kind or nature in any new direct Subsidiary formed or acquired by such Loan Party after the Closing Date, or (y) any stock dividend, reclassification, readjustment or other change is made or declared in the capital structure of any direct Subsidiary or any Loan Party acquires or in any other manner receives additional shares of stock, membership/limited liability company interests, partnership interests or other Equity Interests in any Subsidiary, or any option included within the Pledged Equity Interest Collateral with respect to the stock, membership/limited liability company interests, partnership interests or other Equity Interests of any direct Subsidiary is exercised, then any and all such new Equity Interests (together with all Related Equity Interest Rights associated therewith) so acquired, other than any Excluded Property, and any and all such new, substituted or additional Equity Interests (together with all Related Equity Interest Rights associated therewith) issued by reason of any such change or exercise to such Loan Party, other than any Excluded Property, shall immediately and automatically become subject to this Agreement specifically including this Section 4.14 and the pledge and grant of a security interest created by each Loan Party hereunder and each Loan Party hereby grants a security interest in any such future Equity Interests of any Subsidiary (together with all Related Equity Rights associated therewith) other than any Excluded Property, to Agent for the benefit of Secured Parties to secure the Obligations. Any and all certificates issued to such Loan Party with respect to any such new, substituted or additional Equity Interests, accompanied by duly executed instruments of transfer or assignments in blank, shall be delivered to and held by Agent in the same manner as the Pledged Equity Interest Collateral originally pledged hereunder. Promptly upon the acquisition by any Loan Party of any such new, substituted or additional Equity Interests, Loan Parties shall deliver written notice of such new, substituted or additional Equity Interests to Agent, which such written notice shall include an updated and amended Schedule 4.14 to this Agreement, which shall upon delivery be deemed to have amended and restated the previously effective version of such Schedule 4.14.

(h) Until the earlier of (x) the time after the occurrence and during the continuance of any Event of Default hereunder that Agent shall give prior notice in writing to any Loan Party (which such notice shall be automatically effective immediately upon such Loan Party's receipt thereof) of the exercise of Agent's rights under this Section 4.14(h), or (y) the commencement of any proceeding of the type described in clause (x) or clause (y) of Section 10.7 hereof with respect to any Loan Party (in which case no notice or other affirmative action shall be required by Agent, unless Agent shall affirmatively elect at such time to forego the effectiveness of this clause (y)) (a "Triggering Equity Event"), each Loan Party shall retain the sole right to vote the Pledged Equity Interest Collateral belonging to it and to exercise all Related Equity Interests Rights with respect to the Pledged Equity Interest Collateral belonging to it for all purposes not in violation of the terms hereof. Upon any such Triggering Equity Event as to any Loan Party, such Loan Party shall have no further rights to, and shall not, exercise any such Related Equity Interest Rights with respect to the Pledged Equity Interest Collateral belonging to it, and all such Related Equity Interest Rights with respect to the Pledged Equity Interest Collateral belonging to it shall be thereafter exercisable only by Agent (regardless of whether Agent shall have taken title to such Pledged Equity Interest Collateral and/or otherwise exercised any of its other rights and remedies with respect to such Pledged Equity Interest Collateral and even prior to any such exercise). Without limiting the generality of the foregoing, with respect to any Pledged Issuer that is a limited liability company or partnership, the Related Equity Interest Rights which Agent may exercise upon exercise of its rights under this Section 4.14(h) shall include (i) the right to replace any "managing member" or "manager" and/or any "general partner", as applicable, of any such limited liability company or partnership Pledged Issuer and/or to replace any one or more of the members of any board of members/managers/partners/directors (or similar board) that may at any time have any rights to manage and direct the business and affairs of the applicable Pledged Issuer under its Organizational Documents as in effect from time to time (including in any such case under this clause (i), the right to replace the pledging Loan Party in any such capacity, and each Loan Party hereby agrees that, notwithstanding anything to the contrary provided for in Organizational Documents of any such Pledged Issuer, upon any exercise by Agent of any such right under this clause (i) resulting in the replacement of such Loan Party in any such capacity, such Loan Party shall immediately and automatically be deemed to have resigned from such capacity without the need of any further or affirmative action of such Loan Party), and, if necessary in connection with the foregoing, the power to amend the limited liability company operating agreement or partnership agreement, as applicable, of any such limited liability company or partnership Pledged Issuer to effectuate such replacement; and (ii) if the pledging Loan Party is a general partner or managing member of any such limited liability company or partnership Pledged Issuer, to act as such general partner or managing member of any such Pledged Issuer with respect to any and all business matters relating to the applicable Pledged Issuer and/or its property and businesses for all purposes under the Organizational Documents of such Pledged Issuer and/or under the applicable limited liability company or partnership laws of the jurisdiction of organization of such Pledged Issuer.

(i) In furtherance of the foregoing and (a) for so long as this Agreement is in effect and (b) until the Commitments have been terminated and the Obligations have been Paid in Full, each Loan Party hereby irrevocably appoints Agent, or Agent's nominee or any other person whom Agent may designate, as such Loan Party's attorney in fact with full power of substitution and in the name of such Loan Party, and hereby gives and grants to Agent an irrevocable and exclusive proxy for and in such Loan Party's name, place and stead, to exercise under such power of attorney and/or under such proxy any and all voting or other ownership and/or management rights and other Related Equity Interest Rights with respect to the Pledged Equity Interest Collateral of any Pledged Issuer belonging to it (including any such exercise of any Related Equity Interest Rights with respect to any and all business matters relating to any applicable Pledged Issuer and/or its property and businesses), in each case exercisable only following (but at all times during the continuance of) the occurrence and continuance of any Triggering Equity Event. The power of attorney and proxy granted and appointed in this Section 4.14(h)(i) shall include the right to sign each Loan Party's name (as a holder of any Equity Interest of any Subsidiary and/or as a shareholder of or member or partner in any applicable Pledged Issuer) to any consent, certificate or other document relating to the exercise of any such voting or other ownership and/or management rights and other Related Equity Interest Rights with respect to the Pledged Equity Interest Collateral belonging to such Loan Party that Applicable Law or the Organizational Documents of the applicable Pledged Issuer(s) may permit or require, to cause the Pledged Equity Interest Collateral belonging to such Loan Party to be voted and/or such other ownership and/or management rights or other Related Equity Right to be exercised in accordance with the preceding sentence. Each Loan Party hereby represents and warrants that there are no other proxies and powers of attorney with respect to the Pledged Equity Interest Collateral of any Pledged Issuer belonging to such Loan Party that such Loan Party may have granted or appointed; and no Loan Party will give a subsequent proxy or power of attorney or enter into any other voting agreement with respect to the Pledged Equity Interest Collateral of any Pledged Issuer belonging to such Loan Party and any attempt to do so shall be void and of no effect. Each Loan Party agrees that each Pledged Issuer shall be fully protected in complying with any instructions given by Agent under such power of attorney granted under this Section 4.14(h)(i) and/or recognizing and honoring any exercise by Agent of such proxy granted under this Section 4.14(h)(i). Each Loan Party acknowledges and agrees that Agent shall be authorized at any time to provide a copy of this Agreement to any Pledged Issuer as evidence that Agent has been given the foregoing power of attorney and proxy. The proxies and powers of attorney granted by each Loan Party pursuant to this Section 4.14(h)(i) are coupled with an interest and are given to secure the performance of the Obligations and shall continue and be irrevocable (a) for so long as this Agreement is in effect and (b) until the Commitments have been terminated and all of the Obligations have been Paid in Full.

(j) To the extent that Agent shall reasonably determine that any amendments to the Organizational Documents of any Pledged Issuer that is a wholly-owned Subsidiary of Parent and its Subsidiaries are necessary in order for Agent to be granted the collateral assignment, pledge and Liens in the Pledged Equity Interest Collateral issued by such Pledged Issuer provided for herein, and/or to exercise the rights and remedies, or to be granted and to exercise the proxies and powers of attorney, provided for in herein (specifically including without limitation under Sections 4.14(h) hereof) with respect to the Pledged Equity Interest Collateral issued by such Pledged Issuer in accordance with the terms hereof (whether because of any contrary provisions of such Organization Documents or any requirement of the Applicable Laws governing corporations, limited liability companies, partnerships or professional corporations (as applicable) in the jurisdiction of organization of such Pledged Issuer, or otherwise), each Loan Party shall, within fifteen (15) days of such Loan Party's receipt of Agent's written request therefor, adopt such amendments to such Organizational Documents of such Pledged Issuer as Agent may reasonably request. Loan Parties hereby further acknowledge and agree that, with respect to any Subsidiary whose Equity Interests are owned only by one or more Loan Parties, if and to the extent that any provision of the Organizational Documents of any such Subsidiary should be deemed to be inconsistent with or to prohibit the granting of the collateral assignment, pledge and Liens to Agent by Loan Parties in the Pledged Equity Interest Collateral issued by such Subsidiary provided for herein, or the exercise of any of the rights and remedies of and/or proxies or powers of attorney granted to Agent under this Section 4.14, such Organizational Documents of such Pledged Issuer are hereby amended as necessary to allow for such grant and to allow the full exercise by Agent of all such rights and remedies and/or proxies or powers of attorney, and this Agreement shall constitute and be deemed for all purposes and under all circumstances to be an amendment to any such applicable Organizational Document of such Pledged Issuer.

V. REPRESENTATIONS AND WARRANTIES.

Each Loan Party represents and warrants as follows:

5.1. Authority. Each Loan Party has full power, authority and legal right to enter into this Agreement and the Other Documents to which it is a party and to perform all its respective Obligations hereunder and thereunder. This Agreement and the Other Documents to which it is a party have been duly executed and delivered by each Loan Party, and this Agreement and the Other Documents to which it is a party constitute the legal, valid and binding obligation of such Loan Party enforceable in accordance with their terms, except as such enforceability may be limited by any Insolvency Law. The execution, delivery and performance of this Agreement and of the Other Documents to which it is a party (a) are within such Loan Party's corporate or company powers, as applicable, have been duly authorized by all necessary corporate or company action, as applicable, are not in contravention of law or the terms of such Loan Party's Organizational Documents or to the conduct of such Loan Party's business or of any Material Contract or undertaking to which such Loan Party is a party or by which such Loan Party is bound, including the Unsecured Notes Documents (b) will not conflict with or violate any law or regulation, or any judgment, order or decree of any Governmental Body, (c) will not require the Consent of any Governmental Body, any party to a Material Contract or any other Person, except those Consents set forth on Schedule 5.1 hereto, all of which will have been duly obtained, made or compiled prior to the Closing Date and which are in full force and effect and (d) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Encumbrances upon any asset of such Loan Party under the provisions of any agreement, instrument, or other document to which such Loan Party is a party or by which it or its property is a party or by which it may be bound, including the Unsecured Notes Documents.

5.2. Formation and Qualification.

(a) Each Company is duly incorporated or formed, as applicable, and in good standing under the laws of the state listed on Schedule 5.2(a) hereto and is qualified to do business and is in good standing in the states listed on Schedule 5.2(a) hereto which constitute all states in which qualification and good standing are necessary for such Company to conduct its business and own its property and where the failure to so qualify could reasonably be expected to have a Material Adverse Effect on such Company. Each Loan Party has delivered to Agent true and complete copies of its Organizational Documents and will promptly notify Agent of any amendment or changes thereto.

(b) The only Subsidiaries of each Loan Party are listed on Schedule 5.2(b) hereto.

5.3. Survival of Representations and Warranties. All representations and warranties of such Loan Party set forth in this Agreement and the Other Documents to which it is a party shall be true at the time of such Loan Party's execution of this Agreement and the Other Documents to which it is a party, and shall survive the execution, delivery and acceptance thereof by the parties thereto and the closing of the transactions described therein or related thereto.

5.4. Tax Returns. Each Company's federal tax identification number is set forth on Schedule 5.4 hereto. Each Company has filed all federal, provincial, territorial, and material state and local tax returns and other reports each is required by law to file and has paid all federal, provincial, territorial, and material state and local taxes, assessments, fees and other governmental charges that are due and payable, except for such taxes, assessments, fees and other governmental charges that are being Properly Contested. The provision for taxes on the books of each Company is adequate for all years not closed by applicable statutes, and for its current fiscal year, and no Loan Party has any knowledge of any deficiency or additional assessment in connection therewith not provided for on the books of the Companies.

5.5. Financial Statements.

(a) The pro forma balance sheet of Parent and its Subsidiaries (the "Pro Forma Balance Sheet") delivered to Agent on the Closing Date reflects the consummation of the Transactions and is accurate, complete and correct and fairly reflects the financial condition of Loan Parties on a Consolidated Basis as of the Closing Date after giving effect to the Transactions, and has been prepared in accordance with GAAP, consistently applied. The Pro Forma Balance Sheet has been certified as accurate, complete and correct in all material respects by a Responsible Officer of Parent. All financial statements referred to in this Section 5.5(a), including the related schedules and notes thereto, have been prepared in accordance with GAAP, except as may be disclosed in such financial statements.

(b) The projections of cash flow, income, stockholders' equity, and balance sheet projections of Parent and its Subsidiaries on a Consolidated Basis, on a monthly basis for July through December 2021, on a quarterly basis for fiscal year 2022, and annually thereafter through the end of the Term, copies of which have been delivered to Agent (the "Projections" and together with the Pro Forma Balance Sheet, the "Pro Forma Financial Statements") were prepared by a Responsible Officer of Parent, are based on underlying assumptions which provide a reasonable basis for the projections set forth therein and reflect Loan Parties' judgment based on present circumstances of the most likely set of conditions and course of action for the projected period.

(c) The (x) audited consolidated balance sheet of Parent and its Subsidiaries, and such other Persons described therein, as of December 31, 2020, and the related audited consolidated statements of income, stockholders' equity, and cash flows for the fiscal year ended on such date, all accompanied by reports thereon containing unqualified opinions by independent certified public accountants, and (y) interim management-prepared unaudited consolidated balance sheet of Parent and its Subsidiaries, and such other Persons described therein, as of March 31, 2020, and the related interim management-prepared unaudited statements of income, stockholders' equity, and cash flow for the respective quarterly and year to date periods ended on each such date (collectively, the "Historical Financial Statements"), copies of which have been delivered to Agent, have been prepared in accordance with GAAP consistently applied (except for changes in application to which such accountants concur, and subject to, in the case of the unaudited interim financial statements, normal year-end adjustments, the lack of footnote disclosures and non-material quarter-end adjustments) and present fairly in all material respects the financial position of Loan Parties on a Consolidated Basis at such dates and the results of their operations for such periods.

(d) Since December 31. 2020, there has occurred any event, condition or state of facts which could reasonably be expected to have a Material Adverse Effect.

5.6. Entity Names. No Loan Party has been known by any other company or corporate name, as applicable, in the past five (5) years and does not sell Inventory under any other name except as set forth on Schedule 5.6 hereto, nor has any Loan Party been the surviving corporation or company, as applicable, of a merger or consolidation or acquired all or substantially all of the assets of any Person during the preceding five (5) years.

5.7. O.S.H.A.; Environmental Compliance; Flood Insurance.

(a) Except as set forth on Schedule 5.7 hereto, each Company is in compliance with, and its facilities, business, assets, property, leaseholds, Real Property and equipment are in compliance with the Federal Occupational Safety and Health Act and Environmental Laws and there are no outstanding citations, notices or orders of non-compliance issued to any Company or relating to its business, assets, property, leaseholds or equipment under any such laws, rules or regulations.

(b) Except as set forth on Schedule 5.7 hereto, each Company has been issued all required federal, state and local licenses, certificates or permits (collectively, "Approvals") relating to all applicable Environmental Laws and all such Approvals are current and in full force and effect.

(c) Except as set forth on Schedule 5.7 hereto: (i) there have been no releases, spills, discharges, leaks or disposal (collectively referred to as "Releases") of Hazardous Materials at, upon, under or migrating from or onto any Real Property owned, leased or occupied by any Company, except for those Releases which are in full compliance with Environmental Laws; (ii) there are no underground storage tanks or polychlorinated biphenyls on any Real Property owned, leased or occupied by any Company, except for such underground storage tanks or polychlorinated biphenyls that are present in compliance with Environmental Laws; (iii) the Real Property owned, leased or occupied by any Company has never been used by any Company to dispose of Hazardous Materials, except as authorized by Environmental Laws; and (iv) no Hazardous Materials are managed by Company on any Real Property including any premises owned, leased or occupied by any Company, excepting such quantities as are managed in accordance with all applicable manufacturer's instructions and compliance with Environmental Laws and as are necessary for the operation of the commercial business of any Company or of its tenants.

(d) All Real Property owned by Companies is insured pursuant to policies and other bonds which are valid and in full force and effect and which provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of each such Company in accordance with prudent business practice in the industry of such Company. Each Company has taken all actions required under the Flood Laws and/or requested by Agent to assist in ensuring that each Cash Collateral Provider is in compliance with the Flood Laws applicable to the Collateral, including, but not limited to, providing Agent with the address and/or GPS coordinates of each structure located upon any Real Property that will be subject to a Mortgage in favor of Agent, for the benefit of Cash Collateral Providers, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral.

5.8. Solvency; No Litigation, Violation, Indebtedness or Default; ERISA Compliance.

(a) On the Closing Date, after giving effect to the Transactions, and also on the date each Advance is made or issued hereunder, Loan Parties, taken as a whole, are and will be Solvent.

(b) Except as set forth on Schedule 5.8(b) hereto, no Company has any pending or threatened litigation, arbitration, actions or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, $1,000,000. None of the pending or threatened litigation, arbitration, actions or proceedings set forth on Schedule 5.8(b) hereto could reasonably be expected to have a Material Adverse Effect.

(c) No Company has any outstanding Indebtedness other than the Obligations, except for (i) Indebtedness set forth on Schedule 7.8 hereto, and (ii) Indebtedness otherwise permitted under Section 7.8 hereof.

(d) No Company is in violation of any applicable statute, law, rule, regulation or ordinance in any respect which could reasonably be expected to have a Material Adverse Effect, nor is any Company in violation of any order of any court, Governmental Body or arbitration board or tribunal.

(e) Except as would not reasonably be expected to result, individually or when taken together with all of the following events or conditions, a Material Adverse Effect, (i) each Plan and Pension Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other Applicable Laws (ii) each Company and each member of the Controlled Group has met all applicable minimum funding requirements under Section 302 of ERISA and Section 412 of the Code in respect of each Pension Plan, and each Pension Plan is in compliance with Sections 412, 430 and 436 of the Code and Sections 206(g), 302 and 303 of ERISA, without regard to waivers and variances, other than the Pension Funding Waivers; (iii) each Plan which is intended to be a qualified plan under Section 401(a) of the Code as currently in effect has been determined by the Internal Revenue Service to be qualified under Section 401(a) of the Code or an application for such a determination is currently being processed by the Internal Revenue Code; (iv) neither any Company nor any member of the Controlled Group has incurred any liability to the PBGC other than for the payment of premiums due and not delinquent under Section 4007 of ERISA; (v) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and the PBGC has not instituted, and is not reasonably expected to institute, proceedings under Title IV of ERISA to terminate any Pension Plan; (vi) neither the Company nor any member of the Controlled Group has incurred any liability for any excise tax arising under Section 4971 or 4972 of the Code with respect to any Pension Plan; (vii) no Company nor (to the knowledge of any Company) any fiduciary of, nor any trustee to, any Plan, has engaged in a non-exempt "prohibited transaction" described in Section 406(a) of ERISA or Section 4975(c)(1)(A)-(D) of the Code; (viii) no Termination Event has occurred or is reasonably expected to occur; (ix) neither any Company nor any member of the Controlled Group has any liability under Section 4069 or 4212(c) of ERISA; and (x) neither any Company nor any member of the Controlled Group maintains or is required to contribute to any Plan which provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code or similar state laws or for death benefits or retirement benefits under any Pension Plan. Each Company and, to the knowledge of the Loan Parties, each member of the Controlled Group (as applicable), have complied in all material respects with the terms and conditions of any Pension Funding Waiver, including, without limitation, the timely payment of any amortization installments required by such Pension Funding Waivers.

5.9. Intellectual Property. As of the date of this Agreement, (a) all patents and patent applications, trademark registrations and applications to register trademarks, and copyright registrations and applications to register copyrights (all of the foregoing in subsection (a) collectively, "Registered Intellectual Property"); and (b) all material unregistered Intellectual Property, in each of the foregoing cases in subsections (a) and (b), owned or purported to be owned by any Company: (a) are set forth on Schedule 5.9 hereto; and (b) are valid, subsisting, and, to the Company's knowledge, enforceable, and all Registered Intellectual Property has been duly registered or filed with all appropriate Governmental Bodies. Each Company owns or licenses pursuant to a written agreement or otherwise has the valid and enforceable right to use all Intellectual Property that is used, held for use or necessary for the operation of its business free and clear of all Liens. As of the date of this Agreement, there is no Intellectual Property Claim, and no objection to, pending challenge to the validity of, or proceeding by any Governmental Body to suspend, revoke, terminate or adversely modify, any such Intellectual Property, and no Company is aware of any bona fide basis for any such challenge or proceeding, except as set forth on Schedule 5.9 hereto. All Intellectual Property owned, used or held for use by any Company consists of original material or property developed by such Company or was lawfully acquired by such Company from the proper and lawful owner, and has not infringed, misappropriated or otherwise violated, and does not infringe, misappropriate or otherwise violate any Intellectual Property of any third party. Each Company has taken reasonable measures to maintain the proprietary nature of all material Intellectual Property owned or purported to be owned by such Company (including the confidentiality of any trade secrets included in such Intellectual Property) so as to preserve the value thereof from the date of creation or acquisition thereof. Each Company has complied with all Applicable Laws, as well as its own rules, policies, and procedures, relating to privacy, data protection, and the collection and use of personal information collected, used, or held for use by such Company.

5.10. Licenses and Permits. Except as set forth in Schedule 5.10, each Company (a) is in compliance with and (b) has procured and is now in possession of, all material licenses or permits required by any applicable federal, state, provincial or local law, rule or regulation for the operation of its business in each jurisdiction wherein it is now conducting or proposes to conduct business and where the failure to procure such licenses or permits could reasonably be expected to have a Material Adverse Effect.

5.11. Default of Indebtedness. No Company is in default in the payment of the principal of or interest on any Indebtedness with an outstanding principal balance in excess of $2,500,000 or under any instrument or agreement under or subject to which any Indebtedness has been issued and no event has occurred under the provisions of any such instrument or agreement which with or without the lapse of time or the giving of notice, or both, constitutes or would constitute an event of default thereunder.

5.12. No Default. No Company is in default in the payment or performance of any of its contractual obligations and no Default or Event of Default has occurred. No Company, and no Subsidiary, Joint Venture or Consortium of a Company is in material default in the payment or performance of any Performance Guaranty.

5.13. No Burdensome Restrictions. No Company is party to any contract or agreement the performance of which could reasonably be expected to have a Material Adverse Effect. Each Company has heretofore delivered to Agent true and complete copies of all Material Contracts to which it is a party or to which it or any of its properties is subject. No Company has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien which is not a Permitted Encumbrance.

5.14. No Labor Disputes. No Company is not involved in any labor dispute that could reasonably be expected to have a material adverse effect on the operations of any Loan Party or to have a Material Adverse Effect; there are no strikes or walkouts in existence or, to the knowledge of such Company, threatened, that in either case could reasonably be expected to have a material adverse effect on the operations of any Loan Party or to have a Material Adverse Effect, and no collective bargaining agreement is scheduled to expire during the Term other than as set forth on Schedule 5.14 hereto. To the knowledge of such Company, there are no union organizing activities involving any Company's employees threatened or in existence.

5.15. Margin Regulations. No Company is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect. No part of the proceeds of any Advance will be used for "purchasing" or "carrying" "margin stock" as defined in Regulation U of such Board of Governors.

5.16. Investment Company Act. No Company is an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, nor is it controlled by such a company.

5.17. Delivery of Certain Documents.

(a) Delivery of ABL And Related L/C Facility Documents. Loan Parties have delivered to Agent true, correct, and complete copies (as executed) of all material reimbursement agreements, credit facility agreements, security agreements, and other agreements, contracts, and documents related to the ABL Facility and Related L/C Facility (in each case complete with all schedules, annexes, exhibits, and disclosure letters referred to therein or attached or delivered pursuant thereto, if any) and all amendments thereto, waivers or consents relating thereto, and other side letters or agreements affecting the terms thereof. None of such documents and agreements has been amended or supplemented, nor have any of the provisions thereof been waived, except pursuant to a written agreement or instrument which has heretofore been delivered to Agent.

(b) (b) Delivery of B. Riley Guarantee. Loan Parties have delivered to Agent received a true, correct and complete copy (as executed) of the B. Riley Guarantee and the B. Riley Fee Letter (complete with all schedules, annexes, exhibits, and disclosure letters referred to therein or attached or delivered pursuant thereto, if any) and all amendments thereto, waivers or consents relating thereto, and other side letters or agreements affecting the terms thereof), which has not been amended or supplemented, nor have any of the provisions thereof been waived, except pursuant to a written agreement or instrument which has heretofore been delivered to Agent.

