

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

FORM 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the Quarterly Period Ended June 30, 2021

OR
☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
Commission File No. 000-22490



FORWARD AIR CORPORATION

(Exact name of registrant as specified in its charter)

Tennessee				62-1120025	
(State or other jurisdiction of incorporation)				(I.R.S. Employer Identification No.)	
1915 Snapps Ferry Road	Building N	Greeneville	TN	37745	
(Address of principal executive offices)				(Zip Code)	

Registrant's telephone number, including area code: (423) 636-7000

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	FWRD	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).
Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See definition of "large accelerated filer", "accelerated filer", "smaller reporting company", and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐ 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. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
Yes ☐ No ☒

The number of shares outstanding of the registrant's common stock, \$0.01 par value, as of August 5, 2021 was 27,100,389.

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Part I. Financial Information
Item 1. Financial Statements (Unaudited).

Forward Air Corporation
Condensed Consolidated Balance Sheets
(unaudited and in thousands, except share and per share amounts)

	June 30, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	\$ 50,844	\$ 40,254
Accounts receivable, less allowance of \$2,187 in 2021 and \$2,273 in 2020	209,187	156,490
Other receivables	16,999	—
Other current assets	19,982	28,150
Current assets held for sale	—	21,002
Total current assets	297,012	245,896
Property and equipment	383,155	380,519
Less accumulated depreciation and amortization	196,168	190,652
Total property and equipment, net	186,987	189,867
Operating lease right-of-use assets	148,651	123,338
Goodwill	254,993	244,982
Other acquired intangibles, net of accumulated amortization of \$100,018 in 2021 and \$93,009 in 2020	145,813	145,032
Other assets	48,385	45,181
Noncurrent assets held for sale	—	53,097
Total assets	<u>\$ 1,081,841</u>	<u>\$ 1,047,393</u>
Liabilities and Shareholders' Equity		
Current liabilities:		
Accounts payable	\$ 43,655	\$ 38,371
Accrued expenses	70,894	51,264
Other current liabilities	6,813	10,580
Current portion of debt and finance lease obligations	1,867	1,801
Current portion of operating lease liabilities	46,042	43,680
Current liabilities held for sale	—	25,924
Total current liabilities	169,271	171,620
Long-term debt and finance lease obligations, less current portion and debt issuance costs	161,729	117,408
Operating lease liabilities, less current portion	103,280	80,346
Other long-term liabilities	55,741	54,129
Deferred income taxes	41,471	41,986
Noncurrent liabilities held for sale	—	34,575
Shareholders' equity:		
Preferred stock, \$0.01 par value: Authorized shares - 5,000,000; no shares issued or outstanding in 2021 and 2020	—	—
Common stock, \$0.01 par value: Authorized shares - 50,000,000; issued and outstanding shares - 27,120,389 in 2021 and 27,316,434 in 2020	271	273
Additional paid-in capital	252,466	242,916
Retained earnings	297,612	304,140
Total shareholders' equity	550,349	547,329
Total liabilities and shareholders' equity	<u>\$ 1,081,841</u>	<u>\$ 1,047,393</u>

The accompanying notes are an integral part of the condensed consolidated financial statements.

Forward Air Corporation
Condensed Consolidated Statements of Comprehensive Income
(unaudited and in thousands, except per share amounts)

	Three Months Ended	
	June 30, 2021	June 30, 2020
Operating revenues	\$ 420,671	\$ 281,678
Operating expenses:		
Purchased transportation	215,217	142,069
Salaries, wages and employee benefits	84,641	63,772
Operating leases	20,370	17,387
Depreciation and amortization	9,414	9,413
Insurance and claims	10,891	7,722
Fuel expense	4,059	2,519
Other operating expenses	33,955	24,882
Total operating expenses	<u>378,547</u>	<u>267,764</u>
Income from continuing operations	42,124	13,914
Other expense:		
Interest expense	(1,323)	(1,198)
Total other expense	<u>(1,323)</u>	<u>(1,198)</u>
Income before income taxes	40,801	12,716
Income tax expense	10,124	3,491
Net income from continuing operations	30,677	9,225
Loss from discontinued operation, net of tax	—	(6,071)
Net income and comprehensive income	<u>\$ 30,677</u>	<u>\$ 3,154</u>
Basic net income (loss) per share		
Continuing operations	\$ 1.12	\$ 0.33
Discontinued operation	—	(0.22)
Net income per basic share	<u>\$ 1.12</u>	<u>\$ 0.11</u>
Diluted net income (loss) per share		
Continuing operations	\$ 1.11	\$ 0.33
Discontinued operation	—	(0.22)
Net income per diluted share	<u>\$ 1.11</u>	<u>\$ 0.11</u>
Dividends per share	<u>\$ 0.21</u>	<u>\$ 0.18</u>

The accompanying notes are an integral part of the condensed consolidated financial statements.

Forward Air Corporation
Condensed Consolidated Statements of Comprehensive Income
(unaudited and in thousands, except per share amounts)

	Six Months Ended	
	June 30, 2021	June 30, 2020
Operating revenues	\$ 782,873	\$ 587,235
Operating expenses:		
Purchased transportation	399,825	292,667
Salaries, wages and employee benefits	159,538	133,331
Operating leases	39,537	35,271
Depreciation and amortization	18,651	18,747
Insurance and claims	20,632	17,766
Fuel expense	7,761	6,532
Other operating expenses	72,081	53,234
Total operating expenses	718,025	557,548
Income from continuing operations	64,848	29,687
Other expense:		
Interest expense	(2,488)	(2,051)
Total other expense	(2,488)	(2,051)
Income before income taxes	62,360	27,636
Income tax expense	14,969	6,995
Net income from continuing operations	47,391	20,641
Loss from discontinued operation, net of tax	(5,533)	(9,112)
Net income and comprehensive income	\$ 41,858	\$ 11,529
Basic net income (loss) per share		
Continuing operations	\$ 1.72	\$ 0.72
Discontinued operation	(0.20)	(0.31)
Net income per basic share	\$ 1.52	\$ 0.41
Diluted net income (loss) per share		
Continuing operations	\$ 1.71	\$ 0.72
Discontinued operation	(0.20)	(0.32)
Net income per diluted share	\$ 1.51	\$ 0.40
Dividends per share	\$ 0.42	\$ 0.36

The accompanying notes are an integral part of the condensed consolidated financial statements.

Forward Air Corporation
Condensed Consolidated Statements of Cash Flows
(unaudited and in thousands)

	Six Months Ended	
	June 30, 2021	June 30, 2020
Operating activities:		
Net income from continuing operations	\$ 47,391	\$ 20,641
Adjustments to reconcile net income of continuing operations to net cash provided by operating activities of continuing operations		
Depreciation and amortization	18,651	18,747
Change in fair value of earn-out liability	(385)	(2,702)
Share-based compensation expense	5,578	5,507
Provision for revenue adjustments	3,525	1,787
Deferred income tax (benefit) expense	(572)	4,668
Other	189	697
Changes in operating assets and liabilities, net of effects from the purchase of acquired businesses:		
Accounts receivable	(51,018)	2,979
Other receivables	(13,491)	—
Other current and noncurrent assets	6,746	(29)
Accounts payable and accrued expenses	23,047	7,634
Net cash provided by operating activities of continuing operations	39,661	59,929
Investing activities:		
Proceeds from sale of property and equipment	1,314	988
Purchases of property and equipment	(8,575)	(14,214)
Purchase of a business, net of cash acquired	(22,543)	(55,931)
Net cash used in investing activities of continuing operations	(29,804)	(69,157)
Financing activities:		
Repayments of finance lease obligations	(954)	(676)
Proceeds from revolving credit facility	45,000	65,000
Payment of earn-out liability	—	(5,284)
Proceeds from issuance of common stock upon stock option exercises	3,570	—
Payments of dividends to stockholders	(11,565)	(10,087)
Repurchases and retirement of common stock	(33,992)	(15,259)
Proceeds from common stock issued under employee stock purchase plan	388	294
Payment of minimum tax withholdings on share-based awards	(2,832)	(3,286)
Contributions from (distributions to) subsidiary held for sale	1,118	(5,307)
Net cash provided by financing activities from continuing operations	733	25,395
Net increase in cash and cash equivalents of continuing operations	10,590	16,167
Cash from discontinued operation:		
Net cash used in operating activities of discontinued operation	(6,902)	(4,672)
Net cash provided by (used in) investing activities of discontinued operation	8,020	(635)
Net cash (used in) provided by financing activities of discontinued operation	(1,118)	5,307
Net increase in cash and cash equivalents	10,590	16,167
Cash and cash equivalents at beginning of period of continuing operations	40,254	64,749
Cash at beginning of period of discontinued operation	—	—
Net increase in cash and cash equivalents	10,590	16,167
Less: cash at end of period of discontinued operation	—	—
Cash and cash equivalents at end of period of continuing operations	<u>\$ 50,844</u>	<u>\$ 80,916</u>

The accompanying notes are an integral part of the condensed consolidated financial statements.

Forward Air Corporation
Condensed Consolidated Statements of Shareholders' Equity
(unaudited and in thousands)

	Common Stock		Additional Paid-in Capital	Retained Earnings	Total Shareholders' Equity
	Shares	Amount			
Balance at December 31, 2020	27,316	\$ 273	\$ 242,916	\$ 304,140	\$ 547,329
Net income	—	—	—	11,181	11,181
Stock options exercised	40	—	2,147	—	2,147
Share-based compensation expense	—	—	2,613	—	2,613
Payment of dividends to shareholders	—	—	3	(5,800)	(5,797)
Payment of minimum tax withholdings on share-based awards	(35)	—	—	(2,744)	(2,744)
Repurchases and retirement of common stock	(114)	(1)	—	(9,997)	(9,998)
Issuance of share-based awards	111	1	(1)	—	—
Balance at March 31, 2021	27,318	\$ 273	\$ 247,678	\$ 296,780	\$ 544,731
Net income	—	—	—	30,677	30,677
Stock options exercised	26	—	1,416	—	1,416
Common stock issued under employee stock purchase plan	5	—	388	—	388
Share-based compensation expense	—	—	2,981	—	2,981
Payment of dividends to shareholders	—	—	3	(5,771)	(5,768)
Payment of minimum tax withholdings on share-based awards	(1)	—	—	(82)	(82)
Repurchases and retirement of common stock	(252)	(2)	—	(23,992)	(23,994)
Issuance of share-based awards	24	—	—	—	—
Balance at June 30, 2021	27,120	\$ 271	\$ 252,466	\$ 297,612	\$ 550,349

	Common Stock		Additional Paid-in Capital	Retained Earnings	Total Shareholders' Equity
	Shares	Amount			
Balance at December 31, 2019	27,850	\$ 279	\$ 226,869	\$ 350,034	\$ 577,182
Net income	—	—	—	8,375	8,375
Share-based compensation expense	—	—	3,266	—	3,266
Payment of dividends to shareholders	—	—	2	(5,052)	(5,050)
Payment of minimum tax withholdings on share-based awards	(42)	—	—	(2,672)	(2,672)
Repurchases and retirement of common stock	(268)	(3)	—	(15,256)	(15,259)
Issuance of share-based awards	139	1	(2)	—	(1)
Balance at March 31, 2020	27,679	\$ 277	\$ 230,135	\$ 335,429	\$ 565,841
Net income	—	—	—	3,155	3,155
Common stock issued under employee stock purchase plan	7	—	295	—	295
Share-based compensation expense	—	—	2,654	—	2,654
Payment of dividends to shareholders	—	—	3	(5,042)	(5,039)
Payment of minimum tax withholdings on share-based awards	(13)	—	—	(613)	(613)
Issuance of share-based awards	56	—	(1)	—	(1)
Balance at June 30, 2020	27,729	\$ 277	\$ 233,086	\$ 332,929	\$ 566,292

The accompanying notes are an integral part of the condensed consolidated financial statements.

Forward Air Corporation
Notes to Condensed Consolidated Financial Statements
(unaudited and in thousands, except per share data)
June 30, 2021

1. Description of Business and Basis of Presentation

Basis of Presentation and Principles of Consolidation

Forward Air Corporation and its subsidiaries (“Forward Air” or the “Company”) is a leading asset-light freight and logistics company. The Company has two reportable segments: Expedited Freight and Intermodal. The Company conducts business in the United States and Canada.

The Expedited Freight segment operates a comprehensive national network to provide expedited regional, inter-regional and national less-than-truckload (“LTL”) services. Expedited Freight offers customers local pick-up and delivery and other services including final mile, truckload, shipment consolidation and deconsolidation, warehousing, customs brokerage and other handling.

The Intermodal segment provides first- and last-mile high value intermodal container drayage services both to and from seaports and railheads. Intermodal also offers dedicated contract and Container Freight Station (“CFS”) warehouse and handling services.

The condensed consolidated financial statements of the Company have been prepared in accordance with United States generally accepted accounting principles (“U.S. GAAP”) for interim financial information and the rules and regulations of the Securities and Exchange Commission. In the opinion of management, the accompanying unaudited condensed consolidated financial statements reflect all adjustments, which are of a normal recurring nature, necessary to present fairly the Company’s financial position, results of operations, and cash flows at the dates and for the periods presented. These condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and the notes thereto included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2020. Results for interim periods are not necessarily indicative of the results for the year.

The Board approved a strategy to divest the Pool Distribution business (“Pool”) on April 23, 2020, and the sale of Pool was completed on February 12, 2021. Pool provided high-frequency handling and distribution of time sensitive product to numerous destinations within a specific geographic region. Pool offered this service throughout the Mid-Atlantic, Southeast, Midwest and Southwest United States. Accordingly, the results of operations for Pool have been presented as a discontinued operation in our Condensed Consolidated Statements of Comprehensive Income for all period presented. In addition, the assets and liabilities were presented as held for sale in the Condensed Consolidated Balance Sheets for the prior period. Unless otherwise noted, amounts, percentages and discussion for all periods reflect the results of operations, financial condition and cash flows from our continuing operations.

2. Revenue Recognition

Revenue is recognized when the Company satisfies the performance obligation by the delivery of a shipment in accordance with contractual agreements, bills of lading (“BOLs”) and general tariff provisions. The amount of revenue recognized is measured as the consideration the Company expects to receive in exchange for those services pursuant to a contract with a customer. A contract exists once the Company enters into a contractual agreement with a customer. The Company does not recognize revenue in cases where collectibility is not probable, and defers recognition until collection is probable or payment is received.

The Company generates revenue from the delivery of a shipment and the completion of related services. Revenue for the delivery of a shipment is recorded over time to coincide with when customers simultaneously receive and consume the benefits of the delivery services. Accordingly, revenue billed to a customer for the transportation of freight are recognized over the transit period as the performance obligation to the customer is satisfied. The Company determines the transit period for a shipment based on the pick-up date and the delivery date, which may be estimated if delivery has not occurred as of a reporting period. The determination of the transit period and how much of it has been completed as of a given reporting date may require the Company to make judgments that impact the timing of revenue recognized. For delivery of shipments with a pick-up date in one reporting period and a delivery date in another reporting period, the Company recognizes revenue based on relative transit time in each reporting period. A portion of the total revenue to be billed to the customer after completion of a delivery is

Forward Air Corporation
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recognized in each reporting period based on the percentage of total transit time that has been completed at the end of the applicable reporting period. Upon delivery of a shipment or related service, customers are billed according to the applicable payment terms. Related services are a separate performance obligation and include accessorial charges such as terminal handling, storage, equipment rentals and customs brokerage.

Revenue is classified based on the line of business as the Company believes this best depicts the nature, timing and amount of revenue and cash flows. For all lines of business, the Company records revenue on a gross basis as it is the principal in the transaction as the Company has discretion to determine the amount of consideration. Additionally, the Company has the discretion to select drivers and other vendors for the services provided to customers. These factors, discretion in the amount of consideration and the selection of drivers and other vendors, support revenue recognized on a gross basis.

3. Discontinued Operation and Held for Sale

As previously disclosed, on April 23, 2020, the Company made a decision to divest of Pool. The Pool business met the criteria for held for sale classification. As a result, the assets and liabilities of Pool were presented separately under the captions “Current assets held for sale”, “Noncurrent assets held for sale”, “Current liabilities held for sale” and “Noncurrent liabilities held for sale” in the Condensed Consolidated Balance Sheets as of December 31, 2020. The results of Pool were reclassified to “Loss from discontinued operation, net of tax” in the Condensed Consolidated Statements of Comprehensive Income for three and six months ended June 30, 2021 and 2020. Certain corporate overhead and other costs previously allocated to Pool for segment reporting purposes did not qualify for classification within discontinued operation and have been reallocated to continuing operations. These costs were reclassified to the eliminations and other column in the segment reconciliation in Note 13, *Segment Reporting*.

Sale of Pool

On February 12, 2021, the Company completed the sale of the Pool business for \$8,000 in cash and up to a \$12,000 earn-out based on earnings before interest, taxes, depreciation and amortization. The sale agreement for Pool included an earn-out based on the achievement of certain earnings before interest, taxes, depreciation and amortization attainment over an eleven-month period, beginning February 1, 2021. The Company will receive payment for the amount earned in the first quarter of 2022, and if elected, the buyer may defer the payment of up to half of the amount earned to first quarter of 2023. The estimated fair value of the earn-out asset on the date of sale was \$6,967. The fair value was based on the estimated eleven-month period of the earnings before interest, taxes, depreciation and amortization and was calculated using a Monte Carlo simulation model.

The weighted-average assumptions under the Monte Carlo simulation model were as follows:

	February 12, 2021
Counterparty credit spread	1.2%
Earnings before interest, taxes, depreciation and amortization discount rate	15.0%
Asset volatility	55.0%

Subsequent to the date of sale, the Company will recognize any increases in the carrying value of the earn-out asset when the change is realized and will evaluate the earn-out asset for impairment at each reporting period. The Company concluded there were no indicators of impairment during the three months ended June 30, 2021. As of June 30, 2021, the Company recorded \$3,508 in “Other receivables” and \$3,459 in “Other assets” in the Condensed Consolidated Balance Sheets.

Transition Services Agreement

On February 12, 2021, the Company entered into a Transition Services Agreement (“TSA”) with TOG FAS Holdings LLC, the buyer of the Pool business. Under the TSA, the Company performs certain services on an interim basis in order to facilitate the orderly transition of the Pool business. The effective date of the TSA was February 12, 2021 and will remain in effect until the date all services have been completed, but no more than six months following effective date. The TSA provides the right to extend the term of the TSA with no limit on the number of the mutually agreed upon extensions. In exchange for the services performed by the Company under the TSA, the Company receives a monthly service charge. For the three and six

Forward Air Corporation
Notes to Condensed Consolidated Financial Statements
(unaudited and in thousands, except per share data)
June 30, 2021

months ended June 30, 2021, the Company recognized \$241 and \$412, respectively, in “Other operating expenses” in the Condensed Consolidated Statements of Comprehensive Income, for the services performed under the TSA.

Additionally, under the TSA, the Company remits payments to outside vendors on behalf of TOG FAS Holdings LLC for expenses incurred by the Pool business up to a limit of \$18,000. The Company is reimbursed by TOG FAS Holdings LLC within 60 days from the end of the month in which the payment is remitted. As of June 30, 2021, the Company recorded a receivable in the amount of \$13,491 in “Other receivables” in the Condensed Consolidated Balance Sheets for the reimbursement due to the Company.

Summarized Discontinued Operation Financial Information

A summary of the results of operations classified as a discontinued operation, net of tax, in the Condensed Consolidated Statements of Comprehensive Income for the three and six months ended June 30, 2021 and 2020 is as follows:

	Three Months Ended		Six Months Ended	
	June 30, 2021	June 30, 2020	June 30, 2021	June 30, 2020
Operating revenues	\$ —	\$ 13,974	\$ 17,087	\$ 50,926
Operating expenses:				
Purchased transportation	—	3,147	4,290	12,683
Salaries, wages and employee benefits	—	8,394	9,674	25,507
Operating leases	—	4,966	2,907	10,646
Depreciation and amortization	—	362	—	1,657
Insurance and claims	—	1,287	929	3,013
Fuel expense	—	413	644	1,740
Other operating expenses	—	3,495	2,087	7,841
Total operating expenses	—	22,064	20,531	63,087
Loss from discontinued operation	—	(8,090)	(3,444)	(12,161)
Loss on sale of business	—	—	(2,860)	—
Loss from discontinued operation before income taxes	—	(8,090)	(6,304)	(12,161)
Income tax benefit	—	(2,019)	(771)	(3,049)
Loss from discontinued operation, net of tax	\$ —	\$ (6,071)	\$ (5,533)	\$ (9,112)

Forward Air Corporation
Notes to Condensed Consolidated Financial Statements
(unaudited and in thousands, except per share data)
June 30, 2021

4. Acquisitions

Expedited Freight Acquisition

As part of the Company's strategy to expand final mile pickup and delivery operations, in April 2019, the Company acquired certain assets and liabilities of FSA Network, Inc., doing business as FSA Logistix ("FSA"), for \$27,000 and a potential earn-out of up to \$15,000. The purchase agreement for FSA included an earn-out up to \$15,000 based on the achievement of certain revenue milestones over two one-year periods, beginning May 1, 2019. The estimated fair value of the earn-out liability on the date of acquisition was \$11,803. The fair value was based on the estimated two-year performance of the acquired customer revenue and was calculated using a Monte Carlo simulation model. The fair value of the earn-out liability was adjusted at each reporting period based on changes in the expected cash flows and related assumptions used in the Monte Carlo simulation model. During the three and six months ended June 30, 2021, the fair value of the earn-out changed by (\$4) and (\$52), respectively, and the change in fair value was recorded in "Other operating expenses" in the Condensed Consolidated Statements of Comprehensive Income. During the three and six months ended June 30, 2020, the fair value of the earn-out changed by (\$2,108) and (\$2,702), respectively, and the change in fair value was recorded in "Other operating expenses" in the Condensed Consolidated Statements of Comprehensive Income. The first one-year period ended in the second quarter of 2020 and the Company paid \$5,284 based on the terms of the purchase agreement. The second one-year period ended in the second quarter of 2021 and the Company will remit payment in the third quarter of 2021 based on the terms of purchase agreement. As of June 30, 2021 and December 31, 2020, the fair value of the earn-out liability was \$6,813 and \$6,865, respectively, which was reflected in "Other current liabilities" in the Condensed Consolidated Balance Sheets.

In May 2021, the Company acquired certain assets and liabilities of J&P Hall Express Delivery ("J&P") for \$7,543. J&P is headquartered in Atlanta, Georgia with a second terminal in Albany, Georgia. The acquisition of J&P supports the Company's strategic growth plan by expanding pickup and delivery, less than truckload, truckload, less than container load, container freight station warehousing, and airport transfer services across the Southeastern United States. The acquisition was financed by cash flow from operations. The results of J&P have been included in the Company's Condensed Consolidated Financial Statements as of and from the date of acquisition. The associated goodwill has been included in the Company's Expedited Freight reportable segment.

Intermodal Acquisition

In February 2021, the Company acquired certain assets and liabilities of Proficient Transport Incorporated and Proficient Trucking, Inc. (together "Proficient Transport") for \$15,510 and a potential earn-out up to \$2,000. Proficient Transport is an intermodal drayage company headquartered in Chicago, Illinois. The acquisition of Proficient Transport supports the Company's strategic growth plan by expanding the intermodal footprint in Georgia, Illinois, North Carolina, and Texas, and introduces a new location in Ohio. The acquisition was financed by cash flows from operations. The results of Proficient Transport have been included in the Company's Condensed Consolidated Financial Statements as of and from the date of acquisition. The associated goodwill has been included in the Company's Intermodal reportable segment.

The purchase agreement for Proficient Transport included an earn-out up to \$2,000 based on the achievement of certain revenue milestones over a one-year period, beginning March 1, 2021. The estimated fair value of the earn-out liability on the date of acquisition was \$829. The fair value was based on the estimated one-year performance of the acquired customer revenue and was calculated using the option pricing method. The weighted-average assumptions used to calculate the estimated fair value of the earn-out under the option pricing method were as follows:

	February 28, 2021	June 30, 2021
Risk-free rate	0.1%	0.1%
Revenue discount rate	8.3%	8.3%
Revenue volatility	27.3%	19.7%

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During both the three and six months ended June 30, 2021, the fair value of the earn-out changed by (\$33) and the change in the fair value was recorded in “Other operating expenses” in the Condensed Consolidated Statements of Comprehensive Income. As of June 30, 2021, the fair value of the earn-out liability was \$496, which was reflected in “Other current liabilities” in the Condensed Consolidated Balance Sheets.