(c) Delivery of Unsecured Note Documents. Loan Parties have delivered to Agent true, correct, and complete copies (as executed) of the Unsecured Note Indenture and any other material agreements, contracts, and documents related to the Unsecured Notes (complete with all schedules, annexes, exhibits, and disclosure letters referred to therein or attached or delivered pursuant thereto, if any) and all amendments thereto, waivers or consents relating thereto, and other side letters or agreements affecting the terms thereof), which has not been amended or supplemented, nor have any of the provisions thereof been waived, except pursuant to a written agreement or instrument which has heretofore been delivered to Agent.

5.18. [RESERVED].

5.19. Swaps. No Company is a party to, nor will it be a party to, any swap agreement whereby such Company has agreed or will agree to swap interest rates or currencies unless same provides that damages upon termination following an event of default thereunder are payable on an unlimited "two-way basis" without regard to fault on the part of either party.

5.20. Business and Property of Loan Parties.

(a) Upon and after the Closing Date, the Companies (excluding Parent) do not propose to engage in any business other than substantially those businesses and activities engaged in by Parent and its Subsidiaries on the Closing Date, any other businesses or activities reasonably related, incidental, ancillary or complementary thereto or reasonable extensions or expansions thereof, as reasonably determined in good faith by the Borrower, including, without limitation, any business relating, incidental, ancillary or complementary to power generation, clean energy or nuclear service or any services relating thereto, and any other businesses that, when taken together with the existing businesses of the Borrower and its Subsidiaries, are immaterial with respect to the assets and liabilities of the Borrower and its Subsidiaries, taken as a whole (collectively, the "Eligible Line of Business"). On the Closing Date, each Company will own or lease all the property and/or possess all of the rights and Consents reasonably necessary for the conduct of the business of such Loan Party.

(b) Parent (i) does not engage in any material business or other commercial activities, (ii) does not own any material assets or property, (iii) is not liable with respect to any Indebtedness except for Permitted Indebtedness pursuant to clause (h) of the definition of that term (including the Unsecured Notes), Performance Guarantees or material Contractual Obligations, or (iv) has not granted any Liens over any of its assets or property, in any such case under clauses (i) through (iv) other than: (A) ownership of the Equity Interests of its Subsidiaries and of cash and Cash Equivalents, (B) the maintenance of its corporate existence, and activities and contractual rights incidental thereto and incidental to its status and activities as a holding company for its Subsidiaries; (C) the Obligations hereunder and the Related L/C Facility Obligations, and (D) obligations under the ABL Facility and (E) its liabilities, obligations, and Indebtedness under the B. Riley Guarantee Reimbursement Agreement and the B. Riley Fee Letter.

5.21. Ineligible Securities. Loan Parties do not intend to use and shall not use any portion of the proceeds of the Advances, directly or indirectly, to purchase during the underwriting period, or for 30 days thereafter, Ineligible Securities being underwritten by a securities Affiliate of Agent or any Cash Collateral Provider.

5.22. Federal Securities Laws. No Company nor any of its Subsidiaries (a) is required to file periodic reports under the Exchange Act, (b) has any securities registered under the Exchange Act or (c) has filed a registration statement that has not yet become effective under the Securities Act.

5.23. Equity Interests. The authorized and outstanding Equity Interests and Equity Interest Equivalents of each Company, and each legal and beneficial holder of such Equity Interests and Equity Interest Equivalents (other than the Equity Interests and Equity Interest Equivalents of Parent) as of the Closing Date, are as set forth on Schedule 5.23(a) hereto. All of the Equity Interests of each Company have been duly and validly authorized and issued and are fully paid and non-assessable and have been sold and delivered to the holders hereof in compliance with, or under valid exemption from, all federal and state laws and the rules and regulations of each Governmental Body governing the sale and delivery of securities. Except for the rights and obligations set forth on Schedule 5.23(b), there are no subscriptions, warrants, options, calls, commitments, rights or agreement or other Equity Interest Equivalents by which any Company or any of the holders of the Equity Interests of any Company is bound relating to the issuance, transfer, voting or redemption of shares of its Equity Interests or any pre-emptive rights held by any Person with respect to the Equity Interests of Companies. Except as set forth on Schedule 5.23(c), Companies have not issued any securities convertible into or exchangeable for shares of its Equity Interests or any options, warrants or other rights to acquire such shares or securities convertible into or exchangeable for such shares or other Equity Interest Equivalents.

5.24. Commercial Tort Claims. No Loan Party has any commercial tort claims with respect to which the damages recoverable by Loan Parties could reasonably be expected to exceed $1,000,000, except as set forth on Schedule 5.24 hereto.

5.25. Letter of Credit Rights. No Loan Party has any letter of credit rights (other than letter of credit rights constituting supporting obligations) except as set forth on Schedule 5.25 hereto.

5.26. Material Contracts. Schedule 5.26 hereto sets forth all Material Contracts of Loan Parties as of the Closing Date. All Material Contracts are in full force and effect and no material defaults currently exist thereunder.

5.27. Affiliate Transactions. Except as permitted by Section 7.10 hereof, no Company nor any of its Subsidiaries is a party to or bound by any agreement or arrangement (whether oral or written) to which any Affiliate of any Company or any Subsidiary of any Company is a party.

5.28. [Reserved].

5.29. Disclosure. No representation or warranty made by any Loan Party in this Agreement or any Other Document or in any financial statement, report, certificate or any other document delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not misleading. There is no fact known to any Loan Party or which reasonably should be known to such Loan Party which such Loan Party has not disclosed to Agent in writing with respect to the Transactions which could reasonably be expected to have a Material Adverse Effect.

5.30. Sanctions and other Anti-Terrorism Laws. No (a) Covered Entity: (i) is a Sanctioned Person, nor to its knowledge any employees, officers, directors, affiliates, consultants, brokers or agents acting on a Covered Entity's behalf in connection with this Agreement is a Sanctioned Person; (ii) directly, or indirectly through any third party, engages in any transactions or other dealings with any Sanctioned Person or Sanctioned Jurisdiction, or which otherwise are prohibited by any Laws of the United States or laws of other applicable jurisdictions relating to economic sanctions and other Ant-Terrorism Laws; (b) Collateral may be deemed embargoed Property.

5.31. Anti-Corruption Laws. Each Covered Entity has (a) conducted its business in compliance with all Anti-Corruption Laws and (b) has instituted and maintains policies and procedures designed to ensure compliance with such Laws.

VI. AFFIRMATIVE COVENANTS.

Each Loan Party shall, and shall cause each of its Subsidiaries to, until the Payment in Full of the Obligations, the termination of the Commitments and the termination of this Agreement:

6.1. Compliance with Laws. Comply with all Applicable Laws with respect to the Collateral or any part thereof or to the operation of such Company's business the non-compliance with which could reasonably be expected to have a Material Adverse Effect (except to the extent any separate provision of this Agreement shall expressly require compliance with any particular Applicable Law(s) pursuant to another standard).

6.2. Conduct of Business and Maintenance of Existence and Assets. (a) Conduct continuously and operate actively its business according to good business practices and maintain all of its properties useful or necessary in its business in good working order and condition (reasonable wear and tear excepted and except as may be disposed of in accordance with the terms of this Agreement), including all Intellectual Property and take all actions that are reasonably deemed necessary by such Loan Party within its reasonable discretion to enforce and protect the validity of the Registered Intellectual Property and other material Intellectual Property included in the Collateral; (b) keep in full force and effect its existence and comply in all material respects with the laws and regulations governing the conduct of its business where the failure to do so could reasonably be expected to have a Material Adverse Effect; and (c) make all such reports and pay all such franchise and other similar taxes and license fees and do all such other acts and things as may be lawfully required to maintain its rights, licenses, leases, powers and franchises under the laws of the United States or any political subdivision thereof where the failure to do so could reasonably be expected to have a Material Adverse Effect.

6.3. Books and Records. Keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to its business and affairs (including without limitation accruals for taxes, assessments, Charges, levies and claims, allowances against doubtful Receivables and accruals for depreciation, obsolescence or amortization of assets), all in accordance with, or as required by, GAAP consistently applied in the opinion of such independent public accountant as shall then be regularly engaged by Companies.

6.4. Payment of Taxes. Pay, when due, all taxes, assessments and other governmental charges lawfully levied or assessed upon such Company or any of the Collateral, including real and personal property taxes, assessments and charges and all franchise, income, employment, social security benefits, withholding, and sales taxes, except (i) such taxes, assessments, fees and other governmental charges that are being Properly Contested and (ii) immaterial taxes, assessments and other governmental charges. If any tax by any Governmental Body is or may be imposed on or as a result of any transaction between any Company and Agent or any Cash Collateral Provider which Agent or any Cash Collateral Provider may be required to withhold or pay or if any taxes, assessments, or other charges remain unpaid after the date fixed for their payment, or if any claim shall be made which, in the opinion of Agent, may possibly create a valid Lien on the Collateral, Agent may, with prior written notice to the Loan Parties, pay the taxes, assessments or other charges and each Company hereby indemnifies and holds Agent and each Cash Collateral Provider harmless in respect thereof. Agent will not pay any taxes, assessments or charges to the extent that any applicable Company has Properly Contested those taxes, assessments or charges.

6.5. Financial Covenants.

(a) Fixed Charge Coverage Ratio. Cause Loan Parties on a Consolidated Basis to maintain as of the end of the fiscal quarter ending September 30, 2021 and as of the end of each fiscal quarter ending thereafter, a Fixed Charge Coverage Ratio calculated and measured for the four (4) fiscal quarter measurement period ending as of the end of such fiscal quarter of not less than 1.00 to 1.00; provided that, (x) for the fiscal quarter ended September 30, 2021, the Fixed Charge Coverage Ratio for Loan Parties on a Consolidated Basis shall be measured for purposes of determining compliance with this Section 6.5(a) for the single fiscal quarter measurement period ending on such date, (y) for the fiscal quarter ended December 31, 2021, the Fixed Charge Coverage Ratio for Loan Parties on a Consolidated Basis shall be measured for purposes of determining compliance with this Section 6.5(a) for the two fiscal quarter measurement period ending on such date, and (z) for the fiscal quarter ended March 31, 2022, the Fixed Charge Coverage Ratio for Loan Parties on a Consolidated Basis shall be measured for purposes of determining compliance with this Section 6.5(a) for the three fiscal quarter measurement period ending on such date; and further provided that, notwithstanding anything to the contrary provided for in any of the foregoing, the Fixed Charge Coverage Ratio of Loan Parties on a Consolidated Basis shall not be tested or measured for purposes of this Section 6.5(a) as of the end of the fiscal quarter ending September 30, 2021 unless the Dollar Equivalent of the aggregate amount of the Maximum Undrawn Amounts (as defined in the ABL Facility Agreement as of the Closing Date) of all Letters of Credit outstanding hereunder exceeds $5,000,000 on any day during such the fiscal quarter then ended.

(b) Senior Net Leverage Ratio. Cause Loan Parties on a Consolidated Basis to maintain as of the end of the fiscal quarter ending September 30, 2021 and as of the end of each fiscal quarter ending thereafter, a Senior Net Leverage Ratio tested as of such date of not greater than 2.50 to 1.00.

(c) Cash Repatriation Covenant. Notwithstanding any provisions of this Agreement to the contrary, Loan Parties shall not, and shall not permit their Subsidiaries to, allow the aggregate amount of all unrestricted cash and Cash Equivalents (excluding any cash and Cash Equivalents subject to any pledge to any third-party constituting a Permitted Encumbrance) either belonging to any Companies other than Loan Parties to exceed $35,000,000 at any one time.

(d) Minimum Liquidity Covenant. Maintain Liquidity of at least $30,000,000 at all times.

(e) Notwithstanding any provision to the contrary set forth in Sections 6.5(a) and 6.5(b), in the event that Loan Parties fail to comply with the requirements of Sections 6.5(a) or 6.5(b) as of the last day of any fiscal quarter, until the tenth (10th) Business Day after the day on which financial statements are required to be delivered pursuant to Section 9.8 for such fiscal quarter (such ten (10) Business Day period, the "Cure Period"), Parent shall have the right (the "Cure Right") the right to issue common Equity Interests (or other Equity Interests of the Borrower reasonably acceptable to Agent) for cash or otherwise receive direct equity contributions in cash (any such net cash proceeds of such issuance or contribution, excluding such net cash proceeds of such issuance or contribution of Disqualified Stock, a "Specified Equity Contribution"), which Specified Equity Contribution shall be included in the calculation of EBITDA solely for purposes of determining compliance with the Fixed Charge Coverage Ratio covenant set forth in Section 6.5(a) above and the Leverage Ratio covenant set forth in Section 6.5(b) above as of the last day of such fiscal quarter and for applicable subsequent periods which include such fiscal quarter; provided that: (i) any such Specified Equity Contribution shall be in an aggregate amount not in excess of the amount required to cause Loan Parties to be in pro forma compliance with Sections 6.5(a) and/or 6.5(b) above for such fiscal quarter (for the avoidance of doubt, if Loan Parties fail to comply with the requirements of both Sections 6.5(a) and 6.5(b) above, the Specified Equity Contribution shall be in an amount required to cause Loan Parties to be in compliance with both Sections 6.5(a) and 6.5(b) above), (ii) the Cure Right may not be exercised more than two (2) times in any period of four (4) consecutive fiscal quarters, or more than five (5) times in during the Term, (iii) there shall be no pro forma reduction in Indebtedness with the proceeds of any Specified Equity Contribution for purposes of determining compliance with the Leverage Ratio or Fixed Charge Coverage Ratio for any fiscal quarter in which such Specified Equity Contribution is included in the calculation of EBITDA, (iv) to the extent that any Delayed Draw Term Loans are outstanding at such time, Loan Parties shall cause the net cash proceeds of Specified Equity Contributions to be remitted to Agent for application to the Obligations in accordance with the provisions of Section 2.22(c); provided, that, no such prepayment shall be required (x) during any "Cash Dominion Period" to the extent such proceeds are required to prepay the ABL Facility in accordance with its terms and (y) if no Delayed Draw Term Loans are outstanding at such time, and (v) all Specified Equity Contributions shall be disregarded for all calculations under this Agreement (including any covenant or other provision herein that is subject to compliance with a Leverage Ratio or Fixed Charge Coverage Ratio) except for purposes of determining compliance with the Leverage Ratio and the Fixed Charge Coverage Ratio under Sections 6.5(a) and 6.5(b) above for the relevant period. Notwithstanding anything to the contrary contained herein, (A) in any applicable case where the Loan Parties have failed to be in compliance with either the Fixed Charge Coverage Ratio covenant set forth in Section 6.5(a) above and the Leverage Ratio covenant set forth in Section 6.5(b) above as of the last day of any applicable fiscal quarter, if upon the valid exercise of the Cure Right in accordance with this Section 6.5(c), Loan Parties shall then be in compliance with the requirements of the Fixed Charge Coverage Ratio covenant set forth in Section 6.5(a) above and the Leverage Ratio covenant set forth in Section 6.5(b) above, such covenants shall be deemed satisfied and complied with as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply with such covenants prior to the exercise of the Cure Right, and any Default or Event of Default related to any failure to comply the Financial Covenants shall be deemed not to have occurred.

6.6. Insurance.

(a) (i) Keep all its insurable properties and properties in which such Company has an interest insured against the hazards of fire, flood, sprinkler leakage, those hazards covered by extended coverage insurance and such other hazards, and for such amounts, as is customary in the case of companies engaged in businesses similar to such Company's including business interruption insurance; (ii) maintain a bond in such amounts as is customary in the case of companies engaged in businesses similar to such Company insuring against larceny, embezzlement or other criminal misappropriation of insured's officers and employees who may either singly or jointly with others at any time have access to the assets or funds of such Company either directly or through authority to draw upon such funds or to direct generally the disposition of such assets; (iii) maintain public and product liability insurance against claims for personal injury, death or property damage suffered by others; (iv) maintain all such worker's compensation or similar insurance as may be required under the laws of any state or jurisdiction in which such Company is engaged in business; (v) [RESERVED]; (vi) provide Agent with (A) copies of all policies and evidence of the maintenance of such policies by the renewal thereof at least thirty (30) days before any expiration date, and (B) appropriate loss payable endorsements in form and substance satisfactory to Agent, naming Agent as an additional insured and mortgagee and/or lender loss payee (as applicable) as its interests may appear with respect to all insurance coverage referred to in clauses (i) and (iii) above, and providing (I) that all proceeds thereunder shall be payable to Agent, (II) no such insurance shall be affected by any act or neglect of the insured or owner of the property described in such policy, and (III) that such policy and loss payable clauses may not be cancelled, amended or terminated unless at least thirty (30) days prior written notice is given to Agent (or in the case of non-payment, at least ten (10) days prior written notice). In the event of any loss thereunder, the carriers named therein hereby are directed by Agent and the applicable Company to make payment for such loss to Agent and not to such Company and Agent jointly. If any insurance losses are paid by check, draft or other instrument payable to any Company and Agent jointly, Agent may endorse such Company's name thereon and do such other things as Agent may deem advisable to reduce the same to cash.

(b) Each Company shall take all actions required under the Flood Laws and Flood Requirement Standards and also all actions reasonably requested by Agent to assist in ensuring that each Cash Collateral Provider is in compliance with the Flood Laws applicable to the Collateral, including, but not limited to, providing Agent with the address and/or GPS coordinates of each structure on any real property that will be subject to a mortgage in favor of Agent, for the benefit of Cash Collateral Providers, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral, and thereafter maintaining such flood insurance in full force and effect for so long as required by the Flood Laws and Flood Requirement Standards.

(c) Agent is hereby authorized to adjust and compromise claims under insurance coverage as to any Loan Party referred to in Sections 6.6(a)(i) and (iii) and (iv) and 6.6(b) above. All loss recoveries received by Agent under any such insurance as to any Loan Party, shall be applied to the Obligations in accordance with Section 2.22(b)(ii) or (iii) hereof, if any as applicable. If any Loan Party fails to obtain insurance as hereinabove provided, or to keep the same in force, Agent, if Agent so elects, may obtain such insurance and pay the premium therefor on behalf of such Loan Party, which payments shall constitute part of the Obligations.

6.7. Payment of Indebtedness and Leasehold Obligations. Pay, discharge or otherwise satisfy (a) at or before maturity (subject, where applicable, to specified grace periods) all its Indebtedness, except when the failure to do so could not reasonably be expected to have a Material Adverse Effect or when the amount or validity thereof is currently being Properly Contested, subject at all times to any applicable subordination arrangement in favor of Cash Collateral Providers and (b) when due its rental obligations under all leases under which it is a tenant, and shall otherwise comply, in all material respects, with all other terms of such leases and keep them in full force and effect.

6.8. Environmental Matters.

(a) Ensure that the Real Property owned or leased by any Company and all operations and businesses conducted thereon are in compliance and remain in compliance with all Environmental Laws and it shall manage any and all Hazardous Materials on any Real Property by any Company in compliance with Environmental Laws.

(b) Establish and maintain an environmental management and compliance system to assure and monitor continued compliance with all applicable Environmental Laws which system shall include periodic environmental compliance audits to be conducted by knowledgeable environmental professionals. All potential violations and violations of Environmental Laws shall be reviewed with legal counsel to determine any required reporting to applicable Governmental Bodies and any required corrective actions to address such potential violations or violations.

(c) Respond promptly to any Hazardous Discharge or Environmental Complaint and take all necessary action in order to safeguard the health of any Person and to avoid subjecting the Collateral or Real Property to any Lien. If any Company shall fail to respond promptly to any Hazardous Discharge or Environmental Complaint or any Company shall fail to comply with any of the requirements of any Environmental Laws, Agent on behalf of Cash Collateral Providers may, but without the obligation to do so, for the sole purpose of protecting Agent's interest in the Collateral: (i) give such notices or (ii) enter onto the Real Property owned or leased by any Company (or authorize third parties to enter onto such Real Property) and take such actions as Agent (or such third parties as directed by Agent) deem reasonably necessary or advisable, to remediate, remove, mitigate or otherwise manage with any such Hazardous Discharge or Environmental Complaint. All reasonable costs and expenses incurred by Agent and Cash Collateral Providers (or such third parties) in the exercise of any such rights, including any sums paid in connection with any judicial or administrative investigation or proceedings, fines and penalties, together with interest thereon from the date expended at the Default Rate for Domestic Rate Advances constituting Delayed Draw Term Loans shall be paid upon demand by Companies, and until paid shall be added to and become a part of the Obligations secured by the Liens created by the terms of this Agreement or any other agreement between Agent, any Cash Collateral Provider and any Company.

(d) Promptly upon the written request of Agent from time to time, Companies shall provide Agent, at Companies' expense, with an environmental site assessment or environmental compliance audit report prepared by an environmental engineering firm acceptable in the reasonable opinion of Agent, to assess with a reasonable degree of certainty the existence of a Hazardous Discharge and the potential costs in connection with abatement, remediation and removal of any Hazardous Materials found on, under, at or within the Real Property owned or leased by any Company. Any report or investigation of such Hazardous Discharge proposed and acceptable to the responsible Governmental Body shall be acceptable to Agent. If such estimates, individually or in the aggregate, exceed $100,000, Agent shall have the right to require Companies to post a bond, letter of credit or other security reasonably satisfactory to Agent a to secure payment of these costs and expenses.

6.9. Standards of Financial Statements. Cause all financial statements referred to in Sections 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, and 9.13 hereof as to which GAAP is applicable to be complete and correct in all material respects (subject, in the case of interim financial statements, to normal year-end audit adjustments) and to be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except as disclosed therein and agreed to by such reporting accountants or officer, as applicable).

6.10. Federal Securities Laws. Promptly notify Agent in writing if any Company or any of their Subsidiaries (a) is required to file periodic reports under the Exchange Act, (b) registers any securities under the Exchange Act or (c) files a registration statement under the Securities Act.

6.11. Execution of Supplemental Instruments. Execute and deliver to Agent from time to time, upon demand, such supplemental agreements, statements, assignments and transfers, or instructions or documents relating to the Collateral, and such other instruments as Agent may request, in order that the full intent of this Agreement may be carried into effect.

6.12. Additional Collateral and Guaranties; After-Acquired Real Property.

(a) Notify Agent promptly after any Person (i) becomes a Collateral Jurisdiction Subsidiary that is not an Immaterial Subsidiary (including a Collateral Jurisdiction Subsidiary that ceases for any reason to satisfy the definition of "Immaterial Subsidiary" at any time) or (ii) be-comes a First-Tier Foreign Subsidiary, and promptly thereafter (and in any event within 30 days, or such longer period of time permitted by Agent in its sole discretion:

(i) if such Person is a Collateral Jurisdiction Subsidiary and is not a Captive Insurance Subsidiary, Loan Parties shall:

(A) deliver to Agent such documentation and other information relating to such Person requested request by Agent or by any Cash Collateral Provider through Agent in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act; provided that, in the event that Agent shall determine that an Event of Default would occur under Section 10.17 hereof, and/or that any misrepresentation or breach under any warranty or representation set forth in Section 5.29 or 5.30 or breach of any covenant set forth in Section 6.17, 7.21, or 7.21 would occur, as a result of any joinder of such Person to this Agreement and the Other Documents as a Loan Party, or Agent shall determine that Agent or any: Cash Collateral Provider would be in violation of any Anti-Corruption Laws or Anti-Terrorism Laws as a result of such joinder, Agent shall not be obligated to join such Person as Loan Party hereto and Loan Parties shall have no right to join such Person as a Loan Party hereunder;

(B) cause such Collateral Jurisdiction Subsidiary to become a Borrower or Guarantor hereunder (as Loan Parties may elect, provided that any joinder of any such Collateral Jurisdiction Subsidiary hereto as a Borrower is subject to Agent consent to such joinder of such Person as a Borrower rather than Guarantor hereunder, such consent not to be unreasonably (as determined in Agent's discretion) withheld, conditioned, or delayed) by executing and delivering to Agent joinder agreement(s) with respect to this Agreement and any applicable Other Documents, favorable opinion(s) of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of this Agreement and the Other Documents as to such Person, customary "corporate" opinions as to such Person, and customary legal opinions as to the creation and perfection of Agent's Liens in the Collateral of such Person), and such other documentation as Agent may reasonably require (including customary "secretary's certificates" or "officer's certificates" concerning such Person's Organizational Documents, incumbency of such Person's officers/authorized signers, and authorizing resolutions regarding such joinder transactions adopted by such Person's board of directors or similar governing body or Person(s)) in connection with joinder, such joinder agreement, legal opinions and other documentation to be in form, contents, scope and substance reasonably acceptable to Agent in its discretion; and

(C) if such Person is joined hereto as a Borrower, cause such Person and all other Borrowers to deliver amended and restated Notes to any Cash Collateral Provider that makes any request therefore,

(D) cause such Person to execute and deliver such documents and take such actions reasonably requested by Agent to create and perfect in favor of Agent (or any representative of or trustee for Agent designated by Agent for such purpose) Liens for the benefit of the Secured Parties in such Person's Collateral, and

(E) cause Parent and/or the applicable Subsidiaries of Parent to execute and delivery such documents and take such actions (including delivery of all certificated Pledged Interests in and of such Person and customary related "stock powers"), requested by Agent to create and perfect in favor of Agent Liens for the benefit of the Secured Parties in the Subsidiary Equity Interest of such Person;

(ii) (ii) if such Person is a First-Tier Foreign Subsidiary, Loan Parties shall cause Parent and/or the applicable Subsidiaries of Parent to execute and delivery such documents and take such actions (including delivery of all certificated Equity Interests in and of such Person and customary related "stock powers"), requested by Agent to create and perfect in favor of Agent Liens for the benefit of the Secured Parties in the Subsidiary Equity Interest of such Person.

(b) With respect to any fee interest in any Material Real Property of any Loan Party (whether owned by such Loan Party as of or acquired by such Loan Party subsequent to the Closing Date), the applicable Loan Party shall, promptly (and, in any event, within 45 days following the date of such request, unless such date is extended by Agent in its sole discretion) upon request therefor by Agent in its sole discretion: (i) execute a Mortgage covering such Real Property and complying with the provisions hereof, (ii) provide the Secured Parties with title insurance (in standard ALTA form, issued by a title insurance company reasonably satisfactory to Agent and insuring the Mortgage to create a valid Lien on such Real Property with no exceptions other than Permitted Encumbrances and any other exceptions (excluding any Lien securing any Indebtedness) which Agent shall not have approved in its discretion and no survey exceptions) in an amount at least equal to the purchase price of such Real Property (or such other amount as the Agent shall reasonably specify), and if applicable, lease estoppel certificates, (iv) if requested by Agent in its sole discretion, deliver to Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to Agent, and (v) comply with the Flood Requirement Standards. Without limiting the foregoing, at any time that there is Material Real Property that is subject to a Mortgage, no MIRE Event shall be consummated prior to Agent confirming compliance with the Flood Requirement Standards.

(c) Notwithstanding anything to the contrary provided for in this Agreement, following the Closing Date, no Company shall create, form, purchase, or acquire any Collateral Jurisdiction Subsidiary that is not a Wholly-Owned Subsidiary.

6.13. [Reserved].

6.14. Membership / Partnership Interests. Designate and cause all of its Subsidiaries that are limited liability companies or partnerships and are the issuers of any Subsidiary Equity Interest to designate (a) their limited liability company membership interests or partnership interests as the case may be, as securities as contemplated by the definition of "security" in Section 8-102(15) and Section 8-103 of Article 8 of the Uniform Commercial Code, and (b) certificate such limited liability company membership interests and partnership interests, as applicable, and deliver to Agent all original certificates evidencing such Equity Interests, together with transfer powers executed in blank.

6.15. [Reserved].

6.16. Additional Information. Provide to Agent and the Cash Collateral Providers such information and documentation as may reasonably be requested by Agent or any Cash Collateral Provider from time to time for purposes of compliance by Agent or such Cash Collateral Provider with applicable laws (including without limitation the USA Patriot Act and other "know your customer" and anti-money laundering rules and regulations), and any policy or procedure implemented by Agent or such Cash Collateral Provider to comply therewith.

6.17. Sanctions and other Anti-Terrorism Laws; Anti-Corruption Laws. (a) The Loan Parties covenant and agree that (A) they shall immediately notify the Agent and each of the Cash Collateral Providers in writing upon the occurrence of a Reportable Compliance Event; and (B) if, at any time, any Collateral becomes Embargoed Property, in addition to all other rights and remedies available to the Agent and each of the Cash Collateral Providers, upon request by the Agent or any of the Cash Collateral Providers, the Loan Parties shall provide substitute Collateral acceptable to the Cash Collateral Providers that is not Embargoed Property.

(b) Each Covered Entity shall conduct their business in compliance with all Anti-Corruption Laws and maintain policies and procedures designed to ensure compliance with such Laws.

VII. NEGATIVE COVENANTS.

No Loan Party shall, nor shall it permit any of its Subsidiaries to, until the Payment in Full of the Obligations, the termination of the Commitments and the termination of this Agreement:

7.1. Merger, Consolidation, Acquisition and Sale of Assets.

(a) Enter into any merger, consolidation or other reorganization with or into any other Person, permit any other Person to consolidate with or merge with it, acquire all or a substantial portion of the assets or Equity Interests of any Person or of any division or line of business of any Person, or consummate an LLC Division, except that:

(i) any Loan Party may merge, consolidate or reorganize with another Loan Party or a Subsidiary of a Loan Party or acquire the assets or Equity Interests of another Loan Party or a Subsidiary of a Loan Party so long as (A) in each case, Borrowing Agent shall provide Agent with notice of such merger, consolidation, reorganization or acquisition, including copies of all of the material agreements, documents and instruments related to such merger, consolidation, reorganization or acquisition, within ten (10) Business Days prior to the intended date for the consummation thereof, (B) in connection with any merger, consolidation or reorganization to which Parent is a party, Parent must be the surviving entity of such merger, consolidation or reorganization and no Change of Control shall occur as a result of and no violation of Section 7.9(b) hereof shall exist after giving effect to such transaction, (C) in connection with any merger, consolidation or reorganization to which a Loan Party a party, the surviving entity of such merger, consolidation or reorganization must be, or concurrently with the consummation of such merger, consolidation or reorganization become, a Loan Party, (D) no Event of Default or Default shall occur under any other provision hereof or of any Other Document as a result of or after giving effect to such transaction, and (E) promptly following the consummation thereof, Loan Parties shall deliver to Agent copies (with evidence of filing) of any public filings or notices made in connection with or to effect such consummation,

(ii) any Non-Loan Party may merge, consolidate or reorganize with another Non-Loan Party or acquire the assets or Equity Interests of another Non-Loan Party so long as (A) Loan Parties shall deliver to Agent true, correct and complete copies of all of the relevant agreement, documents and instruments evidencing such merger, consolidation or reorganization (including copies (with evidence of filing) of any public filings or notices made in connection with or to effect such transaction) concurrently with the delivery of the monthly financial statements required to be delivered to Agent pursuant to Section 9.9 hereof, and (B) no Event of Default or Default shall occur under any other provision hereof or of any Other Document as a result of or after giving effect to such transaction,

(iii) Companies may make Permitted Investments, and

(iv) Companies may make Permitted Acquisitions;

(b) Dispose of any of its properties or assets, except for Permitted Dispositions; or

(c) Liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), except for:

(i) the liquidation or dissolution of any Loan Party so long as all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Loan Party are transferred to a Loan Party that is not liquidating or dissolving,

(ii) the liquidation or dissolution of a Loan Party (other than Parent or a Loan Party) so long as all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Loan Party are transferred to a Loan Party that is not liquidating or dissolving, and

(iii) the liquidation or dissolution of a Non-Loan Party so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Loan Party or Non-Loan Party that is not liquidating or dissolving.

7.2. Creation of Liens. Create or suffer to exist any Lien or transfer upon or against any of its property or assets now owned or hereafter created or acquired, except Permitted Encumbrances.

7.3. [RESERVED].

7.4. Investments. Make any Investments, other than Permitted Investments.

7.5. [RESERVED].

7.6. Capital Expenditures. Contract for, purchase or make any expenditure or commitments for Capital Expenditures incurred to renew, replace, rehabilitate, refurbish, restore or maintain the long-term useful life of property, plant and equipment of the Companies (excluding (A) any expenditures for replacements and substitutions for fixed assets, capital assets or equipment to the extent made with the proceeds of insurance to repair replace any such assets or equipment that were lost, damaged or destroyed from a casualty or condemnation event and (B) Capital Expenditures for relating to ERP implementation and Capital Expenditures related to Acquisitions and other "growth" Capital Expenditures") in any fiscal year in an aggregate amount for all Loan Parties in excess of $7,500,000.

7.7. Restricted Payments. Declare, pay or make any Restricted Payment other than Permitted Restricted Payments.

7.8. Indebtedness. Create, incur, assume or suffer to exist any Indebtedness other than Permitted Indebtedness.

7.9. Nature of Business.

(a) Engage in any business other than an Eligible Line of Business, nor except as specifically permitted hereby purchase or invest, directly or indirectly, in any assets or property other than in the Ordinary Course of Business for assets or property which are useful in, necessary for and are to be used in its business as presently conducted.

(b) Without limiting the generality of the foregoing paragraph (a), in the case of Parent, take any actions, or omit any actions or allow any events or circumstances to occur, that would cause any of the representations and warranties in Section 5.21(b) hereof to become untrue.

7.10. Transactions with Affiliates. Directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise enter into any transaction or deal with, any Affiliate, except for (a) transactions among Loan Parties which are not expressly prohibited by the terms of this Agreement and which are in the Ordinary Course of Business; (b) transactions among Loan Parties (on the one hand) and Non-Loan Parties and Joint Ventures that are expressly permitted hereunder; (c) Restricted Payments and Investments otherwise permitted hereunder, (d) transactions in accordance with the Affiliate Agreements or as thereafter amended or replaced in any manner that, taken as a whole, is not more disadvantageous to the Secured Parties or the Borrower in any material respect than such agreement as it was in effect on the Closing Date; (e) reasonable director, officer and employee compensation (including bonuses) and other benefits (including pursuant to any employment agreement or any retirement, health, stock option or other benefit plan) and indemnification and insurance arrangements, in each case, as determined in good faith by Parent's board of directors or senior management; (f) the entering into of a tax sharing agreement, or payments pursuant thereto, between Parent and/or one or more Subsidiaries, on the one hand, and any Tax Affiliate, on the other hand, which payments by Parent and its Subsidiaries are not in excess of the tax liabilities that would have been payable by them on a stand-alone basis; (g) pledges by the Borrower or any Subsidiary of Stock of any Joint Venture in a transaction permitted by clause (i)(y) of the definition of Permitted Encumbrances; (i) any transaction entered into by a Person prior to the time such Person becomes a Subsidiary or is merged or consolidated into the Borrower or a Subsidiary (provided that such transaction is not entered into in contemplation of such event); and (j) the transactions entered into pursuant to the B. Riley Fee Letter, including the issuance of Stock and Stock Equivalents, and (k) transactions which are in the Ordinary Course of Business, on an arm's-length basis on terms and conditions no less favorable than terms and conditions which would have been obtainable from a Person other than an Affiliate and, to the extent as such transaction or series of related transactions involves aggregate payments or consideration in excess of $2,500,000, such transaction is disclosed to Agent in writing; provided, however, that neither the extension of credit to, nor the assumption, endorsement or guaranty of any Indebtedness of, any Affiliate (other than a Loan Party) shall be deemed to be a transaction in the Ordinary Course of Business for purposes of this Section 7.10.

7.11. [Reserved].

7.12. Anti-Layering. Create or incur any Indebtedness (other than the Obligations) (a) that is secured by a Lien on the Collateral, which Lien is subordinated in right of priority to the Lien securing the ABL Facility Obligations, unless the Lien securing such Indebtedness is also subordinated in right of priority in the same manner and to the same extent, to the Lien securing the Obligations or (b) which is subordinated in right of payment to the ABL Facility Obligations unless such Indebtedness is also subordinated in right of payment in the same manner, and to the same extent, to the Obligations.

7.13. Fiscal Year and Accounting Changes. Change its fiscal year from December 31 or make any significant change (a) in accounting treatment and reporting practices except as required by GAAP or (b) in tax reporting treatment except as required by law.

7.14. Pledge of Credit. Now or hereafter pledge Agent's or any Cash Collateral Provider's credit on any purchases, commitments or contracts or for any purpose whatsoever or use any portion of any Advance in or for any business other than such Loan Party's business operations as conducted on the Closing Date.

7.15. Amendment of Organizational Documents. In the case of any Loan Party, (a) change its legal name, (b) change its form of legal entity (e.g., converting from a corporation to a limited liability company or vice versa), (c) change its jurisdiction of organization or become (or attempt or purport to become) organized in more than one jurisdiction, or (d) otherwise amend, modify or waive any term or material provision of its Organizational Documents, unless required by law, in any manner that would be materially adverse to the interest of Secured Parties or the continued perfection of any Liens of Agent on the Collateral or would obligate any Loan Party to take any action that could reasonably be expected (under any reasonably foreseeable circumstances) to require such Loan Party make any Restricted Payment other than a Permitted Restricted Payment or enter into any transaction in violation of Section 7.10 hereof, in any such case without (x) giving at least ten (10) days prior written notice of such intended change to Agent, (y) having received from Agent confirmation that Agent has taken all steps necessary for Agent to continue the perfection of and protect the enforceability and priority of its Liens in the Collateral belonging to such Loan Party and in the Equity Interests of such Loan Party (other than Parent) and (z) in any case under clause (d), having received the prior written consent of Agent to such amendment, modification or waiver.

7.16. Compliance with ERISA. Except as would not reasonably be expected to result, individually or when taken together with all of the following events or conditions, in a Material Adverse Effect, (a) engage in any non-exempt "prohibited transaction", as that term is defined in Section 406(a) of ERISA or Section 4975(c)(1)(A)-(D) of the Code, (b) terminate any Pension Plan where such event would reasonably be expected to result in any liability of any Company or the imposition of a lien on the property of any Company pursuant to Section 4068 of ERISA, (c) incur any withdrawal liability to any Multiemployer Plan; (d) fail to promptly notify Agent once any Company knows or has reason to know any Termination Event has occurred or is reasonably expected to occur, (e) fail to comply with the requirements of ERISA or the Code or other Applicable Laws in respect of any Plan or Pension Plan, (f) fail to meet, or permit any Pension Plan to fail to meet, all minimum funding requirements under ERISA and the Code, without regard to any waivers or variances, or postpone or delay any funding requirement with respect to any Pension Plan, other than the Pension Funding Waivers, or (g) fail to comply in all material respects with the terms and conditions of any Pension Funding Waiver, including, without limitation, the timely payment of any amortization installments required by such Pension Funding Waivers.

7.17. Prepayment of Indebtedness. At any time, directly or indirectly, voluntarily prepay any Indebtedness, or repurchase, redeem, retire or otherwise acquire any Indebtedness of any Company, except:

(a) Borrowers may prepay the Obligations in accordance with the terms hereof;

(b) Borrowers may prepay the Obligations under the ABL Facility;

(c) Intercompany Subordinated Debt Payments; and

(d) prepayments, repurchases, redemptions or retirements in an aggregate amount not to exceed $5,000,000 in the aggregate in any fiscal year but only so long as and to the effect that after giving pro forma effect to any such payment (and to any other transaction being closed and consummated by any Company concurrently/substantially contemporaneously with such payment), the Payment Conditions with respect thereto shall have been satisfied.

7.18. Subordinated Debt. At any time, directly or indirectly, pay, prepay, repurchase, redeem, retire or otherwise acquire, or make any payment on account of any principal of, interest on or premium payable in connection with the repayment or redemption of any Subordinated Debt, except as expressly permitted under the applicable subordination agreement/subordination arrangements and, in the case of any voluntary prepayment, repurchase, redemption, retirement or acquisition, in accordance with the requirements of Section 7.17 hereof.

7.19. Other Agreements.

(a) Enter into any amendment, waiver, consent, or modification of or with respect to the material reimbursement agreements, credit facility agreements, security agreements, and other agreements, contracts, and documents related to the ABL Facility or the Related L/C Facility to the extent such would be prohibited under the Intercreditor Agreement; and

(b) Enter into any amendment, waiver, consent, or modification of or with respect to the B. Riley Guarantee Reimbursement Agreement or the B. Riley Fee Letter that is or could reasonably be expected to be adverse to the interests of the Companies or Secured Parties or would result in the occurrence of any Default or Event of Default hereunder.

(c) Enter into any amendment, waiver, consent, or modification of or with respect to the Unsecured Note Indenture or any other material agreement, contract, or document related to the Unsecured Notes that is or could reasonably be expected to be adverse to the interests of the Companies or Secured Parties or would result in the occurrence of any Default or Event of Default hereunder.

7.20. Sanctions and other Anti-Terrorism Laws. Each loan party hereby covenants and agrees that until the last day of the Term, the loan party will not, and will not permit any of its Subsidiaries to: (a) [reserved]; (b) directly, or knowingly indirectly through a third party, engage in any transactions or other dealings with any Sanction Person or Sanctioned Jurisdiction, including any use of the proceeds of the Loans to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctions Person or Sanctioned Jurisdiction; (c) repay the Loans with funds derived from any unlawful activity; (d) [reserved]; (e) engage in any transactions or other dealings with any Sanctioned Person or Sanctioned Jurisdiction prohibited by any applicable laws of the United States or other applicable jurisdictions relating to economic sanctions and any Anti-Terrorism Laws; or (f) cause any Cash Collateral Provider or Agent to violate any sanctions administered by OFAC.

7.21. Anti-Corruption Laws. Each loan party hereby covenants and agrees that until the last day of the Term, the loan party will not, and will not permit any of its Subsidiaries to, directly or knowingly indirectly, use the Advances or any proceeds thereof for any purpose which would breach any Anti-Corruption Laws in any jurisdiction in which any Covered Entity conducts business.

VIII. CONDITIONS PRECEDENT.

8.1. Conditions to Delivery of Cash Collateral. The effectiveness of this Agreement and agreement of Cash Collateral Providers to provide Cash Collateral on the Closing Date is subject to the satisfaction (or waiver by Agent in its sole discretion) of the following conditions precedent as well as the conditions precedent under the Cash Collateral Agreement:

(a) Loan Documents. Agent shall have received on or before the Closing Date the following, each in form and substance reasonably satisfactory to the Agent and, unless indicated otherwise, dated as of the Closing Date:

(i) this Agreement, duly executed and delivered by each Credit Party;

(ii) the B. Riley Guarantee, duly executed by B. Riley Financial, Inc.;

(iii) [Reserved];

(iv) originals of stock certificates representing 100% of the Equity Interest of each Pledged Issuer to the extent the Equity Interests of such Pledged Issuer are certificated, together with stock powers executed in blank;

(v) the Intercreditor Agreement.

(b) Financial Condition Certificate. Agent shall have received an executed Financial Condition Certificate in substantially the form of Exhibit 8.1(b) attached hereto, signed by a Responsible Officer of Parent, dated as of the Closing Date, attaching and certifying true, correct, and complete copies of the Pro Forma Financial Statements and Historical Financial Statements;

(c) Closing Certificate. Agent shall have received a closing certificate signed by a Responsible Officer of Parent, dated as of the Closing Date, stating that (i) all representations and warranties set forth in this Agreement and the Other Documents are true and correct on and as of such date, (ii) on such date no Default or Event of Default has occurred or is continuing, and (ii) all of the conditions set forth in Sections 8.1(d), (e)(i), (e)(ii), (m), (k), (p), and (q) have been satisfied, and attaching and certifying true, correct, and complete copies of (x) all material reimbursement agreements, credit facility agreements, security agreements, and other agreements, contracts, and documents related to the ABL Facility and the Related L/C Facility and (y) the B. Riley Guarantee and the B. Riley Fee Letter, in each case under clause (x) and (y) complete with all schedules, annexes, exhibits, and disclosure letters referred to therein or attached or delivered pursuant thereto, if any, and all amendments thereto, waivers or consents relating thereto, and other side letters or agreements affecting the terms thereof;

(d) [Reserved].

(e) Unrestricted Cash. After giving pro forma effect to the Transactions, Loan Parties on a Consolidated Basis will have not less than $100,000,000 of the sum of (x) unrestricted cash on their consolidated balance sheet and (y) cash pledged (pursuant to the terms of the Existing BAML Credit Facility Payoff Letter) to cash collateralize the "Existing Letters of Credit" as defined under the Existing BAML Credit Facility Payoff Letter.

(f) [Reserved].

(g) Environmental Reports. To the extent requested by Agent, Agent shall have received all environmental studies and reports prepared by independent environmental engineering firms with respect to all Real Property owned or leased by any Loan Party;

(b) Closing Date Transactions

(i) Related L/C Facility. All of the conditions precedent set forth in Section 8.1 of the Related L/C Facility Agreement (subject to any applicable provisions of Section 8.3 of the Related L/C Facility Agreement) shall have occurred, Agent shall have received a copy of the Related L/C Facility Agreement, and PNC, as the issuer under the Related L/C Facility shall have executed and delivered the Cash Collateral Agreement.

(ii) ABL Facility. All of the conditions precedent set forth in Section 8.1 of the ABL Facility Agreement (subject to any applicable provisions of Section 8.3 of the ABL Facility Agreement) shall have occurred and the Agent shall have received a copy of the ABL Facility Agreement.

(a) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code financing statement and Uniform Commercial Code termination statements) required by this Agreement, any of the Other Documents or under Applicable Law or reasonably requested by Agent to be filed, registered or recorded in order to create, in favor of Agent, a perfected security interest in or lien upon the Collateral and in order to terminate the perfected security interest in or lien upon the Collateral of Existing Agent shall have been properly filed, registered or recorded in each jurisdiction in which the filing, registration or recordation thereof is so required or requested, and Agent shall have received an acknowledgment copy, or other evidence satisfactory to it, of each such filing, registration or recordation and satisfactory evidence of the payment of any necessary fee, tax or expense relating thereto;

(b) Payoff Letter. Agent shall have received a final executed copy of a payoff letter in form and substance and on terms and conditions satisfactory to Agent ("Existing BAML Credit Facility Payoff Letter") from Bank of American, N.A., as administrative agent under the Existing BAML Credit Facility, regarding the payment in full (or cash collateralization/backstop by letter of credit) of all Indebtedness and obligations owing to agents, Cash Collateral Providers and secured parties under the Existing BAML Credit Facility and the release of all Liens on any Collateral or other assets of any Company securing the BAML Credit Facility (excluding any cash collateral granted pursuant to such Payoff Letter to secure the "Existing Letters of Credit" (as defined under the Existing BAML Credit Facility Payoff Letter) issued under the Existing BAML Credit Facility);

(h) [RESERVED].

(i) Secretary's Certificates, Authorizing Resolutions and Good Standings of Loan Parties. Agent shall have received, in form and substance satisfactory to Agent, a certificate of the Secretary or Assistant Secretary (or other equivalent officer, partner or manager) of each Loan Party dated as of the Closing Date which shall certify (i) copies of resolutions, in form and substance satisfactory to Agent, of the board of directors (or other equivalent governing body, member or partner) of such Loan Party authorizing (x) as to Borrowers, the execution, delivery and performance of this Agreement and each Other Document to which each such Borrower is a party (including authorization of the incurrence of indebtedness, borrowing of Advances and requesting of Letters of Credit on a joint and several basis with all Borrowers as provided for herein), (y) as to Guarantors, the execution, delivery and performance of this Agreement and each Other Document to which each such Guarantor is a party (including authorization of the giving of a guaranty of the Guaranteed Obligations on a joint and several basis with all Guarantors as provided for herein), and (y) the granting by such Loan Party of the security interests in and liens upon the Collateral to secure the Obligations and/or Guaranteed Obligations (and such certificate shall state that such resolutions have not been amended, modified, revoked or rescinded as of the date of such certificate), (ii) the incumbency and signature of the officers of such Loan Party authorized to execute this Agreement and the Other Documents, (iii) true, correct, and complete copies of the Organizational Documents of such Loan Party as in effect on such date, complete with all amendments thereto, and (iv) the good standing (or equivalent status) of such Loan Party in its jurisdiction of organization and each applicable jurisdiction where the conduct of such Loan Party's business activities or the ownership of its properties necessitates qualification, as evidenced by good standing certificates (or the equivalent thereof issued by any applicable jurisdiction) dated not more than thirty (30) days prior to the Closing Date, issued by the Secretary of State or other appropriate official of each such jurisdiction;

(j) Legal Opinion. Agent shall have received (i) the executed legal opinion of King & Spalding LLP and (ii) the executed legal opinion of John J. Dziewisz, internal counsel to the Borrower, in each case, in form and substance satisfactory to Agent which shall cover such matters incident to the Transactions as Agent may reasonably require and each Loan Party hereby authorizes and directs such counsel to deliver such opinions to Agent and Cash Collateral Providers;

(k) No Litigation. No litigation, investigation or proceeding before or by any arbitrator or Governmental Body shall be continuing or threatened against any Loan Party or Joint Venture or against the officers or directors of any Loan Party or Joint Venture (A) in connection with this Agreement, the Other Documents, the ABL Facility, the related L/C Facility or any of the Transactions and which, in the reasonable opinion of Agent, is deemed material or (B) which could, in the reasonable opinion of Agent, have a Material Adverse Effect; and (ii) no injunction, writ, restraining order or other order of any nature materially adverse to any Loan Party or the conduct of its business or inconsistent with the due consummation of the Transactions shall have been issued by any Governmental Body;

(l) [Reserved].

(m) Fees. Agent shall have received all fees payable to Agent and Cash Collateral Providers on or prior to the Closing Date hereunder, including pursuant to Article III hereof;

(n) Pro Forma Financial Statements. Agent shall have received true, correct, and complete copies of the Pro Forma Financial Statements and Historical Financial Statements, which shall be satisfactory in all respects to Agent;

(o) Insurance. Agent shall have received in form and substance satisfactory to Agent, (i) evidence that adequate insurance, including without limitation, casualty and liability insurance, required to be maintained under this Agreement is in full force and effect, (ii) insurance certificates issued by Loan Parties' insurance broker containing such information regarding Loan Parties' casualty and liability insurance policies as Agent shall request and naming Agent as an additional insured, lenders loss payee and/or mortgagee, as applicable, and (iii) loss payable endorsements issued by Loan Parties' insurer naming Agent as lenders loss payee and mortgagee, as applicable;

(p) Consents. Agent shall have received any and all Consents necessary to permit the effectuation of the transactions contemplated by this Agreement and the Other Documents; and, Agent shall have received such Consents and waivers of such third parties as might assert claims with respect to the Collateral, as Agent and their counsel shall deem necessary;

(q) No Adverse Material Change. (i) Since December 31, 2020, no event, condition or state of facts which could reasonably be expected to have a Material Adverse Effect shall have occurred and (ii) no representations made or information supplied to Agent or Cash Collateral Providers shall have been proven to be inaccurate or misleading in any material respect;

(r) Contract Review. Agent shall have received and reviewed all Material Contracts of Companies including leases, collective bargaining agreements, vendor supply contracts, license agreements and distributorship agreements and such contracts and agreements shall be satisfactory in all respects to Agent;

(s) Compliance with Laws. Agent shall be reasonably satisfied that each Company is in material compliance with all pertinent federal, state, local or territorial regulations, including those with respect to the Federal Occupational Safety and Health Act, the Environmental Protection Act, ERISA and the Anti-Terrorism Laws;

(t) [Reserved].