Fair Value of Assets Acquired and Liabilities Assumed

Assets acquired and liabilities assumed as of the acquisition date are presented in the following table:

	Proficient Transport February 28, 2021	J&P May 30, 2021
Tangible assets:		
Accounts receivable	\$ 4,171	\$ 1,686
Prepaid expenses and other current assets	—	32
Property and equipment	140	934
Other assets	24	3
Total tangible assets	4,335	2,655
Intangible assets:		
Customer relationships	6,060	1,580
Non-compete agreements	18	132
Goodwill	6,249	3,762
Total intangible assets	12,327	5,474
Total assets acquired	16,662	8,129
Liabilities assumed:		
Current liabilities	323	586
Total liabilities assumed	323	586
Net assets acquired	\$ 16,339	\$ 7,543

The fair value of the assets acquired and liabilities assumed are preliminary based on the information available as of the acquisition date through the date of this filing.

The weighted-average useful life of acquired intangible assets as of the acquisition date are summarized in the following table:

	Weighted-Average Useful Lives	
	Proficient Transport	J&P
Customer relationships	8 years	12 years
Non-compete agreements	1 year	5 years

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5. Goodwill and Other Intangible Assets

Goodwill

Changes in the carrying amount of goodwill during the six months ended June 30, 2021 are summarized as follows:

	Expedited Freight	Intermodal	Consolidated
Balance as of December 31, 2020	\$ 165,268	\$ 79,714	\$ 244,982
Acquisitions	3,762	6,249	10,011
Balance as of June 30, 2021	\$ 169,030	\$ 85,963	\$ 254,993

Goodwill is tested for impairment on an annual basis and more often if indications of impairment exist. The Company conducts its annual impairment analyses as of June 30 each year. Based on the current macroeconomic conditions, the Company assessed its goodwill and other intangible assets for indications of impairment as of June 30, 2021. The Company concluded there were no indicators of impairment during the six months ended June 30, 2021.

Other Intangible Assets

Changes in the carrying amount of acquired intangible assets during the six months ended June 30, 2021 are summarized as follows:

Gross Carrying Amount				
	Customer Relationships¹	Non-Compete Agreements	Trade Names	Total
Balance as of December 31, 2020	\$ 228,416	\$ 8,125	\$ 1,500	\$ 238,041
Acquisitions	7,640	150	—	7,790
Balance as of June 30, 2021	\$ 236,056	\$ 8,275	\$ 1,500	\$ 245,831

Accumulated Amortization				
	Customer Relationships¹	Non-Compete Agreements	Trade Names	Total
Balance as of December 31, 2020	\$ 85,930	\$ 5,579	\$ 1,500	\$ 93,009
Amortization expense	6,344	665	—	7,009
Balance as of June 30, 2021	\$ 92,274	\$ 6,244	\$ 1,500	\$ 100,018

¹ Carrying value as of June 30, 2021 and December 31, 2020 is inclusive of \$ 16,501 of accumulated impairment.

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6. Stock Incentive Plans

Stock Incentive Plan

The Company recorded shared-based compensation expense as follows for the three and six months ended June 30, 2021 and 2020:

	Three Months Ended		Six Months Ended	
	June 30, 2021	June 30, 2020	June 30, 2021	June 30, 2020
Salaries, wages and employee benefits - continuing operations	\$ 2,463	\$ 2,154	\$ 4,732	\$ 4,971
Salaries, wages and employee benefits - discontinued operation	—	222	16	410
Total share-based compensation expense	<u>\$ 2,463</u>	<u>\$ 2,376</u>	<u>\$ 4,748</u>	<u>\$ 5,381</u>

In May 2016, the Company adopted the 2016 Omnibus Incentive Compensation Plan (the “Omnibus Plan”) for the issuance of up to 2,000 of common shares to employees. As of June 30, 2021, approximately 797 shares remain available for grant under the Omnibus Plan.

Stock Options

Share-based compensation expense associated with stock options is amortized ratably over the vesting period. The Company estimates the fair value of the grants using the Black-Scholes option-pricing model.

Stock option transactions during the six months ended June 30, 2021 on a continuing operations basis were as follows:

	Stock Options	Weighted-Average Exercise Price
Outstanding as of January 1, 2021	359	\$ 55
Granted	39	75
Exercised	(52)	54
Forfeited	—	
Outstanding as of June 30, 2021	<u>346</u>	<u>\$ 58</u>

As of June 30, 2021, the total share-based compensation expense related to unvested stock options net yet recognized was \$1,002, and the weighted-average period over which it is expected to be recognized is approximately two years.

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Stock option transactions during the six months ended June 30, 2021 on a discontinued operation basis were as follows:

	Stock Options	Weighted-Average Exercise Price
Outstanding as of January 1, 2021	14	\$ 52.15
Granted	—	—
Exercised	(14)	52.15
Forfeited	—	—
Outstanding as of June 30, 2021	—	\$ —

Restricted Shares

Restricted shares are restricted from sale or transfer until vesting, and restrictions lapse in three equal installments beginning one year after the date of grant. Share-based compensation expense associated with these awards is amortized ratably over the requisite service period. Restricted share transactions during the six months ended June 30, 2021 on a continuing operations basis were as follows:

	Restricted Shares	Weighted-Average Grant Date Fair Value
Outstanding as of January 1, 2021	210	\$ 62.78
Granted	108	75.28
Vested	(98)	61.49
Forfeited	(15)	69.91
Outstanding as of June 30, 2021	205	\$ 69.31

As of June 30, 2021, the total share-based compensation expense related to restricted shares not yet recognized was \$11,227, and the weighted-average period over which it is expected to be recognized is approximately two years.

Restricted share transactions during the six months ended June 30, 2021 on a discontinued operation basis were as follows:

	Restricted Shares	Weighted-Average Grant Date Fair Value
Outstanding as of January 1, 2021	10	\$ 61.25
Granted	—	—
Vested	(5)	60.49
Forfeited	(5)	61.92
Outstanding as of June 30, 2021	—	\$ —

Performance Awards

Performance awards are based on achieving certain financial targets, such as targets for earnings before interest, taxes, depreciation and amortization, and the Company's total shareholder return as compared to the total shareholder return of a selected peer group, as determined by the Company's Board of Directors. Performance targets are set at the beginning of each three-year measurement period. Share-based compensation expense associated with these awards is amortized ratably over the vesting period. Depending on the financial target, the compensation expense is based on the projected assessment of the level of performance that will be achieved.

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Performance award transactions during the six months ended June 30, 2021 on a continuing operations basis were as follows assuming target levels of performance:

	Performance Awards	Weighted-Average Grant Date Fair Value
Outstanding as of January 1, 2021	65	\$ 67.62
Granted	36	87.33
Earned	(11)	72.30
Forfeited or unearned	(11)	70.22
Outstanding as June 30, 2021	79	\$ 75.61

As of June 30, 2021, the total share-based compensation expense related to unearned performance awards not yet recognized, assuming the Company's current projected assessment of the level of performance that will be achieved, was \$4,621, and the weighted-average period over which it is expected to be recognized is approximately three years.

Employee Stock Purchase Plan

As of June 30, 2021, the Company is authorized to issue up to a remaining 330 shares of common stock to employees under the 2005 Employee Stock Purchase Plan (the "ESPP"). These shares may be issued at a price equal to 90% of the lesser of the market value on the first day or the last day of each six-month purchase period. Common stock purchases are paid for through periodic payroll deductions and/or up to two large lump sum contributions.

Employee stock purchase plan activity and related information was as follows on a continuing operations basis:

	Six Months Ended	
	June 30, 2021	June 30, 2020
Shares purchased by participants under the ESPP	5	6
Average purchase price	\$ 68.76	\$ 44.84
Weighted-average fair value of each purchase right under the ESPP granted ¹	\$ 20.99	\$ 4.98
Share-based compensation for ESPP shares	\$ 118	\$ 30

¹ Equal to the discount from the market value of the common stock at the end of each six month purchase period.

Employee stock purchase plan activity and related information was as follows on a discontinued operation basis:

	Six Months Ended	
	June 30, 2021	June 30, 2020
Shares purchased by participants under the ESPP	—	1
Average purchase price	\$ —	\$ 44.84
Weighted-average fair value of each purchase right under the ESPP granted ¹	\$ —	\$ 4.98
Share-based compensation for ESPP shares	\$ —	\$ 3

¹ Equal to the discount from the market value of the common stock at the end of each six month purchase period.

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Director Restricted Shares

Under the Amended and Restated Non-Employee Director Stock Plan (the “Amended Plan”), approved in May 2007 and further amended in February 2013 and January 2016, up to 360 of common shares may be issued. As of June 30, 2021, approximately 75 shares remain available for grant under the Amended Plan.

Director restricted share transactions during the six months ended June 30, 2021 were as follows:

	Director Restricted Shares	Weighted-Average Grant Date Fair Value
Outstanding as of January 1, 2021	24	\$ 42.88
Granted	17	93.39
Vested	(26)	47.12
Forfeited	—	—
Outstanding as of June 30, 2021	<u>15</u>	<u>\$ 93.46</u>

For the three and six months ended June 30, 2021, the Company recorded \$400 and \$728, respectively, of share-based compensation expense associated with these grants. For the three and six months ended June 30, 2020, the Company recorded \$245 and \$506, respectively, of share-based compensation expense associated with these grants. As of June 30, 2021, the total share-based compensation expense related to the restricted shares not yet recognized was \$1,221, and the weighted-average period over which it is expected to be recognized is approximately less than one year.

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7. Indebtedness

As of June 30, 2021, the Company had \$157,500 in borrowings outstanding under the revolving credit facility, \$18,326 utilized for outstanding letters of credit and \$49,174 of available borrowing capacity under the revolving credit facility. As of December 31, 2020, the Company had \$112,500 in borrowings outstanding under the revolving credit facility, \$18,326 utilized for outstanding letters of credit and \$94,174 of available borrowing capacity under the revolving credit facility. The interest rate on the outstanding borrowings under the revolving credit facility was 3.25% as of both June 30, 2021 and June 30, 2020.

In September 2017, the Company entered into a five-year senior unsecured revolving credit facility (the “Facility”) with a maximum aggregate principal amount of \$150,000, with a sublimit of \$30,000 for letters of credit and a sublimit of \$30,000 for swing line loans. The maturity date of the Facility is September 29, 2022. In April 2020, the Company entered into the first amendment to the Facility, which increased the maximum aggregate principal amount to \$225,000. The Facility may be increased by up to \$25,000 to a maximum aggregate principal amount of \$250,000 pursuant to the terms of the amended credit agreement, subject to the lenders’ agreement to increase their commitments or the addition of new lenders extending such commitments. Such increases to the Facility may be in the form of additional revolving credit loans, term loans or a combination thereof, and are contingent upon there being no events of default under the Facility.

Under the amended Facility, interest accrues on the amounts outstanding under the Facility, at the Company’s option, at either (1) London Interbank Offered Rate (“LIBOR”) rate, not less than 1.00%, plus a margin ranging from 2.25% to 2.75% based on the Company’s leverage ratio, or (2) base rate, which cannot be less than 3.00%. The base rate is the highest of (i) the federal funds rate, not less than zero, plus 0.50%, (ii) the administrative agent’s prime rate and (iii) the LIBOR rate, not less than 1.00%, plus 1.00%, plus a margin ranging from 0.25% to 0.75% based on the Company’s leverage ratio. Interest is payable in arrears for each loan that is based on the LIBOR rate on the last day of the interest period applicable to each loan, and interest is payable in arrears on loans not based on the LIBOR rate on the last day of each quarter.

The Facility contains covenants that, among other things, restrict the ability of the Company, without the approval of the required lenders, to engage in certain mergers, consolidations, asset sales, dividends and stock repurchases, investments, and other transactions or to incur liens or indebtedness in excess of agreed thresholds, as set forth in the credit agreement. The Company also has to fulfill financial covenants with respect to a leverage ratio and an interest coverage ratio. As of June 30, 2021, the Company was in compliance with the aforementioned covenants.

In July 2021, the Company entered into the second amendment to the Facility, which extended the maturity date to July 20, 2026 and changed the interest rate options available under the Facility. Under the amended Facility, interest accrues on the amounts outstanding under the Facility at the Company’s option, at either (1) Bloomberg Short-Term Bank Yield Index rate (the “BSBY Rate”), which cannot be less than zero, plus a margin ranging from 1.25% to 1.75% based on the Company’s leverage ratio, or (2) the base rate, which cannot be less than 2.00%. The base rate is the highest of (i) the federal funds rate, which cannot be less than zero, plus 0.50%, (ii) the administrative agent’s prime rate and (iii) the BSBY Rate, which cannot be less than zero, plus 1.00%, plus a margin ranging from 0.00% to 0.50% based on the Company’s leverage ratio. In addition, under the second amendment, the Facility may be increased by up to \$75,000 to a maximum aggregate principal amount of \$300,000 pursuant to the terms of the amended credit agreement, subject to the lenders’ agreement to increase their commitments or the addition of new lenders extending such commitments. Such increases to the Facility may be in the form of additional revolving credit loans, term loans or a combination thereof, and are contingent upon there being no events of default under the Facility.

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8. Net Income (Loss) Per Share

A reconciliation of net income attributable to Forward Air and weighted-average common shares outstanding for purposes of calculating basic and diluted net income per share during the three and six months ended June 30, 2021 and 2020 is as follows:

	Three Months Ended		Six Months Ended	
	June 30, 2021	June 30, 2020	June 30, 2021	June 30, 2020
Numerator:				
Net income and comprehensive income from continuing operations	\$ 30,677	\$ 9,225	\$ 47,391	\$ 20,641
Net loss and comprehensive loss from discontinued operation	—	(6,071)	(5,533)	(9,112)
Net income attributable to Forward Air	<u>\$ 30,677</u>	<u>\$ 3,154</u>	<u>\$ 41,858</u>	<u>\$ 11,529</u>
Income allocated to participating securities	(256)	(13)	(363)	(83)
Numerator for basic and diluted net income per share for continuing operations	<u>\$ 30,421</u>	<u>\$ 9,212</u>	<u>\$ 47,028</u>	<u>\$ 20,558</u>
Numerator for basic and diluted net loss per share for discontinued operation	<u>\$ —</u>	<u>\$ (6,071)</u>	<u>\$ (5,533)</u>	<u>\$ (9,112)</u>
Denominator:				
Denominator for basic net income per share - weighted-average number of common shares outstanding	27,261	27,695	27,309	28,424
Dilutive stock options and performance share awards	154	31	145	67
Denominator for diluted net income per share - weighted-average number of common shares and common share equivalents outstanding	<u>27,415</u>	<u>27,726</u>	<u>27,454</u>	<u>28,491</u>
Basic net income (loss) per share:				
Continuing operations	\$ 1.12	\$ 0.33	\$ 1.72	\$ 0.72
Discontinued operation	—	(0.22)	(0.20)	(0.31)
Net income per basic share	<u>\$ 1.12</u>	<u>\$ 0.11</u>	<u>\$ 1.52</u>	<u>\$ 0.41</u>
Diluted net income (loss) per share:				
Continuing operations	\$ 1.11	\$ 0.33	\$ 1.71	\$ 0.72
Discontinued operation	—	(0.22)	(0.20)	(0.32)
Net income per diluted share	<u>\$ 1.11</u>	<u>\$ 0.11</u>	<u>\$ 1.51</u>	<u>\$ 0.40</u>

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The number of shares that were not included in the calculation of net income per diluted share because to do so would have been anti-dilutive for the three and six months ended June 30, 2021 and 2020 are as follows:

	Three Months Ended		Six Months Ended	
	June 30, 2021	June 30, 2020	June 30, 2021	June 30, 2020
Anti-dilutive stock options	—	268	39	218
Anti-dilutive performance shares	—	18	—	29
Anti-dilutive restricted shares and deferred stock units	—	177	15	95
Total anti-dilutive shares	—	463	54	342

9. Income Taxes

For the six months ended June 30, 2021 and 2020, the Company recorded income tax expense of \$4,969 and \$6,995, respectively, for continuing operations. The effective tax rate of 24.0% for the six months ended June 30, 2021 varied from the statutory United States federal income tax rate of 21.0% primarily due to the effect of state income taxes, net of the federal benefit, and non-deductible executive compensation, partially offset by excess tax benefits realized on share-based awards. The effective tax rate of 25.3% for the six months ended June 30, 2020 varied from the statutory United States federal income tax rate of 21% primarily due to the effect of state income taxes, net of the federal benefit, and non-deductible executive compensation, partially offset by excess tax benefits realized on share-based awards and a refund for Tennessee tax credits.

As of both June 30, 2021 and December 31, 2020, the Company had \$544 of unrecognized income tax benefits, all of which would affect the Company's effective tax rate if recognized. The Company accrues interest and penalties related to unrecognized tax benefits in its provision for income taxes. As of both June 30, 2021 and December 31, 2020, the Company had accrued interest and penalties related to unrecognized tax benefits of \$168. With a few exceptions, the Company is no longer subject to U.S. federal, state and local, or Canadian examinations by tax authorities for years before 2013.

The sale of Pool resulted in a capital loss in the amount of \$2,426. The capital loss expires in 2026. The Company concluded that it was more likely than not the capital loss carryforward will not be realized and therefore, established a valuation allowance of \$2,426 to reserve against its capital loss carryforward. The Company also maintains a valuation allowance to reserve against its state net operating loss carryforwards. A valuation allowance is established when it is more likely than not that some portion or all of the deferred tax assets will not be realized. The Company assessed the likelihood that its deferred tax assets would be recovered from estimated future taxable income and available tax planning strategies. In making this assessment, all available evidence was considered including economic climate, as well as reasonable tax planning strategies. The Company believes it is more likely than not that it will realize its remaining net deferred tax assets, net of the valuation allowance, in future years.

10. Fair Value of Financial Instruments

The Company categorizes its assets and liabilities into one of three levels based on the assumptions used in valuing the asset or liability. Estimates of fair value financial assets and liabilities are based on a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Observable inputs (highest level) reflect market data obtained from independent sources, while unobservable inputs (lowest level) reflect internally developed market assumptions. In accordance with this guidance, fair value measurements are classified under the following hierarchy:

- Level 1 - Quoted prices in active markets for identical assets or liabilities.
- Level 2 - Quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; and model-derived valuations in which all significant inputs are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3 - Model-derived valuations in which one or more significant inputs are unobservable.

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As previously discussed in Note 4, *Acquisitions*, the estimated fair value of the earn-out liability was determined using either the Monte-Carlo simulation model or the option pricing method. The significant inputs used to calculate the estimated fair value are derived from a combination of observable and unobservable market data. Observable inputs used in either the Monte Carlo simulation model or the option pricing method include the risk-free rate and the revenue volatility while unobservable inputs include the revenue discount rate and the estimated revenue projections.

Assets and liabilities measured at fair value on a recurring basis as of June 30, 2021 and December 31, 2020 are summarized below:

As of June 30, 2021				
	Level 1	Level 2	Level 3	Total
Earn-out liability	\$ —	\$ —	\$ 7,309	\$ 7,309

As of December 31, 2020				
	Level 1	Level 2	Level 3	Total
Earn-out liability	\$ —	\$ —	\$ 6,865	\$ 6,865

Cash and cash equivalents, accounts receivable, and accounts payable are valued at their carrying amounts in the Company's Condensed Consolidated Balance Sheets, due to the immediate or short-term maturity of these financial instruments.

The carrying amount of long-term debt under the Company's credit facility approximate fair value based on the borrowing rates currently available to the Company for a loan with similar terms and average maturity.

As of June 30, 2021, the estimated fair value of the Company's finance lease obligation, based on current borrowing rates, was \$6,192, compared to its carrying value of \$6,168. As of December 31, 2020, the estimated fair value of the Company's finance lease obligation, based on current borrowing rates, was \$7,009, compared to its carrying value of \$6,811.

11. Shareholders' Equity

Cash Dividends

During the second quarter of 2021, first quarter of 2021 and the fourth quarter of 2020, the Company's Board of Directors declared and the Company has paid a quarterly cash dividend of \$0.21 per share of common stock.

On July 27, 2021, the Company's Board of Directors declared a quarterly cash dividend of \$0.21 per common share that will be paid in third quarter of 2021.

Share Repurchase Program

On July 21, 2016, the Company's Board of Directors approved a stock repurchase program for up to 3,000 shares of the Company's common stock (the "2016 Repurchase Plan"). On February 5, 2019, the Board of Directors canceled the Company's 2016 Repurchase Plan and approved a revised stock repurchase plan authorizing up to 5,000 shares of the Company's common stock (the "2019 Repurchase Plan"). The 2019 Repurchase Plan expires when the shares authorized for repurchase are exhausted or the 2019 Repurchase Plan is canceled.

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During the six months ended June 30, 2021, the Company repurchased through open market transactions 366 shares of common stock for \$33,992, or \$92.76 per share, and during the six months ended June 30, 2020, the Company repurchased 268 shares of common stock for \$15,259, or \$56.93 per share. All shares received were retired upon receipt, and the excess of the purchase price over the par value per share was recorded to "Retained Earnings" in the Condensed Consolidated Balance Sheets.

As of June 30, 2021, the remaining shares to be repurchased under the 2019 Repurchase Plan were approximately 3,002 shares.

12. Commitments and Contingencies

Contingencies

The Company is party to various legal claims and actions incidental to its business, including claims related to vehicle liability, workers' compensation, property damage and employee medical benefits. We accrue for the uninsured portion of contingent losses from these and other pending claims when it is both probable that a liability has been incurred and the amount of loss can be reasonably estimated. Based on the knowledge of the facts, management believes the resolution of claims and pending litigation, taking into account existing reserves, will not have a material adverse effect on our condensed consolidated financial statements. Moreover, the results of complex legal proceedings are difficult to predict, and the Company's view of these matters may change in the future as the litigation and related events unfold.

Insurance coverage provides the Company with primary and excess coverage for claims related to vehicle liability, workers' compensation, property damage and employee medical benefits.

For vehicle liability, the Company retains a portion of the risk. Below is a summary of the Company's risk retention on vehicle liability insurance coverage maintained by the Company through \$10,000:

	Company Risk Retention	Frequency	Layer	Policy Term
Expedited Freight¹				
LTL business	\$ 3,000	Occurrence/Accident ²	\$0 to \$3,000	10/1/2020 to 10/1/2021
Truckload business	\$ 2,000	Occurrence/Accident ²	\$0 to \$2,000	10/1/2020 to 10/1/2021
LTL and Truckload businesses	\$ 6,000	Policy Term Aggregate ³	\$3,000 to \$5,000	10/1/2020 to 10/1/2021
LTL and Truckload businesses	\$ 5,000	Policy Term Aggregate ³	\$5,000 to \$10,000	10/1/2020 to 10/1/2021
Intermodal	\$ 250	Occurrence/Accident ²	\$0 to \$250	4/1/2020 to 10/1/2021

¹ Excluding the Final Mile business, which is primarily a brokered service.

² For each and every accident, the Company is responsible for damages and defense up to these amounts, regardless of the number of claims associated with any accident.

³ During the Policy Term, the Company is responsible for damages and defense within the stated Layer up to the stated, aggregate amount of Company Risk Retention before insurance will respond.

Also, from time to time, when brokering freight, the Company may face claims for the "negligent selection" of outside, contracted carriers that are involved in accidents, and the Company maintains third-party liability insurance coverage with a \$100 deductible per occurrence for most of its brokered services. Additionally, the Company maintains workers' compensation insurance with a self-insured retention of \$500 per occurrence.

Insurance coverage in excess of the self-insured retention limit is an important part of the Company's risk management process. The Company believes the recorded reserves are sufficient for all incurred claims up to the self-insured retention

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limits, including an estimate for claims incurred but not reported. Since the ultimate resolution of outstanding claims as well as claims incurred but not reported is uncertain, it is possible that the reserves recorded for these losses could change materially in the near term. However, an estimate cannot be made of the range of additional loss that is at least reasonably possible.

13. Segment Reporting

The Company has two reportable segments: Expedited Freight and Intermodal. The Company evaluates segment performance based on income from operations. Segment results include intersegment revenues and shared costs. Costs related to the corporate headquarters, shared services and shared assets, such as trailers, are allocated to each segment based on usage. Shared assets are not allocated to each segment, but rather the shared assets, such as trailers, are allocated to the Expedited Freight segment. Corporate includes revenues and expenses as well as assets that are not attributable to any of the Company's reportable segments.