(u) USA Patriot Act Diligence. Agent and each Cash Collateral Provider shall have received, in form and substance acceptable to Agent and each Cash Collateral Provider such documentation and other information requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act; and

(v) Other. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the Transactions shall be satisfactory in form and substance to Agent.

(w) Representations and Warranties. Each of the representations and warranties made by any Loan Party in or pursuant to this Agreement and/or the Other Documents shall be true and correct in all material respects (except in the case of any such representation or warranty that is qualified as to materiality or as to the occurrence of (or the absence of the occurrence of) a Material Adverse Effect (specifically including without limitation the representations set forth in Section 5.5(d) hereof), each of which such representations and warranties shall be true and correct in all respects) on and as of such date as if made on and as of such date (except to the extent any such representation or warranty expressly relates only to any earlier and/or specified date, in which case such representation or warranty shall have been true and correct in all material respects (except in the case of any such representation or warranty that is qualified as to materiality or as to the occurrence of (or the absence of the occurrence of) a Material Adverse Effect (specifically including limitation the representations set forth in Section 5.5(d) hereof), each of which such representations and warranties shall have been true and correct in all respects) on and as of such earlier and/or specified date); and

(x) No Default. No Event of Default or Default shall have occurred and be continuing on such date, or would exist after giving effect to the Advances requested to be made, on such date and, in the case of the initial Advances, after giving effect to the consummation of the Transactions; provided, however that Agent, in its sole discretion, may continue to make Advances notwithstanding the existence of an Event of Default or Default and that any Advances so made shall not be deemed a waiver of any such Event of Default or Default.

8.2. [Reserved]

8.3. Post-Closing Covenants/Conditions. Loan Parties hereby acknowledge and agree that Agent and Cash Collateral Providers have agreed to execute and deliver this Agreement and make the initial Advances on the Closing Date notwithstanding the fact that certain conditions precedent more fully described in this Section 8.3 have not been satisfied as of the Closing Date, and Loan Parties hereby covenant and agree to satisfy each of such conditions no later than the respective deadlines for each such condition set forth below as follows (as any such deadline may be extended from time to time by Agent in its sole discretion):

(a) No later than the date that is ninety (90) days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties (excluding any Foreign Subsidiaries that may be Loan Parties) shall execute and deliver, and shall cause the applicable financial depository institution to execute and deliver, a Control Account with respect to such deposit account (which Control Account, if such deposit account is a Blocked Account, shall also comply with the requirements of Section 4.8(h) hereof); provided that, for the avoidance of doubt, nothing in this Section. shall be deemed to limit or contradict the provisions of, or to defer or limit the obligations of Loan Parties to comply with the requirements of, Section. hereof, and without limiting the generality of the foregoing, during the period from the Closing Date until the date that Loan Parties shall have fully complied with the requirements of clauses (x) and (y) of this Section, Loan Parties shall make arrangements with respect to each of its deposit accounts not maintained with Agent into which Customers remit payments and collections on Receivables or into which Loan Parties deposit payments and collections on Receivables received from Customers for the funds in each such deposit account to be wired and transferred to a Depositary Account maintained with Agent on a daily basis; but further provided that, notwithstanding anything to the contrary contained herein, Borrowers shall not be required to obtain a Control Agreement or to otherwise give "control" to Controlling Agent with respect to any Excluded Deposit Accounts.

(b) No later than thirty (30) days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties shall deliver to Agent loss payable endorsements issued by Loan Parties' insurers naming Agent as lenders loss payee and mortgagee, as applicable, with respect to each of Loan Parties' casualty/property insurance policies (including business interruption insurance policies).

(c) No later than ninety (90) days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties (excluding any Foreign Subsidiaries that may be Loan Parties), Loan Parties shall have made commercially reasonable efforts to cause the applicable Persons to execute and deliver to Agent Lien Waiver Agreements with respect to (i) each leased corporate headquarters location of each Loan Party, all locations or places at which more than $500,000 of Inventory, equipment and books and records are located, and (ii) each leased location at which any unique books and records (not duplicated at the applicable corporate headquarters of such Loan Party) of any Loan Party regarding Borrowing Base are kept.

(d) No later than the date that is five (5) Business Days after the Closing Date (as such date may be extended by Agent in its reasonable discretion), Loan Parties shall (x) have complied with, and caused each Subsidiary incorporated in Canada to comply with, the requirements of the provisions of Section 6.12 with respect to each Company that is incorporated in Canada on the Closing Date, and (y) enter into any amendment to this Agreement and any applicable Other Document reasonably requested by Agent and reasonably and in good faith negotiated by Agent with Loan Parties (and by Loan Parties with Agent) to incorporate provisions regarding matters governed the Applicable Laws of each jurisdiction in which any such Subsidiary is organized or formed that are customary in the United States for companies similarly situated to Loan Parties and its Subsidiaries addressing matters relating to the Companies already addressed by the representations and warranties and covenants set forth herein.

(e) No later than forty-five (45) days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties shall (x) have complied with, and caused each applicable Collateral Jurisdiction Subsidiary to comply with, the requirements of the provisions of Section 6.12 with respect to each Company that is a Collateral Jurisdiction Subsidiary on the Closing Date, and (y) enter into any amendment to this Agreement and any applicable Other Document reasonably requested by Agent and reasonably and in good faith negotiated by Agent with Loan Parties (and by Loan Parties with Agent) to incorporate provisions regarding matters governed the Applicable Laws of each jurisdiction in which any such Collateral Jurisdiction Subsidiary is organized or formed that are customary in the United States for companies similarly situated to Loan Parties and its Subsidiaries addressing matters relating to the Companies already addressed by the representations and warranties and covenants set forth herein (such as pension and retirement benefits laws, other employee benefits laws, environmental laws, Permitted Encumbrances for statutory Liens and statutory priority claims and related exceptions/exclusions under the definitions of Eligible Inventory and Eligible Receivables and related Reserves, matters related to "centres of interest", anti-money laundering/anti-terrorism laws and other similar matters as are customarily required as a part of credit facilities of a similar size and nature to the credit facilities provided hereunder by lenders in such jurisdictions to borrowers that are similarly situated to the Loan Parties.

(f) No later than thirty (30) days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties shall deliver to Agent a true, correct and complete copy (as executed) of B. Riley Guarantee Reimbursement Agreement, complete with all schedules, annexes, exhibits, and disclosure letters referred to therein or attached or delivered pursuant thereto, if any, and all amendments thereto, waivers or consents relating thereto, and other side letters or agreements affecting the terms thereof, which shall be on terms reasonably acceptable to Agent.

(g) No later than sixty (60) days after the Closing Date (as such date may be extended by Agent in its sole discretion), Loan Parties shall have made commercially reasonable efforts to cause the PBGC to subordinate the Permitted Encumbrances described in subclause (i) of clause (q) of the definition of such term in favor of the Liens securing the Obligations to the extent contemplated by the documents evidencing/governing such Permitted Encumbrances and the PBGC Secured Obligations.

IX. INFORMATION AS TO LOAN PARTIES.

Each Loan Party shall, or (except with respect to Section 9.11 hereof) shall cause Borrowing Agent on its behalf to, until the Payment in Full of the Obligations, the termination of the Commitments and the termination of this Agreement:

9.1. Disclosure of Material Matters. Promptly upon learning thereof, report to Agent (a) all matters materially affecting the value, enforceability or collectability of any portion of the Collateral, including any Loan Party's reclamation or repossession of, or the return to any Loan Party of, a material amount of goods or claims or disputes asserted by any Customer or other obligor, and (b) any investigation, hearing, proceeding or other inquest into any Loan Party or any Affiliate of any Loan Party by any Governmental Body with respect to Anti-Terrorism Laws.

9.2. [Reserved].

9.3. Environmental Reports.

(a) [Reserved].

(b) In the event any Company obtains, gives or receives notice of any Release or threat of Release of a reportable quantity of any Hazardous Materials at the Real Property owned or leased by any Company (any such event being hereinafter referred to as a "Hazardous Discharge") or receives any notice of violation, request for information or notification that it is potentially responsible for investigation or cleanup of environmental conditions at such Real Property, demand letter or complaint, order, citation, or other written notice with regard to any Hazardous Discharge or violation of Environmental Laws affecting such Real Property or any Company's interest therein or the operations or the business which could reasonably be expected to have a Material Adverse Effect (any of the foregoing is referred to herein as an "Environmental Complaint") from any Person, including any Governmental Body, then Borrowing Agent shall, within five (5) Business Days, give written notice of same to Agent detailing facts and circumstances of which any Company is aware giving rise to the Hazardous Discharge or Environmental Complaint. Such information is to be provided to allow Agent to protect its security interest in and Lien on the Collateral and is not intended to create nor shall it create any obligation upon Agent or any Cash Collateral Provider with respect thereto.

(c) Borrowing Agent shall promptly forward to Agent copies of any request for information, notification of potential liability, demand letter relating to potential responsibility with respect to the investigation or cleanup of Hazardous Materials at any other site owned, operated or used by any Company to manage of Hazardous Materials and shall continue to forward copies of correspondence between any Company and the Governmental Body regarding such claims to Agent until the claim is settled. Borrowing Agent shall promptly forward to Agent copies of all documents and reports concerning a Hazardous Discharge or Environmental Complaint at the Real Property owned or leased by any Company, operations or business that any Company is required to file under any Environmental Laws. Such information is to be provided solely to allow Agent to protect Agent's security interest in and Lien on the Collateral.

9.4. Litigation. Promptly notify Agent in writing of any claim, litigation, suit or administrative proceeding affecting any Company or Joint Venture, whether or not the claim is covered by insurance, and of any litigation, suit or administrative proceeding, which in any such case affects a material portion of the Collateral or which could reasonably be expected to have a Material Adverse Effect.

9.5. Material Occurrences. Promptly notify Agent in writing upon the occurrence of: (a) any Event of Default or Default; (b) any event of default under the ABL Loan Documents; (c) any event which with the giving of notice or lapse of time, or both, would constitute an event of default under the ABL Loan Documents; (d) any event, development or circumstance whereby any financial statements or other reports delivered to Agent fail in any material respect to present fairly, in accordance with GAAP consistently applied, the financial condition or operating results of any Company as of the date of such statements; (e) any accumulated retirement plan funding deficiency which, if such deficiency continued for two plan years and was not corrected as provided in Section 4971 of the Code, could subject any Company or any member of the Controlled Group to a tax imposed by Section 4971 of the Code; (f) each and every default by any Company which might result in the acceleration of the maturity of any Indebtedness, including the names and addresses of the holders of such Indebtedness with respect to which there is a default existing or with respect to which the maturity has been or could be accelerated, and the amount of such Indebtedness; (g) any exercise of rights or remedies under any Performance Guaranty, (h) any draw on any Letter of Credit, and (i) any other development in the business or affairs of any Loan Party, which could reasonably be expected to have a Material Adverse Effect; in each case describing the nature thereof and the action Companies propose to take with respect thereto.

9.6. Deliverables under L/C Agreement. Deliver to Agent (i) concurrently with delivery to the Issuer, any Letter of Credit Applications (as defined in the Related L/C Facility Agreement) and (ii) promptly after receipt thereof, any notices of any draws on Letters of Credit received or notices requiring additional cash collateral, notices of default, or other material notices in respect of the Related L/C Facility.

9.7. Annual Financial Statements. Deliver to Agent within ninety (90) days after the end of each fiscal year of Parent, (A) financial statements of Parent and its Subsidiaries on a consolidated basis including, but not limited to, statements of income, stockholders' equity, and cash flow from the beginning of the current fiscal year to the end of such fiscal year and the balance sheet as at the end of such fiscal year, which such financial statements shall be true, complete and correct in all material respects and fairly present, in all material respects, the financial position of Parent and its Subsidiaries on a consolidated basis as of the date thereof and the results of operations for Parent and its Subsidiaries on a consolidated basis for such fiscal year and prepared in accordance with GAAP applied on a basis consistent with prior practices, and in reasonable detail, and shall be reported upon without qualification by an independent certified public accounting firm selected by Loan Parties and reasonably satisfactory to Agent (the "Accountants"); provided that, it is agreed by the parties hereto that Deloitte & Touche LLP shall be acceptable as the Accountants and (B) unaudited balance sheets of Parent and its Subsidiaries on a consolidating basis and unaudited statements of income, stockholders' equity, and cash flow of Parent and its Subsidiaries on a consolidating basis reflecting results of operations from the beginning of the current fiscal year to the end of such fiscal year and the balance sheet as at the end of such fiscal year, which such financial statements shall be true, complete and correct in all material respects and fairly present, in all material respects, the financial position of Parent and its Subsidiaries on a consolidated basis as of the date thereof and the results of operations for Parent and its Subsidiaries on a consolidated basis for such fiscal quarter and year-to-date period and prepared in accordance with GAAP applied on a basis consistent with prior practices. The report of the Accountants shall be accompanied by a statement of the Accountants certifying that (i) they have caused this Agreement to be reviewed, (ii) in making the examination upon which such report was based either no information came to their attention which to their knowledge constituted an Event of Default or a Default under this Agreement or any of the Other Documents or, if such information came to their attention, specifying any such Default or Event of Default, its nature, when it occurred and whether it is continuing, and such report shall contain or have appended thereto calculations which set forth Loan Parties' compliance with the requirements or restrictions imposed by Section 6.5 hereof. In addition, the reports shall be accompanied by a Compliance Certificate.

9.8. Quarterly Financial Statements. Deliver to Agent within forty-five (45) days after the end of each fiscal quarter, unaudited balance sheets of Parent and its Subsidiaries on a consolidated and consolidating basis and unaudited statements of income, stockholders' equity, and cash flow of Parent and its Subsidiaries on a consolidated and consolidating basis reflecting results of operations from the beginning of the fiscal year to the end of such quarter and for such quarter and setting forth in comparative form the respective financial statements for the corresponding date and period in the previous fiscal year and the budget delivered pursuant to Section 9.12 hereof, which such financial statements shall be true, complete and correct in all material respects and fairly present, in all material respects, the financial position of Parent and its Subsidiaries on a consolidated and consolidating basis as of the date thereof and the results of operations for Parent and its Subsidiaries on a consolidated and consolidating basis for such fiscal quarter and year-to-date period and prepared in accordance with GAAP applied on a basis consistent with prior practices, and in reasonable detail, subject to normal and recurring year-end adjustments that individually and in the aggregate are not material to Loan Parties' business. The reports shall be accompanied by a Compliance Certificate, as well as (i) a management discussion and analysis (with reasonable detail and specificity) of the results of operations for the fiscal periods reported, (ii) a calculation of the Available Amount as of the end of such fiscal quarter, and (iii) a calculation of Total Net Leverage as of the end of such fiscal quarter, (iv) a calculation of Senior Net Leverage as of the end of such fiscal quarter and (v) a calculation of EBITDA as of the end of such fiscal quarter.

9.9. Monthly Financial Statements. Deliver to Agent within thirty (30) days after the end of each month, an unaudited balance sheet of Parent and its Subsidiaries on a consolidated basis and unaudited statements of income and cash flow of Parent and its Subsidiaries on a consolidated basis reflecting results of operations from the beginning of the fiscal year to the end of such month and for such month, which such financial statements shall be true, complete and correct in all material respects and fairly present, in all material respects, the financial position of Parent and its Subsidiaries on a consolidated basis as of the date thereof and the results of operations for Parent and its Subsidiaries on a consolidated basis for fiscal month and year-to-date period and prepared in accordance with GAAP applied on a basis consistent with prior practices, and in reasonable detail, subject to normal and recurring year-end adjustments that individually and in the aggregate are not material to Loan Parties' business. The reports shall be accompanied by a Compliance Certificate.

9.10. Other Reports. Deliver to Agent as soon as available, but in any event within ten (10) days after the issuance thereof, copies of all material notices, reports, financial statements and other materials sent or received pursuant to the Subordinated Loan Documents.

9.11. Additional Information.

(a) Promptly upon request, deliver to Agent such other information concerning the business, properties, condition (financial or otherwise), or operations, of any Company or Joint Venture as Agent may from time to time may reasonably request or as Agent may reasonably request as an ongoing supplement to any regularly scheduled period financial delivery, including without limitation, current copies of the Material Contracts, and

(b) without limiting the generality of the foregoing Section 9.11(a), promptly upon request by Agent at reasonable intervals, deliver to Agent, a corporate organizational chart or other equivalent list, current as of the date of delivery of such annual financial statements, in form and substance reasonably acceptable to Agent and certified as true, correct and complete by an Responsible Officer of Parent, setting forth, for each of the Loan Parties, all Persons subject to Section 6.12 and all Subsidiaries of any of them and any joint venture (including Joint Ventures) or Consortium entered into by any of the foregoing, (i) its full legal name, (ii) its jurisdiction of organization and organizational number (if any) and (iii) the number of shares of each class of its Equity Interests authorized (if applicable), the number outstanding as of the date of delivery, and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by Parent.

9.12. Projected Operating Budget. Deliver to Agent, no later than ninety (90) days after the beginning of each of Parent's fiscal years commencing with fiscal year 2022, a month by month projected operating budget and cash flow of Parent and its Subsidiaries (including consolidated statements of income, and cash flow for each month, and consolidated and consolidating balance sheets as at the end of and consolidated and consolidating statement of income and cash flow for each fiscal quarter), such projections to be accompanied by a certificate signed by a Responsible Officer of Parent to the effect that such projections have been prepared on the basis of sound financial planning practice consistent with past budgets and financial statements and that such officer has no reason to question the reasonableness of any material assumptions on which such projections were prepared.

9.13. Variances from Operating Budget. Deliver to Agent, concurrently with the delivery of the financial statements referred to in Sections 9.7, 9.8 and 9.9 hereof, a written report summarizing all material variances from budgets submitted by Loan Parties pursuant to Section 9.12 hereof and a discussion and analysis by management with respect to such variances.

9.14. Notice of Suits, Adverse Events. Provide Agent with prompt written notice of (a) any lapse or other termination of any Consent issued to any Company by any Governmental Body or any other Person that is material to the operation of any Company's business, (b) any refusal by any Governmental Body or any other Person to renew or extend any such Consent; and (c) copies of any periodic or special reports filed by any Loan Party with any Governmental Body or Person, if such reports indicate any material change in the business, operations, affairs or condition of any Loan Party, or if copies thereof are requested by Cash Collateral Provider, and (d) copies of any material notices and other communications from any Governmental Body or Person which specifically relate to any Loan Party.

9.15. ERISA Notices and Requests. Provide Agent with prompt written notice in the event that (a) any Company knows or has reason to know that a Termination Event has occurred or is reasonably expected to occur that alone or together with any other Termination Events that have occurred, would reasonably be expected to result in liability of any Company in an aggregate amount exceeding $5,000,000, together with a written statement describing such Termination Event and the action, if any, which such Company has taken, is taking, or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, Department of Labor or PBGC with respect thereto, (b) any Company knows or has reason to know that a non-exempt "prohibited transaction" (as defined in Section 406(a) of ERISA or Section 4975(c)(1)(A)-(D) of the Code) has occurred with respect to a Plan which would reasonably be expected to result in material liability of any Company, together with a written statement describing such transaction and the action which such Company has taken, is taking or proposes to take with respect thereto, (c) a funding waiver request has been filed with respect to any Pension Benefit Plan (other than the Pension Funding Waivers), together with all communications received by any Company with respect to such request, or (d) the establishment of any new Pension Benefit Plan by the Company or the commencement by the Company of contributions to any Pension Benefit Plan or Multiemployer Plan to which any Company or any member of the Controlled Group was not previously contributing shall occur.

9.16. Additional Information; Additional Documents.

(a) Promptly upon request, execute and deliver to Agent, upon request, such documents and agreements as Agent may, from time to time, reasonably request to carry out the purposes, terms or conditions of this Agreement.

(b) Documents required to be delivered pursuant to Section 9.7 and 9.8 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Cash Collateral Provider and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that: (i) the Loan Parties shall deliver paper copies of such documents to Agent or any Cash Collateral Provider upon its request to the Loan Parties to deliver such paper copies until a written request to cease delivering paper copies is given by Agent or such Cash Collateral Provider and (ii) Loan Parties shall notify Agent (by facsimile or electronic mail) of the posting of any such documents. Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Loan Parties with any such request by a Cash Collateral Provider for delivery, and each Cash Collateral Provider shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

(c) It is understood and agreed that if any Cash Collateral Provider requests to be treated as a "public" Cash Collateral Provider, Borrower will provide such Cash Collateral Provider with a Compliance Certificate that is not populated with the actual ratio calculations and merely provides for a certification of compliance or non-compliance.

9.17. Updates to Certain Schedules. Deliver to Agent promptly as shall be required to maintain the related representations and warranties as true and correct, updates to Schedules 4.4 (Locations of equipment and Inventory), Schedule 4.14 (Pledged Equity Interest Collateral), 5.9 (Intellectual Property), 5.23 (Equity Interests), 5.24 (Commercial Tort Claims), and 5.25 (Letter-of-Credit Rights) hereto; provided, that absent the occurrence and continuance of any Event of Default, Loan Parties shall only be required to provide such updates on a quarterly basis in connection with delivery of a Compliance Certificate with respect to the applicable fiscal quarter. Any such updated Schedules delivered by Loan Parties to Agent in accordance with this Section 9.17 shall automatically and immediately be deemed to amend and restate the prior version of such Schedule previously delivered to Agent and attached to and made part of this Agreement.

9.18. Financial Disclosure. Each Loan Party hereby irrevocably authorizes and directs all accountants and auditors employed by such Company at any time during the Term to exhibit and deliver to Agent and each Cash Collateral Provider copies of any of such Company's financial statements, trial balances or other accounting records of any sort in the accountant's or auditor's possession, and to disclose to Agent and each Cash Collateral Provider any information such accountants may have concerning such Company's financial status and business operations, subject to customary confidentiality or conflict of interest exclusions.

X. EVENTS OF DEFAULT.

The occurrence of any one or more of the following events shall constitute an "Event of Default":

10.1. Nonpayment. Failure by any Loan Party to pay when due (a) any principal on the Obligations (including without limitation pursuant to Section 2.9 hereof), or (b) any interest or other fee, charge, premium (including any Prepayment Premium), amount or liability provided for herein or in any Other Document and such failure continues for a period of three (3) Business Days, in each case whether at maturity, by reason of acceleration pursuant to the terms of this Agreement, by notice of intention to prepay or by required prepayment.

10.2. Breach of Representation. Except as provided in Section 10.17 hereof, any representation or warranty made or deemed made by any Loan Party in this Agreement, any of the Other Documents or any related agreement, document, certificate or financial or other statement provided at any time in connection herewith or therewith shall prove to have been incorrect or misleading in any material respect on the date when made or deemed to have been made;

10.3. Financial Information. Failure by any Loan Party to (a) deliver financial information when due hereunder or, if no due date is specified herein, within fifteen (15) days following a reasonable request therefor (as such deadline may be extended by consent of Agent upon request of Loan Parties, such consent not to be unreasonably withheld, conditioned or delayed), or (b) permit the inspection of its books or records or access to its premises for audits and appraisals in accordance with the terms hereof;

10.4. Judicial Actions and Seizures. (I) Issuance of a notice of Lien, levy, assessment, injunction or attachment (a) against any Loan Party's Inventory or Receivables or (b) against a material portion of any Company's other property, which, in either case, is not stayed or lifted within thirty (30) days, or (II) (a) the seizure, garnishment or taking by a Governmental Body of any portion of the Collateral, or (b) the title and rights of any Loan Party or any other Person which is the owner of any material portion of the Collateral shall have become the subject matter of claim, litigation, suit, garnishment or other proceeding which might, in the opinion of Agent, upon final determination, result in impairment or loss of the security provided by this Agreement or the Other Document;

10.5. Noncompliance. Except as otherwise provided for in Sections 10.1, 10.3, 10.5(b) and 10.17 hereof, any (a) failure or neglect of any Loan Party or any Person to perform, keep or observe any term, provision, condition, covenant (subject to any Cure Right) herein contained, or contained in any Other Document or any other agreement or arrangement, now or hereafter entered into between any Loan Party or such Person, and Agent or any Cash Collateral Provider, or (b) failure or neglect of any Loan Party to perform, keep or observe any term, provision, condition or covenant, contained in Sections 4.5, 6.1, 6.3, 6.11 or 9.4 hereof which is not cured within thirty (30) days from the occurrence of such failure or neglect;

10.6. Judgments. Any (a) judgment(s), writ(s), order(s) or decree(s) for the payment of money are rendered against any one or more Compan(ies) in an aggregate amount in excess of $5,000,000 (excluding any judgment that would be covered by any insurance of any Company for which the applicable insurer has not disputed coverage or disclaimed liability), and (b) (i) action shall be legally taken by any judgment creditor to levy upon assets or properties of any Company to enforce any such judgment, (ii) any such judgment shall remain undischarged for a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, shall not be in effect, or (iii) any Liens arising by virtue of the rendition, entry or issuance of such judgment upon assets or properties of any Loan Party shall be senior to any Liens in favor of Agent on such assets or properties;

10.7. Bankruptcy. Any Loan Party, any Subsidiary or Affiliate of any Loan Party shall (a) apply for, consent to or suffer the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar fiduciary of itself or of all or a substantial part of its property, (b) admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business, (c) make a general assignment for the benefit of creditors, (d) commence a voluntary case under any state or federal bankruptcy or receivership laws (as now or hereafter in effect), (e) be adjudicated bankrupt or insolvent (including by entry of any order for relief in any involuntary Insolvency Proceeding commenced against it), (f) file a petition seeking to take advantage of any other law providing for the relief of debtors, (g) acquiesce to, or fail to have dismissed, within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (h) take any action for the purpose of effecting any of the foregoing;

10.8. [RESERVED];

10.9. Lien Priority. Any Lien created hereunder or provided for hereby or under any of the Other Documents for any reason ceases to be or is not a valid and perfected Lien having a first priority interest (subject only to Permitted Encumbrances that have priority as a matter of Applicable Law or pursuant to the Intercreditor Agreement);

10.10. Performance Guarantees. Any counterparty or other stakeholder takes any material step to enforce any rights or remedies it may have with respect to Performance Guarantees it may have against any Loan Party as reasonably determined by the Agent, to the extent that (x) the aggregate potential liability thereof exceeds $10,000,000 and (y) the relevant counterparties and/or stakeholders have not agreed to waive or postpone the exercise of such rights or remedies within thirty (30) days.

10.11. Cross Default. Any (x) specified "event of default" under (i) the ABL Facility Agreement, (ii) the Related L/C Facility Agreement, (iii) the Unsecured Notes and/or the Unsecured Notes Indenture, or (iv) any other Indebtedness (other than the Obligations) of any Company with a then-outstanding principal balance (or, in the case of any Indebtedness not so denominated, with a then-outstanding total obligation amount) of $5,000,000 or more, or (y) any other event or circumstance which would permit the holder of any such Indebtedness of any Company to accelerate such Indebtedness (and/or the obligations of Companies thereunder) prior to the scheduled maturity or termination thereof, shall occur (regardless of whether the holder of such Indebtedness shall actually accelerate, terminate or otherwise exercise any rights or remedies with respect to such Indebtedness);

10.12. Breach of B. Riley Guarantee, Guaranty, Guarantor Security Agreement or Pledge Agreement. Termination or breach of the B. Riley Guarantee, any Guaranty, Guarantor Security Agreement, Pledge Agreement or similar agreement executed and delivered to Agent in connection with the Obligations, or if B. Riley Financial, Inc., any Guarantor or pledgor attempts to terminate, challenges the validity of, or its liability under, any such Guaranty, Guarantor Security Agreement, Pledge Agreement or similar agreement, as applicable;

10.13. Change of Control. Any Change of Control shall occur;

10.14. Invalidity. Any material provision of this Agreement or any Other Document shall, for any reason, cease to be valid and binding on any Loan Party, or any Loan Party shall so claim in writing to Agent or any Cash Collateral Provider or any Loan Party challenges the validity of or its liability under this Agreement or any Other Document;

10.15. [RESERVED].

10.16. Pension Plans. A Termination Event or an event or condition described in Sections 7.16 hereof shall occur with respect to any Pension Plan or Multiemployer Plan and, as a result of such Termination Event, event or condition, together with all other such Termination Events, events or conditions, any Company shall incur, or would be reasonably likely to incur, liability to a Pension Plan or Multiemployer Plan, the Internal Revenue Service or the PBGC (or any combination thereof) which, would reasonably be expected to have a Material Adverse Effect; or

10.17. Anti-Money Laundering/International Trade Law Compliance. Any representation, warranty or covenant contained in Sections 5.29, 5.30, 6.17, 7.20 and 7.21 is or becomes false or misleading at any time.

XI. CASH COLLATERAL PROVIDERS' RIGHTS AND REMEDIES AFTER DEFAULT.

11.1. Rights and Remedies.

(a) Upon the occurrence of: (i) an Event of Default pursuant to Section 10.7 hereof (other than Section 10.7(g) hereof), all Obligations shall be immediately due and payable (including, without limitation, any fees pursuant to Section 3.4 hereof, if applicable), the Loan Parties shall be immediately required to provide replacement cash collateral to the Agent in an amount equal to the Cash Collateral that is then in the Cash Collateral Accounts, and the Commitments shall be deemed terminated and (ii) any of the other Events of Default and at any time thereafter, at the option of Agent or at the direction of Required Cash Collateral Providers, all Obligations shall be immediately due and payable (including, without limitation, any fees pursuant to Section 3.4 hereof, if applicable), the Loan Parties shall be immediately required to provide replacement cash collateral to the Agent in an amount equal to the Cash Collateral that is then in the Cash Collateral Accounts and Agent or Required Cash Collateral Providers shall have the right, subject to Section 13.2, to terminate the Agreement and to terminate the Commitments; and (iii) without limiting any Default under Section 10.7(g) hereof, the obligation of Cash Collateral Providers to maintain Cash Collateral in the Cash Collateral Account shall be suspended until such time as such involuntary petition shall be dismissed. Upon the occurrence of any Event of Default, Agent shall have the right to exercise any and all rights and remedies provided for herein, under the Other Documents, under the Uniform Commercial Code and at law or equity generally, including the right to foreclose the security interests granted herein and to realize upon any Collateral by any available judicial procedure and/or to take possession of and sell any or all of the Collateral with or without judicial process. Agent may enter any of any Loan Party's premises or other premises without legal process and without incurring liability to any Loan Party therefor, and Agent may thereupon, or at any time thereafter, in its discretion without notice or demand, take the Collateral and remove the same to such place as Agent may deem advisable and Agent may require Loan Parties to make the Collateral available to Agent at a convenient place. With or without having the Collateral at the time or place of sale, Agent may sell the Collateral, or any part thereof, at public or private sale, at any time or place, in one or more sales, at such price or prices, and upon such terms, either for cash, credit or future delivery, as Agent may elect. Except as to that part of the Collateral which is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Agent shall give Loan Parties reasonable notification of such sale or sales, it being agreed that in all events written notice mailed to Borrowing Agent at least ten (10) days prior to such sale or sales is reasonable notification. At any public sale Agent or any Cash Collateral Provider may bid (including credit bid) for and become the purchaser, and Agent, any Cash Collateral Provider or any other purchaser at any such sale thereafter shall hold the Collateral sold absolutely free from any claim or right of whatsoever kind, including any equity of redemption and all such claims, rights and equities are hereby expressly waived and released by each Loan Party. In connection with the exercise of the foregoing remedies, including the sale of Inventory, Agent is granted a perpetual non-revocable, royalty free, nonexclusive, sublicensable license and Agent is granted permission to use all of each Loan Party's (a) Intellectual Property that constitutes Collateral and which is used or useful in connection with Inventory for the purpose of marketing, advertising for sale and selling or otherwise disposing of such Inventory, subject, in the case of trademarks constituting Collateral, to reasonable and customary quality control and inspection rights in favor of such Loan Party sufficient to avoid the risk of invalidation of such trademarks and (b) equipment for the purpose of completing the manufacture of unfinished goods, provided, however, that any such license granted by the Agent to a third party shall include reasonable and customary terms necessary to preserve the existence, validity and value of the applicable Intellectual Property Collateral, including, as applicable, provisions requiring the continuing confidential handling of any trade secrets constituting Collateral, protecting and maintaining the quality standards of the trademarks in the manner set forth above (it being understood and agreed that, without limiting any other rights and remedies of the Agent under this Agreement, Other Document or Applicable Law, nothing in the foregoing license grant shall be construed as granting the Agent rights in and to any such Intellectual Property Collateral above and beyond (a) the rights to such Intellectual Property Collateral that each Loan Party has reserved for itself and (b) in the case of Intellectual Property Collateral that is licensed to any such Loan Party by a third party, the extent to which such Loan Party has the right to grant a sublicense to such Intellectual Property Collateral hereunder). The Net Cash Proceeds realized from the sale of any Collateral shall be applied to the Obligations in the order set forth in Section 11.5 hereof. Non-cash proceeds will only be applied to the Obligations as they are converted into cash. If any deficiency shall arise, Loan Parties shall remain liable to Agent and Cash Collateral Providers therefor.

(b) To the extent that Applicable Law imposes duties on Agent to exercise remedies in a commercially reasonable manner, each Loan Party acknowledges and agrees that it is not commercially unreasonable for Agent: (i) to fail to incur expenses reasonably deemed significant by Agent 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 governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of; (iii) to fail to exercise collection remedies against Customers or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral; (iv) to exercise collection remedies against Customers 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 such 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 capacity 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, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure Agent against risks of loss, collection or disposition of Collateral or to provide to Agent 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 11.1(b) is to provide non-exhaustive indications of what actions or omissions by Agent would not be commercially unreasonable in Agent's exercise of remedies against the Collateral and that other actions or omissions by Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 11.1(b). Without limitation upon the foregoing, nothing set forth in this Section 11.1(b) shall be construed to grant any rights to any Loan Party or to impose any duties on Agent that would not have been granted or imposed by this Agreement or by Applicable Law in the absence of this Section 11.1(b).

11.2. Agent's Discretion. Agent shall have the right to determine which rights, Liens, security interests or remedies Agent may at any time pursue, relinquish, subordinate, or modify, which procedures, timing and methodologies to employ, and what any other action to take with respect to any or all of the collateral and in what order, thereto and such determination will not in any way modify or affect any of Agent's or Cash Collateral Providers' rights hereunder as against Loan Parties or each other.

11.3. Setoff. Subject to Section 14.13 hereof, in addition to any other rights which Agent or any Cash Collateral Provider may have under Applicable Law, upon the occurrence of an Event of Default hereunder, Agent and such Cash Collateral Provider shall have a right, immediately and without notice of any kind, to apply any Loan Party's property held by Agent and such Cash Collateral Provider or any of their Affiliates to reduce the Obligations and to exercise any and all rights of setoff which may be available to Agent and such Cash Collateral Provider with respect to any deposits held by Agent or such Cash Collateral Provider. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of Default hereunder without any action of the Agent, although the Agent may enter such setoff on its books and records at a later time.

11.4. Rights and Remedies not Exclusive. The enumeration of the foregoing rights and remedies is not intended to be exhaustive and the exercise of any rights or remedy shall not preclude the exercise of any other right or remedies provided for herein or otherwise provided by law, all of which shall be cumulative and not alternative.

11.5. Allocation of Payments and Proceeds of Collateral after Event of Default. Notwithstanding any provisions of this Agreement to the contrary:

(a) After the occurrence and during the continuance of an Event of Default, all amounts collected or received by any Secured Party on account of the Obligations or in respect of the Collateral (including without limitation any and all payments paid by or on behalf of any Loan Party (including any and all payments by or on behalf of any Guarantor in respect of its obligations and liabilities under its Guaranty), any and all proceeds of Collateral, any and all amount obtained by any Secured Party in respect of the Obligations by exercise of any rights of setoff or recoupment, any and all adequate protection payments payable to any Secured Party, and any and all distributions to any Secured Party under a plan of reorganization) (all of the foregoing, the "Obligations Receipts") shall be, if received by any Secured Party other than Agent, turned over to promptly by such Secured Party to Agent in the form received (together with any applicable endorsement), and upon receipt by Agent, may be, at Agent's discretion, applied or paid over as follows:

FIRST, to the payment until paid in full of (x) all out-of-pocket costs and expenses (including without limitation all legal expenses and reasonable attorneys' fees) of Agent to the extent payable and/or reimbursable by Loan Parties under the provisions of Section 16.9 hereof and/or any other applicable provisions hereof or of any Other Document, including all such costs and expenses incurred by Agent in connection with enforcing the rights and remedies of Agent and/or any other Secured Parties under this Agreement and the Other Documents, and (y) all indemnification obligations owing to Agent to the extent payable by Loan Parties under the provisions of Section 16.5 hereof and/or any other applicable provisions hereof or of any Other Document;

SECOND, to payment until paid in full of any fees owing and payable to Agent hereunder and/or under any Other Document;

THIRD, ratably, to the payment until paid in full of (x) all out-of-pocket costs and expenses (including without limitation all legal expenses and reasonable attorneys' fees) of each of the Cash Collateral Providers to the extent payable and/or reimbursable by Loan Parties under the provisions of Section 16.9 hereof and/or any other applicable provisions hereof or of any Other Document, and (y) all indemnification obligations owing to each of the Cash Collateral Providers to the extent payable by Loan Parties under the provisions of Section 16.5 hereof and/or any other applicable provisions hereof or of any Other Document;

FOURTH, to the payment until paid in full of all Obligations arising under this Agreement and the Other Documents consisting of accrued and unpaid interest (excluding all interest paid pursuant to clauses FIRST and FOURTH above) and accrued and unpaid fees and premiums (including but not limited to all Cash Collateral Commitment Fees and Prepayment Premiums);

FIFTH, to the payment until paid in full of the outstanding principal amount of the Delayed Draw Term Loans arising under this Agreement;

SIXTH, to the payment until paid in full of any outstanding Cash Collateral Reimbursement Obligations and replacement of any Cash Collateral required to be maintained with Issuer;

SEVENTH, to the payment until paid in full of all other Obligations arising under this Agreement and the Other Documents which shall have become due and payable and not repaid pursuant to clauses "FIRST" through "SIXTH" above; and

EIGHTH, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, and subject in all cases to the other provisions of this Section 11.5 and also to any separate written agreements among any applicable Cash Collateral Providers, (i) amounts received shall be applied in the numerical order provided until exhausted and each applicable category is paid in full prior to application to the next succeeding category, (ii) each of the Cash Collateral Providers and other Secured Parties (as applicable) shall receive an amount equal to its pro rata share (based on the proportion that the then outstanding Advances held by such Cash Collateral Provider bears to the aggregate then outstanding Advances) of amounts available to be applied pursuant to clause "THIRD" above, (iii) each of the Cash Collateral Providers (as applicable) shall receive an amount equal to its pro rata share (based on the proportion that the then outstanding Advances held by such Secured Party bears to the aggregate then outstanding Advances) of amounts available to be applied pursuant to "FOURTH" and "SIXTH" above; and (iv) to the extent that any amounts available for distribution pursuant to clause "EIGHTH" above are attributable the issued by undrawn amount of outstanding Letters of Credit, such amounts may be held by Agent, in its discretion, as cash collateral securing the Obligations hereunder and applied (A) first, to reimburse Agent and the Cash Collateral Providers from time to time for any Cash Collateral Withdrawals on the Cash Collateral automatically converted into Delayed Draw Term Loans, and (B) then, following the expiration, drawing in full, and/or return for cancellation with the consent of the applicable beneficiaries of all Letters of Credit (and return of any remaining Cash Collateral from the Issuer in accordance with the Cash Collateral Agreement), to all other Obligations in the order provided in this Section 11.5.

(b) In the event that, notwithstanding the foregoing provisions of this Section 11.5, any Obligations Receipts shall be received by any Secured Party in violation of the terms of this Section 11.5, such amounts shall be held in trust for the benefit of the Secured Parties as a whole and shall promptly be paid over to or delivered to Agent in the form received (together with any applicable endorsement) for application.

(c) [Reserved].

(d) For the avoidance of doubt, for all purposes under this Section 11.5, as applied to any category of Obligations and/or any clause under Section 11.5(a) hereof, "paid in full" means payment in cash of all amounts owing hereunder and under the Other Documents in respect of such Obligations and/or such clause of Section 11.5(a) hereof according to the terms hereof and of the Other Documents, including loan fees, service fees, premiums, professional fees and interest, default interest calculated at default rates, interest on interest and expense reimbursements, whether or not the same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding, and specifically including without limitation in the case of each clause under Section 11.5(a) hereof all Obligations of the type described in such clause 11.5(a) constituting Post-Petition Obligations.

XII. WAIVERS AND JUDICIAL PROCEEDINGS.

12.1. Waiver of Notice. Each Loan Party hereby waives notice of non-payment of any of the Receivables, demand, presentment, protest and notice thereof with respect to any and all instruments, notice of acceptance hereof, notice of loans or advances made, credit extended, Collateral received or delivered, or any other action taken in reliance hereon, and all other demands and notices of any description, except such as are expressly provided for herein.

12.2. Delay. No delay or omission on Agent's or any Cash Collateral Provider's part in exercising any right, remedy or option shall operate as a waiver of such or any other right, remedy or option or of any Default or Event of Default.

12.3. Jury Waiver. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, COUNTERCLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT, ANY OTHER DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, ANY OTHER DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HEREBY CONSENTS THAT ANY SUCH CLAIM, COUNTERCLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

XIII. EFFECTIVE DATE AND TERMINATION.

13.1. Term. This Agreement, which shall inure to the benefit of and shall be binding upon the respective successors and permitted assigns of each Loan Party, Agent and each Cash Collateral Provider, shall become effective on the Closing Date and shall continue in full force and effect until the earlier of (x) the fourth anniversary of the Closing Date, and (y) Payment in Full of all of the Obligations hereunder (the "Term"), unless sooner terminated as herein provided. Borrowers may terminate this Agreement at any time upon fifteen (15) days prior written notice to Agent upon Payment in Full of the Obligations, including payment of the Prepayment Premium, as applicable.

13.2. Termination. The termination of this Agreement shall not affect Agent's or any Cash Collateral Provider's rights, or any of the Obligations having their inception prior to the effective date of such termination or any Obligations which pursuant to the terms hereof continue to accrue after such date, and the provisions hereof shall continue to be fully operative until all transactions entered into, rights or interests created and all of the Obligations have been Paid in Full. The security interests, Liens and rights granted to Agent and Cash Collateral Providers hereunder and the financing statements filed in connection herewith shall continue in full force and effect, notwithstanding the termination of this Agreement, until (a) all of the Obligations have Paid in Full, the Commitments and this Agreement and the Other Documents have been terminated and each Loan Party has provided Agent and Cash Collateral Providers with an indemnification satisfactory to Agent with respect thereto, and (b) all of the Loan Parties have released Agent and the other Secured Parties from and against any and all claims of any nature whatsoever that any Loan Party may have against Secured Parties pursuant to a release in form and substance acceptable to Agent. Accordingly, each Loan Party waives any rights which it may have under the Uniform Commercial Code to demand the filing of termination statements with respect to the Collateral, and Agent shall not be required to send such termination statements to each Loan Party, or to file them with any filing office, unless and until this Agreement shall have been terminated in accordance with its terms, all Obligations have been Paid in Full, and all of the Loan Parties have released Agent and the other Secured Parties from and against any and all claims of any nature whatsoever that any Loan Party may have against Agent and such other Secured Parties pursuant to a release in form and substance acceptable to Agent. All representations, warranties, covenants, waivers and agreements set forth herein shall survive the termination of this Agreement and the Payment in Full of the Obligations.

XIV. REGARDING AGENT.

14.1. Appointment. Each Cash Collateral Provider hereby designates MSD to act as Agent for such Cash Collateral Provider under this Agreement and the Other Documents. Each Cash Collateral Provider hereby irrevocably authorizes Agent to take such action on its behalf under the provisions of this Agreement and the Other Documents and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto and Agent shall hold all Collateral, payments of principal and interest, fees, charges and collections received pursuant to this Agreement, for the ratable benefit of Cash Collateral Providers. Agent may perform any of its duties hereunder by or through its agents or employees. As to any matters not expressly provided for by this Agreement (including collection of the Note), Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of Required Cash Collateral Providers, and such instructions shall be binding; provided, however, that Agent shall not be required to take any action which, in Agent's discretion, exposes Agent to liability or which is contrary to this Agreement or the Other Documents or Applicable Law unless Agent is furnished with an indemnification reasonably satisfactory to Agent with respect thereto.

14.2. Nature of Duties. Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and the Other Documents. Neither Agent nor any of its officers, directors, employees or agents shall be (i) liable for any action taken or omitted by them as such hereunder or in connection herewith, unless caused by their gross (not mere) negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), or (ii) responsible in any manner for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof set forth in this Agreement, or in any of the Other Documents or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any of the Other Documents or for the value, validity, effectiveness, genuineness, due execution, enforceability or sufficiency of this Agreement, or any of the Other Documents or for any failure of any Loan Party to perform its obligations hereunder. Agent shall not be under any obligation to any Cash Collateral Provider to ascertain or to inquire as to the observance or performance of any of the agreements set forth in, or conditions of, this Agreement or any of the Other Documents, or to inspect the properties, books or records of any Loan Party. The duties of Agent as respects the Advances to Borrowers shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Cash Collateral Provider and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon Agent any obligations in respect of this Agreement or the transactions described herein except as expressly set forth herein.

14.3. Lack of Reliance on Agent. Independently and without reliance upon Agent or any other Cash Collateral Provider, each Cash Collateral Provider has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of each Loan Party in connection with the making and the continuance of the Advances hereunder and the taking or not taking of any action in connection herewith, and (ii) its own appraisal of the creditworthiness of each Loan Party. Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Cash Collateral Provider with any credit or other information with respect thereto, whether coming into its possession before making of the Advances or at any time or times thereafter except as shall be provided by any Loan Party pursuant to the terms hereof. Agent shall not be responsible to any Cash Collateral Provider for any recitals, statements, information, representations or warranties herein or in any agreement, document, certificate or a statement delivered in connection with or for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency of this Agreement or any Other Document, or of the financial condition of any Loan Party, or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement, the Notes, the Other Documents or the financial condition or prospects of any Loan Party, or the existence of any Event of Default or any Default.

14.4. Resignation of Agent; Successor Agent. Agent may resign on sixty (60) days written notice to each of Cash Collateral Providers and Borrowing Agent and upon such resignation, Required Cash Collateral Providers will promptly designate a successor Agent reasonably satisfactory to Borrowing Agent (provided that no such approval by Borrowing Agent shall be required (i) in any case where the successor Agent is one of Cash Collateral Providers or (ii) after the occurrence and during the continuance of any Event of Default). Any such successor Agent shall succeed to the rights, powers and duties of Agent, and shall in particular succeed to all of Agent's right, title and interest in and to all of the Liens in the Collateral securing the Obligations created hereunder or any Other Document, and the term "Agent" shall mean such successor agent effective upon its appointment, and the former Agent's rights, powers and duties as Agent shall be terminated, without any other or further act or deed on the part of such former Agent. However, notwithstanding the foregoing, if at the time of the effectiveness of the new Agent's appointment, any further actions need to be taken in order to provide for the legally binding and valid transfer of any Liens in the Collateral from former Agent to new Agent and/or for the perfection of any Liens in the Collateral as held by new Agent or it is otherwise not then possible for new Agent to become the holder of a fully valid, enforceable and perfected Lien as to any of the Collateral, former Agent shall continue to hold such Liens solely as agent for perfection of such Liens on behalf of new Agent until such time as new Agent can obtain a fully valid, enforceable and perfected Lien on all Collateral, provided that Agent shall not be required to or have any liability or responsibility to take any further actions after such date as such agent for perfection to continue the perfection of any such Liens (other than to forego from taking any affirmative action to release any such Liens). After Agent's resignation as Agent, the provisions of this Article XIV, and any indemnification rights under this Agreement, including without limitation, rights arising under Section 16.5 hereof, shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement (and in the event resigning Agent continues to hold any Liens pursuant to the provisions of the immediately preceding sentence, the provisions of this Article XIV and any indemnification rights under this Agreement, including without limitation, rights arising under Section 16.5 hereof, shall inure to its benefit as to any actions taken or omitted to be taken by it in connection with such Liens).

14.5. Certain Rights of Agent. If Agent shall request instructions from Cash Collateral Providers with respect to any act or action (including failure to act) in connection with this Agreement or any Other Document, Agent shall be entitled to refrain from such act or taking such action unless and until Agent shall have received instructions from Required Cash Collateral Providers; and Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, Cash Collateral Providers shall not have any right of action whatsoever against Agent as a result of its acting or refraining from acting hereunder in accordance with the instructions of Required Cash Collateral Providers.

14.6. Reliance. Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, statement, certificate, email, facsimile or telecopier message, order or other document or telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person or entity, and, with respect to all legal matters pertaining to this Agreement and the Other Documents and its duties hereunder, upon advice of counsel selected by it. Agent may employ agents and attorneys-in-fact and shall not be liable for the default or misconduct of any such agents or attorneys-in-fact selected by Agent with reasonable care.

14.7. Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder or under the Other Documents, unless Agent has received notice from a Cash Collateral Provider or Borrowing Agent referring to this Agreement or the Other Documents, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that Agent receives such a notice, Agent shall give notice thereof to Cash Collateral Providers. Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by Required Cash Collateral Providers; 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 such Default or Event of Default as it shall deem advisable in the best interests of Cash Collateral Providers.

14.8. Indemnification. To the extent Agent is not reimbursed and indemnified by Loan Parties, each Cash Collateral Provider will reimburse and indemnify Agent in proportion to its respective portion of the outstanding Cash Collateral Commitments, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against Agent in performing its duties hereunder, or in any way relating to or arising out of this Agreement or any Other Document; provided that Cash Collateral Providers shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from Agent's gross (not mere) negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment). All amounts due under this Section 14.8 shall be payable not later than ten (10) days after demand therefor.