The accounting policies applied to each segment are the same as those described in the Summary of Significant Accounting Policies as disclosed in Note 1 to the Annual Report on Form 10-K for the year ended December 31, 2020, except for certain self-insurance loss reserves related to vehicle liability and workers' compensation. Each segment is allocated an insurance premium and deductible that corresponds to the self-insured retention limit for that particular segment. Any self-insurance loss exposure beyond the deductible allocated to each segment is recorded in Corporate.

Segment results from operations for the three and six months ended June 30, 2021 and 2020 are as follows:

Three Months Ended June 30, 2021					
	Expedited Freight	Intermodal	Corporate	Eliminations	Consolidated - Continuing Operations
External revenues	\$ 351,551	\$ 69,120	\$ —	\$ —	\$ 420,671
Intersegment revenues	184	13	—	(197)	—
Depreciation	4,989	835	23	—	5,847
Amortization	1,790	1,777	—	—	3,567
Income (loss) from continuing operations	34,688	8,386	(950)	—	42,124
Purchases of property and equipment	5,724	156	—	—	5,880

Three Months Ended June 30, 2020					
	Expedited Freight	Intermodal	Corporate	Eliminations	Consolidated - Continuing Operations
External revenues	\$ 235,417	\$ 46,420	\$ —	\$ —	\$ 281,837
Intersegment revenues	241	8	—	(408)	(159)
Depreciation	5,009	1,081	25	—	6,115
Amortization	1,731	1,567	—	—	3,298
Income (loss) from continuing operations	11,753	4,413	(2,252)	—	13,914
Purchases of property and equipment	11,545	18	—	—	11,563

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Six Months Ended June 30, 2021					
	Expedited Freight	Intermodal	Corporate	Eliminations	Consolidated - Continuing Operations
External revenues	\$ 655,308	\$ 127,622	\$ —	\$ —	\$ 782,930
Intersegment revenues	613	25	—	(695)	(57)
Depreciation	9,982	1,634	26	—	11,642
Amortization	3,595	3,414	—	—	7,009
Income (loss) from continuing operations	59,218	12,895	(7,265)	—	64,848
Purchases of property and equipment	8,136	439	—	—	8,575
Six Months Ended June 30, 2020					
	Expedited Freight	Intermodal	Corporate	Eliminations	Consolidated - Continuing Operations
External revenues	\$ 488,560	\$ 98,875	\$ —	\$ —	\$ 587,435
Intersegment revenues	727	13	—	(940)	(200)
Depreciation	9,916	2,134	43	—	12,093
Amortization	3,519	3,135	—	—	6,654
Income (loss) from continuing operations	26,933	8,126	(5,372)	—	29,687
Purchases of property and equipment	13,950	264	—	—	14,214
Total Assets					
As of June 30, 2021	\$ 767,222	\$ 209,266	\$ 105,459	\$ (106)	\$ 1,081,841
As of December 31, 2020	905,081	221,963	47,641	(201,391)	973,294

A reconciliation from the segment information to the consolidated balances for revenues and total assets is set forth below:

	Three Months Ended		Six Months Ended	
	June 30, 2021	June 30, 2020	June 30, 2021	June 30, 2020
Intersegment revenues - continuing operations	\$ —	\$ (159)	\$ (57)	\$ (200)
Intersegment revenues - discontinued operation	—	159	57	200
Consolidated intersegment revenues	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>
	June 30, 2021	December 31, 2020		
Segment assets - continuing operations	\$ 1,081,841	\$ 973,294		
Current assets held for sale	—	21,002		
Noncurrent assets held for sale	—	53,097		
Consolidated total assets	<u>\$ 1,081,841</u>	<u>\$ 1,047,393</u>		

Forward Air Corporation
Notes to Condensed Consolidated Financial Statements
(unaudited and in thousands, except per share data)
June 30, 2021

Revenue from the individual services within the Expedited Freight segment for the three and six months ended June 30, 2021 and 2020 are as follows:

	Three Months Ended		Six Months Ended	
	June 30, 2021	June 30, 2020	June 30, 2021	June 30, 2020
Expedited Freight revenues:				
Network	\$ 210,088	\$ 134,173	\$ 388,715	\$ 286,182
Truckload	56,968	41,857	109,348	89,384
Final Mile	69,883	53,427	132,139	101,229
Other	14,796	6,201	25,719	12,492
Total	<u>\$ 351,735</u>	<u>\$ 235,658</u>	<u>\$ 655,921</u>	<u>\$ 489,287</u>

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

Overview

We are a leading asset-light freight and logistics company providing less-than-truckload (“LTL”), final mile truckload and intermodal drayage services across the United States and in Canada. We offer premium services that typically require precision execution, such as expedited transit, delivery during tight time windows and special handling. We utilize an asset-light strategy to minimize our investments in equipment and facilities and to reduce our capital expenditures.

Our services are classified into two reportable segments: Expedited Freight and Intermodal.

Through the Expedited Freight segment, we operate a comprehensive national network to provide expedited regional, inter-regional and national LTL services. Expedited Freight offers customers local pick-up and delivery and other services including final mile, truckload, shipment consolidation and deconsolidation, warehousing, customs brokerage and other handling. We plan to grow our LTL and final mile geographic footprints through greenfield start-ups as well as acquisitions.

Our Intermodal segment provides first- and last-mile high value intermodal container drayage services both to and from seaports and railheads. Intermodal also offers dedicated contract and container freight station (“CFS”) warehouse and handling services. Intermodal operates primarily in the Midwest and Southeast, with smaller operational presence in Southwest and Mid-Atlantic United States. We plan to grow Intermodal’s geographic footprint through acquisitions as well as greenfield start-ups where we do not have an acceptable acquisition target.

Our operations, particularly our network of hubs and terminals, represent substantial fixed costs. Consequently, our ability to increase our earnings depends in significant part on our ability to increase the amount of freight and the revenue per pound for the freight shipped through our networks and to grow other services, such as LTL pickup and delivery, final mile solutions and intermodal services, which will allow us to maintain revenue growth in challenging shipping environments. In addition, we are continuing to execute synergies across our services, particularly with service offerings in the Expedited Freight segment. Synergistic opportunities include the ability to share resources, particularly our fleet resources.

The Board approved a strategy to divest the Pool Distribution business (“Pool”) on April 23, 2020, and the sale of Pool was completed on February 12, 2021. Pool provided high-frequency handling and distribution of time sensitive product to numerous destinations within a specific geographic region. Pool offered this service throughout the Mid-Atlantic, Southeast, Midwest and Southwest United States. Accordingly, the results of operations for Pool have been presented as a discontinued operation in our Condensed Consolidated Statements of Comprehensive Income for all period presented. In addition, the assets and liabilities were presented as held for sale in the Condensed Consolidated Balance Sheets for the prior period. Unless otherwise noted, amounts, percentages and discussion for all periods reflect the results of operations, financial condition and cash flows from our continuing operations. Refer to Note 4, *Discontinued Operation and Held for Sale*, to the our Condensed Consolidated Financial Statements for additional information on our discontinued operation.

Trends and Developments

COVID-19

Our business is highly susceptible to changes in the economic conditions. Our products and services are directly tied to the production and sale of goods and, more generally, to the North American economy. The COVID-19 pandemic has adversely impacted economic activity and conditions worldwide and created significant volatility and disruption to the financial markets. Efforts to control the spread of COVID-19 led governments and other authorities to impose restrictions which resulted in business closures and disrupted supply chains worldwide. As a result, transportation and supply chain companies such as ours experienced slowdowns and reduced demand for our services.

Although our business and operations have returned to pre-COVID levels, the situation surrounding COVID-19 and its variants remains fluid and may be further impacted by the policies of President Biden’s administration, the availability and success of a vaccine and vaccination rates. The extent to which outbreaks of COVID-19 and its variants impacts our business, results of operations and financial condition in 2021 will depend on future developments, which are highly uncertain and cannot be predicted by, including, but not limited to the duration, spread, severity and impact of the COVID-19 outbreak, including the new variants, the effects of the outbreak on our customers and suppliers and the remedial actions and stimulus measures adopted by local and federal governments, and to what extent normal economic and operating conditions can resume.

In addition, although we believe we have sufficient capital and liquidity to manage our business over the short- and long-term, our liquidity may be materially affected if conditions in the credit and financial markets deteriorate as a result of COVID-19 including failure by us or our customers to secure any necessary financing in a timely manner.

Intermodal Acquisition

As part of the inorganic growth strategy, in February 2021, we acquired certain assets and liabilities of Proficient Transport Incorporated and Proficient Trucking, Inc. (together “Proficient Transport”) for \$15,510 and a potential earn-out up to \$2,000. The estimated fair value of the earn-out liability on the date of acquisition was \$829. The fair value was based on the estimated one-year performance of the acquired customer revenue and was calculated using the option pricing method. Proficient Transport is an intermodal drayage company headquartered in Chicago, Illinois. The acquisition of Proficient Transport will expand our intermodal footprint in Georgia, Illinois, North Carolina, and Texas, and will introduce a new location in Ohio. The acquisition was funded using cash flows from operations. The results of Proficient Transport have been included in our Condensed Consolidated Financial Statements as of and from the date of acquisition.

Expedited Freight Acquisition

In May 2021, we acquired certain assets and liabilities of J&P Hall Express Delivery (“J&P”) for \$7,543. J&P is headquartered in Atlanta, Georgia with a second terminal in Albany, Georgia. The acquisition of J&P supports our strategic growth plan by expanding pickup and delivery, less than truckload, truckload, less than container load, container freight station warehousing, and airport transfer services across the Southeastern United States. The acquisition was funded using cash flow from operations. The results of J&P have been included in our Condensed Consolidated Financial Statements as of and from the date of acquisition.

Sale of Pool

On February 12, 2021, we sold Pool for an \$8,000 cash payment and up to a \$12,000 earn-out based on 2021 earnings before interest, taxes, depreciation and amortization attainment, beginning February 1, 2021. The estimated fair value of the earn-out on the date of sale was \$6,967, and was calculated based on the estimated performance of Pool using a Monte Carlo simulation model. A loss on the sale of Pool in the amount of \$2,860 was recorded in discontinued operation.

Environmental Protection and Community Support

We embrace a comprehensive definition of sustainability that addresses Environmental, Social, and Governance factors (“ESG”). In 2019, our Board amended the Corporate Governance and Nominating (“CG&N”) Committee Charter to ensure Board oversight of our efforts related to environmental, social, and governance matters, and management of sustainability-related risks and opportunities. At least twice a year, the CG&N Committee is updated on each of these topics and provides feedback and recommendations that it deems appropriate.

In 2020, we created and staffed the Head of Corporate ESG role to provide oversight of our ESG vision, strategic planning, performance management and improvement activities. Shortly after, we initiated an ESG market analysis and benchmarking exercise that explored the ESG issues that most impact transportation and logistics industries and marketplaces.

We began in 2020 to conduct an ESG assessment, starting with a third-party stakeholder assessment that served as a basis for identifying and prioritizing ESG topics most relevant to our industry, our business, and our stakeholders. The assessment’s findings yielded initial topics that we recognized as important. We followed with a more in-depth assessment of risks and opportunities, utilizing Sustainable Accounting Standards Board (“SASB”) standards as a guide, in order to further refine our disclosure topics and gain stakeholder alignment. This more detailed assessment yielded clarity of our ESG topics and prioritization based on the degree of both qualitative and quantitative impact to our business.

We identified ten ESG topic priority areas relevant to our business and mapped each to widely adopted ESG reporting standards as identified by SASB. Within these ten topic areas, we identified specific related risks and opportunities, and aligned on improvement activities. In first quarter of 2021, we published our first ESG report that describes our sustainability focus and plan. We are committed to making our results count across the country and will continue to update our future disclosures accordingly.

Results from Operations

The following table sets forth our consolidated financial data from operations for the three months ended June 30, 2021 and 2020 (unaudited and in thousands):

	Three Months Ended			
	June 30, 2021	June 30, 2020	Change	Percent Change
Operating revenues:				
Expedited Freight	\$ 351,735	\$ 235,658	\$ 116,077	49.3 %
Intermodal	69,133	46,428	22,705	48.9
Eliminations and other operations	(197)	(408)	211	(51.7)
Operating revenues	420,671	281,678	138,993	49.3
Operating expenses:				
Purchased transportation	215,217	142,069	73,148	51.5
Salaries, wages, and employee benefits	84,641	63,772	20,869	32.7
Operating leases	20,370	17,387	2,983	17.2
Depreciation and amortization	9,414	9,413	1	—
Insurance and claims	10,891	7,722	3,169	41.0
Fuel expense	4,059	2,519	1,540	61.1
Other operating expenses	33,955	24,882	9,073	36.5
Total operating expenses	378,547	267,764	110,783	41.4
Income (loss) from continuing operations:				
Expedited Freight	34,688	11,753	22,935	195.1
Intermodal	8,386	4,413	3,973	90.0
Other Operations	(950)	(2,252)	1,302	(57.8)
Income from continuing operations	42,124	13,914	28,210	202.7
Other expense:				
Interest expense	(1,323)	(1,198)	(125)	10.4
Total other expense	(1,323)	(1,198)	(125)	10.4
Income from continuing operations before income taxes	40,801	12,716	28,085	220.9
Income tax expense	10,124	3,491	6,633	190.0
Net income from continuing operations	30,677	9,225	21,452	232.5
Loss from discontinued operations, net of tax	—	(6,071)	6,071	(100.0)
Net income and comprehensive income	\$ 30,677	\$ 3,154	\$ 27,523	872.6 %

Revenues

Operating revenues increased \$138,993, or 49.3%, to \$420,671 for the three months ended June 30, 2021 compared to \$281,678 for the three months ended June 30, 2020. The increase was primarily driven by an increase in our Expedited Freight segment of \$116,077 due to increased Network, Truckload and Final Mile revenue.

Operating Expenses

Operating expenses increased \$110,783, or 41.4%, to \$378,547 for the three months ended June 30, 2021 compared to \$267,764 for the three months ended June 30, 2020. The increase was primarily driven by an increase in purchased transportation expense of \$73,148 in both our Expedited Freight and Intermodal segments. Purchased transportation expense includes our independent contractor fleet owners and owner-operators, who lease their equipment to our motor carrier, ("Leased Capacity Providers") and third party carriers.

Income from Continuing Operations and Segment Operations

Income from continuing operations increased \$28,210, or 202.7%, to \$42,124 for the three months ended June 30, 2021 compared to \$13,914 for the three months ended June 30, 2020. The increase was primarily driven by an increase in income from continuing operations at our Expedited Freight segment and Intermodal segment of \$22,935 and \$3,973, respectively. The results for our two reportable segments are discussed in detail in the following sections.

Interest Expense

Interest expense was \$1,323 for the three months ended June 30, 2021 compared to \$1,198 for the three months ended June 30, 2020. The increase in interest expense was attributable to additional outstanding borrowings under our revolving credit facility during the second quarter of 2021. The interest rate on the outstanding borrowings under the revolving credit facility was 3.25% as of both June 30, 2021 and June 30, 2020.

Income Taxes on a Continuing Basis

The combined federal and state effective tax rate on a continuing basis for the three months ended June 30, 2021 was 24.8% compared to a rate of 27.5% for the three months ended June 30, 2020. The lower effective tax rate for the three months ended June 30, 2021 was primarily due to increased vesting of restricted shares as well as exercises of stock options in the second quarter of 2021 when compared to the same period in 2020.

Loss from Discontinued Operation, net of tax

Loss from discontinued operation, net of tax was \$6,071 for the three months ended June 30, 2020. Loss from discontinued operation includes our Pool business and, as discussed above, the Pool business was sold on February 12, 2021. For the three months ended June 30, 2020, our Pool business was adversely impacted by COVID-19 as many of our customers were affected by retail mall closure in response to stay-at-home orders beginning in March 2020.

Net Income

As a result of the foregoing factors, net income increased \$27,523, or 872.6%, to \$30,677 for the three months ended June 30, 2021 compared to \$3,154 for the three months ended June 30, 2020.

Expedited Freight - Three Months Ended June 30, 2021 compared to Three Months Ended June 30, 2020

The following table sets forth the financial data of our Expedited Freight segment for the three months ended June 30, 2021 and 2020:

Expedited Freight Segment Information
(unaudited and in thousands)

	Three Months Ended					
	June 30, 2021	Percent of Revenue	June 30, 2020	Percent of Revenue	Change	Percent Change
Operating revenues:						
Network ¹	\$ 210,088	59.7 %	\$ 134,173	56.9 %	\$ 75,915	56.6 %
Truckload	56,968	16.2	41,857	17.8	15,111	36.1
Final Mile	69,883	19.9	53,427	22.7	16,456	30.8
Other	14,796	4.2	6,201	2.6	8,595	138.6
Total operating revenues	351,735	100.0	235,658	100.0	116,077	49.3
Operating expenses:						
Purchased transportation	191,648	54.5	127,478	54.1	64,170	50.3
Salaries, wages and employee benefits	67,560	19.2	50,508	21.4	17,052	33.8
Operating leases	14,868	4.2	13,338	5.7	1,530	11.5
Depreciation and amortization	6,779	1.9	6,740	2.9	39	0.6
Insurance and claims	8,385	2.4	5,715	2.4	2,670	46.7
Fuel expense	2,147	0.6	1,406	0.6	741	52.7
Other operating expenses	25,660	7.3	18,720	7.9	6,940	37.1
Total operating expenses	317,047	90.1	223,905	95.0	93,142	41.6
Income from operations	\$ 34,688	9.9 %	\$ 11,753	5.0 %	\$ 22,935	195.1 %

¹Network revenue is comprised of all revenue, including linehaul, pickup and/or delivery, and fuel surcharge revenue, excluding accessorial, Truckload and Final Mile revenue.

Expedited Freight Operating Statistics				
	Three Months Ended			
	June 30, 2021	June 30, 2020	Percent Change	
				— %
Business days	64	64		
Tonnage ^{1,2}				
Total pounds	728,191	522,031		39.5
Pounds per day	11,378	8,157		39.5
Shipments ^{1,2}				
Total shipments	1,096	963		13.8
Shipments per day	17.1	15.0		14.0
Weight per shipment	664	542		22.5
Revenue per hundredweight ³	\$ 28.63	\$ 26.32		8.8
Revenue per hundredweight, ex fuel ³	\$ 24.68	\$ 23.09		6.9
Revenue per shipment ³	\$ 191.89	\$ 139.30		37.8
Revenue per shipment, ex fuel ³	\$ 165.62	\$ 121.77		36.0
Network revenue from door-to-door shipments as a percentage of network revenue ^{3,4}	51.3 %	49.9 %		2.8

¹ In thousands

² Excludes accessorial, Truckload and Final Mile products

³ Includes intercompany revenue between the Network and Truckload revenue streams

⁴ Door-to-door shipments include all shipments with a pickup and/or delivery

Operating Revenues

Expedited Freight operating revenues increased \$116,077, or 49.3%, to \$351,735 for the three months ended June 30, 2021 from \$235,658 for the three months ended June 30, 2020. The increase was attributable to increased Network, Truckload and Final Mile revenue. Network revenue increased due to a 39.5% increase in tonnage, a 13.8% increase in shipments and a 8.8% increase in revenue per hundredweight as compared to the prior year. The increase in tonnage and shipments was primarily driven by the economic recovery from COVID-19, which adversely impacted the results of operations for the second quarter of 2020. Strategic pricing initiatives and freight rationalization actions contributed to the increase in the revenue per hundredweight. Fuel surcharge revenue increased \$11,925, or 70.6% as a result of the rise in fuel prices and increased tonnage. Truckload revenue increased \$15,111 primarily driven by the economic recovery from COVID-19, which adversely impacted the results of operations for the second quarter of 2020. Final Mile revenue increased \$16,456 due to the combination of organic growth and the acquisition of CLW Delivery, Inc. ("CLW") in October 2020. Other revenue, which includes warehousing and terminal handling, increased \$8,595 due to the higher linehaul tonnage and shipment counts.

Purchased Transportation

Expedited Freight purchased transportation increased \$64,170, or 50.3%, to \$191,648 for the three months ended June 30, 2021 from \$127,478 for the three months ended June 30, 2020. Purchased transportation was 54.5% of Expedited Freight operating revenues for the three months ended June 30, 2021 compared to 54.1% for the same period in 2020. Expedited Freight purchased transportation includes Leased Capacity Providers and third party carriers, while Company-employed drivers are included in salaries, wages and employee benefits. The increase in purchased transportation as a percentage of revenues was primarily due to the change in the mix of freight capacity purchased from Leased Capacity Providers, third party carriers and Company-employed drivers for Network and Truckload services. In the second quarter of 2021, we purchased 63.0%, 33.7% and 3.3% of our freight capacity from Leased Capacity Providers, third party carriers and Company-employed drivers, respectively. This compares to 68.4%, 27.3% and 4.3% in the same period in 2020.

Salaries, Wages and Employee Benefits

Expedited Freight salaries, wages and employee benefits increased \$17,052, or 33.8%, to \$67,560 for the three months ended June 30, 2021 from \$50,508 for the three months ended June 30, 2020. Salaries, wages and employee benefits were 19.2% of Expedited Freight operating revenues for the three months ended June 30, 2021 compared to 21.4% for the same period in 2020. The increase in salaries, wages and employee benefits expense was due to the additional employees hired in response to the increase in tonnage and shipments in the second quarter of 2021, higher group health insurance premiums and an increased reserve for incentive compensation. Cost-control measures implemented in the prior year contributed to the decrease in salaries, wages and employee benefits expense as a percentage of operating revenues.

Operating Leases

Expedited Freight operating leases increased \$1,530, or 11.5%, to \$14,868 for the three months ended June 30, 2021 from \$13,338 for the three months ended June 30, 2020. Operating leases were 4.2% of Expedited Freight operating revenues for the three months ended June 30, 2021 compared to 5.7% for the same period in 2020. The increase in operating leases expense was primarily due to higher facility and equipment lease expense in 2021, which is partially attributable to facility leases assumed in connection with the CLW and J&P acquisitions.

Depreciation and Amortization

Expedited Freight depreciation and amortization increased \$39, or 0.6%, to \$6,779 for the three months ended June 30, 2021 from \$6,740 for the three months ended June 30, 2020. Depreciation and amortization was 1.9% of Expedited Freight operating revenues for the three months ended June 30, 2021 compared to 2.9% for the same period in 2020. The increase in depreciation and amortization expense is primarily due to the additional amortization expense resulting from the acquisitions of CLW and J&P.

Insurance and Claims

Expedited Freight insurance and claims increased \$2,670, or 46.7%, to \$8,385 for the three months ended June 30, 2021 from \$5,715 for the three months ended June 30, 2020. Insurance and claims were 2.4% of Expedited Freight operating revenues for both the three months ended June 30, 2021 and 2020. The increase in insurance and claims expense was primarily attributable to an increase in vehicle insurance premiums as well as additional vehicle liability and cargo claims. See additional discussion over the consolidated change in self-insurance reserves in the "Other Operations" section below.

Fuel Expense

Expedited Freight fuel expense increased \$741, or 52.7%, to \$2,147 for the three months ended June 30, 2021 from \$1,406 for the three months ended June 30, 2020. Fuel expense was 0.6% of Expedited Freight operating revenues for both the three months ended June 30, 2021 and 2020. Expedited Freight fuel expense increased due to increased mileage and the rise in the average price of fuel in the second quarter of 2021.

Other Operating Expenses

Expedited Freight other operating expenses increased \$6,940, or 37.1%, to \$25,660 for the three months ended June 30, 2021 from \$18,720 for the three months ended June 30, 2020. Other operating expenses were 7.3% of Expedited Freight operating revenues for the three months ended June 30, 2021 compared to 7.9% for the same period in 2020. The increase in other operating expenses was driven by an increase in equipment maintenance costs, terminal and office expenses, legal and professional fees, other over-the-road costs and parts for final mile installations. In the second quarter of 2020, other operating expenses included a \$2,108 gain from changes in the fair value of an earn-out liability due to the timing of expected new business wins. A similar gain was not recorded in the second quarter of 2021.

Income from Operations

Expedited Freight income from operations increased \$22,935, or 195.1%, to \$34,688 for the three months ended June 30, 2021 compared to \$11,753 for the three months ended June 30, 2020. Income from operations was 9.9% of Expedited Freight operating revenues for the three months ended June 30, 2021 compared to 5.0% for the same period in 2020. The increase in income from operations as a percentage of operating revenues was driven by increased revenue per hundredweight and higher number of shipments combine with cost-control measures and operational efficiencies, partially offset by the change in mix of freight capacity purchased from Leased Capacity Providers, third party carriers and Company-employed drivers.