14.9. Agent in its Individual Capacity. With respect to the obligation of Agent to lend under this Agreement, the Advances made by it shall have the same rights and powers hereunder as any other Cash Collateral Provider and as if it were not performing the duties as Agent specified herein; and the term "Cash Collateral Provider" or any similar term shall, unless the context clearly otherwise indicates, include Agent in its individual capacity as a Cash Collateral Provider. Agent may engage in business with any Loan Party as if it were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party for services in connection with this Agreement or otherwise without having to account for the same to Cash Collateral Providers.

14.10. Delivery of Documents. To the extent Agent receives financial statements required under Sections 9.7, 9.8, 9.9, 9.12 and 9.13 hereof from any Loan Party pursuant to the terms of this Agreement, such Loan Party shall also promptly deliver such documents and information to Cash Collateral Providers.

14.11. Loan Parties' Undertaking to Agent. Without prejudice to their respective obligations to Cash Collateral Providers under the other provisions of this Agreement, each Loan Party hereby undertakes with Agent to pay to Agent from time to time on demand all amounts from time to time due and payable by it for the account of Agent or Cash Collateral Providers or any of them pursuant to this Agreement to the extent not already paid. Any payment made pursuant to any such demand shall pro tanto satisfy the relevant Loan Party's obligations to make payments for the account of Cash Collateral Providers or the relevant one or more of them pursuant to this Agreement.

14.12. No Reliance on Agent's Customer Identification Program. To the extent the Advances or this Agreement is, or becomes, syndicated in cooperation with other Cash Collateral Providers, each Cash Collateral Provider acknowledges and agrees that neither such Cash Collateral Provider, nor any of its Affiliates, participants or assignees, may rely on Agent to carry out such Cash Collateral Provider's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA PATRIOT Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended, modified, supplemented or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any of Loan Parties, their Affiliates or their agents, the Other Documents or the transactions hereunder or contemplated hereby: (i) any identity verification procedures, (ii) any recordkeeping, (iii) comparisons with government lists, (iv) customer notices or (v) other procedures required under the CIP Regulations or such Anti-Terrorism Laws.

14.13. Other Agreements. Each of Cash Collateral Providers agrees that it shall not, without the prior written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the request of Agent, set off against the Obligations, any amounts owing by such Cash Collateral Provider to any Loan Party or any deposit accounts of any Loan Party now or hereafter maintained with such Cash Collateral Provider. Anything in this Agreement to the contrary notwithstanding, each of Cash Collateral Providers further agrees that it shall not, unless specifically requested to do so by Agent, take any action to protect or enforce its rights arising out of this Agreement or the Other Documents, it being the intent of Cash Collateral Providers that any such action to protect or enforce rights under this Agreement and the Other Documents shall be taken in concert and at the direction or with the consent of Agent or Required Cash Collateral Providers.

14.14. Erroneous Payments.

(a) If the Agent notifies a Cash Collateral Provider, Secured Party, or any Person who has received funds on behalf of a Cash Collateral Provider, Secured Party (any such Cash Collateral Provider, Secured Party or other recipient, a "Payment Recipient") that the Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Cash Collateral Provider, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Agent, and such Cash Collateral Provider or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent in same day funds at the greater of the Overnight Bank Funding Rate/Effective Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice from the Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Cash Collateral Provider or Secured Party, or any Person who has received funds on behalf of a Cash Collateral Provider or Secured Party hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Agent (or any of its Affiliates) (x) that is in an amount different than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such, prepayment or repayment (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates), or (z) that such Cash Collateral Provider or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) In the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Cash Collateral Provider or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Agent pursuant to this Section 14.14(b),

(c) Each Cash Collateral Provider or Secured Party hereby authorizes the Agent to set off, net and apply any and all amounts at any time owing to such Cash Collateral Provider or Secured Party under any Other Document, or otherwise payable or distributable by the Agent to such Cash Collateral Provider or Secured Party from any source, against any amount due to the Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Agent for any reason, after demand therefor by the Agent in accordance with immediately preceding clause (a), from any Cash Collateral Provider that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Agent's notice to such Cash Collateral Provider at any time, (i) such Cash Collateral Provider shall be deemed to have assigned its Advances (but not its commitments) of the relevant class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Agent may specify) (such assignment of the loans (but not commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an assignment and assumption with respect to such Erroneous Payment Deficiency Assignment, and such Cash Collateral Provider shall deliver any Notes evidencing such loans to the Borrower or the Agent, (ii) the Agent as the assignee Cash Collateral Provider shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Agent as the assignee Cash Collateral Provider shall become a Cash Collateral Provider hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Cash Collateral Provider shall cease to be a Cash Collateral Provider hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable commitments which shall survive as to such assigning Cash Collateral Provider and (iv) the Agent may reflect in the Register its ownership interest in the loans subject to the Erroneous Payment Deficiency Assignment. The Agent may, in its discretion, sell any loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Cash Collateral Provider shall be reduced by the net proceeds of the sale of such loan (or portion thereof), and the Agent shall retain all other rights, remedies and claims against such Cash Collateral Provider (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the commitments of any Cash Collateral Provider and such commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Agent has sold a loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Agent may be equitably subrogated, the Agent shall be contractually subrogated to all the rights and interests of the applicable Cash Collateral Provider or Secured Party under the Other Documents with respect to such Erroneous Payment Return Deficiency (the "Erroneous Payment Subrogation Rights").

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other loan party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from the Borrower or any other loan party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payment received, including without limitation, waiver of any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations under this Section 14.14 shall survive the resignation or replacement of the Agent, the termination of all of the commitments and/or repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Other Document.

XV. BORROWING AGENCY.

15.1. Borrowing Agency Provisions.

(a) Each Loan Party hereby irrevocably designates Borrowing Agent to be its attorney and agent and in such capacity whether verbally, in writing or through electronic methods (including, without limitation, an Approved Electronic Communication) to (i) request Advances, (ii) sign and endorse notes, (iii) execute and deliver all instruments, documents, applications, security agreements, and all other agreements, documents, instruments, certificates, notices, writings and further assurances now or hereafter required hereunder, (iv) make elections regarding interest rates, and (v) otherwise take action under and in connection with this Agreement and the Other Documents, all on behalf of and in the name of such Loan Party or Loan Parties, and hereby authorizes Agent to pay over or credit all advances hereunder in accordance with the request of Borrowing Agent.

(b) The handling of this credit facility as a co-borrowing facility with a borrowing agent in the manner set forth in this Agreement is solely as an accommodation to Loan Parties and at their request. Neither Agent nor any Cash Collateral Provider shall incur liability to Loan Parties as a result thereof. To induce Agent and Cash Collateral Providers to do so and in consideration thereof, each Loan Party hereby indemnifies Agent and each Cash Collateral Provider and holds Agent and each Cash Collateral Provider harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against Agent or any Cash Collateral Provider by any Person arising from or incurred by reason of the handling of the financing arrangements of Loan Parties as provided herein, reliance by Agent or any Cash Collateral Provider on any request or instruction from Borrowing Agent or any other action taken by Agent or any Cash Collateral Provider with respect to this Section 15.1 except due to willful misconduct or gross (not mere) negligence by the indemnified party (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

(c) All Obligations shall be joint and several, and each Borrower shall make payment upon the maturity of the Obligations by acceleration or otherwise, and such obligation and liability on the part of each Borrower shall in no way be affected by any extensions, renewals and forbearance granted by Agent or any Cash Collateral Provider to any Loan Party, failure of Agent or any Cash Collateral Provider to give any Loan Party notice of borrowing or any other notice, any failure of Agent or any Cash Collateral Provider to pursue or preserve its rights against any Loan Party, the release by Agent or any Cash Collateral Provider of any Collateral now or thereafter acquired from any Loan Party, and such agreement by each Borrower to pay upon any notice issued pursuant thereto is unconditional and unaffected by prior recourse by Agent or any Cash Collateral Provider to the other Loan Parties or any Collateral for such Borrower's Obligations or the lack thereof. Each Borrower waives all suretyship defenses.

15.2. Waiver of Subrogation. Each Loan Party expressly waives any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution of any other claim which such Loan Party may now or hereafter have against the other Loan Parties or any other Person directly or contingently liable for the Obligations hereunder, or against or with respect to any other Loan Party's property (including, without limitation, any property which is Collateral for the Obligations), arising from the existence or performance of this Agreement, until the termination of the Commitments, the termination of this Agreement and the Payment in Full of the Obligations.

15.3. Common Enterprise. The successful operation and condition of each of the Loan Parties and other Companies is dependent on the continued successful performance of the functions of the group of Loan Parties and other Companies as a whole and the successful operation of each Loan Parties and other Companies is dependent on the successful performance and operation of each other Loan Party and each other Company. Each of the Borrowers expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly or indirectly, from successful operations of Parent, each of the other Borrowers, each of the other Loan Parties, and the other Companies. Each Borrower expects to derive benefit (and the board of directors or other governing body of each such Borrower have determined that it may reasonably be expected to derive benefit), directly and indirectly, from the credit extended by the Cash Collateral Providers to the Borrowers hereunder, both in their separate capacities and as members of the group of Companies. Each Borrower has determined that execution, delivery, and performance of this Agreement and any Other Documents to be executed by such Borrower is within its corporate purpose, will be of direct and indirect benefit to such Borrower, and is in its best interest.

XVI. MISCELLANEOUS.

16.1. Governing Law. This Agreement and each Other Document (unless and except to the extent expressly provided otherwise in any such Other Document), and all matters relating hereto or thereto or arising herefrom or therefrom (whether arising under contract law, tort law or otherwise) shall, in accordance with Section 5-1401 of the General Obligations Law of the State of New York, be governed by and construed in accordance with the laws of the State of New York. Any judicial proceeding brought by or against any Loan Party with respect to any of the Obligations, this Agreement or any of the Other Documents may be brought in any court of competent jurisdiction in the State of New York, United States of America, and, by execution and delivery of this Agreement, each Loan Party accepts for itself and in connection with its properties, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. 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 or registered mail (return receipt requested) directed to Borrowing Agent at its address set forth in Section 16.6 hereof and service so made shall be deemed completed five (5) days after the same shall have been so deposited in the mails of the United States of America, or, at Agent's option, by service upon Borrowing Agent which each Loan Party irrevocably appoints as such Loan Party's Agent for the purpose of accepting service within the State of New York. Nothing herein shall affect the right to serve process in any manner permitted by law or shall limit the right of Agent or any Cash Collateral Provider to bring proceedings against any Loan Party in the courts of any other jurisdiction. Each Loan Party waives any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon forum non conveniens. Each Loan Party waives the right to remove any judicial proceeding brought against such Loan Party in any state court to any federal court. Any judicial proceeding by any Loan Party against Agent or any Cash Collateral Provider involving, directly or indirectly, any matter or claim in any way arising out of, related to or connected with this Agreement or any of the Other Documents shall be brought only in a federal or state court located in the County of New York, State of New York.

16.2. Entire Understanding.

(a) This Agreement and the documents executed concurrently herewith contain the entire understanding between each Loan Party, Agent and each Cash Collateral Provider and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. Any promises, representations, warranties or guarantees not herein contained and hereinafter made shall have no force and effect unless in writing, signed by each Loan Party's, Agent's and each Cash Collateral Provider's respective officers. Neither this Agreement nor any portion or provisions hereof may be amended, modified, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged. Notwithstanding the foregoing, Agent may modify this Agreement or any of the Other Documents for the purposes of completing missing content or correcting erroneous content of an administrative nature, without the need for a written amendment, provided that Agent shall send a copy of any such modification to Loan Parties and each Cash Collateral Provider (which copy may be provided by electronic mail). Each Loan Party acknowledges that it has been advised by counsel in connection with the execution of this Agreement and Other Documents and is not relying upon oral representations or statements inconsistent with the terms and provisions of this Agreement.

(b) Required Cash Collateral Providers. Agent with the consent in writing of Required Cash Collateral Providers, and the Loan Parties may, subject to the provisions of this Section 16.2(b), from time to time enter into any written amendments to this Agreement or any of the Other Documents or any other supplemental agreements, documents or instruments for the purpose of adding or deleting any provisions or otherwise amending, modifying, supplementing, changing, varying or waiving in any manner the conditions, provisions or terms hereof or thereof or waiving any Event of Default hereunder or thereunder, but only to the extent specified in such written amendments or other agreements, documents or instruments; provided, however, that no such amendment, or other agreement, document or instrument shall:

(i) increase the Cash Collateral Commitment or the Cash Collateral Commitment Amount, as applicable of any Cash Collateral Provider without the consent of such Cash Collateral Provider directly affected thereby;

(ii) extend the Term or the time for payment of principal or interest of any Advance (excluding the due date of any mandatory prepayment of an Advance), or any fee payable to any Cash Collateral Provider, or reduce the principal amount of or the rate of interest borne by any Advances or reduce any fee payable to any Cash Collateral Provider, without the consent of each Cash Collateral Provider directly affected thereby (except that Required Cash Collateral Providers may elect to waive or rescind any imposition of the Default Rate under Section 3.1 or Section 3.2 hereof (unless imposed by Agent));

(iii) alter the definition of the term Required Cash Collateral Providers or alter, amend or modify this Section 16.2(b) without the consent of all Cash Collateral Providers;

(iv) alter, amend or modify the provisions of Section 11.5 hereof without the consent of all Cash Collateral Providers;

(v) release any Collateral during any calendar year (other than in accordance with the provisions of this Agreement) having an aggregate value in excess of $25,000,000 without the consent of all Cash Collateral Providers;

(vi) change the rights and duties of Agent without the consent of all Cash Collateral Providers and Agent;

(vii) release any Borrower without the consent of all Cash Collateral Providers; or

(viii) subordinate the Liens securing the Obligations in favor of any other Liens (other than any Permitted Liens which have priority over the Liens securing the Obligations by operation of law or any Permitted Liens which, by the express terms hereof, are contemplated to have priority over any of the Liens securing the Obligations).

(c) Any such supplemental agreement shall apply equally to each Cash Collateral Provider and shall be binding upon Loan Parties, Cash Collateral Providers and Agent and all future holders of the Obligations. In the case of any waiver, Loan Parties, Agent and Cash Collateral Providers shall be restored to their former positions and rights, and any Event of Default waived shall be deemed to be cured and not continuing, but no waiver of a specific Event of Default shall extend to any subsequent Event of Default (whether or not the subsequent Event of Default is the same as the Event of Default which was waived), or impair any right consequent thereon.

(d) In the event that Agent requests the consent of a Cash Collateral Provider pursuant to this Section 16.2 and (x) such consent is denied and (y) Required Cash Collateral Providers have approved such consent, then Agent may require such Cash Collateral Provider to assign its interest in the Advances to Agent or to another Cash Collateral Provider or to any other Person designated by Agent (the "Designated Cash Collateral Provider"), for a price equal to (i) then outstanding principal amount thereof plus (ii) accrued and unpaid interest and fees (including any Prepayment Premium) due such Cash Collateral Provider, which interest and fees shall be paid when collected from Borrowers. In the event Agent elects to require any Cash Collateral Provider to assign its interest to Agent or to the Designated Cash Collateral Provider, Agent will so notify such Cash Collateral Provider in writing within forty five (45) days following such Cash Collateral Provider's denial, and such Cash Collateral Provider will assign its interest to Agent or the Designated Cash Collateral Provider no later than five (5) days following receipt of such notice pursuant to a Commitment Transfer Supplement executed by such Cash Collateral Provider, Agent or the Designated Cash Collateral Provider, as appropriate, and Agent.

16.3. Successors and Assigns; Participations; New Cash Collateral Providers.

(a) This Agreement shall be binding upon and inure to the benefit of Loan Parties, Agent, each Cash Collateral Provider, all future holders of the Obligations and their respective successors and assigns, except that no Loan Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Agent and each Cash Collateral Provider.

(b) Each Loan Party acknowledges that in the regular course of commercial banking business one or more Cash Collateral Providers may at any time and from time to time sell participating interests in the Advances to other Persons (each such transferee or purchaser of a participating interest, a "Participant"). Each Participant may exercise all rights of payment (including rights of set-off) with respect to the portion of such Advances held by it or other Obligations payable hereunder as fully as if such Participant were the direct holder thereof provided that (i) Borrowers shall not be required to pay to any Participant more than the amount which it would have been required to pay to Cash Collateral Provider which granted an interest in its Advances or other Obligations payable hereunder to such Participant had such Cash Collateral Provider retained such interest in the Advances hereunder or other Obligations payable hereunder unless the sale of the participation to such Participant is made with Borrower's prior written consent and (ii) in no event shall Borrowers be required to pay any such amount arising from the same circumstances and with respect to the same Advances or other Obligations payable hereunder to both such Cash Collateral Provider and such Participant. Loan Parties agree that each Participant shall be entitled to the benefits of Sections 2.2(g), 3.7, 3.9 and 3.10 (subject to the requirements and limitations therein, including the requirements under Section 3.10(e) (it being understood that the documentation required under Section 3.10(e) shall be delivered to the participating Cash Collateral Provider)) to the same extent as if it were a Cash Collateral Provider and had acquired its interest by assignment pursuant to Section 16.3(a); provided that each Cash Collateral Provider that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 3.11 with respect to any Participant. Each Loan Party hereby grants to any Participant a continuing security interest in any deposits, moneys or other property actually or constructively held by such Participant as security for the Participant's interest in the Advances. Each Cash Collateral Provider that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Advances or other obligations under this Agreement or any Other Documents (the "Participant Register"); provided that no Cash Collateral Provider shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under this Agreement or any Other Documents) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Income Tax Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Cash Collateral Provider shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement and any Other Documents notwithstanding any notice to the contrary. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(c) Any Cash Collateral Provider may, with the consent of Agent in its sole discretion, sell, assign or transfer all or any part of its rights and obligations under or relating to any of the Advances or Commitments of such Cash Collateral Provider under this Agreement and the Other Documents to one or more entities (each a "Purchasing Cash Collateral Provider"), in minimum amounts of not less than $5,000,000, pursuant to a Commitment Transfer Supplement, executed by a Purchasing Cash Collateral Provider, the transferor Cash Collateral Provider, and Agent and delivered to Agent for recording; provided, however, that any assignment of Cash Collateral Commitments may be effected by providing replacement cash collateral to the Agent (for further delivery to the applicable assignor, resulting in a return of such assignor's Cash Collateral and a reduction to such assignor's Cash Collateral Commitment). Upon such execution, delivery, acceptance and recording, from and after the transfer effective date determined pursuant to such Commitment Transfer Supplement, (i) Purchasing Cash Collateral Provider thereunder shall be a party hereto and, to the extent provided in such Commitment Transfer Supplement, have the rights and obligations of a Cash Collateral Provider hereunder with respect to the Advances and, if applicable, Commitments transferred to such Purchasing Cash Collateral Provider under such Commitment Transfer Supplement, and (ii) the transferor Cash Collateral Provider thereunder shall, to the extent provided in such Commitment Transfer Supplement, be released from its obligations under this Agreement. Such Commitment Transfer Supplement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing Cash Collateral Provider and, if and as applicable, the resulting adjustment of the Cash Collateral Commitment Percentages arising from the purchase by such Purchasing Cash Collateral Provider of all or a portion of the rights and obligations of such transferor Cash Collateral Provider under this Agreement and the Other Documents. Each Loan Party hereby consents to the addition of such Purchasing Cash Collateral Provider and, if and as applicable, the resulting adjustment of the Cash Collateral Commitment Percentages arising from the purchase by such Purchasing Cash Collateral Provider of all or a portion of the rights and obligations of such transferor Cash Collateral Provider under this Agreement and the Other Documents. Loan Parties shall execute and deliver such further documents and do such further acts and things in order to effectuate the foregoing.

(d) Any Cash Collateral Provider, with the consent of Agent in its sole discretion, may directly or indirectly sell, assign or transfer all or any portion of its rights and obligations under or relating to any of the Advances or Commitments of such Cash Collateral Provider under this Agreement and the Other Documents to an entity, whether a corporation, partnership, trust, limited liability company or other entity that (i) is a Fund and (ii) is administered, serviced or managed by the assigning Cash Collateral Provider or an Affiliate of such Cash Collateral Provider (a "Purchasing CLO" and together with each Participant and Purchasing Cash Collateral Provider, each a "Transferee" and collectively the "Transferees"), pursuant to a Commitment Transfer Supplement modified as appropriate to reflect the interest being assigned ("Modified Commitment Transfer Supplement"), executed by any intermediate purchaser, the Purchasing CLO, the transferor Cash Collateral Provider, and Agent as appropriate and delivered to Agent for recording; provided, however, that any assignment of Cash Collateral Commitments may be effected by providing replacement cash collateral to the Agent (for further delivery to the applicable assignor, resulting in a return of such assignor's Cash Collateral and a reduction to such assignor's Cash Collateral Commitment). Upon such execution and delivery, from and after the transfer effective date determined pursuant to such Modified Commitment Transfer Supplement, (i) Purchasing CLO thereunder shall be a party hereto and, to the extent provided in such Modified Commitment Transfer Supplement, have the rights and obligations of a Cash Collateral Provider thereunder with respect to the Advances and, if applicable, Commitments transferred to such Purchasing CLO under such Commitment Transfer Supplement, and (ii) the transferor Cash Collateral Provider thereunder shall, to the extent provided in such Modified Commitment Transfer Supplement, be released from its obligations under this Agreement. Such Modified Commitment Transfer Supplement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing CLO. Each Loan Party hereby consents to the addition of such Purchasing CLO. Loan Parties shall execute and deliver such further documents and do such further acts and things in order to effectuate the foregoing.

(e) Agent shall maintain at its address a copy of each Commitment Transfer Supplement and Modified Commitment Transfer Supplement delivered to it and a register (the "Register") for the recordation of the names, addresses and Payment Offices of each Cash Collateral Provider and the outstanding principal, Cash Collateral Commitments, accrued and unpaid interest, fees and other amounts due hereunder. The entries in the Register shall be conclusive, in the absence of manifest error, and each Loan Party, Agent and Cash Collateral Providers may treat each Person whose name is recorded in the Register as the owner of the Advance recorded therein for the purposes of this Agreement. The Register shall be available for inspection by Borrowing Agent or any Cash Collateral Provider at any reasonable time and from time to time upon reasonable prior notice. Agent shall receive a fee in the amount of $3,500 payable by the applicable Purchasing Cash Collateral Provider and/or Purchasing CLO upon the effective date of each transfer or assignment (other than to an intermediate purchaser or to a Permitted Assignee) to such Purchasing Cash Collateral Provider and/or Purchasing CLO and, if and as applicable, the resulting adjustment of the Cash Collateral Commitment Percentages arising therefrom.

(f) Each Loan Party authorizes each Cash Collateral Provider to disclose to any Transferee and any prospective Transferee any and all financial information in such Cash Collateral Provider's possession concerning such Loan Party which has been delivered to such Cash Collateral Provider by or on behalf of such Loan Party pursuant to this Agreement or in connection with such Cash Collateral Provider's credit evaluation of such Loan Party.

(g) Notwithstanding anything to the contrary set forth in this Agreement, any Cash Collateral Provider may at any time and from time to time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Cash Collateral Provider, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Cash Collateral Provider from any of its obligations hereunder or substitute any such pledgee or assignee for such Cash Collateral Provider as a party hereto.

16.4. Application of Payments. Agent shall have the continuing and exclusive right to apply or reverse and re-apply any payment and any and all proceeds of Collateral to any portion of the Obligations. To the extent that any Loan Party makes a payment or Agent or any Cash Collateral Provider receives any payment or proceeds of the Collateral for any Loan Party's benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the Obligations or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by Agent or such Cash Collateral Provider.

16.5. Indemnity. Each Loan Party shall defend, protect, indemnify, pay and save harmless Agent, each Cash Collateral Provider and each of their respective officers, directors, direct and indirect owners, Affiliates, attorneys, employees and agents (each an "Indemnified Party") for and from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, actions, judgments, suits, costs, charges, expenses and disbursements of any kind or nature whatsoever (including fees and disbursements of counsel) (collectively, "Claims") which may be imposed on, incurred by, or asserted against any Indemnified Party in arising out of or in any way relating to or as a consequence, direct or indirect, of: (i) this Agreement, the Other Documents, the Advances and other Obligations and/or the transactions contemplated hereby including the Transactions, (ii) any action or failure to act or action taken only after delay or the satisfaction of any conditions by any Indemnified Party in connection with and/or relating to the negotiation, execution, delivery or administration of the Agreement and the Other Documents, the credit facilities established hereunder and thereunder and/or the transactions contemplated hereby including the Transactions, (iii) any Loan Party's failure to observe, perform or discharge any of its covenants, obligations, agreements or duties under or breach of any of the representations or warranties made in this Agreement and the Other Documents, (iv) the enforcement of any of the rights and remedies of Agent or any Cash Collateral Provider under the Agreement and the Other Documents, (v) any threatened or actual imposition of fines or penalties, or disgorgement of benefits, for violation of any Anti-Terrorism Law by any Loan Party or any Affiliate or Subsidiary of any Loan Party, (vi) any claim, litigation, proceeding or investigation instituted or conducted by any Governmental Body or instrumentality, any Loan Party, any Affiliate or Subsidiary of any Loan Party or any other Person with respect to any aspect of, or any transaction contemplated by, or referred to in, or any matter related to, this Agreement or the Other Documents, whether or not Agent or any Cash Collateral Provider is a party thereto, and (vii) any failure by the Issuer to return to Agent and the Cash Collateral Providers the full amount of Cash Collateral in the Cash Collateral Accounts that are not used to reimburse Letter of Credit draws. Without limiting the generality of any of the foregoing, each Loan Party shall defend, protect, indemnify, pay and save harmless each Indemnified Party from any Claims which may be imposed on, incurred by, or asserted against any Indemnified Party under any Environmental Laws with respect to or in connection with any Real Property owned or leased by any Company, any Hazardous Discharge, the presence of any Hazardous Materials affecting such Real Property (whether or not the same originates or emerges from such Real Property or any contiguous real estate), including any Claims consisting of or relating to the imposition or assertion of any Lien on any of such Real Property under any Environmental Laws and any loss of value of such Real Property as a result of the foregoing except to the extent such loss, liability, damage and expense is attributable to any Hazardous Discharge resulting from actions on the part of Agent or any Cash Collateral Provider. Loan Parties' obligations under this Section 16.5 shall arise upon the discovery of the presence of any Hazardous Materials at any Real Property owned or leased by any Company, whether or not any federal, state, or local environmental agency has taken or threatened any action in connection with the presence of any Hazardous Materials, in each such case except to the extent that any of the foregoing arises out of the gross negligence or willful misconduct of the Indemnified Party (as determined by a court of competent jurisdiction in a final and non-appealable judgment). Without limiting the generality of the foregoing, this indemnity shall extend to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including fees and disbursements of counsel) asserted against or incurred by any of the Indemnified Parties by any Person under any Environmental Laws or similar laws by reason of any Loan Party's or any other Person's failure to comply with laws applicable to solid or hazardous waste materials, including Hazardous Materials and Hazardous Waste, or other Toxic Substances. This Section 16.5 shall not apply to Taxes other than Taxes that represent losses, claims, damages, etc. arising from a non-Tax claim.

16.6. Notice. Any notice or request hereunder may be given to Borrowing Agent or any Loan Party or to Agent or any Cash Collateral Provider at their respective addresses set forth below or at such other address as may hereafter be specified in a notice designated as a notice of change of address under this Section. Any notice, request, demand, direction or other communication (for purposes of this Section 16.6 only, a "Notice") to be given to or made upon any party hereto under any provision of this Agreement shall be given or made by telephone or in writing (which includes by means of electronic transmission (i.e., "e-mail") or by setting forth such Notice on a website to which Loan Parties are directed (an "Internet Posting") if Notice of such Internet Posting (including the information necessary to access such site) has previously been delivered to the applicable parties hereto by another means set forth in this Section 16.6) in accordance with this Section 16.6. Any such Notice must be delivered to the applicable parties hereto at the addresses and numbers set forth under their respective names set forth below in this Section 16.6 or in accordance with any subsequent unrevoked Notice from any such party that is given in accordance with this Section 16.6. Any Notice shall be effective:

(a) In the case of hand-delivery, when delivered;

(b) If given by mail, four (4) days after such Notice is deposited with the United States Postal Service, with first-class postage prepaid, return receipt requested;

(c) In the case of a telephonic Notice, when a party is contacted by telephone, if delivery of such telephonic Notice is confirmed no later than the next Business Day by hand delivery, or electronic transmission, an Internet Posting or an overnight courier delivery of a confirmatory Notice (received at or before 12:00 Noon on such next Business Day);

(d) [reserved];

(e) In the case of electronic transmission, when actually received;

(f) In the case of an Internet Posting, upon delivery of a Notice of such posting (including the information necessary to access such site) by another means set forth in this Section 16.6; and

(g) If given by any other means (including by overnight courier), when actually received.

Any Cash Collateral Provider giving a Notice to Borrowing Agent or any Loan Party shall concurrently send a copy thereof to Agent, and Agent shall promptly notify the other Cash Collateral Providers of its receipt of such Notice.

(A) If to Agent or MSD at:

MSD PCOF Partners XLV, LLC
c/o MSD Partners, L.P.
645 Fifth Ave, 21st Floor
New York, New York 10022 5910
Attn: Marcello Liguori
Email: mliguori@msdpartners.com

with a copy to:
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, New York 10178
Attention: Katherine G. Weinstein
Telephone: (212) 309-6775
E-mail: katherine.weinstein@morganlewis.com

(B) If to a Cash Collateral Provider other than Agent, as specified on its signature page hereto or in the Commitment Transfer Supplement or joinder agreement under which such Cash Collateral Provider became a party hereto.

(C) If to Borrowing Agent or any Loan Party:

Babcock & Wilcox Enterprises, Inc.
1200 East Market Street
Akron, Ohio 44305
Attention: Lou Salamone
Telephone: 919-280-7343
Email: lsalamone@babcock.com

and

Babcock & Wilcox Enterprises, Inc.
1200 East Market Street
Akron, Ohio 44305
Attention: John Dziewisz
Email: jjdziewisz@babcock.com

with a copy to:
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309
Attention: Sarah Borders
Telephone: (404) 572-3596
Email: sborders@kslaw.com

16.7. Survival. The obligations of Loan Parties under Sections 2.2(f), 2.2(g), 2.2(h), 2.16, 2.17, 2.19, 3.7, 3.8, 3.9, 3.10, 16.5 and 16.9 hereof and the obligations of Cash Collateral Providers under Sections 2.2, 2.15(b), 2.16, 2.18, 2.19, 13.2, 14.8 and 16.5 hereof shall survive the termination of this Agreement and the Other Documents and the Payment in Full of the Obligations.

16.8. Severability. If any part of this Agreement is contrary to, prohibited by, or deemed invalid under Applicable Laws, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given effect so far as possible.

16.9. Expenses. The Loan Parties shall pay (a) all out-of-pocket expenses incurred by Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for each of Agent), and shall pay all fees and time charges and disbursements for attorneys who may be employees of Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the Other Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (b) [reserved], (c) all reasonable out-of-pocket expenses incurred by Agent or any Cash Collateral Provider (including the fees, charges and disbursements of any counsel for Agent or any Cash Collateral Provider), and shall pay all fees and time charges for attorneys who may be employees of Agent or any Cash Collateral Provider, in connection with the enforcement or protection of its rights (i) in connection with this Agreement and the Other Documents, including its rights under this Section, or (ii) in connection with the Advances made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Advances, Cash Collateral or Letters of Credit, and (d) all reasonable out-of-pocket expenses of Agent's regular employees and agents engaged periodically to perform audits of the Loan Parties' books, records and business properties; provided for this Section 16.9, that any expenses for counsel shall be limited to one lead counsel and one local counsel in each relevant jurisdiction, and one specialty counsel in any relevant area of the law, for Agent and Cash Collateral Providers as a group.

16.10. Injunctive Relief. Each Loan Party recognizes that, in the event any Loan Party fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, or threatens to fail to perform, observe or discharge such obligations or liabilities, any remedy at law may prove to be inadequate relief to Cash Collateral Providers; therefore, Agent, if Agent so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving that actual damages are not an adequate remedy.

16.11. Consequential Damages. Neither Agent, nor any Cash Collateral Provider, nor any agent or attorney for any of them, shall be liable to any Loan Party (or any Affiliate of any Loan Party) for indirect, punitive, exemplary or consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Obligations or as a result of any transaction contemplated under this Agreement or any Other Document.

16.12. Captions. The captions at various places in this Agreement are intended for convenience only and do not constitute and shall not be interpreted as part of this Agreement.

16.13. Counterparts; Electronic Signatures. This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature hereto.

16.14. Construction. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, schedules or exhibits thereto.

16.15. Confidentiality; Sharing Information. Agent, each Cash Collateral Provider and each Transferee shall hold all non-public information obtained by Agent, such Cash Collateral Provider or such Transferee pursuant to the requirements of this Agreement in accordance with Agent's, such Cash Collateral Provider's and such Transferee's customary procedures for handling confidential information of this nature; provided, however, Agent, each Cash Collateral Provider and each Transferee may disclose such confidential information (a) to its examiners, Affiliates, directors, officers, partners, employees agents, current and prospective financing sources and investors, outside auditors, counsel and other professional advisors, (b) to Agent, any Cash Collateral Provider or to any prospective Transferees, (c) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any of the Other Documents, and (d) as required or requested by any Governmental Body or representative thereof or pursuant to legal process; provided, further that (i) unless specifically prohibited by Applicable Law, Agent, each Cash Collateral Provider and each Transferee shall use its reasonable best efforts prior to disclosure thereof, to notify the applicable Loan Party of the applicable request for disclosure of such non-public information (A) by a Governmental Body or representative thereof (other than any such request in connection with an examination of the financial condition of a Cash Collateral Provider or a Transferee by such Governmental Body) or (B) pursuant to legal process and (ii) in no event shall Agent, any Cash Collateral Provider or any Transferee be obligated to return any materials furnished by any Loan Party other than those documents and instruments in possession of Agent or any Cash Collateral Provider in order to perfect its Lien on the Collateral once the Obligations have been Paid in Full, the Commitments have been terminated and this Agreement has been terminated. Each Loan Party acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to such Loan Party or one or more of its Affiliates (in connection with this Agreement or otherwise) by any Cash Collateral Provider or by one or more Subsidiaries or Affiliates of such Cash Collateral Provider and each Loan Party hereby authorizes each Cash Collateral Provider to share any information delivered to such Cash Collateral Provider by such Loan Party and its Subsidiaries pursuant to this Agreement, or in connection with the decision of such Cash Collateral Provider to enter into this Agreement, to any such Subsidiary or Affiliate of such Cash Collateral Provider, it being understood that any such Subsidiary or Affiliate of any Cash Collateral Provider receiving such information shall be bound by the provisions of this Section 16.15 as if it were a Cash Collateral Provider hereunder. Such authorization shall survive the repayment of the other Obligations and the termination of this Agreement. Notwithstanding any non-disclosure agreement or similar document executed by Agent in favor of any Loan Party or any of any Loan Party's affiliates, the provisions of this Agreement shall supersede such agreements.

16.16. Publicity. Each Loan Party and each Cash Collateral Provider hereby authorizes Agent to make appropriate announcements of the financial arrangement entered into among Loan Parties, Agent and Cash Collateral Providers, including announcements which are commonly known as tombstones, in such advertising, print media, and promotional materials (including, without limitation, on any of the Agent's websites) and to such selected parties as Agent shall in its sole and absolute discretion deem appropriate.

16.17. Certifications From Banks and Participants; USA PATRIOT Act.

(a) Each Cash Collateral Provider or assignee or participant of a Cash Collateral Provider that is not incorporated under the Laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA PATRIOT Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to Agent the certification, or, if applicable, recertification, certifying that such Cash Collateral Provider is not a "shell" and certifying to other matters as required by Section 313 of the USA PATRIOT Act and the applicable regulations: (1) within ten (10) days after the Closing Date, and (2) as such other times as are required under the USA PATRIOT Act.

(b) The USA PATRIOT Act requires all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, Agent and each Cash Collateral Provider may from time to time request, and each Loan Party shall provide to Agent or such Cash Collateral Provider, such Loan Party's name, address, tax identification number and/or such other identifying information as shall be necessary for Agent or such Cash Collateral Provider to comply with the USA PATRIOT Act and any other Anti-Terrorism Law.

XVII. GUARANTY AND SURETYSHIP AGREEMENT

17.1. Guaranty and Suretyship Agreement. Each Guarantor hereby guarantees, and becomes surety for the prompt payment and performance when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of (a) all of the Obligations owing by the Loan Parties to the Secured Parties, including all of the costs and expenses and all of the indemnities owing to any Secured Party or other Indemnitee under the provisions of Sections 16.5 and 16.9 hereof, and (b) the costs and expenses of Agent in enforcing the provisions of this Article XVII (the "Guaranteed Obligations"). The obligations and liabilities of the Guarantors under this Article XVII are joint and several, and each Guarantor hereby acknowledges and accepts such joint and several liability and further acknowledges and agrees that the joint and several liabilities of Guarantors under the provisions of this Article XVII shall be primary and direct liabilities and not secondary liabilities.

17.2. Guaranty of Payment and Not Merely Collection. The provisions of this Article XVII constitute a guaranty of payment and not of collection and no Secured Party shall be required, as a condition of any Guarantor's liability hereunder, to make any demand upon or to pursue any of their rights against any Loan Parties and/or any of the Collateral, or to pursue any rights which may be available to any Secured Party with respect to any other person who may be liable for the payment of the Guaranteed Obligations and/or any other collateral or security available to any Secured Party therefor.

17.3. Guarantor and Suretyship Waivers.

(a) The provisions of this Article XVII constitute an absolute, unconditional, irrevocable and continuing guaranty and will remain in full force and effect until all of the Guaranteed Obligations have been Paid in Full. The provisions of this Article XVII will remain in full force and effect even if there are no Guaranteed Obligations outstanding at a particular time or from time to time. The provisions of this Article XVII will not be affected (i) by any surrender, exchange, acceptance, compromise or release by any Secured Party of any other party, or any other guaranty or any Collateral or other collateral or security held by it for any of the Guaranteed Obligations, (ii) by any failure of any Secured Party to take any steps to perfect or maintain their Liens or security interest in or to preserve their rights in or to any Collateral or any other security or other collateral for the Guaranteed Obligations or any guaranty, or (iii) by any irregularity, unenforceability or invalidity of the Guaranteed Obligations or any part thereof or any security therefor or other guaranty thereof, and the provisions of this Article XVII will not be affected by any other facts, events, occurrences or circumstances (except Payment in Full of the Guaranteed Obligations) that might otherwise give rise to any "guarantor" or "suretyship" defenses to which any Guarantor might otherwise be entitled, all of which such "guarantor" or "suretyship" defenses are hereby waived by each Guarantor. The obligations of each Guarantor hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense of any kind, including any such counterclaim, set-off, deduction or defense based upon any claim such Guarantor may have against any Borrower or any Secured Party (or any of their respective Affiliates), or based upon any claim any Borrower or any other guarantor or surety may have against any Secured Party (or any of their respective Affiliates), except the Payment in Full of the Guaranteed Obligations.

(b) Notice of acceptance of the agreement to guaranty provided for under the provisions of this Article XVII, notice of extensions of credit to Loan Parties from time to time, notice of default, diligence, presentment, notice of dishonor, protest, demand for payment, and any defense based upon any Secured Party's failure to comply with the notice requirements of §§ 9-611, 9-612 and 9-613 of the Uniform Commercial Code are hereby waived to the fullest extent permitted by law. Each Guarantor hereby waives all defenses based on suretyship or impairment of collateral to the fullest extent permitted by law.

(c) Secured Parties may at any time and from time to time, without impairing or releasing, discharging or modifying any Guarantor's liabilities hereunder and (for purposes of this Article XVII only) without notice to or the consent of any Guarantor: (i) change the manner, place, time or terms of payment or performance of or interest rates or other fees on, or other terms relating to (including the maturity thereof), any of the Guaranteed Obligations; (ii) renew, extend, substitute, modify, amend or alter or refinance, or grant consents or waivers relating to any of the terms and provisions of this Agreement or any of the Other Documents or of the Guaranteed Obligations, or of any other guaranties, or any security for the Obligations or guaranties, (iii) increase (without limit of any kind) or decrease the Guaranteed Obligations (including all loans and extensions of credit thereunder) or modify the terms on which loans and extensions of credit may be made to Loan Parties (including without limitation by making available to Loan Parties under this Agreement and/or any Other Document and as part of the Guaranteed Obligations any new loans, advances or other extensions of credit of any kind, including any such new loans, advances or extension of credit of a new or different type or nature as compared to the loans, advances and extensions of credit available to Loan Parties hereunder as of the Closing Date); (iv) apply any and all payments by whomever paid or however realized including any proceeds of the Collateral or any other collateral or security, to any Guaranteed Obligations in such order, manner and amount as Agent may determine in its sole discretion in accordance with the terms of this Agreement; (v) settle, compromise or deal with any other Person, including any Borrower or any other guarantor, with respect to the Guaranteed Obligations in such manner as Agent deems appropriate in its sole discretion; (vi) substitute, exchange, subordinate, sell, compromise or release any security or guaranty for the Guaranteed Obligations; or (vii) take such actions and exercise such remedies hereunder as provided herein.

17.4. Repayments or Recovery from Secured Parties. If any demand or claim is made at any time upon any Secured Party for the repayment or recovery of any amount received by it in payment or on account of the Guaranteed Obligations (including any such demand or claim made in respect of or arising out of any laws relating to fraudulent transfers, fraudulent conveyances or preferences) and if any Secured Party repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body in respect of such demand or claim, or by reason of any settlement or compromise of any such demand or claim, the joint and several liability of Guarantors with respect to such portion of the Guaranteed Obligations previously satisfied by the payment of the amount so repaid or recovered shall be reinstated and revived and Guarantors will be and remain jointly and severally liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by Agent and/or such Cash Collateral Provider, as the case may be. The provisions of this Section 17.4 shall survive any release and/or termination of this Agreement (and/or of any Guarantor's liability under this Article XVII) and will be and remain effective notwithstanding any contrary action which may have been taken by Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to Secured Parties' rights hereunder and any such release and/or termination will be deemed to have been conditioned upon such payment having become final and irrevocable.

17.5. Enforceability of Obligations. No modification, limitation or discharge of the Guaranteed Obligations arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law with respect to any Borrower or any other guarantor or surety for the Guaranteed Obligations will affect, modify, limit or discharge Guarantors' liability in any manner whatsoever and the provisions of this Article XVII will remain and continue in full force and effect and will be enforceable against each Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. Each Guarantor hereby waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the Guaranteed Obligations that may result from any such proceeding.

17.6. Guaranty Payable upon Event of Default; Remedies.

(a) Upon the occurrence and during the continuance of any Event of Default under this Agreement: (i) Guarantors shall pay to Agent, immediately upon Agent's demand therefore (except in the case of any Event of Default under Section 10.7, in which case Guarantors shall pay to Agent immediately, without any demand or notice whatsoever), the full amount of the Guaranteed Obligations; (ii) Agent in its discretion may exercise with respect to any Collateral of any Guarantor or any other collateral or security for the Guaranteed Obligations any one or more of the rights and remedies provided a secured party under the Uniform Commercial Code or any other applicable law or at equity (all of which such rights and remedies are hereby deemed incorporated herein and confirmed and ratified by Guarantors as if expressly set forth and granted and agreed to by Guarantors herein); and/or (iii) Agent in its discretion may exercise from time to time any other rights and remedies available to it or any other Secured Party at law, in equity or otherwise.

(b) The Guarantors jointly and severally agree that, as between the Guarantors and the Secured Parties, the Obligations of Loan Parties under this Agreement and the Other Documents may be declared to be forthwith due and payable as provided in Section 11.1 hereof (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 11.1) for purposes of this Article XVII (specifically including Section 17.1 hereof), notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Loan Parties and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such Obligations (whether or not due and payable by Loan Parties) shall forthwith become due and payable by the Guarantors for purposes of this Article XVII (specifically including Section 17.1 hereof).

(c) Each Guarantor hereby acknowledges that the guarantee provided for under the provisions of this Article XVII constitutes an instrument for the payment of money, and consents and agrees that any Secured Party, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

17.7. Waiver of Subrogation. Until the Guaranteed Obligations are Paid in Full and this Agreement and the Commitments have been terminated, each Guarantor waives in favor of Secured Parties any and all rights which such Guarantor may have to (a) assert any claim against any Borrower or any other Guarantor based on subrogation, restitution, reimbursement or contribution rights with respect to payments made under the provisions of this Article XVII, and (b) any realization on any property of any Borrower or any other Guarantor, including participation in any marshalling of any Borrower's or any other Guarantor's assets.

17.8. Continuing Guaranty and Suretyship Agreement. The provisions of this Article XVII shall constitute a continuing guaranty and suretyship obligation of each Guarantor with respect to all Guaranteed Obligations from time to time outstanding, arising or incurred, and shall continue in effect, and Secured Parties may continue to act in reliance hereon, until all of the Guaranteed Obligations have been Paid in Full and this Agreement and the Commitments have been terminated, and until such time, no Guarantor shall have any right to terminate or revoke the provisions of this Article XVII nor any of the guarantee and surety agreements and other covenants and undertakings provided for herein.

17.9. General Limitation on Guarantee Obligations. If, in the course of any legal action or proceeding under any applicable law, including any Insolvency Proceedings with respect to any Guarantor, the obligations of any Guarantor under the provisions of this Article XVII would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under the provisions of this Article XVII, then, notwithstanding any other provision to the contrary, the amount of such liabilities of such Guarantor under the provisions of this Article XVII shall, without any further action by such Guarantor, any Secured Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 17.10 hereof) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding. Absent any such determination in any such legal action or proceeding, the provisions of this Section 17.9 shall in no respect limit the obligations and liabilities of any Guarantor to Secured Parties, and each Guarantor shall remain liable to Secured Parties for the full amount guaranteed by such Guarantor hereunder.

17.10. Right of Contribution. Each Guarantor hereby agrees that to the extent that any Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 17.7 hereof. The provisions of this Section 17.10 shall in no respect limit the obligations and liabilities of any Guarantor to Secured Parties, and each Guarantor shall remain liable to Secured Parties for the full amount guaranteed by such Guarantor hereunder.

17.11. Intercreditor. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (a) the Liens granted to the Agent in favor of the Secured Parties pursuant to the Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of the Intercreditor Agreement, (b) in the event of any conflict between the express terms and provisions of this Agreement or any other Loan Document, on the one hand, and of the Intercreditor Agreement, on the other hand, the terms and provisions of the Intercreditor Agreement shall control, and (c) each Cash Collateral Provider hereunder authorizes and instructs the Agent to execute the Intercreditor Agreement on behalf of such Cash Collateral Provider, and such Cash Collateral Provider agrees to be bound by the terms thereof.

[Remainder of Page Intentionally Left Blank]

Each of the parties has signed this Agreement as of the day and year first above written.

BORROWER:

BABCOCK & WILCOX ENTERPRISES, INC.

By: /s/ Rodney Carlson
Name: Rodney Carlson
Title: Treasurer

GUARANTORS:

AMERICON EQUIPMENT SERVICES, INC.
AMERICON, LLC
BABCOCK & WILCOX CONSTRUCTION CO., LLC
BABCOCK & WILCOX EBENSBURG POWER, LLC
BABCOCK & WILCOX EQUITY INVESTMENTS, LLC
BABCOCK & WILCOX HOLDINGS, LLC,
BABCOCK & WILCOX INDIA HOLDINGS, INC.
BABCOCK & WILCOX INTERNATIONAL SALES AND SERVICE CORPORATION
BABCOCK & WILCOX INTERNATIONAL, INC.
THE BABCOCK & WILCOX COMPANY
BABCOCK & WILCOX TECHNOLOGY, LLC
DELTA POWER SERVICES, LLC
DIAMOND OPERATING CO., INC.
DIAMOND POWER AUSTRALIA HOLDINGS, INC.
DIAMOND POWER CHINA HOLDINGS, INC.
DIAMOND POWER EQUITY INVESTMENTS, INC.
DIAMOND POWER INTERNATIONAL, LLC
EBENSBURG ENERGY, LLC
O&M HOLDING COMPANY
POWER SYSTEMS OPERATIONS, INC.
SOFCO – EFS HOLDINGS LLC
BABCOCK & WILCOX SPIG, INC.
BABCOCK & WILCOX CANADA CORP.

By: /s/ Rodney Carlson
Name: Rodney Carlson
Title: Treasurer

MSD PCOF PARTNERS XLV, LLC,
as Agent and a Cash Collateral Provider

By: /s/ Marcello Liguori
Name: Marcello Liguori
Title: Vice President

[MSD/B&W – Signature Page to Reimbursement Agreement]

Exhibit 10.4

GUARANTY AGREEMENT

This GUARANTY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Guaranty"), dated as of June 30, 2021, is made by B. RILEY FINANCIAL, INC. (the "Guarantor"), in favor of MSD PCOF PARTNERS XLV, LLC, as agent (in such capacity, the "Agent") for the ratable benefit of the Agent, the Cash Collateral Providers (as such term is defined in the Reimbursement Agreement described below), each co-agent or sub-agent appointed by the Agent from time to time pursuant to Section 14.1 of the Reimbursement Agreement described below and the other Persons to whom the Guaranteed Obligations are owed (collectively, the "Guaranteed Parties").