Intermodal - Three Months Ended June 30, 2021 compared to Three Months Ended June 30, 2020

The following table sets forth the financial data of our Intermodal segment for the three months ended June 30, 2021 and 2020:

Intermodal Segment Information
(unaudited and in thousands)

	Three Months Ended					
	June 30, 2021	Percent of Revenue	June 30, 2020	Percent of Revenue	Change	Percent Change
Operating revenues	\$ 69,133	100.0 %	\$ 46,428	100.0 %	\$ 22,705	48.9 %
Operating expenses:						
Purchased transportation	23,767	34.4	14,904	32.1	8,863	59.5
Salaries, wages and employee benefits	16,230	23.5	11,728	25.3	4,502	38.4
Operating leases	5,500	8.0	4,045	8.7	1,455	36.0
Depreciation and amortization	2,612	3.8	2,648	5.7	(36)	(1.4)
Insurance and claims	2,355	3.4	1,789	3.9	566	31.6
Fuel expense	1,912	2.8	1,113	2.4	799	71.8
Other operating expenses	8,371	12.1	5,788	12.5	2,583	44.6
Total operating expenses	60,747	87.9	42,015	90.5	18,732	44.6
Income from operations	<u>\$ 8,386</u>	<u>12.1 %</u>	<u>\$ 4,413</u>	<u>9.5 %</u>	<u>\$ 3,973</u>	<u>90.0 %</u>

Intermodal Operating Statistics

	Three Months Ended		
	June 30, 2021	June 30, 2020	Percent Change
Drayage shipments	96,805	68,974	40.3 %
Drayage revenue per shipment	\$ 618	\$ 556	11.2 %
Number of locations	29	24	20.8 %

Revenues

Intermodal operating revenues increased \$22,705, or 48.9%, to \$69,133 for the three months ended June 30, 2021 from \$46,428 for the three months ended June 30, 2020. The increase in operating revenues was primarily attributable to a 40.3% increase in drayage shipments over the same period in 2020 and an increase in accessorial revenues. The increase in drayage shipments was driven by the combination of the economic recovery from COVID-19, which adversely impacted the results of operations for the second quarter of 2020, and the Proficient Transport acquisition in February 2021.

Purchased Transportation

Intermodal purchased transportation increased \$8,863, or 59.5%, to \$23,767 for the three months ended June 30, 2021 from \$14,904 for the three months ended June 30, 2020. Purchased transportation was 34.4% of Intermodal operating revenues for the three months ended June 30, 2021 compared to 32.1% for the same period in 2020. Intermodal purchased transportation includes Leased Capacity Providers and third party carriers, while Company-employed drivers are included in salaries, wages and employee benefits. The increase in purchased transportation as a percentage of revenues was primarily due to the change in the mix of freight capacity purchased from Leased Capacity Providers, third party carriers and Company-employed drivers.

Salaries, Wages and Employee Benefits

Intermodal salaries, wages and employee benefits increased \$4,502, or 38.4%, to \$16,230 for the three months ended June 30, 2021 compared to \$11,728 for the three months ended June 30, 2020. Salaries, wages and employee benefits were 23.5% of Intermodal operating revenues for the three months ended June 30, 2021 compared to 25.3% for the same period in 2020. The increase in salaries, wages and employee benefits expense was primarily due to the additional employees hired in response to the increase in shipments in the second quarter of 2021 and an increased reserve for incentive compensation. Cost-control measures implemented in the prior year contributed to the decrease in salaries, wages and employee benefits expense as a percentage of operating revenues.

Operating Leases

Intermodal operating leases increased \$1,455, or 36.0%, to \$5,500 for the three months ended June 30, 2021 compared to \$4,045 for the three months ended June 30, 2020. Operating leases were 8.0% of Intermodal operating revenues for the three months ended June 30, 2021 compared to 8.7% for the same period in 2020. The increase in operating leases expense was primarily due to new trailer leases in 2021.

Depreciation and Amortization

Intermodal depreciation and amortization decreased \$36, or 1.4%, to \$2,612 for the three months ended June 30, 2021 from \$2,648 for the three months ended June 30, 2020. Depreciation and amortization was 3.8% of Intermodal operating revenues for the three months ended June 30, 2021 compared to 5.7% for the same period in 2020. The decrease in depreciation and amortization expense was primarily due to the full depreciation of equipment obtained through acquisitions in 2020, partially offset by the additional amortization expense resulting from the acquisition of Proficient Transport.

Insurance and Claims

Intermodal insurance and claims increased \$566, or 31.6%, to \$2,355 for the three months ended June 30, 2021 from \$1,789 for the three months ended June 30, 2020. Insurance and claims were 3.4% of Intermodal operating revenues for the three months ended June 30, 2021 compared to 3.9% for the same period in 2020. The increase in insurance and claims expense was primarily due to an increase in vehicle insurance premiums. See additional discussion over the consolidated change in self-insurance reserves in the "Other Operations" section below.

Fuel Expense

Intermodal fuel expense increased \$799, or 71.8%, to \$1,912 for the three months ended June 30, 2021 from \$1,113 for the three months ended June 30, 2020. Fuel expense was 2.8% of Intermodal operating revenues for the three months ended June 30, 2021 compared to 2.4% for the same period in 2020. Intermodal fuel expense increased due to increased mileage and the rise in the average price of fuel in the second quarter of 2021.

Other Operating Expenses

Intermodal other operating expenses increased \$2,583, or 44.6%, to \$8,371 for the three months ended June 30, 2021 from \$5,788 for the three months ended June 30, 2020. Other operating expenses were 12.1% of Intermodal operating revenues for the three months ended June 30, 2021 compared to 12.5% for the same period in 2020. The increase in Intermodal other operating expenses was primarily due to additional expenses to support the increased accessorial revenues noted above.

Income from Operations

Intermodal income from operations increased \$3,973, or 90.0%, to \$8,386 for the three months ended June 30, 2021 compared to \$4,413 for the three months ended June 30, 2020. Income from operations was 12.1% of Intermodal operating revenues for the three months ended June 30, 2021 compared to 9.5% for the same period in 2020. The increase in income from operations as a percentage of operating revenues was driven by the operating leverage on fixed costs such as operating leases, depreciation and amortization.

Other Operations - Three Months Ended June 30, 2021 compared to Three Months Ended June 30, 2020

Other operations included an \$950 operating loss during the three months ended June 30, 2021 compared to a \$2,252 operating loss during the three months ended June 30, 2020. The change in the operating loss was driven by decreased self-insurance reserves for vehicle liability and workers' compensation claims, partially offset by an accrual for an incentive program established in 2021 and increased reserves for group health insurance claims. The decrease in the self-insurance reserves for vehicle liability and workers' compensation claims was due to the favorable loss development factor of historical claims attributable to the safety measures in place. In the second quarter of 2020, severance costs in the amount of \$997 were recorded in accordance with severance agreements for former employees. Similar severance costs were not recorded in the second quarter of 2021.

Results from Operations

The following table sets forth our consolidated historical financial data from operations for the six months ended June 30, 2021 and 2020 (unaudited and in thousands):

Six Months Ended					
	June 30, 2021	June 30, 2020	Change	Percent Change	
Operating revenues:					
Expedited Freight	\$ 655,921	\$ 489,287	\$ 166,634	34.1	%
Intermodal	127,647	98,888	28,759	29.1	
Eliminations and other operations	(695)	(940)	245	(26.1)	
Operating revenues	782,873	587,235	195,638	33.3	
Operating expenses:					
Purchased transportation	399,825	292,667	107,158	36.6	
Salaries, wages, and employee benefits	159,538	133,331	26,207	19.7	
Operating leases	39,537	35,271	4,266	12.1	
Depreciation and amortization	18,651	18,747	(96)	(0.5)	
Insurance and claims	20,632	17,766	2,866	16.1	
Fuel expense	7,761	6,532	1,229	18.8	
Other operating expenses	72,081	53,234	18,847	35.4	
Total operating expenses	718,025	557,548	160,477	28.8	
Income (loss) from continuing operations:					
Expedited Freight	59,218	26,933	32,285	119.9	
Intermodal	12,895	8,126	4,769	58.7	
Other Operations	(7,265)	(5,372)	(1,893)	35.2	
Income from continuing operations	64,848	29,687	35,161	118.4	
Other expense:					
Interest expense	(2,488)	(2,051)	(437)	21.3	
Total other expense	(2,488)	(2,051)	(437)	21.3	
Income from continuing operations before income taxes	62,360	27,636	34,724	125.6	
Income tax expense	14,969	6,995	7,974	114.0	
Net income from continuing operations	47,391	20,641	26,750	129.6	
Loss from discontinued operation, net of tax	(5,533)	(9,112)	3,579	(39.3)	
Net income and comprehensive income	\$ 41,858	\$ 11,529	\$ 30,329	263.1	%

Revenues

Operating revenues increased \$195,638, or 33.3% to \$782,873 for the six months ended June 30, 2021 compared to \$587,235 for the six months ended June 30, 2020. The increase was primarily driven by our Expedited Freight segment of \$166,634 due to increased Network, Truckload and Final Mile.

Operating Expenses

Operating expenses increased \$160,477, or 28.8%, to \$718,025 for the six months ended June 30, 2021 compared to \$557,548 for the six months ended June 30, 2020. The increase was primarily driven by a purchased transportation increase of \$107,158 in our Expedited Freight and Intermodal segments. Purchased transportation includes Leased Capacity Providers and third party carriers.

Income from Continuing Operations and Segment Operations

Income from continuing operations increased \$35,161, or 118.4%, to \$64,848 for the six months ended June 30, 2021 compared to \$29,687 for the six months ended June 30, 2020. The increase was primarily driven by increases at our Expedited Freight segment and Intermodal segment of \$32,285 and \$4,769, respectively. The results for our two reportable segments are discussed in detail in the following sections.

Interest Expense

Interest expense was \$2,488 for the six months ended June 30, 2021 compared to \$2,051 for the six months ended June 30, 2020. The increase in interest expense was attributable to additional outstanding borrowings under our revolving credit facility during the six months ended June 30, 2021.

Income Taxes on a Continuing Basis

The combined federal and state effective tax rate on a continuing basis for the six months ended June 30, 2021 was 24.0% compared to a rate of 25.3% for the six months ended June 30, 2020. The lower effective tax rate for the six months ended June 30, 2021 was primarily due to increased vesting of restricted shares as well as exercises of stock options in for the six months ended June 30, 2021 when compared to the same period in 2020.

Loss from Discontinued Operation, net of tax

Loss from discontinued operations, net of tax decreased \$3,579 to a \$5,533 loss for the six months ended June 30, 2021 from a \$9,112 loss for the six months ended June 30, 2020. Loss from discontinued operation includes our Pool business and, as discussed above, the Pool business was sold on February 12, 2021. For the six months ended June 30, 2020, our Pool business was adversely impacted by COVID-19 as many of our customers were affected by retail mall closure in response to stay-at-home orders beginning in March 2020.

Net Income

As a result of the foregoing factors, net income increased by \$30,329, or 263.1%, to \$41,858 for the six months ended June 30, 2021 compared to \$11,529 for the six months ended June 30, 2020.

Expedited Freight - Six Months Ended June 30, 2021 compared to Six Months Ended June 30, 2020

The following table sets forth the historical financial data of our Expedited Freight segment for the six months ended June 30, 2021 and 2020:

Expedited Freight Segment Information
(unaudited and in thousands)

	Six Months Ended					
	June 30, 2021	Percent of Revenue	June 30, 2020	Percent of Revenue	Change	Percent Change
Operating revenues:						
Network ¹	\$ 388,715	59.3 %	\$ 286,182	58.5 %	\$ 102,533	35.8 %
Truckload	109,348	16.7	89,384	18.3	19,964	22.3
Final Mile	132,139	20.1	101,229	20.7	30,910	30.5
Other	25,719	3.9	12,492	2.6	13,227	105.9
Total operating revenues	655,921	100.0	489,287	100.0	166,634	34.1
Operating expenses:						
Purchased transportation	356,012	54.3	260,268	53.2	95,744	36.8
Salaries, wages and employee benefits	129,247	19.7	105,943	21.7	23,304	22.0
Operating leases	29,086	4.4	26,940	5.5	2,146	8.0
Depreciation and amortization	13,577	2.1	13,435	2.7	142	1.1
Insurance and claims	15,996	2.4	12,328	2.5	3,668	29.8
Fuel expense	4,140	0.6	3,550	0.7	590	16.6
Other operating expenses	48,645	7.4	39,890	8.2	8,755	21.9
Total operating expenses	596,703	91.0	462,354	94.5	134,349	29.1
Income from operations	\$ 59,218	9.0 %	\$ 26,933	5.5 %	\$ 32,285	119.9 %

¹ Network revenue is comprised of all revenue, including linehaul, pickup and/or delivery, and fuel surcharge revenue, excluding accessorial, Truckload and Final Mile revenue.

Expedited Freight Operating Statistics			
	Six Months Ended		
	June 30, 2021	June 30, 2020	Percent Change
Business days	127	128	(0.8) %
Tonnage ^{1,2}			
Total pounds	1,379,530	1,091,987	26.3
Pounds per day	10,862	8,531	27.3
Shipments ^{1,2}			
Total shipments	2,122	1,849	14.8
Shipments per day	16.7	14.4	15.7
Weight per shipment	650	591	10.0
Revenue per hundredweight ³	\$ 28.12	\$ 26.76	5.1
Revenue per hundredweight, ex fuel ³	\$ 24.29	\$ 23.09	5.2
Revenue per shipment ³	\$ 183.39	\$ 154.81	18.5
Revenue per shipment, ex fuel ³	\$ 158.47	\$ 133.11	19.1
Network revenue from door-to-door shipments as a percentage of network revenue ^{3,4}	50.0 %	46.9 %	6.6

¹ In thousands

² Excludes accessorial, Truckload and Final Mile products

³ Includes intercompany revenue between the Network and Truckload revenue streams

⁴ Door-to-door shipments include all shipments with a pickup and/or delivery

Operating Revenues

Expedited Freight operating revenues increased \$166,634, or 34.1%, to \$655,921 for the six months ended June 30, 2021 from \$489,287 for the six months ended June 30, 2020. The increase was attributable to increased Network, Truckload and Final Mile revenue. Network revenue increased due to a 26.3% increase in tonnage, a 14.8% increase in shipments and a 10.0% increase in revenue per hundredweight as compared to the prior year. The increase in tonnage and shipments was primarily driven by the economic recovery from COVID-19, which adversely impacted the results of operations for the six months ended June 30, 2020. Strategic pricing initiatives and freight rationalization actions contributed to the increase in the revenue per hundredweight. Fuel surcharge revenue increased \$12,788, or 31.9% as a result of the rise in fuel prices and increased tonnage. Truckload revenue increased \$19,964 primarily driven by the economic recovery from COVID-19, which adversely impacted the results of operations for the six months ended June 30, 2020. Final Mile revenue increased \$30,910 due to the combination of organic growth and the acquisition of CLW Delivery, Inc. ("CLW") in October 2020. Other revenue, which includes warehousing and terminal handling, increased \$13,227 due to the higher linehaul tonnage and shipment counts.

Purchased Transportation

Expedited Freight purchased transportation increased \$95,744, or 36.8%, to \$356,012 for the six months ended June 30, 2021 from \$260,268 for the six months ended June 30, 2020. Purchased transportation was 54.3% of Expedited Freight operating revenue for the six months ended June 30, 2021 compared to 53.2% for the same period in 2020. Expedited Freight purchased transportation includes Leased Capacity Providers and third party carriers, while Company-employed drivers are included in salaries, wages and employee benefits. The increase in purchased transportation as a percentage of revenues was primarily due to the change in the mix of freight capacity purchased from Leased Capacity Providers, third party carriers and Company-employed drivers for Network and Truckload services. For the six months ended June 30, 2021, we purchased 63.8%, 32.6% and 3.6% of our freight capacity from Leased Capacity Providers, third party carriers and Company-employed drivers, respectively. This compares to 70.4%, 24.8% and 4.8% in the same period in 2020.

Salaries, Wages, and Employee Benefits

Expedited Freight salaries, wages and employee benefits increased by \$23,304, or 22.0%, to \$129,247 for the six months ended June 30, 2021 from \$105,943 for the six months ended June 30, 2020. Salaries, wages and employee benefits were 19.7% of Expedited Freight operating revenues for the six months ended June 30, 2021 compared to 21.7% for the same period in 2020. The increase in salaries, wages and employee benefits expense was primarily due to the additional employees hired in response to the increase in tonnage and shipments in 2021, higher group health insurance premiums and an increased reserve for incentive compensation. Cost-control measures implemented in the prior year contributed to the decrease in salaries, wages and employee benefits expense as a percentage of operating revenues.

Operating Leases

Expedited Freight operating leases increased \$2,146, or 8.0%, to \$29,086 for the six months ended June 30, 2021 from \$26,940 for the six months ended June 30, 2020. Operating leases were 4.4% of Expedited Freight operating revenues for the six months ended June 30, 2021 compared to 5.5% for the same period in 2020. The increase in operating leases expense was primarily due to higher facility and equipment lease expense in 2021, which is partially attributable to facility leases assumed in connection with the CLW and J&P acquisitions.

Depreciation and Amortization

Expedited Freight depreciation and amortization increased \$142, or 1.1%, to \$13,577 for the six months ended June 30, 2021 from \$13,435 for the six months ended June 30, 2020. Depreciation and amortization was 2.1% of Expedited Freight operating revenues for the six months ended June 30, 2021 compared to 2.7% for the same period in 2020. The increase in depreciation and amortization expense is primarily due to the additional amortization expense resulting from the acquisitions of CLW and J&P.

Insurance and Claims

Expedited Freight insurance and claims increased \$3,668, or 29.8%, to \$15,996 for the six months ended June 30, 2021 from \$12,328 for the six months ended June 30, 2020. Insurance and claims were 2.4% of Expedited Freight operating revenues for the six months ended June 30, 2021 compared to 2.5% for the same period in 2020. The increase in insurance and claims expense was primarily attributable to an increase in vehicle insurance premiums as well as additional vehicle liability and cargo claims. See additional discussion over the consolidated change in self-insurance reserves in the “Other Operations” section below.

Fuel Expense

Expedited Freight fuel expense increased \$590, or 16.6%, to \$4,140 for the six months ended June 30, 2021 from \$3,550 for the six months ended June 30, 2020. Fuel expense was 0.6% of Expedited Freight operating revenues for the six months ended June 30, 2021 compared to 0.7% for the same period in 2020. Expedited Freight fuel expense increased due to increased mileage and the rise in the average price of fuel for the six months ended June 30, 2021.

Other Operating Expenses

Expedited Freight other operating expenses increased \$8,755, or 21.9%, to \$48,645 for the six months ended June 30, 2021 from \$39,890 for the six months ended June 30, 2020. Other operating expenses were 7.4% of Expedited Freight operating revenues for the six months ended June 30, 2021 compared to 8.2% for the same period in 2020. The increase in other operating expenses was driven by an increase in equipment maintenance costs, terminal and office expenses, legal and professional fees, other over-the-road costs and parts for final mile installations. For the six months ended June 30, 2020, other operating expenses included a \$2,702 gain from changes in the fair value of an earn-out liability due to the timing of expected new business wins. A similar gain was not recorded for the six months ended June 30, 2021.

Income from Operations

Expedited Freight income from operations increased \$32,285, or 119.9%, to \$59,218 for the six months ended June 30, 2021 compared to \$26,933 for the six months ended June 30, 2020. Income from operations was 9.0% of Expedited Freight operating revenues for six months ended June 30, 2021 compared to 5.5% for the same period in 2020. The increase in income from operations as a percentage of operating revenues was driven by increased revenue per hundredweight and higher number of shipments combine with cost-control measures and operational efficiencies, partially offset by the change in mix of freight capacity purchased from Leased Capacity Providers, third party carriers and Company-employed drivers.

Intermodal - Six Months Ended June 30, 2021 compared to Six Months Ended June 30, 2020

The following table sets forth the historical financial data of our Intermodal segment for the six months ended June 30, 2021 and 2020:

Intermodal Segment Information
(unaudited and in thousands)

	Six Months Ended					
	June 30, 2021	Percent of Revenue	June 30, 2020	Percent of Revenue	Change	Percent Change
Operating revenue	\$ 127,647	100.0 %	\$ 98,888	100.0 %	\$ 28,759	29.1 %
Operating expenses:						
Purchased transportation	44,370	34.8	33,070	33.4	11,300	34.2
Salaries, wages and employee benefits	30,293	23.7	24,658	24.9	5,635	22.9
Operating leases	10,337	8.1	8,473	8.6	1,864	22.0
Depreciation and amortization	5,048	4.0	5,269	5.3	(221)	(4.2)
Insurance and claims	4,757	3.7	3,762	3.8	995	26.4
Fuel expense	3,622	2.8	2,982	3.0	640	21.5
Other operating expenses	16,325	12.8	12,548	12.7	3,777	30.1
Total operating expenses	114,752	89.9	90,762	91.8	23,990	26.4
Income from operations	12,895	10.1 %	\$ 8,126	8.2 %	\$ 4,769	58.7 %

Intermodal Operating Statistics

	Six Months Ended		
	June 30, 2021	June 30, 2020	Percent Change
Drayage shipments	186,714	151,448	23.3 %
Drayage revenue per shipment	\$ 587	\$ 553	6.1 %
Number of locations	29	24	20.8 %

Operating Revenues

Intermodal operating revenues increased \$28,759, or 29.1%, to \$127,647 for the six months ended June 30, 2021 from \$98,888 for the six months ended June 30, 2020. The increase in operating revenues was primarily attributable to a 23.3% increase in drayage shipments over the same period in 2020 and an increase in accessorial revenues. The increase in drayage shipments was driven by the combination of the economic recovery from COVID-19, which adversely impacted the results of operations for the six months ended June 30, 2020, and the Proficient Transport acquisition in February 2021.

Purchased Transportation

Intermodal purchased transportation increased \$11,300, or 34.2%, to \$44,370 for the six months ended June 30, 2021 from \$33,070 for the six months ended June 30, 2020. Purchased transportation was 34.8% of Intermodal operating revenues for the six months ended June 30, 2021 compared to 33.4% for the same period in 2020. Intermodal purchased transportation includes Leased Capacity Providers and third party carriers, while Company-employed drivers are included in salaries, wages and employee benefits. The increase in purchased transportation as a percentage of revenues was primarily due to the change in the mix of freight capacity purchased from Leased Capacity Providers, third party carriers and Company-employed drivers.

Salaries, Wages, and Employee Benefits

Intermodal salaries, wages and employee benefits increased \$5,635, or 22.9%, to \$30,293 for the six months ended June 30, 2021 compared to \$24,658 for the six months ended June 30, 2020. Salaries, wages and employee benefits were 23.7% of Intermodal operating revenues for the six months ended June 30, 2021 compared to 24.9% for the same period in 2020. The increase in salaries, wages and employee benefits expense was primarily due to the additional employees hired in response to the increase in shipments for the six months ended June 30, 2021 and an increased reserve for incentive compensation. Cost-control measures implemented in the prior year contributed to the decrease in salaries, wages and employee benefits expense as a percentage of operating revenues.

Operating Leases

Intermodal operating leases increased \$1,864, or 22.0%, to \$10,337 for the six months ended June 30, 2021 from \$8,473 for the six months ended June 30, 2020. Operating leases were 8.1% of Intermodal operating revenues for the six months ended June 30, 2021 compared to 8.6% for the same period in 2020. The increase in operating leases expense was primarily due to new trailer leases in 2021.

Depreciation and Amortization

Intermodal depreciation and amortization decreased \$221, or 4.2%, to \$5,048 for the six months ended June 30, 2021 from \$5,269 for the six months ended June 30, 2020. Depreciation and amortization was 4.0% of Intermodal operating revenues for the six months ended June 30, 2021 compared to 5.3% for the same period in 2020. The decrease in depreciation and amortization expense was primarily due to the full depreciation of equipment obtained through acquisitions in 2020, partially offset by additional amortization expense resulting from the acquisition of Proficient Transport.

Insurance and Claims

Intermodal insurance and claims increased \$995, or 26.4%, to \$4,757 for the six months ended June 30, 2021 from \$3,762 for the six months ended June 30, 2020. Insurance and claims were 3.7% of Intermodal operating revenues for the six months ended June 30, 2021 compared to 3.8% for the same period in 2020. The increase in insurance and claims expense was primarily due to an increase in vehicle insurance premiums. See additional discussion over the consolidated change in self-insurance reserves in the "Other Operations" section below.

Fuel Expense

Intermodal fuel expense increased \$640, or 21.5%, to \$3,622 for the six months ended June 30, 2021 from \$2,982 for the six months ended June 30, 2020. Fuel expense was 2.8% of Intermodal operating revenues for the six months ended June 30, 2021 compared to 3.0% for the same period in 2020. Intermodal fuel expense increased due to increased mileage and the rise in the average price of fuel for the six months ended June 30, 2021.

Other Operating Expenses

Intermodal other operating expenses increased \$3,777, or 30.1%, to \$16,325 for the six months ended June 30, 2021 compared to \$12,548 for the six months ended June 30, 2020. Other operating expenses were 12.8% of Intermodal operating revenues for the six months ended June 30, 2021 compared to 12.7% from the same period in 2020. The increase in Intermodal other operating expenses was primarily due to additional expenses to support the increased accessorial revenues noted above.

Income from Operations

Intermodal income from operations increased by \$4,769, or 58.7%, to \$12,895 for the six months ended June 30, 2021 compared to \$8,126 for the six months ended June 30, 2020. Income from operations was 10.1% of Intermodal operating revenue for the six months ended June 30, 2021 compared to 8.2% for the same period in 2020. The increase in income from operations as a percentage of operating revenues was driven by the operating leverage on fixed costs such as operating leases, depreciation and amortization.

Other Operations - Six Months Ended June 30, 2021 compared to Nine Months Ended June 30, 2020

Other operating activity was a \$7,265 operating loss during the six months ended June 30, 2021 and a \$5,372 operating loss during the six months ended June 30, 2020. The change in the operating loss was driven by increased professional fees related to cybersecurity and shareholder engagement activities and accrual for an incentive program established in 2021, partially offset by decreased self-insurance reserves for vehicle liability, workers' compensation and group health insurance claims. The decrease in the self-insurance reserves for vehicle liability and workers' compensation claims was due to the favorable loss development factor of historical claims attributable to the safety measures in place. For the six months ended June 30, 2020, severance costs in the amount of \$997 were recorded in accordance with severance agreements for former employees. Similar severance costs were not recorded for the six months ended June 30, 2021.

Critical Accounting Policies

The discussion and analysis of our financial condition and results of operations are based on our Condensed Consolidated Financial Statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses and related disclosures of contingent assets and liabilities. On an ongoing basis, management evaluates estimates, including those related to allowance for doubtful accounts and revenue adjustments, deferred income taxes and uncertain tax positions, goodwill, other intangible and long-lived assets, and self-insurance loss reserves. Management bases these estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may differ from those estimates under different assumptions or conditions. A description of critical accounting policies and related judgments and estimates that affect the preparation of our Condensed Consolidated Financial Statements is set forth in our Annual Report on Form 10-K for the year-ended December 31, 2020.

Liquidity and Capital Resources

We have historically financed our working capital needs, including capital expenditures, with cash flows from operations and borrowings under our revolving credit facility. We believe that borrowings under our revolving credit facility, together with available cash and internally generated funds, will be sufficient to support our working capital, capital expenditures and debt service requirements for the foreseeable future. In July 2021, we entered into the second amendment to our revolving credit facility, which extended the maturity date to July 20, 2026 and changed the interest rate options available. In connection with the second amendment, we have replaced the London Interbank Offered Rate with the Bloomberg Short-Term Bank Yield Index rate as the reference rate in our revolving credit facility to calculate interest due to our lender. Additionally, under the second amendment, the credit facility may be increased by up to \$75,000 to a maximum aggregate principal amount of \$300,000 pursuant to the terms of the amended credit agreement, subject to the lenders' agreement to

increase their commitments or the addition of new lenders extending such commitments. As of June 30, 2021, we are in compliance with our financial covenants contained in the revolving credit facility and expect to maintain such compliance. In the event that we encounter difficulties, our historical relationships with our lenders has been strong and we anticipate their continued long-term support of our business. Refer to Note 7, *Indebtedness*, to our Condensed Consolidated Financial Statements for additional information regarding our revolving credit facility.

Cash Flows

Continuing Operations

Net cash provided by continuing operating activities was \$39,661 for the six months ended June 30, 2021 compared to \$59,929 for the six months ended June 30, 2020. The decrease in the net cash provided by continuing operating activities was primarily due to the increase in the accounts receivable and other receivable balances. The accounts receivable balance changed due to the increase in operating revenues for the six months ended June 30, 2021. The other receivables balance changed as a result of the Transition Services Agreement entered into with the buyer of the Pool business. Under the Transition Services Agreement, we remit payments to outside vendors on behalf of the buyer for expenses incurred by the Pool business, up to a limit of \$18,000, and we are reimbursed by the buyer within 60 days from the end of the month in which the payment is remitted.

Net cash used in continuing investing activities was \$29,804 for the six months ended June 30, 2021 compared to \$69,157 for the six months ended June 30, 2020. Capital expenditures for the first six months of 2021 were \$8,575, which primarily related to an organic investment to expand the capacity of our national hub in Columbus, Ohio. Capital expenditures for the first six months of 2020 were \$14,214, which primarily related to the organic investment to expand the capacity of our national hub in Columbus, Ohio. Continuing investing activities for the first six months of 2021 included the acquisition of Proficient Transport for \$15,000 and J&P Hall Express Delivery for \$7,543 while continuing investing activities for the first six months of 2020 included the acquisition of Linn Star Holdings, Inc., Linn Star Transfer, Inc. and Linn Star Logistics, LLC for \$55,931.

Net cash provided by continuing financing activities was \$733 for the six months ended June 30, 2021 compared to \$25,395 for the six months ended June 30, 2020. The change in the net cash provided by continuing financing activities was primarily due to decreased proceeds from the revolving credit facility for the first six months of 2021, increased repurchases and retirement of common stock for the first six months of 2021, partially offset by the payment of the earn-out liability for the six months of 2020.

Discontinued Operation

Net cash used in discontinued operating activities was \$6,902 for the six months ended June 30, 2021 compared to \$4,672 for the six months ended June 30, 2020. The change in net cash used in discontinued operating activities was primarily related to a decrease in discontinued net income after consideration of non-cash items.

Net cash provided by discontinued investing activities was \$8,020 for the six months ended June 30, 2021 compared to net cash used in discontinued investing activities was \$635 for the six months ended June 30, 2020. The change in the net cash provided by discontinued investing activities was due to the proceeds of \$8,000 received from the sale of the Pool business for the first six months of 2021.

Net cash used in discontinued financing activities was \$1,118 for the six months ended June 30, 2021 compared to net cash provided by discontinued financing activities was \$5,307 for the six months ended June 30, 2020. The change in the net cash used in discontinued financing activities was due to decreased contributions from the parent.

Share Repurchase Program

During the six months ended June 30, 2021 and 2020, we repurchased 366 and 268 shares of our common stock, respectively, for approximately \$33,992 and \$15,259, respectively, through open market transactions. All shares received were retired upon receipt, and the excess of the purchase price over the par value per share was recorded to "Retained Earnings" in our Condensed Consolidated Balance Sheets.

Forward-Looking Statements

This report contains “forward-looking statements,” as defined in Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements are statements other than historical information or statements of current condition and relate to future events or our future financial performance. In this Form 10-Q, forward-looking statements include, but are not limited to, any statements regarding the impact of the COVID-19 pandemic on our business, results of operations and financial condition, our pursuit of new revenue opportunities and steps to bolster our liquidity; any projections of earnings, revenues, dividends, or other financial items or methods of interpretation or measurement; any statements of plans, strategies, and objectives of management for future operations; any statements regarding the estimated earn-out from the sale of our Pool business; any statements regarding future performance; any statements regarding future insurance, claims and litigation and any associated estimates or projections; any statements concerning proposed or intended new services or developments and related integration costs; any statements regarding intended expansion through acquisition or greenfield start-ups; any statements regarding future economic conditions or performance based on our business strategy, including acquisitions; any statements related to the sufficiency of our credit facility; any statements related to our ESG and sustainability initiatives and operations; any statements regarding certain tax and accounting matters, including the impact on our financial statements; and any statements of belief and any statements of assumptions underlying any of the foregoing. Some forward-looking statements may be identified by use of such terms as “believes,” “anticipates,” “intends,” “plans,” “estimates,” “projects” or “expects.” Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. The following is a list of factors, among others, that could cause actual results to differ materially from those contemplated by the forward-looking statements: economic factors such as recessions, inflation, higher interest rates and downturns in customer business cycles, the impact of the COVID-19 pandemic on our business, results of operations and financial condition, the creditworthiness of our customers and their ability to pay for services rendered, more limited liquidity than expected which limits our ability to make key investments, the availability and compensation of qualified Leased Capacity Providers and freight handlers as well as contracted, third-party carriers needed to serve our customers’ transportation needs, the inability of our information systems to handle an increased volume of freight moving through our network, changes in fuel prices, our inability to maintain our historical growth rate because of a decreased volume of freight or decreased average revenue per pound of freight moving through our network, loss of a major customer, increasing competition and pricing pressure, our ability to secure terminal facilities in desirable locations at reasonable rates, our inability to successfully integrate acquisitions, claims for property damage, personal injuries or workers’ compensation, enforcement of and changes in governmental regulations, environmental and tax matters, insurance matters, the handling of hazardous materials, and the risks described in our Annual Report on Form 10-K for the year ended December 31, 2020. As a result of the foregoing, no assurance can be given as to future financial condition, cash flows or results of operations. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

For quantitative and qualitative disclosures about market risks, see “Quantitative and Qualitative Disclosures about Market Risk” in Item 7A of Part II of our Annual Report on Form 10-K for the year ended December 31, 2020. As of the second quarter 2021, there has been no material changes in our exposures to market risk.

Item 4. Controls and Procedures.

Disclosure Controls and Procedures

We maintain controls and procedures designed to ensure that we are able to collect the information required to be disclosed in the reports we file with the Securities and Exchange Commission (“SEC”), and to process, summarize and disclose this information within the time periods specified in the rules of the SEC. Based on an evaluation of our disclosure controls and procedures as of the end of the period covered by this report conducted by management, with the participation of the Chief Executive Officer and Chief Financial Officer, the Chief Executive Officer and Chief Financial Officer believe that these controls and procedures are effective to ensure that we are able to collect, process and disclose the information we are required to disclose in the reports we file with the SEC within the required time periods.

Changes in Internal Control

There were no changes in our internal control over financial reporting identified in connection with the evaluation described above that occurred during the three months ended June 30, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II. Other Information

Item 1. Legal Proceedings.

From time to time, we are a party to ordinary, routine litigation incidental to and arising in the normal course of our business, most of which involve claims for personal injury and property damage related to the transportation and handling of freight, or workers’ compensation. We accrue for the uninsured portion of contingent losses from these and other pending claims when it is both probable that a liability has been incurred and the amount of loss can be reasonably estimated. Based on the knowledge of the facts, we believe the resolution of claims and pending litigation, taking into account existing reserves, will not have a material adverse effect on our business, financial condition or results of operations. Moreover, the results of complex legal proceedings are difficult to predict, and our view of these matters may change in the future as the litigation and related events unfold.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**Issuer Purchases of Equity Securities**

The table below sets forth information with respect to purchases of our common stock made by or on behalf of us during the three months ended June 30, 2021:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs ¹	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs ¹
April 1, 2021 through April 30, 2021	—	\$ —	—	3,254,695
May 1, 2021 through May 31, 2021	115,625	95.15	115,625	3,139,070
June 1, 2021 through June 30, 2021	137,064	94.79	137,064	3,002,006
Total	252,689	\$ 94.96	252,689	3,002,006

¹On February 5, 2019, our Board of Directors approved the 2019 Repurchase Plan authorizing up to 5.0 million shares of our common stock. The 2019 Share Repurchase Plan expires when the shares authorized for repurchase are exhausted or the 2019 Repurchase Plan is canceled.

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

Not applicable.

Item 6. Exhibits.

In accordance with SEC Release No. 33-8212, Exhibit 32.1 is to be treated as “accompanying” this report rather than “filed” as part of the report.

No.	Exhibit
3.1	Restated Charter of the registrant (incorporated herein by reference to Exhibit 3 to the registrant’s Current Report on Form 8-K filed with the Securities and Exchange Commission on May 28, 1999 (File No. 0-22490))
3.2	Amended and Restated Bylaws of the registrant (incorporated herein by reference to Exhibit 3.1 to the registrant’s Current Report on Form 8-K filed with the Securities and Exchange Commission on July 31, 2017 (File No. 0-22490))
10.1	Advisory Agreement effective April 5, 2021, between Forward Air Corporation and Michael J. Morris (incorporated herein by reference to Exhibit 10.1 to the registrant’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 4, 2021)
10.2	Rebecca J. Garbrick Offer Letter dated as of June 21, 2021 (incorporated herein by reference to Exhibit 10.1 to the registrant’s Current Report on Form 8-K filed with the Securities and Exchange Commission on June 25, 2021 (File No. 0-22490))
10.3	Second Amendment dated July 20, 2021 to Credit Agreement dated September 29, 2017 by and among Forward Air Corporation and Forward Air, Inc., as borrowers, certain subsidiaries of the borrowers as guarantors, Bank of America, N.A., as administrative agent and lender, U.S. Bank National Association, as lender and the other lenders part thereto.
31.1	Certification of Principal Executive Officer Pursuant to Exchange Act Rule 13a-14(a) (17 CFR 240.13a-14(a))
31.2	Certification of Principal Financial Officer Pursuant to Exchange Act Rule 13a-14(a) (17 CFR 240.13a-14(a))
32.1	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	The instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.
101.SCH	XBRL Taxonomy Extension Schema
101.CAL	XBRL Taxonomy Extension Calculation Linkbase
101.DEF	XBRL Taxonomy Extension Definition Linkbase
101.LAB	XBRL Taxonomy Extension Label Linkbase
101.PRE	XBRL Taxonomy Extension Presentation Linkbase
104	Cover Page Interactive File (formatted in Inline XBRL and contained in Exhibit 101).

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.

Date: August 9, 2021

Forward Air Corporation
By: /s/ Thomas Schmitt
Thomas Schmitt
President and Chief Executive Officer
(Principal Executive Officer and Duly Authorized Officer)

Date: August 9, 2021

Forward Air Corporation
By: /s/ Rebecca J. Garbrick
Rebecca J. Garbrick
Chief Financial Officer and Treasurer
(Principal Financial Officer and Duly Authorized Officer)

SECOND AMENDMENT

THIS SECOND AMENDMENT (this “Amendment”) dated as of July 20, 2021, is by and among FORWARD AIR CORPORATION, a Tennessee corporation, FORWARD AIR, INC., a Tennessee corporation (collectively, the “Borrowers”), the Guarantors identified on the signature pages hereto, the Lenders identified on the signature pages hereto and BANK OF AMERICA, N.A., as administrative agent (in such capacity, the “Administrative Agent”).

W I T N E S S E T H:

WHEREAS, credit facilities have been extended to the Borrowers pursuant to that certain Credit Agreement, dated as of September 29, 2017 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Credit Agreement”), among the Borrowers, the Guarantors identified therein, the Lenders identified therein and the Administrative Agent; and

WHEREAS, the Borrowers have requested that the Lenders consent to certain modifications to the Credit Agreement and all the Lenders have agreed to such requested modifications on the terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Credit Agreement, as amended hereby.
2. Amendments to the Credit Agreement.
 - a. The Credit Agreement, other than the Schedules and Exhibits thereto, is amended to read as set forth in Annex A hereto; and
 - b. Exhibit A to the Credit Agreement is amended in its entirety to read in the form attached hereto as Annex B.
3. Conditions Precedent. This Amendment shall become effective as of the date hereof upon satisfaction of each of the following conditions precedent in each case in a manner reasonably satisfactory to the Administrative Agent:
 - (a) Amendment. Receipt by the Administrative Agent of executed counterparts of this Amendment duly executed by each of the parties hereto.
 - (b) Certified Resolutions. Receipt by the Administrative Agent, in form and substance satisfactory to the Administrative Agent, of a certificate of each Loan Party, dated as of the date hereof, signed by a Responsible Officer of such Loan Party, certifying and attaching resolutions adopted by the board of directors or equivalent governing body of such Loan Party approving this Amendment and the transactions contemplated hereby.
 - (c) Opinions of Counsel. Receipt by the Administrative Agent of favorable opinions of legal counsel to the Loan Parties, in each case, addressed to the Administrative Agent and each Lender, dated as of the date hereof.

(d) Expenses. The Borrowers shall have paid all accrued reasonable and documented expenses required to be paid on or before the date hereof pursuant to the Credit Agreement, including the reasonable out-of-pocket fees and expenses of counsel for the Administrative Agent to the extent invoiced and provided to the Parent Borrower prior to the date of this Amendment.

5. Amendment is a "Loan Document". This Amendment is a Loan Document and all references to a "Loan Document" in the Credit Agreement and the other Loan Documents (including, without limitation, all such references in the representations and warranties in the Credit Agreement and the other Loan Documents) shall be deemed to include this Amendment.

6. Representations and Warranties; No Default. The Loan Parties represent and warrant to the Administrative Agent that, on and as of the date hereof, immediately after giving effect to this Amendment, (a) the representations and warranties of each Loan Party contained in Article V of the Credit Agreement or any other Loan Document, or which are contained in any report, certificate or similar document executed and delivered by the Borrowers or any other Loan Party and furnished at any time under or in connection with this Amendment or the Credit Agreement, or furnished pursuant to Article II, Article V or Sections 7.01, 7.02 or 7.03 of the Credit Agreement, are true and correct in all material respects on and as of the effective date of this Amendment, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date and (b) no Default or Event of Default exists on the effective date of this Amendment or would exist immediately after giving effect to this Amendment.

7. Reaffirmation of Obligations. Each Loan Party (a) acknowledges and consents to all of the terms and conditions of this Amendment, (b) affirms all of its obligations under the Loan Documents and (c) agrees that this Amendment and all documents, agreements and instruments executed in connection with this Amendment do not operate to reduce or discharge each Loan Party's obligations under the Loan Documents.

8. No Other Changes. Except as modified hereby, all of the terms and provisions of the Loan Documents shall remain in full force and effect.

9. Counterparts/Facsimile. This Amendment 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 Amendment by telecopy or other electronic imaging means (e.g. "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart of this Amendment.

10. Governing Law. This Amendment shall be deemed to be a contract made under, and for all purposes shall be construed in accordance with, the laws of the State of New York.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be duly executed as of the date first written above.

BORROWERS:

FORWARD AIR CORPORATION, a Tennessee corporation

By: /s/ Rebecca Garbrick

Name: Rebecca Garbrick

Title: Chief Financial Officer

FORWARD AIR, INC., a Tennessee corporation

By: /s/ Rebecca Garbrick

Name: Rebecca Garbrick

Title: Chief Financial Officer

GUARANTORS:

FAF, INC., a Tennessee corporation

FORWARD AIR TECHNOLOGY AND LOGISTICS SERVICES,
INC., a Tennessee corporation

TQI HOLDINGS, INC., a Delaware corporation

FORWARD AIR LOGISTICS SERVICES, INC., a Michigan corporation

CENTRAL STATES TRUCKING CO., a Delaware corporation

CENTRAL STATES LOGISTICS, INC., an Illinois corporation

FACSBI, LLC, a Delaware limited liability company

TOWNE HOLDINGS, LLC, a Delaware limited liability
company

TAF, LLC, an Indiana limited liability company

TOWNE AIR FREIGHT, LLC, an Indiana limited liability company

FORWARD AIR SERVICES, LLC, a Delaware limited liability company

FORWARD AIR FINAL MILE, LLC, A Tennessee limit liability company

FFM, LLC, a Tennessee limited liability company

By: /s/ Rebecca Garbrick

Name: Rebecca Garbrick

Title: Chief Financial Officer

FORWARD AIR ROYALTY, LLC, a Delaware limited liability
company

By: /s/ Michael L. Hance

Name: Michael L. Hance

Title: President

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N.A.

/s/ John M. Hall

Name: John M. Hall

Title: Senior Vice President

LENDERS:

BANK OF AMERICA, N.A., as a Lender, L/C
Issuer and Swing Line Lender

By: /s/ John M. Hall

Name: John M. Hall

Title: Senior Vice President

U.S. BANK NATIONAL ASSOCIATION

By: /s/ Peter I. Bystol

Name: Peter I. Bystol

Title: Senior Vice President

Annex A

Amended Credit Agreement

CHAR2\2439394v3

ANNEX A

DEAL CUSIP: 34986DAA63 REVOLVER CUSIP: 34986DAB4

CREDIT AGREEMENT

Dated as of September 29, 2017 among

FORWARD AIR CORPORATION
and FORWARD AIR, INC.,
as the Borrowers,

THE SUBSIDIARIES OF THE BORROWERS IDENTIFIED HEREIN,
as the Guarantors,

BANK OF AMERICA, N.A.,
as Administrative Agent, Swing Line Lender and L/C Issuer,

U.S. BANK NATIONAL ASSOCIATION, as Syndication Agent

and

THE OTHER LENDERS PARTY HERETO

Arranged By: BOFA SECURITIES, INC.
and

U.S. BANK NATIONAL ASSOCIATION, as Joint Lead Arrangers and Joint Bookrunners

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- F Form of Compliance Certificate
- G Form of Joinder Agreement
- H Form of Secured Party Designation Notice
- I-1 Form of Assignment and Assumption
- I-2 Form of Administrative Questionnaire

CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of September 29, 2017 among FORWARD AIR CORPORATION, a Tennessee corporation (the “Parent Borrower”), FORWARD AIR, INC., a Tennessee corporation (the “Subsidiary Borrower” and together with the Parent Borrower, the “Borrowers”), the Guarantors (defined herein), the Lenders (defined herein) and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

The Borrowers have requested that the Lenders provide \$225,000,000 in credit facilities for the purposes set forth herein, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I.

DEFINITIONS AND ACCOUNTING TERMS

1.1 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below: “Accepting Lender” has the meaning specified in Section 2.17.

“Acquired Indebtedness” has the meaning specified in Section 8.03.

“Acquisition” means, with respect to any Person, the acquisition by such Person, in a single transaction or in a series of related transactions, of either (a) all or any substantial portion of the property of, or a line of business, division or operating group of, another Person or (b) at least a majority of the Equity Interests of another Person entitled to vote for members of the board of directors or equivalent governing body of such Person, in each case whether or not involving a merger or consolidation with such other Person.

“Additional Indebtedness” has the meaning specified in Section 8.03(g).

“Administrative Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02 or such other address or account as the Administrative Agent may from time to time notify to the Borrowers and the Lenders in writing.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit I-2 or any other form approved by the Administrative Agent.

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

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Aggregate Revolving Commitments” means the Revolving Commitments of all the Lenders. The amount of the Aggregate Revolving Commitments in effect on the effective date of the First Amendment to this Agreement is TWO HUNDRED TWENTY-FIVE MILLION DOLLARS (\$225,000,000).

“Agreement” means this Credit Agreement.

“Applicable Percentage” means with respect to any Lender at any time, with respect to such Lender’s Revolving Commitment at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Revolving Commitments represented by such Lender’s Revolving Commitment at such time; provided that if the commitment of each Lender to make Revolving Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 9.02 or if the Aggregate Revolving Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto or in any documentation executed by such Lender pursuant to Section 2.01(b), as applicable. The Applicable Percentages shall be subject to adjustment as provided in Section 2.15.

“Applicable Period” means, as of any date of determination, the period of the four fiscal quarters most recently ended prior to such date for which the Loan Parties have delivered financial statements pursuant to Section 7.01(a) or (b); provided that, for any date of determination prior to the first delivery of financial statements pursuant to Section 7.01(a) or (b), the Applicable Period shall be the period of the four fiscal quarters ended June 30, 2017.

“Applicable Rate” means, from time to time, the following percentages per annum, based upon the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 7.02(a):

Pricing Tier	Consolidated Leverage Ratio	Applicable Margin for BSBY Rate Loans and Letter of Credit Fees	Applicable Margin for Base Rate Loans	Commitment Fee
1	< 1.75:1.0	1.250%	0.000%	0.200%
2	≥ 1.75:1.0 but < 2.00:1.0	1.500%	0.250%	0.225%
3	> 2.00:1.0	1.750%	0.500%	0.250%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 7.02(a); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Tier 3 shall apply as of the first Business Day after the date on which such Compliance Certificate

was required to have been delivered and shall remain in effect until the first Business Day immediately following the date on which such Compliance Certificate is delivered, with the Applicable Rate determined in accordance with this definition to resume effective as of the first Business Day immediately following such date of delivery. The Applicable Rate in effect from the Second Amendment Effective Date through the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 7.02(a) for the fiscal quarter ending September 30, 2021 shall be determined based upon Pricing Tier 1. Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b).