PRELIMINARY STATEMENT

WHEREAS, pursuant to that certain Letter of Credit Issuance and Reimbursement and Guaranty Agreement, dated as of the date hereof (as further amended, restated, supplemented or otherwise modified from time to time, the "LC Facility Agreement"), among PNC Bank (in its capacity as Issuer thereunder (the "Issuer")), Babcock & Wilcox Enterprises, Inc. (the "Borrower") and the Guarantors, the Issuer has agreed to issue letters of credit for the account of the Borrower, the Guarantors, and any Joint Venture or Consortium in accordance with the terms thereof, including the term that the Cash Collateral Providers provide cash collateral (the "Cash Collateral") to the Issuer to secure Eligible Letters of Credit as more fully set forth in the LC Facility Agreement and that certain Cash Collateral Agreement, dated as of the date hereof (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, the "Cash Collateral Agreement"), among the Issuer, the Agent, the Cash Collateral Providers, the Borrower and the Guarantors;

WHEREAS, pursuant to that certain Reimbursement, Guaranty, and Security Agreement, dated as of the date hereof (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, the "Reimbursement Agreement"), among the Borrower, the Guarantors, the Cash Collateral Providers, and the Agent, the Cash Collateral Providers have agreed to provide, for the benefit of the Borrower and Guarantors, the Cash Collateral to the Issuer to secure Eligible Letters of Credit (the "Cash Collateral Facility"), upon the terms and subject to the conditions and reimbursement obligations set forth therein;

WHEREAS, execution of this Guaranty is a condition precedent to the effectiveness of the Reimbursement Agreement and the provision of Cash Collateral, and the Agent and the Cash Collateral Providers are entering into the Reimbursement Agreement and providing the Cash Collateral in reliance on the Guarantor's obligations hereunder; and

WHEREAS, the Guarantor is an owner of Equity Interests in the Borrower, and will materially benefit from the issuance of Eligible Letters of Credit to be secured by the Cash Collateral provided pursuant to the Reimbursement Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, and to induce the Agent and the other Guaranteed Parties to enter into the Reimbursement Agreement, provide the Cash Collateral, and make certain extensions of credit available to the Borrower under the Reimbursement Agreement, the Guarantor hereby agrees with the Agent, for the ratable benefit of the Guaranteed Parties as follows:

AGREEMENT

1. Defined Terms. Capitalized terms used and not otherwise defined herein shall have the meanings herein that are assigned to such terms in the Reimbursement Agreement. The following terms when used herein shall have the meanings set forth below:

"Borrower Entities" shall have the meaning set forth in Section 9(a).

"Guarantee Event" means any of the following acts or omissions:

(a) the acceleration of the Obligations under Section 11.1 of the Reimbursement Agreement, whether automatic or resulting from the action of the Agent or the Required Cash Collateral Providers; or

(b) the occurrence of an Event of Default under Section 10.1 of the Reimbursement Agreement; or

(c) (i) the Guarantor shall generally not pay its debts as such debts become due, shall admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors or admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business, (ii) any proceeding shall be instituted by or against the Guarantor seeking to adjudicate it a bankrupt or an insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts, under any Insolvency Law, or seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee or other similar official for it or for any substantial part of its property; provided, however, that, in the case of any such proceedings instituted against the Guarantor (but not instituted by the Guarantor), such proceedings shall remain undismissed or unstayed for a period of thirty (30) days or more or an order or decree approving or ordering any of the foregoing shall be entered, or (iii) the Guarantor shall take any corporate action to authorize any action set forth in clauses (i) or (ii) above;

(d) notwithstanding the waivers of the Guarantor set forth in Section 5, the Guarantor or any of its affiliates or any other party acting on the Guarantor or any of its affiliates' behalf in concert with the Guarantor or any of its affiliates makes any assertion that that this Guaranty or any provision hereof ceases to be valid, binding on, or enforceable against the Guarantor.

"Guarantor Claims" shall have the meaning set forth in Section 9(a).

"Guaranteed Obligations" has the meaning set forth in Section 2(a).

"Obligations" means the "Obligations" (as such term is defined in the Reimbursement Agreement). For the avoidance of doubt, the Obligations include (i) reimbursement obligations for Cash Collateral withdrawn from the Cash Collateral Account to satisfy unreimbursed draws on letters of credit, which obligations may be converted to Delayed Draw Term Loans, (ii) indemnification obligations in favor of the Guaranteed Parties relating to any losses or other claims of the Guaranteed Parties in connection with providing the Cash Collateral to the Issuer, (iii) the obligation to pay to the Guaranteed Parties the full amount of any remaining Cash Collateral in the Cash Collateral Accounts not used to reimburse draws under the Letters of Credit (the "Cash Collateral Obligations"), and (iv) interest and fees (including the Prepayment Premium and any interest and fees that accrue after the commencement of any proceeding or case commenced by or against the Guarantor or the Borrower or any Guarantor under any Insolvency Law, regardless of whether allowed or allowable in whole or in part as a claim in any such Proceeding), expenses and other liabilities in respect of the Cash Collateral Facility.

"Payment in Full" means (i) (A) the termination of all commitments of the Cash Collateral Providers to extend credit under the Reimbursement Agreement or (B) the Guarantor assuming all of the commitments of the Cash Collateral Providers to extend credit under the Reimbursement Agreement and (ii) the indefeasible payment in full in cash/immediately available funds of all of the Obligations (including Post-Petition Obligations) owing at the applicable time (including contingent obligations with respect to draws on Eligible Letters of Credit and Cash Collateral Withdrawals, but not including contingent indemnification obligations as to which no claim or demand has been made) and, without duplication of the foregoing, the return to the Agent of all unused Cash Collateral in the Cash Collateral Accounts or a payment by the Guarantor of an equivalent amount in cash to the Agent.

2. Guaranty.

(a) The Guarantor hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment at all times of all Obligations, including, without limitation, (i) any outstanding Delayed Draw Term Loans (including all renewals, extensions, amendments, restatements and other modifications thereof) and earned interest and fees in relation thereto as set forth in the Reimbursement Agreement (including any interest paid-in-kind or deferred, any commitment fees, the prepayment premium set forth in Section 3.4 of the Reimbursement Agreement and any other consent or amendment fees), (ii) indemnification obligations in favor of the Guaranteed Parties relating to any losses or other claims of the Guaranteed Parties in connection with providing the Cash Collateral to the Issuer, and (iii) the obligation to provide replacement cash collateral to the Agent in an amount equal to the Cash Collateral that is in the Cash Collateral Accounts, and in each case whether recovery upon such indebtedness and liabilities may be or hereafter become unenforceable or shall be an allowed or disallowed claim under any proceeding or case commenced by or against the Guarantor or the Borrower or any Guarantor under any Insolvency Law, and including interest that accrues after the commencement by or against the Borrower or any Guarantor of any proceeding under any Insolvency Law (collectively, the "Guaranteed Obligations"); provided that the Guarantor shall have no liability to make any payment under this Section 2(a) until the occurrence of a Guarantee Event; provided further that if the only Guarantee Event that has occurred is a Guarantee Event under clause (b) of the definition thereof, the Guarantor shall only be required to make payments of the Guaranteed Obligations under the Reimbursement Agreement and the Other Documents when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise.

(b) The books and records of the Agent and the books and records of each Guaranteed Party, showing the amount of the Guaranteed Obligations shall be admissible in evidence in any action or proceeding, and shall be conclusive absent manifest error of the amount of the Obligations and the interest accrued thereon and other payments due in respect thereof. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any instrument or agreement evidencing any Guaranteed Obligations or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Guaranteed Obligations, which might otherwise constitute a defense to the obligations of the Guarantor under this Guaranty, and the Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire, in law or in equity, in any way relating to any or all of the foregoing or otherwise.

(c) The Guarantor further agrees to pay any and all expenses (including, without limitation, all fees and disbursements of counsel) which may be paid or incurred by any Guaranteed Party in enforcing, or obtaining advice of counsel in respect of, any rights with respect to, or collecting, any or all of the Guaranteed Obligations and/or enforcing any rights with respect to, or collecting against, the Guarantor under this Guaranty.

(d) The Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the amount of the liability of the Guarantor hereunder without impairing this Guaranty or affecting the rights and remedies of any Guaranteed Party hereunder.

(e) The Guarantor agrees that whenever, at any time, or from time to time, it shall make any payment to any Guaranteed Party on account of its liability hereunder, it will notify the Agent in writing that such payment is made under this Guaranty for such purpose.

(f) The Guaranteed Obligations include as a component thereof, the obligation by the Guarantor to provide replacement cash collateral to the Agent in an amount equal to the Cash Collateral that is in the Cash Collateral Accounts.

3. No Setoff or Deductions; Taxes; Payments. The Guarantor shall make all payments hereunder without setoff or counterclaim against, among others, the Loan Parties, the Guaranteed Parties, and free and clear of and without deduction for any taxes, levies, imposts, duties, charges, fees, deductions, withholdings, compulsory loans, restrictions or conditions of any nature now or hereafter imposed or levied by any jurisdiction or any political subdivision thereof or taxing or other authority therein unless the Guarantor is compelled by Applicable Law to make such deduction or withholding and the Guarantor shall pay and indemnify each Guaranteed Party for Indemnified Taxes and Other Taxes. The obligations of the Guarantor under this paragraph shall survive the payment in full of the Guaranteed Obligations and termination of this Guaranty as to the Guarantor.

4. Rights of Guaranteed Parties. The Guarantor consents and agrees that the Guaranteed Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Guaranteed Obligations or any part thereof, (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Guaranteed Obligations, (c) apply such security and direct the order or manner of sale thereof as the Guaranteed Parties in their sole discretion may determine and (d) release or substitute one or more of any endorsers or other guarantors of any of the Guaranteed Obligations; provided that, without the prior written consent of the Guarantor, the Guaranteed Parties shall not agree to any amendment, waiver or modification of the Reimbursement Agreement that shall (w) modify any covenants or Events of Default set forth in the Reimbursement Agreement in a manner that makes the Reimbursement Agreement materially more restrictive, when taken as a whole with any other modifications made in the same transaction, than the Reimbursement Agreement as in effect immediately prior to making such modification, (x) extend or shorten the maturity of the term of the Reimbursement Agreement, (y) increase the principal amount of the Obligations or (z) increase any interest rate margins, fees or other pricing or economics thereunder (other than modifications in connection with any benchmark replacement event). Without limiting the generality of the foregoing, the Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of the Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of the Guarantor.

5. Certain Waivers. The Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor of the Obligations, or the cessation from any cause whatsoever (including any act or omission of any Guaranteed Party) of the liability of the Borrower other than payment and performance in full of the Guaranteed Obligations, (b) any defense based on any claim that the Guarantor's obligations exceed or are more burdensome than those of the Borrower, (c) the benefit of any statute of limitations affecting the Guarantor's liability hereunder, (d) any right to require any Guaranteed Party to proceed against the Borrower, proceed against or exhaust any security for the Guaranteed Obligations, or pursue any other remedy in any Guaranteed Party's power whatsoever, (e) any benefit of and any right to participate in any security now or hereafter held by any Guaranteed Party, which benefits and rights are hereby preserved, and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by any Applicable Law limiting the liability of or exonerating guarantors or sureties, or any defense related to changed circumstances, frustration of purpose, impossibility of performance or other claim based in law or equity. The Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Guaranteed Obligations.

6. Obligations Independent. The obligations of the Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor of the Obligations, and a separate action may be brought against the Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

7. Subrogation.

(a) The Guarantor shall not exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until Payment in Full. If any amounts are paid to the Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Guaranteed Parties and shall forthwith be paid to the Agent (for the benefit of itself and the other Guaranteed Parties) to reduce the amount of the Guaranteed Obligations, whether matured or unmatured.

(b) The Guaranteed Parties and the Borrower agree that the Guarantor shall have full rights of subrogation. If the Guarantor is required to make payments under the Guaranty, the Guaranteed Parties shall use their commercially reasonable efforts to take all actions that upon the Payment in Full, the Guarantor is assigned all rights and obligations of the Guaranteed Parties under the Reimbursement Agreement, Cash Collateral Agreement, Intercreditor Agreement and the Other Documents as applicable. The parties shall use their commercially reasonable efforts following the date of this Guaranty to amend the foregoing documents to provide for the Guarantor to assume all rights and obligations of the Guaranteed Parties upon termination of this Guaranty.

8. Termination; Reinstatement. This Guaranty is a continuing and irrevocable guarantee of all Guaranteed Obligations, now or hereafter existing, and shall remain in full force and effect with respect to the Guarantor, until the termination of this Guaranty in accordance with its terms. Notwithstanding anything to the contrary, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or the Guarantor is made, or any Guaranteed Party exercises its right of setoff, in respect of the Guaranteed Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any Guaranteed Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Insolvency Law or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not any Guaranteed Party is in possession of or has released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of the Guarantor under this paragraph shall survive termination of this Guaranty.

9. Subordination.

(a) As used herein, the term "Guarantor Claims" shall mean all debts and liabilities of the Borrower or any of its subsidiaries (collectively, the "Borrower Entities") to the Guarantor, whether such debts and liabilities now exist or are hereafter incurred or arise, or whether the obligations of the Borrower Entities thereon be direct, contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such debts or liabilities be evidenced by note, contract, open account, or otherwise, and irrespective of the Person in whose favor such debts or liabilities may, at their inception, have been, or may hereafter be created, or the manner in which they have been or may hereafter be acquired by the Guarantor. The Guarantor Claims shall include without limitation all rights and claims of the Guarantor against the Borrower Entities (arising as a result of subrogation or otherwise) as a result of the Guarantor's payment of all or a portion of the Guaranteed Obligations. Without limitation to any subordination terms set forth in the Reimbursement Agreement or the Other Documents, the Guarantor Claims are subordinate in right of payment until such time as the Obligations have been indefeasibly repaid in full in cash. Upon the occurrence and during the continuance of a Default or Event of Default, the Guarantor shall not, and shall not be entitled to, receive or collect, directly or indirectly, from the Borrower Entities or any other party any amount upon the Guarantor Claims.

(b) In the event that, notwithstanding anything to the contrary in this Guaranty, the Guarantor should receive any funds, payment, claim or distribution which is prohibited by this Guaranty, the Guarantor agrees to hold in trust for the Guaranteed Parties an amount equal to the amount of all funds, payments, claims or distributions so received, and agrees that it shall have absolutely no dominion over the amount of such funds, payments, claims or distributions so received except to pay them promptly to the Guaranteed Parties, and the Guarantor covenants promptly to pay the same to the Guaranteed Parties.

10. Stay of Acceleration. In the event that acceleration of the time for payment of any of the Guaranteed Obligations is stayed, in connection with any case commenced by or against the Borrower or any guarantor of the Obligations under any Insolvency Law, or otherwise, all such amounts shall nonetheless be payable by the Guarantor immediately upon demand by the Agent (at the direction of the Required Cash Collateral Providers).

11. Condition of Borrower. The Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower such information concerning the financial condition, business and operations of the Borrower as the Guarantor requires, and that no Guaranteed Party has a duty, and the Guarantor is not relying on any Guaranteed Party at any time, to disclose to the Guarantor any information relating to the business, operations or financial condition of the Borrower (the Guarantor waiving any duty on the part of any Guaranteed Parties to disclose such information and any defense relating to the failure to provide the same).

12. Representations and Warranties. To induce the Guaranteed Parties to enter into the Reimbursement Agreement, the Guarantor represents and warrants to the Guaranteed Parties as follows:

(a) The Guarantor is an owner of Equity Interests in the Borrower, and has received or will receive, direct or indirect benefit from the making of this Guaranty with respect to the Obligations.

(b) The Guarantor is familiar with, and has independently reviewed books and records regarding, the financial condition of the Borrower; however, the Guarantor is not relying on such financial condition or the Collateral as an inducement to enter this Guaranty. None of the Guaranteed Parties has any obligation to keep the Guarantor informed from time to time of the financial position, solvency, or creditworthiness of the Borrower or any Guarantor.

(c) No Guaranteed Party, nor any other party has made any representation, warranty or statement to the Guarantor in order to induce the Guarantor to execute this Guaranty.

(d) As of the date hereof, and after giving effect to this Guaranty and the contingent obligation evidenced hereby, the Guarantor is, and will be, solvent, and has and will have assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and has and will have property and assets sufficient to satisfy and repay its obligations and liabilities.

(e) The Guarantor has the legal right to execute and deliver, and to perform its obligations under, this Guaranty.

(f) This Guaranty constitutes legal, valid and binding obligations of the Guarantor enforceable in accordance with its terms, except as may be affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of creditors' rights generally, general equitable principles and an implied covenant of good faith and fair dealing.

(g) The execution, delivery and performance of this Guaranty will not violate any provision of any Applicable Law or contractual obligation of the Guarantor and will not result in or require the creation or imposition of any Lien on any of the properties or revenues of the Guarantor pursuant to any Applicable Law or contractual obligation of the Guarantor.

(h) No litigation, investigation or proceeding of or before any arbitrator or Governmental Body is pending or, to the knowledge of the Guarantor, threatened by or against the Guarantor or against any of its properties or revenues (i) with respect to this Guaranty or any of the transactions contemplated hereby, or (ii) which could reasonably be expected to materially impair the rights and remedies of the Agent or any Guaranteed Party under this Guaranty or the ability of the Guarantor to perform its obligations hereunder.

(i) No consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Body and no consent of any other Person (including, without limitation, any stockholder or creditor of the Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty.

(j) All representations and warranties made by the Guarantor herein shall survive the execution hereof.

13. Amendments; Etc. None of the terms or provisions of this Guaranty may be waived, amended, supplemented or otherwise modified, nor any consent be given, except with the written consent of the Agent (at the direction of the Required Cash Collateral Providers) and the Guarantor.

14. Notices. All notices and communications hereunder shall be given to the addresses and otherwise made in accordance with Section 16.6 of the Reimbursement Agreement; provided, that notices and communications to the Guarantor shall be directed to:

B. Riley Financial, Inc.
Burbank Blvd. Suite 400
Woodland Hills, CA 91367
Attention: Chairman (with a copy to General Counsel)
brriley@brileyfin.com
aforman@brileyfin.com

15. Governing Law; Submission to Jurisdiction; Venue; WAIVER OF JURY TRIAL; Right of Setoff. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. Without limiting the general applicability of the foregoing and the terms of the Reimbursement Agreement and the Other Documents to this Guaranty and the parties hereto, the terms of Sections 11.3, 12.3, and 16.1 of the Reimbursement Agreement are incorporated herein by reference, *mutatis mutandis*, with each reference to the "Borrower" therein (whether express or by reference to the Borrower as a "party" thereto) being a reference to the Guarantor, and the parties hereto agree to such terms.

16. Counterparts; Electronic Execution. This Guaranty may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Guaranty by e-mail or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Guaranty.

17. Successor and Assigns. The provisions of this Guaranty shall be binding upon the successors and assigns of the Guarantor and shall inure to the benefit of the Agent and the other Guaranteed Parties and their respective successors and assigns; provided, that the Guarantor may not assign, transfer, or delegate any of its rights or obligations under this Guaranty without the prior written consent of the Agent (at the direction of the Required Cash Collateral Providers), any such purported assignment, transfer or delegation without such consent being null and void.

18. Integration; Severability. This Guaranty represents the agreement of the Guarantor, the Agent and the other Guaranteed Parties with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties (written or oral) by the Agent or any other Guaranteed Party relative to the subject matter hereof and thereof not expressly set forth or referred to herein. The illegality or unenforceability of any provision of this Guaranty in any jurisdiction shall not in any way affect or impair the legality or enforceability of such provision in other jurisdictions, or the legality or enforceability of the remaining provisions of this Guaranty.

19. Miscellaneous. No failure by any Guaranteed Party to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein provided are cumulative and not exclusive of any remedies provided by law or in equity. The unenforceability or invalidity of any provision of this Guaranty shall not affect the enforceability or validity of any other provision herein. Unless otherwise agreed by the Agent (at the direction of the Required Cash Collateral Providers) and the Guarantor in writing, this Guaranty is not intended to supersede or otherwise affect any other guaranty now or hereafter given by the Guarantor or any other guarantor of the Obligations for the benefit of the Guaranteed Parties or any term or provision thereof.

20. Acknowledgments. The Guarantor hereby acknowledges that (a) it has been advised by counsel in the negotiation, execution and delivery of this Guaranty, the Reimbursement Agreement and the Other Documents to which it is a party and (b) it has received a copy of the Reimbursement Agreement and the Other Documents and has reviewed and understands the same.

21. Termination; Release. Upon (x) Payment in Full and (y) the termination of the Cash Collateral Facility and all commitments by the Cash Collateral Providers to provide Cash Collateral and make other credit extensions in respect thereof, this Guaranty and all obligations (other than those expressly stated to survive such termination or as may be reinstated after such termination) of the Guaranteed Parties and the Guarantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party.

22. Right of Guarantor. At any time after a Specified Event of Default, the Guarantor shall have the right to elect to effectuate a Payment in Full at its option; provided that the Guarantor's right to effect such Payment in Full with respect to any Specified Event of Default shall only be effective during the period commencing (a) (1) immediately after the occurrence of a Bankruptcy Event of Default and (2) fourteen days after the occurrence of any other Specified Event of Default and ending (b) thirty days after the Guarantor has obtained knowledge of the occurrence of such Specified Event of Default.

"Specified Events of Default" means, collectively, any

(a) Event of Default under Section 10.1 of the Reimbursement Agreement (without giving effect to any waiver or amendment that cures such Event of Default);

(b) Event of Default under Section 10.5 of the Reimbursement Agreement as result of the failure if any Loan Party to comply with any financial covenant set forth in the Reimbursement Agreement (without giving effect to any waiver or amendment that cures such Event of Default); or

(c) Event of Default (such Event of Default, a "Bankruptcy Event of Default") under Section 10.7 of the Reimbursement Agreement (without giving effect to any waiver or amendment that cures such Event of Default).

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the parties hereto has caused this Guaranty to be duly executed as of the date first above written.

GUARANTOR:

B. RILEY FINANCIAL, INC.

By: /s/ Phillip J. Ahn
Name: Phillip J. Ahn
Title: CFO

BABCOCK & WILCOX ENTERPRISES, INC., as Borrower

By: /s/ Rodney Carlson
Name: Rodney Carlson
Title: Treasurer

Acknowledged and accepted:

MSD PCOF PARTNERS XLV, LLC, as Agent and a Cash Collateral Provider

By: /s/ Marcell Liguori
Name: Marcello Liguori
Title: Vice President

Exhibit 99.1

News Release

Babcock & Wilcox Enterprises Announces Four-Year Senior Financing Facility

- *Establishes new revolving credit facility and letter of credit availability to support the Company's working capital needs, multi-year projects and growth initiatives*
- *Replaces the Company's prior Credit Agreement one year before its June 2022 refinancing requirement*

(AKRON, Ohio – July 7, 2021) – Babcock & Wilcox Enterprises, Inc. ("B&W" or the "Company") (NYSE: BW) announced that on June 30, 2021, it entered into agreements (the "Financing Agreements") with PNC Bank, N.A. ("PNC") and an affiliate of MSD Partners, L.P. ("MSD Partners") under which PNC has provided an up to $50 million asset-based revolving credit facility and availability for up to $125 million of letters of credit to B&W, and MSD Partners will provide cash collateral to support the letter of credit availability. The Financing Agreements have a maturity date of June 30, 2025.

All obligations under the Company's prior Credit Agreement with Bank of America N.A. as administrative agent have been discharged, and the Credit Agreement has been terminated. Under the terms of the prior Credit Agreement, approximately $9 million in deferred fees have been waived due to the Company's successful refinancing prior to July 1, 2021.

"The closing of this new facility is a significant accomplishment that demonstrates the strength of our company going forward and reflects the confidence of our lenders and our shareholders in our business and its future growth," said Kenneth Young, B&W Chairman and Chief Executive Officer. "With financing in place through June 2025, and long-term availability to support multi-year projects, we have a new start to build on our strong global growth strategy, continue to invest in our renewable, environmental, thermal and decarbonization technologies and evaluate potential acquisitions. The new senior facility will directly support new projects this year and ongoing projects as we leverage the strength of our experienced management team, improved balance sheet and robust pipeline to increase shareholder value while driving a worldwide industrial transformation to a green environmental future."

Evercore served as the exclusive financial advisor to B&W.

About Babcock & Wilcox Enterprises
Headquartered in Akron, Ohio, Babcock & Wilcox Enterprises is a global leader in energy and environmental technologies and services for the power and industrial markets.

About MSD Partners, L.P.
MSD Partners, L.P., an SEC-registered investment adviser located in New York, was formed in 2009 by the principals of MSD Capital, L.P. to enable a select group of investors to invest in strategies that were developed by MSD Capital. MSD Capital was established in 1998 to exclusively manage the capital of Michael Dell and his family. MSD Partners utilizes a multi-disciplinary investment strategy focused on maximizing long-term capital appreciation by making investments across the globe in the equities of public and private companies, credit, real estate and other asset classes and securities. For further information about MSD Partners, please see www.msdpartners.com.

Forward-Looking Statements

Statements in this press release that are not descriptions of historical facts are forward-looking statements that are based on management's current expectations and assumptions and are subject to risks and uncertainties. If such risks or uncertainties materialize or such assumptions prove incorrect, our business, operating results, financial condition and stock price could be materially negatively affected. You should not place undue reliance on such forward-looking statements, which are based on the information currently available to us and speak only as of the date of this press release. Such forward looking statements include, but are not limited to, statements regarding the Company's strength and future growth going forward, global growth strategy, future investments and the impact of and support provided by the credit facility. Factors that could cause such actual results to differ materially from these contemplated or implied by such forward-looking statements include, without limitation, the risks associated with the unpredictable and ongoing impact of the COVID-19 pandemic and other risks described from time to time in the Company's periodic filings with the SEC, including, without limitation, the risks described in the Company's Annual Report on Form 10-K for the year ended December 31, 2020 and the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2021, under the captions "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" (as applicable). These factors should be considered carefully, and the Company cautions not to place undue reliance on these forward-looking statements, which speak only as of the date of this release, and undertakes no obligation to update or revise any forward-looking statement, except to the extent required by applicable law.

# # #

Investor Contact:
Megan Wilson
Vice President, Corporate Development & Investor Relations
Babcock & Wilcox Enterprises
704.625.4944 | investors@babcock.com

Media Contact:
Ryan Cornell
Public Relations
Babcock & Wilcox Enterprises
330.860.1345 | rscornell@babcock.com