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arrangers” means BofA Securities, Inc. (or any of its designated affiliates), and U.S. Bank National Association, each in its capacity as a joint lead arranger and joint bookrunner.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit I-1 or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, with respect to any Person on any date, (a) in respect of any capital lease, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease, (c) in respect of any Securitization Transaction, the outstanding principal amount of such financing, after taking into account reserve accounts and making appropriate adjustments, determined by the Administrative Agent in its reasonable judgment and (d) in respect of any Sale and Leaseback Transaction, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease).

“Audited Financial Statements” means the audited consolidated balance sheet of the Parent Borrower and its Subsidiaries for the fiscal year ended December 31, 2020, and the related consolidated statements of income or operations, shareholders’ equity and cash flows of the Parent Borrower and its Subsidiaries for such fiscal year, including the notes thereto.

“Auto Borrow Agreement” has the meaning assigned to such term in Section 2.04(b).

“Availability Period” means, (i) with respect to the Revolving Commitments, the period from and including the date of this Agreement to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 9.02.

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

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time

to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1.0%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate” and (c) the BSBY Rate plus 1.0%, subject to the interest rate floors set forth therein; provided that if the Base Rate shall be less than two percent (2.00%), such rate shall be deemed two percent (2.00%) for purposes of this Agreement. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the “prime rate” announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.”

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

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

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

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Bloomberg” means Bloomberg Index Services Limited.

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

“Borrower Materials” has the meaning specified in Section 7.02.

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

“BSBY” means the Bloomberg Short-Term Bank Yield Index rate.

“BSBY Rate” means:

(a) for any Interest Period with respect to a BSBY Rate Loan, the rate per annum equal to the BSBY Screen Rate two Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published on such determination date then BSBY Rate means the BSBY Screen Rate on the first Business Day immediately prior thereto; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the BSBY Screen Rate with a term of one month commencing that day;

provided that if the BSBY Rate determined in accordance with the foregoing provisions of this definition would otherwise be less than zero, the BSBY Rate shall be deemed zero for purposes of this Agreement.

“BSBY Rate Loan” means a Revolving Loan or a Term Loan that bears interest at a rate based on clause (a) of the definition of BSBY Rate.

“BSBY Screen Rate” means the Bloomberg Short-Term Bank Yield Index rate administered by Bloomberg and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any BSBY Rate Loan, in New York City.

“Businesses” has the meaning specified in Section 6.09(a).

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if the Administrative Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case in the Minimum Collateral Amount and pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the L/C Issuer. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means, as at any date, (a) securities (i) issued or directly and fully guaranteed or insured by the United States or (ii) issued by any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof), in each case, having maturities of not more than twelve months from the date of acquisition, (b) Dollar denominated time deposits and certificates of deposit of, or money market accounts maintained with (i) any Lender or any Affiliate of any Lender, (ii) any domestic commercial bank having capital and surplus in excess of \$100 million, (iii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody’s is at least P-1 or the equivalent thereof or (iv) such other domestic financial institutions or domestic brokerage houses to the extent disclosed to, and approved by, the Administrative Agent (any such bank being an “Approved Bank”), in each case set forth in clauses (i), (ii) and (iii), with maturities of not more than 270 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes (1) issued by any Approved Bank (or by the parent company thereof) or (2) issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody’s and maturing within six months of the date of acquisition, (d) repurchase agreements entered into by any Person with a bank or trust company (including any

Lender) or recognized securities dealer having capital and surplus in excess of \$100 million for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected priority security interest and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations, (e) securities with maturities of one year or less from the date of acquisition and issued or fully guaranteed or insured by any state of the United States or by any political subdivision or taxing authority of any such state, the securities of which state or political subdivision (as the case may be) are rated at least A by S&P or A by Moody's, (f) securities with maturities of six months or less from the date of acquisition and backed by standby letters of credit issued by any Approved Bank and (g) investments, classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940 which are administered by reputable financial institutions having capital of at least \$100 million and the portfolios of which are limited to Investments of the character described in the foregoing subdivisions (a) through (d).

"Cash Management Agreement" means any agreement that is not prohibited by the terms hereof to provide treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit card, p cards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

"Cash Management Bank" means any Person that (a) at the time it enters into a Cash Management Agreement, is a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent or (b) in the case of any Cash Management Agreement in effect on or prior to the Closing Date, is, as of the Closing Date (after satisfaction of the condition in Section 5.01(d)), a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent and a party to a Cash Management Agreement, in each case, in its capacity as a party to such Cash Management Agreement.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following:

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

"Change of Control" means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding 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) becomes, after the date of this Agreement, the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all Equity Interests that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of thirty-five percent (35%) or more of the Equity Interests of the Parent Borrower entitled to vote for members of the board of directors or equivalent

governing body of the Parent Borrower on a fully diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or

(b) during any period of 24 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Parent Borrower 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; or

(c) the occurrence of a “change of control” or “fundamental change” (or similar defined term) with respect to the ownership and voting control of the Parent Borrower similar to events of the kind described in (a) and (b) above and giving rise to a right to accelerate payment or purchase prior to scheduled maturity under the agreements with respect to a Permitted Bond Hedge Transaction or a Permitted Warrant Transaction unless cured by the Parent Borrower or waived in writing by the requisite holders of the applicable Indebtedness, in either case, prior to acceleration of the Loans hereunder; or

(d) the Parent Borrower fails to own, directly or indirectly, all of the Equity Interests of the Subsidiary Borrower or fails to have the right (through share ownership) to elect all of the members of the board of directors of the Subsidiary Borrower.

“Closing Date” means September 29, 2017.

“Commitment” means, as to each Lender, the Revolving Commitment of such Lender.

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

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“Communication” means this Agreement, any Loan Document and any document, any amendment, approval, consent or written notice, certificate, request, statement, disclosure or authorization delivered pursuant to or in connection with any Loan Document.

“Competitor” means any Person (a “Direct Competitor”) whose principal source of revenue is ground transportation or pool distribution networks and any Person whose primary business is owning a Direct Competitor.

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

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with BSBY or any proposed Successor Rate, as applicable, any conforming changes to the definition of Base Rate, BSBY, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such applicable rate, and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such

market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated EBIT” means, for any period, for the Parent Borrower and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period plus the following to the extent deducted in calculating such Consolidated Net Income: (a) Consolidated Interest Expense for such period and (b) federal, state, local and foreign income and franchise tax expense for such period.

“Consolidated EBITDA” means, for any period, for the Parent Borrower and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period plus the following to the extent deducted in calculating such Consolidated Net Income: (a) Consolidated Interest Expense for such period, (b) federal, state, local and foreign income and franchise tax expense for such period, (c) depreciation and amortization expense for such period, (d) any expenses to the extent that a corresponding amount is received during such period in cash by the Parent Borrower or any of its Subsidiaries under any agreement providing indemnification, reimbursement, insurance policy or similar arrangement, (e) the amount of all fees, costs and expenses incurred in connection with this Agreement, the closing and funding of Loans hereunder (whether or not funding occurs following the date hereof) and any amendments, consents or waivers to this Agreement, the other Loan Documents and the Loans, (f) any losses from the sale or other disposition of property, other than from sales in the ordinary course of business, (g) any fees, costs or expenses incurred or written off in connection with any completed or attempted Permitted Acquisition, Permitted Investment, Permitted Convertible Indebtedness, Permitted Warrant Transaction, Permitted Bond Hedge Transaction or other transactions permitted under this Agreement, including but not limited to integration costs (including costs related to integration of technologies and operations), severance and other termination costs, and other expenses incurred or recorded in connection therewith; provided, that the aggregate amount added back pursuant to this clause (g) shall not exceed 10% of Consolidated EBITDA for such period (determined prior to giving effect to such adjustment) and (h) all other non-cash charges, expenses or losses for such period except to the extent representing (i) accruals or reserves for future cash expenditures or (ii) the write-down of current assets minus the following to the extent included in calculating such Consolidated Net Income: (a) any gain from the sale or other disposition of property and (b) all non-cash gains or income.

“Consolidated Funded Indebtedness” means, as of any date of determination, Funded Indebtedness of the Parent Borrower and its Subsidiaries on a consolidated basis on such date.

“Consolidated Interest Expense” means, for any period, for the Parent Borrower and its Subsidiaries on a consolidated basis, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest expense in accordance with GAAP, plus (b) the portion of rent expense with respect to such period under capital leases that is treated as interest expense in accordance with GAAP plus (c) the implied interest component of Synthetic Leases with respect to such period.

“Consolidated Interest Coverage Ratio” means, as of any fiscal quarter of the Parent Borrower, the ratio of (a) Consolidated EBIT for the period of the four fiscal quarters then ended to (b) Consolidated Interest Expense for the period of the four fiscal quarters then ended.

“Consolidated Leverage Ratio” means, as of the end of any fiscal quarter of the Parent Borrower, the ratio of (a) Consolidated Funded Indebtedness as of the end of such fiscal quarter to (b) Consolidated EBITDA for the period of the four fiscal quarters then ended.

“Consolidated Net Income” means, for any period, for the Parent Borrower and its Subsidiaries on a consolidated basis, net income for such period; provided that Consolidated Net Income shall exclude

(a) extraordinary losses and extraordinary gains and any income tax expense, deductions or credits on account thereof for such period, (b) the net income of any Subsidiary during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such period, and (c) any income (or loss) for such period of any Person if such Person is not a Subsidiary, except that the Parent Borrower’s equity in the net income of any such Person for such period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Parent Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the Parent Borrower as described in clause (b) of this proviso).

“Consolidated Tangible Net Worth” means, as of any date of determination, for the Parent Borrower and its Subsidiaries on a consolidated basis, the sum of shareholders’ equity minus (to the extent included in the determination of shareholders’ equity) Intangible Assets; provided, however, that there shall be excluded from the calculation of “Consolidated Tangible Net Worth” any effects resulting from the application of FASB ASC No. 715: Compensation – Retirement Benefits.

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

“Control” 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. Without limiting the generality of the foregoing, with respect to the Parent Borrower or any Subsidiary, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

“Covered Entity” means any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning specified in Section 11.21.

“Convertible Indebtedness” means Indebtedness of the Parent Borrower that is convertible into common stock of the Parent Borrower and/or cash (in an amount determined by reference to the price of such common stock).

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“Daily Simple SOFR” with respect to any applicable determination date means the secured overnight financing rate (“SOFR”) published on such date by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source).

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

“Declining Lender” has the meaning specified in Section 2.17.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any required notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a BSBY Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate for Revolving Loans that are BSBY Rate Loans plus 2% per annum.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means, subject to Section 2.15(d), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrowers in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two Business Days of the date when due, (b) has notified the Borrowers, the Administrative Agent, the L/C Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrowers, to confirm in writing to the Administrative Agent and the Borrowers that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrowers), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation, an EEA Resolution Authority or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-in Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with

immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(d)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrowers, the L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any comprehensive Sanctions (as of the Closing Date being Belarus, Burma/Myanmar, Cuba, Iran, North Korea, Sudan, Syria and Zimbabwe).

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition of any property by the Parent Borrower or any Subsidiary, including any Sale and Leaseback Transaction and any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, but excluding (a) the Disposition of inventory in the ordinary course of business; (b) the Disposition of machinery and equipment that are worn-out, obsolete or no longer used or useful in the conduct of business of the Parent Borrower and its Subsidiaries in the ordinary course of business; (c) the Disposition of property to the Parent Borrower or any Subsidiary; provided, that if the transferor of such property is a Loan Party then the transferee thereof must be a Loan Party; (d) the disposition of accounts receivable in connection with the collection, settlement or compromise thereof; (e) licenses, sublicenses, leases or subleases not interfering in any material respect with the business of the Parent Borrower and its Subsidiaries; (f) the Disposition of Cash Equivalents for fair market value; (g) any Disposition resulting from any Recovery Event; (h) the Disposition of machinery and equipment to the extent that such property is exchanged for credit against the purchase price of similar replacement property; and (i) Dispositions permitted by Section 8.04 and Section 8.05.

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

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any state of the United States or the District of Columbia (other than any such Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary).

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

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

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

“Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Sections 11.06(b) (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

“Environmental Laws” means any and all applicable Federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, licenses or governmental restrictions relating to pollution and the protection of the environment.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Parent Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination. For the avoidance of doubt, “Equity Interests” shall not include Permitted Convertible Indebtedness or Permitted Warrant Transactions.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with a Loan Party within the meaning of Section 414(b) or (c) of the Internal Revenue Code (and Sections 414(m) and (o) of the Internal Revenue Code for purposes of provisions relating to Section 412 of the Internal Revenue Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal of a Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Internal Revenue Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA or for Plan benefits, upon any Loan Party or any ERISA Affiliate.

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

“Event of Default” has the meaning specified in Section 9.01.

“Excluded Swap Obligation” means with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Loan Party or, or the grant under a Loan Document by such Loan Party of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 4.08 and any and all guarantees of such Loan Party’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Loan Party or grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply to only the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or security interest is or becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrowers under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii), 3.01(a)(iii) or 3.01(c) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Existing Credit Agreement” means that certain Credit Agreement dated as of February 4, 2015, among the Borrowers, the Subsidiaries named as Guarantors therein, Bank of America, as administrative agent and a lender, and First Tennessee Bank, N.A. as a lender, as amended, modified and supplemented.

“Existing Letters of Credit” means those Letters of Credit outstanding on the Closing Date and identified on Schedule 2.03.

“Extension Amendment” has the meaning specified in Section 2.17.

“Extension Option” has the meaning specified in Section 2.17.

“Facilities” has the meaning specified in Section 6.09(a).

“Facility Termination Date” means the date as of which all of the following shall have occurred:

- (a) all Commitments have terminated, (b) all Obligations arising under the Loan Documents have been paid in full (other than contingent indemnification, reimbursement and similar obligations) and (c) all

Letters of Credit have terminated or expired (other than Letters of Credit that have been Cash Collateralized).

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

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

“Federal Funds Rate” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Fee Letter” means that certain letter agreement regarding specific fees to be paid by the Borrowers in connection with the Loans dated as of July 21, 2017 between the Borrowers and the Administrative Agent.

“Foreign Lender” means (a) if any Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if any Borrower is not a U.S. Person, a Lender that is resident or organized under the Laws of a jurisdiction other than that in which such Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

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

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

“Fund” means any Person (other than a natural 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 activities.

“Funded Indebtedness” means, as to any Person at a particular time, without duplication, all of the following Indebtedness of such Person:

(a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

- (b) all purchase money indebtedness;
- (c) Reserved;
- (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable, accrued expenses and other similar current liabilities in the ordinary course of business);
- (e) the Attributable Indebtedness of capital leases, Synthetic Leases, Sale and Leaseback Transactions and Securitization Transactions;
- (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of another Person; and
- (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, except to the extent that Funded Indebtedness is expressly made non-recourse to such Person. For the avoidance of doubt, "Funded Indebtedness" shall not include Permitted Bond Hedge Transactions or Permitted Warrant Transactions.

"GAAP" means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) including, without limitation, the FASB Accounting Standards Codification, that are applicable to the circumstances as of the date of determination, consistently applied and subject to Section 1.03.

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

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to

be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantors” means, collectively, together with the successors and permitted assigns of the following: (a) with respect to all Obligations, (i) each Domestic Subsidiary identified as a “Guarantor” on the signature pages hereto and (ii) each Person that becomes a Guarantor pursuant to Section 7.12 or otherwise (it being agreed that, notwithstanding the provisions hereof to the contrary, Synergy Cargo Logistics, Inc. shall not be or be required to become a Guarantor provided that it conducts no material business and owns assets of less than \$500,000 at all times) and (b) with respect to (i) Obligations under any Secured Hedge Agreement, (ii) Obligations under any Secured Cash Management Agreement and (iii) any Swap Obligation of a Specified Loan Party (determined before giving effect to Sections 4.01 and 4.08) under the Guaranty, the Borrowers.

“Guaranty” means the Guaranty made by the Guarantors in favor of the Administrative Agent, the L/C Issuer, the Lenders, the Hedge Banks, the Cash Management Banks and the other holders of the Obligations, as applicable, pursuant to Article IV.

“Hazardous Materials” means all substances or wastes of any nature regulated pursuant to Environmental Law, including explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos- containing materials, polychlorinated biphenyls, radon gas, and infectious or medical wastes.

“Hedge Bank” means any Person that (i) at the time it enters into a Swap Contract, is a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent or (ii) in the case of any Swap Contract in effect on or prior to the Closing Date, is, as of the Closing Date (after satisfaction of the condition in Section 5.01(d)), a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent and a party to a Swap Contract, in each case, in its capacity as a party to such Swap Contract; provided, in the case of a Secured Hedge Agreement with a Person who is no longer a Lender (or Affiliate of a Lender), such Person shall be considered a Hedge Bank only through the stated termination date (without extension or renewal) of such Secured Hedge Agreement.

“IFRS” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“Incremental Facilities” has the meaning specified in Section 2.01(b).

“Incremental Facility Amendment” has the meaning specified in Section 2.01(b).

“Incremental Facility Commitment” means the commitment or other obligation of a Person to fund an Incremental Facility.

“Incremental Revolving Increase” has the meaning specified in Section 2.01(b).

“Incremental Term Facility” has the meaning specified in Section 2.01(b).

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all purchase money indebtedness;
- (c) the maximum amount available to be drawn under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;
- (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);
- (e) the Attributable Indebtedness of capital leases, Synthetic Leases, Sale and Leaseback Transactions and Securitization Transactions;
- (f) the Swap Termination Value of any Swap Contract;
- (g) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (h) all obligations to purchase, redeem, retire, defease or otherwise make any payment prior to the Maturity Date in respect of any Equity Interests, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends;
- (i) without duplication, all Guarantees with respect to Indebtedness of the types specified in clauses (a) through (h) above of another Person; and
- (j) all Indebtedness of the types referred to in clauses (a) through (i) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent that such Indebtedness is expressly made non-recourse to such Person;

For the avoidance of doubt, "Indebtedness" shall not include Permitted Bond Hedge Transactions or Permitted Warrant Transactions.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and

(b) to the extent not otherwise described in (a), Other Taxes. "Indemnitees" has the meaning specified in Section

11.04(b).

"Information" has the meaning specified in Section 11.07.

"Intangible Assets" means assets that are considered to be intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, franchises, licenses, unamortized deferred charges, unamortized debt discount and capitalized research and development costs.

“Intercompany Indebtedness” means Indebtedness owing by a Loan Party to another Loan Party.

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

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

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

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

(c) no Interest Period shall extend beyond the Maturity Date. “Interim Financial Statements” means the unaudited consolidated and consolidating financial

statements of the Parent Borrower and its Subsidiaries for the fiscal quarter ending March 31, 2021, including balance sheets and statements of income or operations, shareholders’ equity and cash flows.

“Internal Revenue Code” means the Internal Revenue Code of 1986.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person,

(b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IP Rights” has the meaning specified in Section 6.17.

“IRS” means the United States Internal Revenue Service.

“ISP” means, the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any reimbursement agreement or other document, agreement and instrument entered into by the L/C

Issuer and a Borrower (or any Subsidiary of a Borrower) or in favor of the L/C Issuer and relating to such Letter of Credit.

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit G executed and delivered by a Domestic Subsidiary in accordance with the provisions of Section 7.12.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Borrowing of Revolving Loans.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Disbursement” means a payment made by the L/C Issuer pursuant to a Letter of Credit.

“L/C Issuer” means Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lenders” means each of the Persons identified as a “Lender” on the signature pages hereto, each other Person that becomes a “Lender” in accordance with this Agreement and their successors and assigns and, unless the context requires otherwise, includes the Swing Line Lender.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrowers and the Administrative Agent in writing, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“Letter of Credit” means any standby letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder and shall include the Existing Letters of Credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use and provided to the requesting Borrower by the L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(l).

“Letter of Credit Sublimit” means an amount equal to THIRTY MILLION DOLLARS (\$30,000,000). The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to a Borrower under Article II in the form of a Revolving Loan or a Swing Line Loan.

“Loan Documents” means this Agreement, each Note, each Issuer Document, each Joinder Agreement, any Auto Borrow Agreement, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.14 and the Fee Letter (but specifically excluding Secured Hedge Agreements and Secured Cash Management Agreements).

“Loan Notice” means a notice of (a) a Borrowing of Revolving Loans, (b) a conversion of Loans from one Type to the other, or (c) a continuation of BSBY Rate Loans, in each case pursuant to Section 2.02(a)(B), which shall be substantially in the form of Exhibit A or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent) and the Borrowers, appropriately completed and signed by a Responsible Officer of the requesting Borrower.

“Loan Parties” means, collectively, each Borrower and each Guarantor.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent) or financial condition of the Parent Borrower and its Subsidiaries, taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document to which it is a party; (c) a material impairment of the ability of the Loan Parties, taken as a whole, to perform their obligations under any Loan Document; or (d) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“Material Indebtedness” means any Indebtedness of the Parent Borrower and its Subsidiaries (other than Indebtedness arising under the Loan Documents and Indebtedness arising under Swap Contracts) having an aggregate principal amount (including amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding the Threshold Amount.

“Maturity Date” means as to the Revolving Loans, Swing Line Loans and Letters of Credit (and the related L/C Obligations), July 20, 2026, as may be extended as to any Approving Lender pursuant to the Extension Option; provided, however, that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Minimum Collateral Amount” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 100% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (ii) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.14(a)(i), (a)(ii) or (a)(iii), an amount equal to 100% of the Outstanding Amount of all L/C Obligations, and (iii) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Parent Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including any Loan Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means the aggregate cash or Cash Equivalents proceeds received by any Loan Party or any Subsidiary in respect of any Disposition (including any cash or Cash Equivalents received pursuant to deferred purchase price payments), net of (a) costs, fees and expenses incurred in connection therewith (including legal, accounting and investment banking fees, and sales commissions), (b) taxes paid or payable to any Governmental Authority in connection with or as a result thereof, (c) amounts held in escrow or reserved (until such amounts are released therefrom and paid to a Loan Party or any Subsidiary) and (d) the amount necessary to retire any Indebtedness secured by a Permitted Lien on the related property.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Note” has the meaning specified in Section 2.11(a).

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit C or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the applicable Borrower.

“Obligations” means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of

Credit and (ii) all obligations of the Parent Borrower or any Subsidiary owing to a Cash Management Bank or a Hedge Bank under any Secured Cash Management Agreement or Secured Hedge Agreement, in each case identified in clauses (i) and (ii) whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided, however, that (i) the “Obligations” of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party, and (ii) for the avoidance of doubt, “Obligations” shall not include Permitted Convertible Indebtedness, Permitted Bond Hedge Transactions or Permitted Warrant Transactions.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

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

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“Outstanding Amount” means (a) with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of any Loans occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by a Borrower of Unreimbursed Amounts.

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

“Participant” has the meaning specified in Section 11.06(d).

“Participant Register” has the meaning specified in Section 11.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Internal Revenue Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Internal Revenue Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Internal Revenue Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by any Loan Party and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Internal Revenue Code.

“Permitted Acquisition” means any Investment consisting of an Acquisition by the Parent Borrower or any Subsidiary, provided that (i) each of the Standard Conditions shall be satisfied, (ii) the property (or the Person) acquired in such Acquisition is used or useful in (or engaged in) a line of business permitted under Section 8.07, (iii) in the case of an Acquisition of the Equity Interests of another Person, the board of directors (or other comparable governing body) of such other Person shall have duly approved such Acquisition, (iv) the representations and warranties made by the Loan Parties in each Loan Document shall be true and correct in all material respects at and as if made as of the date of such Acquisition (after giving effect thereto) and (v) if such transaction involves the purchase of an interest in a partnership between any Loan Party as a general partner and entities unaffiliated with the Parent Borrower as the other partners, such transaction shall be effected by having such equity interest acquired by a corporate holding company directly or indirectly wholly-owned by such Loan Party newly formed for the sole purpose of effecting such transaction.

“Permitted Bond Hedge Transaction” means any call or capped call option (or substantively equivalent derivative transaction) relating to the Parent Borrower’s common stock (or other securities or property following a merger or other change generally to the common stock of the Parent Borrower) purchased by the Parent Borrower in connection with the issuance of any Permitted Convertible Indebtedness; provided that the purchase price for such Permitted Bond Hedge Transactions, less the proceeds received by the Parent Borrower from the sale of any related Permitted Warrant Transactions, does not exceed the net proceeds received by the Parent Borrower from the issuance of such Permitted Convertible Indebtedness in connection with such Permitted Bond Hedge Transactions.

“Permitted Convertible Indebtedness” means Convertible Indebtedness permitted under Section 8.03.

“Permitted Investments” means, at any time, Investments of the Parent Borrower or any Subsidiary permitted to exist at such time pursuant to the terms of Section 8.02.

“Permitted Liens” means, at any time, Liens in respect of property of the Parent Borrower or any Subsidiary permitted to exist at such time pursuant to the terms of Section 8.01.

“Permitted Warrant Transactions” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to the Parent Borrower’s common stock (or other securities or property following a merger or other change generally to the common stock of the Parent

Borrower) sold by the Parent Borrower substantially concurrently in connection with any purchase by the Parent Borrower of a related Permitted Bond Hedge Transactions.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of any Loan Party or any ERISA Affiliate or any such Plan to which any Loan Party or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 7.02.

“Pro Forma Basis” means, with respect to any transaction, that for purposes of calculating the financial covenants set forth in Section 8.11, such transaction shall be deemed to have occurred as of the first day of the Applicable Period. In connection with the foregoing, (a) with respect to any Disposition or Recovery Event, (i) income statement and cash flow statement items (whether positive or negative) attributable to the property disposed of shall be excluded to the extent relating to any period occurring prior to the date of such transaction and (ii) Indebtedness which is retired shall be excluded and deemed to have been retired as of the first day of the applicable period and (b) with respect to any Acquisition,

(i) income statement and cash flow statement items attributable to the Person or property acquired shall be included to the extent relating to any period applicable in such calculations to the extent (A) such items are not otherwise included in such income statement and cash flow statement items for the Parent Borrower and its Subsidiaries in accordance with GAAP or in accordance with any defined terms set forth in Section 1.01 and (B) such items are supported by financial statements or other information reasonably satisfactory to the Administrative Agent and (ii) any Indebtedness incurred or assumed by the Parent Borrower or any Subsidiary (including the Person or property acquired) in connection with such transaction and any Indebtedness of the Person or property acquired which is not retired in connection with such transaction (A) shall be deemed to have been incurred as of the first day of the applicable period and (B) if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination.

“Pro Forma Compliance Certificate” means a certificate of a Responsible Officer of the Parent Borrower containing reasonably detailed calculations of the financial covenants set forth in Section 8.11 recomputed as of the end of the Applicable Period after giving effect to the applicable transaction on a Pro Forma Basis.

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

“Public Lender” has the meaning specified in Section 7.02.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8) (D).

“QFC Credit Support” has the meaning specified in Section 11.21.

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Recipient” means the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Recovery Event” means any casualty loss of, damage to or destruction of, or any taking by condemnation or similar proceeding or under the power of eminent domain of, any property of the Parent Borrower or any Subsidiary.

“Register” has the meaning specified in Section 11.06(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

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

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty-day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Loans, a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan (unless such Swing Line Loan is to be advanced under an Auto Borrow Agreement), a Swing Line Loan Notice.

“Required Lenders” means, at any time, at least two Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders (or if there is only one Lender, such Lender). The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; provided that the amount of any participation in any Swing Line Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swing Line Lender or L/C Issuer, as the case may be, in making such determination.

“Rescindable Amount” has the meaning as defined in Section 2.12(b)(ii).

“Resignation Effective Date” has the meaning specified in Section 10.06.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means the chief executive officer, the president, the chairman, the chief legal officer, the chief financial officer, the treasurer, the chief accounting officer, or the controller of a Loan Party and, solely for purposes of the delivery of incumbency certificates, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to

have acted on behalf of such Loan Party. To the extent requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate and appropriate authorization documentation, in form and substance reasonably satisfactory to the Administrative Agent.

“Restricted Payment” means (a) any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of any Person, (b) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interests or on account of any return of capital to such Person’s stockholders, partners or members (or the equivalent Person thereof), (c) any payment made in cash to holders of Permitted Convertible Indebtedness in excess of the original principal (or notional) amount thereof (other than payment of customary fees, costs and expenses associated therewith) and interest on such excess amount, unless and to the extent that a corresponding amount is received in cash (whether through a direct cash payment or a settlement in shares of stock that are immediately sold for cash) substantially contemporaneously from the other parties to a Permitted Bond Hedge Transaction relating to such Permitted Convertible Indebtedness, and (d) any cash payment made in connection with the settlement of a Permitted Warrant Transaction solely to the extent the Parent Borrower has the option of satisfying such payment obligation through the issuance of shares of common stock.

“Revolving Commitment” means, as to each Lender, its obligation to (a) make Revolving Loans to the Borrowers pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto or in any documentation executed by such Lender pursuant to Section 2.01(b), as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Revolving Credit Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender’s participation in L/C Obligations and Swing Line Loans at such time.

“Revolving Loan” has the meaning specified in Section 2.01(a).

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global Inc., and any successor thereto.

“Sale and Leaseback Transaction” means, with respect to any Person, any arrangement, directly or indirectly, whereby such Person shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sanction(s)” means any sanction administered or enforced by the United States Government, including OFAC, the United Nations Security Council, the European Union, Her Majesty’s Treasury (“HMT”) or other similar sanctions authority applicable to the Parent Borrower and its Subsidiaries.

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

“Second Amendment Effective Date” means July 20, 2021.

“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between the Parent Borrower or any Subsidiary and any Cash Management Bank. For the avoidance of doubt, a holder of Obligations in respect of a Secured Cash Management Agreement shall be subject to the last paragraph of Section 9.03 and Section 10.11.

“Secured Hedge Agreement” means any Swap Contract permitted under Section 8.03 that is entered into by and between the Parent Borrower or any Subsidiary and any Hedge Bank. For the avoidance of doubt, a holder of Obligations in respect of a Secured Hedge Agreement shall be subject to the last paragraph of Section 9.03 and Section 10.11.

“Secured Party Designation Notice” means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit H.

“Securitization Transaction” means, with respect to any Person, any financing transaction or series of financing transactions (including factoring arrangements) pursuant to which such Person or any Subsidiary of such Person may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate of such Person.

“Solvent” or “Solvency” means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature in the ordinary course of business, (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s property would constitute unreasonably small capital, (d) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (e) the present fair salable value of the property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured and (f) such Person does not intend, in any transaction, to hinder, delay or defraud either present or future creditors or any other person to which such Person is or will become, through such transaction, indebted. The amount of contingent liabilities at any time shall be computed as the amount that, in the 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.

“SOFR Adjustment” with respect to Daily Simple SOFR means 0.11448% (11.448 basis points) and with respect to Term SOFR means 0.11448% (11.448 basis points) for an interest period of one-month’s duration, 0.26161% (26.161 basis points) for an interest period of three-month’s duration and 0.42826% (42.826 basis points) for an interest period of six-months’ duration.

“Specified Loan Party” has the meaning specified in Section 4.08.

“Specified Representations” means the representations and warranties made in Section 6.01(a) (as to valid existence), Section 6.01(b)(ii), Section 6.02(a), Section 6.03, Section 6.04, Section 6.14, Section 6.18, Section 6.20 and Section 6.21.

“Standard Conditions” means, with respect to any transaction, (a) no Default shall exist immediately prior to such transaction or would exist immediately after giving effect to such transaction, (b) the Loan Parties would be in compliance with the financial covenants set forth in Section 8.11 recomputed as of the end of the Applicable Period after giving effect to such transaction on a Pro Forma Basis (or in the case of any transaction consummated prior to the date a Compliance Certificate is

required to be delivered pursuant to Section 7.02(a) for the fiscal quarter ending September 30, 2017, the Consolidated Leverage Ratio and the Consolidated Interest Coverage Ratio recomputed as of the end of the Applicable Period after giving effect to such transaction on a Pro Forma Basis, would meet the levels required by Section 8.11 for the fiscal quarter ending September 30, 2017) and (c) in the case of any Acquisition, Disposition, incurrence of Additional Indebtedness or Restricted Payment in an amount in excess of \$30 million, the Parent Borrower shall have delivered to the Administrative Agent a Pro Forma Compliance Certificate demonstrating compliance with clause (b) of this definition.

“Subordinated Indebtedness” means Indebtedness of the Parent Borrower or any Subsidiary which is subordinated to the Obligations in a manner and to an extent reasonably acceptable to the Administrative Agent pursuant to the terms of such Subordinated Indebtedness or one or more subordination agreements in each case in form and substance reasonably acceptable to the Administrative Agent.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Equity Interests having ordinary voting power for the election of directors or equivalent governing body (other than Equity Interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Parent Borrower.

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

“Supported QFC” has the meaning specified in Section 11.21.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and

(b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement; provided that, for the avoidance of doubt, “Swap Contract” shall not include any Permitted Convertible Indebtedness, Permitted Bond Hedge Transactions or Permitted Warrant Transactions.

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

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap

Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swing Line Lender” means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Borrowing of Swing Line Loans pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent) and the Borrowers, appropriately completed and signed by a Responsible Officer of the requesting Borrower.

“Swing Line Sublimit” means an amount equal to THIRTY MILLION DOLLARS (\$30,000,000). The Swing Line Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

“Synthetic Lease” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing arrangement whereby the arrangement is considered borrowed money indebtedness for tax purposes but is classified as an operating lease or does not otherwise appear on a balance sheet under GAAP.

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

“Term SOFR” means, for the applicable corresponding Interest Period of BSBY (or if any Interest Period does not correspond to an interest period applicable to SOFR, the closest corresponding interest period of SOFR, and if such interest period of SOFR corresponds equally to two Interest Periods of BSBY, the corresponding interest period of the shorter duration shall be applied) the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Threshold Amount” means TWENTY MILLION DOLLARS (\$20,000,000).

“Total Credit Exposure” means, as to any Lender at any time, the sum of the unused Commitments of such Lender at such time, the outstanding Loans of such Lender at such time and such Lender’s participation in L/C Obligations and Swing Line Loans at such time.

“Total Revolving Outstandings” means the aggregate Outstanding Amount of all Revolving Loans, all Swing Line Loans and all L/C Obligations.

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

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential

Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

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

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

“Unreimbursed Amount” has the meaning specified in Section 2.03(f).

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

“U.S. Special Resolution Regimes” has the meaning specified in Section 11.21.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(3).

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years (and/or portion thereof) obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

“Wholly Owned Subsidiary” means any Person 100% of whose Equity Interests (other than directors’ qualifying shares) are at the time owned by the Parent Borrower directly or indirectly through other Persons 100% of whose Equity Interests are at the time owned, directly or indirectly, by the Parent Borrower.

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

1.2 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or

reference to any agreement, instrument or other document (including any Loan Document or Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto", "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, Preliminary Statements of and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all assets and properties, tangible and intangible, real and personal, including cash, securities, accounts and contract rights.

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

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

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to the division of or by a limited liability company under applicable law, or an allocation of assets to a series of a limited liability company pursuant to such division (or the unwinding of such division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any such division of a limited liability company shall constitute a separate Person hereunder (and each such division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

1.3 Accounting Terms; Calculation of Financial Covenants on a Pro Forma Basis.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Parent Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP (including the adoption of IFRS) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrowers or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Loan Parties shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders);

provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrowers shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, for all purposes hereunder (including but not limited to the definitions of Indebtedness and Lien, and the calculations of covenants made or to be made under any Loan Document) leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP or in any interpretation thereof relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of the Parent Borrower and its Subsidiaries or to the determination of any amount for the Parent Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Parent Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

(d) Calculation of Financial Covenants on a Pro Forma Basis. Notwithstanding the above, the parties hereto acknowledge and agree that all calculations of the financial covenants in Section 8.11 in connection with any Compliance Certificate delivered pursuant to Section 7.02(a) (including for purposes of determining the Applicable Rate) shall be made on a Pro Forma Basis with respect to any Acquisition, Disposition or Recovery Event occurring during the applicable period.

(e) Principal Amount of Permitted Convertible Indebtedness. Notwithstanding the above, the parties hereto acknowledge and agree that for purposes of all calculations hereunder, the principal amount of Permitted Convertible Indebtedness shall be the outstanding principal (or notional) amount thereof, valued at par.

1.4 Rounding.

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

1.5 Times of Day; Interest Rates.

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “BSBY Rate” or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including, without limitation, any Successor Rate) or the effect of any of the foregoing, or of any Conforming Changes.

1.6 Letter of Credit Amounts.

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that, except with respect to the calculation of Letter of Credit fees pursuant to Section 2.03(l), fronting fees pursuant to

Section 2.03(m) and Commitment Fees pursuant to Section 2.09(a), with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE II.

THE COMMITMENTS AND CREDIT EXTENSIONS

2.1 Revolving Loans.

(a) Revolving Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a “Revolving Loan”) to the Borrowers in Dollars from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Revolving Commitment; provided, however, that after giving effect to any Borrowing of Revolving Loans, (i) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, and (ii) the Revolving Credit Exposure of any Lender shall not exceed such Lender’s Revolving Commitment. Within the limits of each Lender’s Revolving Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving Loans may be Base Rate Loans or BSBY Rate Loans, or a combination thereof, at the option of the Borrowers as further provided herein.

(b) Incremental Facilities. The Borrowers may from time to time add one or more tranches of term loans (each an “Incremental Term Facility”) and/or increase the Aggregate Revolving Commitments (each such increase, an “Incremental Revolving Increase”; and together with each Incremental Term Facility collectively, the “Incremental Facilities”) to this Agreement at the option of the Borrowers by an agreement in writing entered into by the Loan Parties, the Administrative Agent and each Person (including any existing Lender) that agrees to provide a portion of such Incremental Facility (each an “Incremental Facility Amendment”); provided that:

- (i) the aggregate principal amount of all Incremental Facilities incurred after the Second Amendment Effective Date shall not exceed \$75,000,000;
- (ii) no Default shall exist on the effective date of such Incremental Facility or would exist after giving effect to such Incremental Facility;
- (iii) the representations and warranties of each Loan Party contained in Article V or any other Loan Document, or which are contained in any report, certificate or similar document executed and delivered by the Borrowers or any other Loan Party and furnished at any time under or in connection herewith or therewith, or furnished pursuant to Article II, Article V or Sections 7.01, 7.02 or 7.03 of this Agreement, shall be true and correct in all material respects on and as of the effective date of such Incremental Facility, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date;
- (iv) no existing Lender shall be under any obligation to provide any Incremental Facility Commitment and any such decision whether to provide an Incremental Facility Commitment shall be in such Lender’s sole and absolute discretion;

(v) each Incremental Facility shall be in an aggregate principal amount of at least \$10,000,000 and integral multiples of \$500,000 in excess thereof;

(vi) each Person providing an Incremental Facility Commitment shall qualify as an Eligible Assignee;

(vii) the Borrowers shall deliver to the Administrative Agent:

(A) a certificate of each Loan Party dated as of the effective date of such Incremental Facility signed by a Responsible Officer of such Loan Party (1) certifying and attaching resolutions adopted by the board of directors or equivalent governing body of such Loan Party approving such Incremental Facility and (2) in the case of the Borrowers, certifying that, before and after giving effect to such Incremental Facility, the conditions set forth in clauses (ii) and (iii) of this Section 2.01(b) above are satisfied;

(B) customary opinions of legal counsel to the Loan Parties, addressed to the Administrative Agent and each Lender (including each Person providing an Incremental Facility Commitment), dated as of the effective date of such Incremental Facility; and

(C) a Pro Forma Compliance Certificate demonstrating that after giving effect to the incurrence of such Incremental Facility on a Pro Forma Basis (and for purposes of the calculations under this clause (C) assuming that any then proposed Incremental Revolving Increase or Incremental Term Facility is fully drawn) the Loan Parties would be in compliance with the financial covenants set forth in Section 8.11 recomputed as of the end of the Applicable Period;

(viii) in the case of an Incremental Term Facility:

(A) the interest rate, interest rate margins, fees, discount, prepayment premiums, amortization and final maturity date for such Incremental Term Facility shall be as agreed by the Loan Parties and the Lenders providing such Incremental Term Facility; provided that (1) the final maturity of such Incremental Term Facility shall not be earlier than the latest maturity date of any outstanding term loan under this Agreement, if any, and (2) the Weighted Average Life to Maturity of such Incremental Term Facility shall not be shorter than the Weighted Average Life to Maturity of any outstanding term loan under this Agreement, if any; and

(B) such Incremental Term Facility shall share ratably in any mandatory prepayments of the other term loans, if any, under this Agreement pursuant to Section 2.05(b) (or otherwise provide for more favorable prepayment treatment for the then outstanding term loans under this Agreement) and shall have ratably voting rights as the other term loans, if any, under this Agreement (or otherwise provide for more favorable voting rights for the then outstanding term loans under this Agreement).

(ix) in the case of any Incremental Revolving Increase:

(A) such Incremental Revolving Increase shall have the same terms (including interest rate and interest rate margins but excluding upfront fees payable solely to the Lenders under such Incremental Revolving Increase) applicable to the Revolving Commitments and Revolving Loans;

(B) if any Revolving Loans are outstanding on the date of such increase, (1) each Lender providing such Incremental Revolving Increase shall make Revolving Loans, the proceeds of which shall be applied by the Administrative Agent to prepay Revolving Loans of the existing Lenders, in an amount necessary such that after giving effect thereto the outstanding Revolving Loans are held ratably among all of the Lenders with a Revolving Commitment and (2) the Borrowers shall pay an amount required pursuant to Section 3.05 as a result of any such prepayment of Revolving Loans of existing Lenders; and

(C) the existing Lenders with a Revolving Commitment shall on the effective date of such Incremental Revolving Increase be deemed to have made such assignments (which assignments shall not be subject to the requirements set forth in Section 11.06(b)) of the outstanding participation interests in Letters of Credit and Swing Line Loans to the Lenders providing such Incremental Revolving Increase and the Administrative Agent may make such adjustments to the Register as are necessary so that, after giving effect to such assignments and adjustments, each Lender with a Revolving Commitment (including the Lenders providing such Incremental Revolving Increase) will hold participation interests in Letters of Credit and Swing Line Loans equal to its pro rata share thereof.

The Incremental Facility Commitments and credit extensions thereunder shall constitute Commitments and Credit Extensions under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees. The Lenders hereby authorize the Administrative Agent to enter into, and the Lenders agree that this Agreement and the other Loan Documents shall be amended by (without any further consent of any Lender being required therefor), each Incremental Facility Amendment to the extent the Administrative Agent and the Borrowers deem necessary in order to establish the applicable Incremental Facility and to effect such other changes agreed by the Borrowers and the Persons providing such Incremental Facility and approved by the Administrative Agent; provided, however, that the Incremental Facility Amendment shall not effect any change described in Section 11.01(a) without the consent of each Person required to consent to such change under such clause (it being agreed, however, that any Incremental Revolving Increase or establishment of any Incremental Term Facility will not, of itself, be deemed to effect any of the changes described in Section 11.01(a) and that modifications to the definitions of “Commitments”, “Loans” and “Required Lenders” or other provisions relating to voting provisions to provide the Persons providing the applicable Incremental Facility with the benefit of such provisions will not, by themselves, be deemed to effect any of the changes described in Section 11.01(a)). The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Facility Amendment.

2.2 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of BSBY Rate Loans shall be made upon the requesting Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone or (B) a Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Administrative Agent of a Loan Notice. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of, BSBY Rate Loans or of any conversion of BSBY Rate Loans to Base Rate Loans, and (ii) on the requested date

of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of BSBY Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Except as provided in Sections 2.03(f) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice shall specify (i) whether the requesting Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of BSBY Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the requesting Borrower fails to specify a Type of a Loan in a Loan Notice or if the requesting Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable BSBY Rate Loans. If the requesting Borrower requests a Borrowing of, conversion to, or continuation of BSBY Rate Loans in any Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be converted to a BSBY Rate Loan.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the requesting Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 5.02, the Administrative Agent shall make all funds so received available to the requesting Borrower in like funds as received by the Administrative Agent either by wire transfer of such funds in accordance with instructions provided by the requesting Borrower to (and reasonably acceptable to) the Administrative Agent on or prior to the Closing Date or by wire transfer of such funds in accordance with subsequent instructions provided by the requesting Borrower to (and reasonably acceptable to) the Administrative Agent by the requesting Borrower; provided, however, that if, on the date the Loan Notice with respect to a Borrowing of Revolving Loans is given by the requesting Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings and second, shall be made available to the requesting Borrower as provided above.

(c) Except as otherwise provided herein, a BSBY Rate Loan may be continued or converted only on the last day of an Interest Period for such BSBY Rate Loan. During the existence and continuation of an Event of Default, no Loans may be requested as, converted to or continued as BSBY Rate Loans without the consent of the Required Lenders and the Required Lenders may demand that any or all of the then outstanding BSBY Rate Loans be converted immediately to Base Rate Loans.

(d) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrowers and the Lenders in the absence of manifest error.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than 12 Interest Periods in effect.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrowers, the Administrative Agent and such Lender.

(g) With respect to BSBY the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrowers and the Lenders reasonably promptly after such amendment becomes effective.

2.3 Letters of Credit.

(a) The Letter of Credit Commitment. Subject to the terms and conditions set forth herein, in addition to the Loans provided for in Section 2.01, the Parent Borrower may request that the L/C Issuer, and the L/C Issuer shall, in reliance on the agreements of the Lenders set forth in this Section 2.03, issue, at any time and from time to time during the Availability Period, Letters of Credit denominated in Dollars for its own account or the account of any of its Subsidiaries in such form as is reasonably acceptable to the Administrative Agent and the L/C Issuer in its reasonable determination. Letters of Credit issued hereunder shall constitute utilization of the Revolving Commitments.

(b) Notice of Issuance, Amendment, Extension, Reinstatement or Renewal.

(i) To request the issuance of a Letter of Credit (or the amendment of the terms and conditions, extension of the terms and conditions, extension of the expiration date, reinstatement of amounts paid, or renewal of an outstanding Letter of Credit), the Parent Borrower shall deliver (or transmit by electronic communication, if arrangements for doing so have been approved by the L/C Issuer) to the L/C Issuer and to the Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as each of the Administrative Agent and the L/C Issuer may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, extended, reinstated or renewed, and specifying the date of issuance, amendment, extension, reinstatement or renewal (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with clause (d) of this Section 2.03), the amount of such Letter of Credit, the name and address of the beneficiary thereof, the purpose and nature of the requested Letter of Credit and such other information as shall be necessary to prepare, amend, extend, reinstate or renew such Letter of Credit. If requested by the L/C Issuer, the Parent Borrower also shall submit a Letter of Credit Application on the L/C Issuer's standard form in connection with any request for a Letter of Credit (which shall be subject, in all respects, to the provisions of Section 2.03(r)).

(ii) If the Parent Borrower so requests in any applicable Letter of Credit Application (or the amendment of an outstanding Letter of Credit), the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit shall permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon by the Parent Borrower and the L/C Issuer at the time such Letter

of Credit is issued. Unless otherwise directed by the L/C Issuer, the Parent Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto- Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiration date not later than the date permitted pursuant to Section 2.03(d); provided, that the L/C Issuer shall not (A) permit any such extension if (1) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its extended form under the terms hereof (except that the expiration date may be extended to a date that is no more than one (1) year from the then-current expiration date) or (2) it has received notice (which may be in writing or by telephone (if promptly confirmed in writing)) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date from the Administrative Agent that the Required Lenders have elected not to permit such extension or (B) be obligated to permit such extension if it has received notice (which may be in writing or by telephone (if promptly confirmed in writing)) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date from the Administrative Agent, any Lender or any Borrower that one or more of the applicable conditions set forth in Section 5.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iii) If the Parent Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an “Auto-Reinstatement Letter of Credit”). Unless otherwise directed by the L/C Issuer, the Parent Borrower shall not be required to make a specific request to the L/C Issuer to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits the L/C Issuer to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non- reinstatement within a specified number of days after such drawing (the “Non-Reinstatement Deadline”), the L/C Issuer shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Reinstatement Deadline (A) from the Administrative Agent that the Required Lenders have elected not to permit such reinstatement or (B) from the Administrative Agent, any Lender or any Borrower that one or more of the applicable conditions specified in Section 5.02 is not then satisfied (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing the L/C Issuer not to permit such reinstatement.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Parent Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Limitations on Amounts, Issuance and Amendment.

(i) A Letter of Credit shall be issued, amended, extended, reinstated or renewed only if (and upon issuance, amendment, extension, reinstatement or renewal of each Letter of Credit the Borrowers shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, reinstatement or renewal (w) the aggregate amount of the outstanding Letters of Credit issued by the L/C Issuer shall not exceed its L/C Commitment, (x) the aggregate L/C Obligations shall not exceed the L/C Sublimit, (y) the Revolving Credit Exposure of any

Lender shall not exceed its Revolving Commitment and (z) the Total Revolving Exposure of all Lenders shall not exceed the Aggregate Revolving Commitments.

(ii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing the Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, the Letter of Credit is in an initial stated amount less than \$50,000;

(D) any Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrowers or such Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.15(a)(iii)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(E) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iii) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(d) Expiration Date. Each Letter of Credit shall have a stated expiration date no later than the earlier of (i) the date twelve (12) months after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration date thereof, whether automatic or by amendment, twelve months after the then-current expiration date of such Letter of Credit) and (ii) the date that is twelve (12) months after the Maturity Date.

(e) Participations.

(i) By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the expiration date thereof), and without any further action on the part of the L/C Issuer or the Lenders, the L/C Issuer hereby grants to each Lender, and each

Lender hereby acquires from the L/C Issuer, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this clause (e) in respect of Letters of Credit is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, extension, reinstatement or renewal of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Commitments.

(ii) In consideration and in furtherance of the foregoing, each Lender hereby absolutely, unconditionally and irrevocably agrees to pay to the Administrative Agent, for account of the L/C Issuer, such Lender's Applicable Percentage of each L/C Disbursement made by the L/C Issuer not later than 1:00 p.m. on the Business Day specified in the notice provided by the Administrative Agent to the Lenders pursuant to Section 2.03(f) until such L/C Disbursement is reimbursed by the Borrowers or at any time after any reimbursement payment is required to be refunded to the Borrowers for any reason, including if such refund to the Borrower occurs after the Maturity Date. Such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each such payment shall be made in the same manner as provided in Section 2.02 with respect to Loans made by such Lender (and Section 2.02 shall apply, mutatis mutandis, to the payment obligations of the Lenders pursuant to this Section 2.03), and the Administrative Agent shall promptly pay to the L/C Issuer the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to Section 2.03(f), the Administrative Agent shall distribute such payment to the L/C Issuer or, to the extent that the Lenders have made payments pursuant to this clause (e) to reimburse the L/C Issuer, then to such Lenders and the L/C Issuer as their interests may appear. Any payment made by a Lender pursuant to this clause (e) to reimburse the L/C Issuer for any L/C Disbursement shall not constitute a Loan and shall not relieve any Borrower of its obligation to reimburse such L/C Disbursement.

(iii) Each Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit at each time such Lender's Commitment is amended pursuant to the operation of Sections 2.01 or 2.17, as a result of an assignment in accordance with Section 11.06 or otherwise pursuant to this Agreement.

(iv) If any Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(e), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (e)(vi) shall be conclusive absent manifest error.

(f) Reimbursement. If the L/C Issuer shall make any L/C Disbursement in respect of a Letter of Credit, the Borrowers shall reimburse the L/C Issuer in respect of such L/C Disbursement by paying to

the Administrative Agent an amount equal to such L/C Disbursement not later than 12:00 noon on (i) the Business Day that the Borrowers receive notice of such L/C Disbursement, if such notice is received prior to 10:00 a.m. or (ii) the Business Day immediately following the day that the Borrowers receive such notice, if such notice is not received prior to such time, provided that, the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.02 or Section 2.04 that such payment be financed with a Borrowing of Base Rate Loans or Swing Line Loan in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment shall be discharged and replaced by the resulting Borrowing of Base Rate Loans or Swing Line Loan. If the Borrowers fail to make such payment when due, the Administrative Agent shall notify each Lender of the applicable L/C Disbursement, the payment then due from the Borrowers in respect thereof (the "Unreimbursed Amount") and such Lender's Applicable Percentage thereof. Promptly upon receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the Unreimbursed Amount pursuant to Section 2.03(e)(ii), subject to the amount of the unutilized portion of the aggregate Revolving Commitments. Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(f) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(g) Obligations Absolute. The Borrowers' obligation to reimburse L/C Disbursements as provided in clause (f) of this Section 2.03 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:

(i) any lack of validity or enforceability of this Agreement, any other Loan Document or any Letter of Credit, or any term or provision herein or therein;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement in such draft or other document being untrue or inaccurate in any respect;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrowers or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrowers;

(v) honor of a demand for payment presented electronically even if such Letter of Credit required that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) payment by the L/C Issuer under a Letter of Credit against presentation of a draft or other document that does not comply strictly with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a

trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.03, constitute a legal or equitable discharge of, or provide a right of setoff against, any Borrowers' obligations hereunder (other than payment in full of Borrowers' obligations hereunder).

(h) Examination. The Parent Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Parent Borrower's instructions or other irregularity, the Parent Borrower will promptly notify the L/C Issuer. The Parent Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(i) Liability. None of the Administrative Agent, the Lenders, the L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by the L/C Issuer or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in Section 2.03(g)), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the L/C Issuer; provided that the foregoing shall not be construed to excuse the L/C Issuer from liability to the Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable Law) suffered by the Borrowers that are caused by the L/C Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the L/C Issuer (as finally determined by a court of competent jurisdiction), the L/C Issuer shall be deemed to have exercised care in each such determination, and that:

(i) the L/C Issuer may replace a purportedly lost, stolen, or destroyed original Letter of Credit or missing amendment thereto with a certified true copy marked as such;

(ii) the L/C Issuer may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit and without regard to any non-documentary condition in such Letter of Credit;

(iii) the L/C Issuer shall have the right, in its sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit; and

(iv) this sentence shall establish the standard of care to be exercised by the L/C Issuer when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by applicable Law, any standard of care inconsistent with the foregoing).

Without limiting the foregoing, none of the Administrative Agent, the Lenders, the L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of (A) any presentation that includes forged or fraudulent documents or that is otherwise affected by the fraudulent, bad faith, or illegal conduct of the beneficiary or other Person (except where the L/C Issuer acts with gross negligence or willful misconduct), (B) the L/C Issuer declining to take-up documents and make payment, against documents that are fraudulent, forged, or for other reasons by which that it is entitled not to honor, (C) to the extent that the Borrower waives discrepancies with respect to such documents or requests the honor of such documents or (D) the L/C Issuer retaining proceeds of a Letter of Credit based on an apparently applicable attachment order, blocking regulation, or third-party claim notified to the L/C Issuer. For the avoidance of doubt, nothing herein is intended to, and nothing herein shall be deemed to, preclude any Borrower from pursuing any rights or remedies it may have against any beneficiary, transferee, or other third Person at law or under any other agreement.

(j) Applicability of ISP. Unless otherwise expressly agreed by the L/C Issuer and the Borrowers when a Letter of Credit is issued by it (including any such agreement applicable to a Letter of Credit that exists as of the Second Amendment Effective Date), the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrowers for, and the L/C Issuer's rights and remedies against the Borrowers shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(k) Benefits. The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (i) provided to the Administrative Agent in Article X with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article X included the L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the L/C Issuer.

(l) Letter of Credit Fees. The Borrowers shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any standby Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) payable on the first Business Day following the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit and (ii) accrued through and including the last day of each calendar quarter in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(m) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrowers shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each

Letter of Credit, at the rate per annum equal to the percentage separately agreed upon between the Borrowers and the L/C Issuer, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable no later than the tenth Business Day after the end of each March, June, September and December in the most recently ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Maturity Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrowers shall pay directly to the L/C Issuer for its own account, in Dollars the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(n) Disbursement Procedures. The L/C Issuer for any Letter of Credit shall, within the time allowed by applicable Laws or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. The L/C Issuer shall promptly after such examination notify the Administrative Agent and the Borrowers in writing of such demand for payment if the L/C Issuer has made or will make an L/C Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrowers of its obligation to reimburse the L/C Issuer and the Lenders with respect to any such L/C Disbursement.

(o) Interim Interest. If the L/C Issuer for any standby Letter of Credit shall make any L/C Disbursement, then, unless the Borrowers shall reimburse such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that the Borrowers reimburses such L/C Disbursement, at the rate per annum then applicable to Base Rate Loans; provided that if the Borrowers fail to reimburse such L/C Disbursement when due pursuant to clause (f) of this Section 2.03, then Section 2.08(b) shall apply. Interest accrued pursuant to this clause (o) shall be for account of the L/C Issuer, except that interest accrued on and after the date of payment by any Lender pursuant to clause (f) of this Section 2.03 to reimburse the L/C Issuer shall be for account of such Lender to the extent of such payment.

(p) Cash Collateralization.

(i) If any Event of Default shall occur and be continuing, on the Business Day that the Borrowers receive notice from the Administrative Agent or the Required Lenders demanding the deposit of Cash Collateral pursuant to this clause (p) (provided such notice is received by the Borrower prior to 3:00 p.m. on such Business Day; otherwise, on the next Business Day), the Borrowers shall promptly deposit into an account established and maintained on the books and records of the Administrative Agent (the “Collateral Account”) an amount in cash equal to the Minimum Collateral Amount with respect to the total L/C Obligations as of such date plus any accrued and unpaid interest thereon, provided that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrowers described in clause (f) of Section 9.01. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrowers under this Agreement. In addition, and without limiting the foregoing or clause (d) of this Section 2.03, if any L/C Obligations remain outstanding after the Maturity Date (as further described in Section 2.14), the Borrowers shall immediately deposit into the Collateral Account an amount in cash equal to an amount not less than the applicable Minimum Collateral Amount with respect to such L/C Obligations as of such date plus any accrued and unpaid interest thereon.

(ii) The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the Collateral Account. Moneys in the Collateral Account shall be applied by the Administrative Agent to reimburse L/C Issuer for L/C Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the L/C Obligations at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of the Required Lenders), be applied to satisfy other obligations of the Borrowers under this Agreement. If the Borrowers are required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrowers within three (3) Business Days after all Events of Default have been cured or waived.

(q) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrowers shall be obligated to reimburse, indemnify and compensate the L/C Issuer hereunder for any and all drawings under such Letter of Credit as if such Letter of Credit had been issued solely for the account of the Borrowers. The Borrowers irrevocably waive any and all defenses that might otherwise be available to them as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of such Subsidiaries inures to the benefit of such Borrower, and that such Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(r) Conflict with Issuer Documents. In the event of any conflict or inconsistency between the terms hereof and the terms of any Issuer Documents, (i) the terms hereof shall control, (ii) no event or circumstance shall give rise to a default or event of default under any Issuer Documents unless such event or circumstance gives rise to a Default or an Event of Default under this Agreement, as applicable, and

(iii) the Borrowers shall not have any obligation to make any deposit under any Issuer Documents (without limiting the Borrowers' obligation to make such deposits under this Agreement pursuant to the terms hereof). The Borrowers shall not have any obligation to pay (x) any interest under any Issuer Documents (without limiting the interest payable pursuant to the terms of this Agreement), or (y) any fees under any Issuer Documents (without limiting the Borrowers' obligations to pay any fees pursuant to the terms of this Agreement).

(s) Existing Letters of Credit as of the Second Amendment Effective Date. Notwithstanding any of the provisions of this Section 2.03 to the contrary, all Letters of Credit that are issued and outstanding as of the Second Amendment Effective Date in accordance with the terms of this Agreement as in effect prior to the Second Amendment Effective Date shall be deemed for all purposes to be issued and outstanding under this Agreement in all respects in accordance with the provisions hereof (even if the terms of such existing Letters of Credit do not otherwise conform to the requirements set forth herein). Moreover, if the terms of any such existing Letters of Credit include auto-reinstatement, maturity date or other provision that conflict with any of the provisions of this Section 2.03, such Letters of Credit shall continue to be deemed to be properly issued and outstanding in accordance with the terms and provisions of this Agreement if any such Letters of Credit are renewed or extended on substantially the same terms as they exist as of the Second Amendment Effective Date (even if the terms of such Letters of Credit do not otherwise conform to the requirements set forth herein).

2.4 Swing Line Loans.

(a) Swing Line Facility. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, shall, subject to the terms of any Auto Borrow Agreement (if applicable) make loans (each such loan, a “Swing Line Loan”) to the Borrowers in Dollars from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender’s Revolving Commitment; provided, however, that (i) after giving effect to any Swing Line Loan, (A) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments and (B) the Revolving Credit Exposure of any Lender shall not exceed such Lender’s Revolving Commitment, (ii) the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan and (iii) the Swing Line Lender shall not be under any obligation to make any Swing Line Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan, unless otherwise agreed between the Swing Line Lender and the applicable Borrower; provided, however, such alternate rate of interest shall apply to Swing Line Loans so long as the Swing Line Lender has not requested that the Lenders fund Revolving Loans to refinance, or to purchase and fund risk participations in, such Swing Line Loans pursuant to Section 2.04(c). Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender’s Applicable Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures.

(i) At any time an Auto Borrow Agreement is not in effect, each Borrowing of Swing Line Loans shall be made upon the requesting Borrower’s irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by (A) telephone or (B) by a Swing Line Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a Swing Line Loan Notice. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum principal amount of \$50,000, and (ii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed Borrowing of Swing Line Loans (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article V is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the requesting Borrower either by wire transfer of such funds in accordance with instructions provided by the requesting Borrower to (and reasonably acceptable to) the Administrative Agent on or prior to the Closing Date or by wire transfer of such funds in accordance with subsequent

instructions provided by the requesting Borrower to (and reasonably acceptable to) the Swing Line Lender by the requesting Borrower.

(ii) In order to facilitate the borrowing of Swing Line Loans, any Borrower and the Swing Line Lender may mutually agree to, and are hereby authorized to, enter into an Auto Borrow Agreement in form and substance satisfactory to the Administrative Agent and the Swing Line Lender (the “Auto Borrow Agreement”) providing for the automatic advance by the Swing Line Lender of Swing Line Loans under the conditions set forth in such agreement, which shall be subject to the conditions set forth herein. At any time an Auto Borrow Agreement is in effect, the requirements for borrowings of Swing Line Loans set forth in the immediately preceding paragraph shall not apply, and all Borrowings of Swing Line Loans under the Auto Borrow Agreement shall be made in accordance with the Auto Borrow Agreement; provided that any automatic advance made by Bank of America in reliance on the Auto Borrow Agreement shall be deemed a Swing Line Loan as of the time such automatic advance is made notwithstanding any provision in the Auto Borrow Agreement to the contrary. For purposes of determining the Outstanding Amount under the Aggregate Revolving Commitments at any time during which an Auto Borrow Agreement is in effect, the Outstanding Amount of all Swing Line Loans shall be deemed to be the sum of the Outstanding Amount of Swing Line Loans at such time plus the maximum remaining amount available to be borrowed under the Auto Borrow Agreement. For purposes of any borrowing of Swing Line Loans pursuant to the Auto Borrow Agreement, all references to Bank of America shall be deemed to be a reference to Bank of America, in its capacity as Swing Line Lender hereunder.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole discretion may request, on behalf of each Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Lender make a Revolving Loan that is a Base Rate Loan in an amount equal to such Lender’s Applicable Percentage of the then outstanding amount of Swing Line Loans made to such Borrower. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Revolving Commitments and the conditions set forth in Section 5.02. The Swing Line Lender shall furnish the applicable Borrower with a copy of the applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent’s Office not later than 1:00 p.m. on the day specified in such Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available shall be deemed to have made a Revolving Loan that is a Base Rate Loan to the applicable Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Borrowing of Revolving Loans in accordance with Section 2.04(c)(i), the request for Revolving Loans that are Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender’s payment to the Administrative Agent for the

account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right that such Lender may have against the Swing Line Lender, the Parent Borrower, any Subsidiary or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 5.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrowers for interest on the Swing Line Loans. Until each Lender funds its Revolving Loans that are Base Rate Loans or risk participation pursuant to this Section 2.04 to refinance such

Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.5 Prepayments.

(a) Voluntary Prepayments of Loans.

(i) Revolving Loans. Each Borrower may, upon delivery of a Notice of Loan Prepayment to the Administrative Agent, at any time or from time to time voluntarily prepay Revolving Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of BSBY Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any such prepayment of BSBY Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding); and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding). Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if BSBY Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by a Borrower, then a Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a BSBY Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.15, each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

(ii) Swing Line Loans. At any time that an Auto Borrow Agreement is not in effect, each Borrower may, upon notice from such Borrower to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of \$50,000 (or, if less, the entire principal thereof then outstanding or if so provided in any applicable Auto Borrow Agreement). Each such notice shall specify the date and amount of such prepayment. If such notice is given by a Borrower, then a Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory Prepayments of Revolving Loans. If for any reason the Total Revolving Outstandings at any time exceed the Aggregate Revolving Commitments then in effect, the Borrowers shall promptly prepay Revolving Loans and/or Swing Line Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b) unless after the prepayment in full of the Revolving Loans and Swing Line Loans the Total Revolving Outstandings exceed the Aggregate Revolving Commitments then in effect. In addition, the Borrowers shall promptly prepay Revolving Loans and/or Swing Line Loans (or, at the Borrowers' option, any term loans outstanding at such time) with Net Cash Proceeds as provided in Section 8.05(c) (it being agreed that any such prepayment shall be permitted to be deferred to correspond with the expiration of a then-in-effect

Interest Period to avoid the incurrence of breakage costs and other penalties as a result thereof). Within the parameters of the applications set forth above, prepayments shall be applied first to Base Rate Loans and then to BSBY Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.05(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

2.6 Termination or Reduction of Aggregate Revolving Commitments. The Borrowers may, upon notice to the Administrative Agent, terminate the Aggregate Revolving Commitments, or from time to time permanently reduce the Aggregate Revolving Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of such termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$2,500,000 or any whole multiple of \$500,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Aggregate Revolving Commitments and (iv) if, after giving effect to any reduction of the Aggregate Revolving Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Revolving Commitments, such sublimit shall be automatically reduced by the amount of such excess. The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Revolving Commitments. Any reduction of the Aggregate Revolving Commitments shall be applied to the Revolving Commitment of each Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination.

2.7 Repayment of Loans.

(a) Revolving Loans. The Borrowers shall repay to the Lenders on the Maturity Date the aggregate unpaid principal amount of all Revolving Loans outstanding on such date.

(b) Swing Line Loans. At any time the Auto Borrow Agreement is in effect, the Swing Line Loans shall be repaid in accordance with the terms of the Auto Borrow Agreement. At any time the Auto Borrow Agreement is not in effect, the Borrowers shall repay to Swing Line Lender the aggregate unpaid principal amount of each Swing Line Loan outstanding on the Maturity Date.

2.8 Interest.

(a) Subject to the provisions of subsection (b) below, (i) each BSBY Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the BSBY Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to (A) the Base Rate plus the Applicable Rate or (B) such other rate as may be agreed to in writing between the applicable Borrower and the Swing Line Lender so long as the Swing Line Lender has not requested that the Lenders fund Revolving Loans to refinance, or to purchase and fund risk participations in, such Swing Line Loans pursuant to Section 2.04(c)). To the extent that any calculation of interest or any fee required to be paid under this Agreement shall be based on (or result in) a calculation that is less than zero, such calculation shall be deemed zero for purposes of this Agreement.

(b) (i) If any amount of principal of any Loan is not paid when due, whether at stated maturity, by acceleration or otherwise, such amount shall bear interest until paid at a fluctuating interest rate per annum equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by any Borrower under any Loan Document is not paid when due, whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall bear interest until paid at a fluctuating interest rate per annum equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists and is continuing (other than as set forth in clauses (b)(i) and (b)(ii) above), the Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.9 Fees.

In addition to certain fees described in subsections (l) and (m) of Section 2.03:

(a) Commitment Fee. The Borrowers shall pay to the Administrative Agent, for the account of each Lender in accordance with its Applicable Percentage, a commitment fee (the "Commitment Fee") equal to the product of (i) the Applicable Rate ~~times~~ (ii) the actual daily amount by which the Aggregate Revolving Commitments exceed the sum of (A) the Outstanding Amount of Revolving Loans and (B) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.15. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be counted towards or considered usage of the Aggregate Revolving Commitments for purposes of determining the Commitment Fee. The Commitment Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article V is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The Commitment Fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such new Applicable Rate was in effect.

(b) Other Fees.

(i) The Borrowers shall pay to the Administrative Agent for its own account fees in the amounts and at the times specified in the Fee Letter (including, without duplication, fronting fees referred to in Section 2.03(m)). Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrowers shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the BSBY Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the consolidated financial statements of the Parent Borrower or for any other reason, the Borrowers or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Parent Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrowers shall promptly and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under this Agreement. The Borrowers' obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Unless such Borrower has already done so, upon the request of any Lender made through the Administrative Agent, each Borrower shall execute and deliver to such Lender (through the Administrative Agent) a promissory note, which shall also evidence such Lender's Loans, in addition to such accounts or records. Each such promissory note shall be in the form of Exhibit D (a "Note"). Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a) above, each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. 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. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by a Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of BSBY Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and such Borrower that received the proceeds of such Borrowing severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by such Borrower, the interest rate applicable to Base Rate Loans. If such Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to such Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by a Borrower shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrowers prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders or the L/C Issuer hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by

the Borrowers (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrowers with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

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

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

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

2.13 Sharing of Payments by Lenders.

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall

(a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of a Borrower pursuant to and in accordance with the express terms of this

Agreement (including the application of funds arising from the existence of a Defaulting Lender),
(B) the application of Cash Collateral provided for in Section 2.14 or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to the Parent Borrower or any Subsidiary (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Cash Collateral.

(a) Certain Credit Support Events. If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Maturity Date, any L/C Obligation for any reason remains outstanding, (iii) the Borrowers shall be required to provide Cash Collateral pursuant to Section 9.02(c) or (iv) there shall exist a Defaulting Lender, the Borrowers shall promptly (in the case of clause (iii) above) or within one Business Day (in all other cases) following any request by the Administrative Agent or the L/C Issuer provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to Section 2.15(b) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. Each Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant to Section 2.14(a), and in all proceeds of the foregoing, as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.14(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided (other than Liens permitted under Section 8.01(p)) or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrowers will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. The Borrowers shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.14 or Sections 2.03, 2.04, 2.05, 2.15 or 9.02 in respect of Letters of Credit may be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations or circumstances giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee

following compliance with Section 11.06(b)(vi)) or (ii) the determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided, however, (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien, if any, conferred under the Loan Documents and the other applicable provisions of the Loan Documents and (y) the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations. Upon any such release, the Administrative Agent shall (and is hereby irrevocably authorized by the Lenders and the L/C Issuer to) execute such documents as may be necessary to evidence such release.

2.15 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; third, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.14; fourth, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrowers, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to any Borrower as a result of any judgment of a court of competent jurisdiction obtained by such Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if

(x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 5.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting

Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.15(b). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14 and Section 2.15.

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (B) above, the Borrowers shall (x) pay to each Non- Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to Section 2.15(b) below, (y) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(b) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(c) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in Section 2.15(b) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.14.

(d) Defaulting Lender Cure. If the Borrowers, the Administrative Agent, Swing Line Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to

be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.15(b)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of any Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.16 Joint and Several Liability.

(a) Each Borrower is jointly and severally liable for all of the Obligations regardless of which such Person actually receives or received (or receives or received the proceeds of) Loans, Letters of Credit and other extensions of credit hereunder or the amount of such Loans, Letters of Credit and other extensions of credit received or the manner in which the Administrative Agent, the L/C Issuer, any Lender or any other holder of Obligations accounts for such Loans, Letters of Credit and other extensions of credit on its books and records. Each Borrower's obligations with respect to Loans, Letters of Credit and other extensions of credit made to it hereunder and each such Borrower's obligations arising as a result of the joint and several liability of such Borrower hereunder, with respect to Loans, Letters of Credit and other extensions of credit made to and other Obligations owing by the other Borrowers hereunder, shall be primary obligations of each such Borrower.

(b) The joint and several liability of each Borrower under clause (a) above is absolute and unconditional, irrespective of the value, genuineness, validity or regularity of any of the Loan Documents or any other document relating to the Obligations or the enforceability of the Loan Documents or any other document relating to the Obligations against any Person other than such Borrower or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any law or regulation or other circumstance whatsoever (other than payment of the Obligations in full) which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 2.16 that the joint and several liability of each Borrower the foregoing clause (a) shall be absolute and unconditional under any and all circumstances. Each Borrower agrees that with respect to its Obligations under the foregoing clause (a), such Borrower shall have no right of subrogation, indemnity, reimbursement or contribution against any other Borrower for amounts paid under this Section 2.16 until such time as all Loans and all other Obligations (other than indemnification and other contingent obligations not yet due) have been paid in full and the Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the joint and several liability of each Borrower under the foregoing clause (a), which shall remain absolute and unconditional as described above:

(i) at any time or from time to time, without notice to any Borrower, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of any of the Loan Documents or any other document relating to the Obligations shall be done or omitted; provided, however, that the foregoing shall not be deemed a waiver by any Borrower of any right to receive notice expressly granted to such Borrower under any Loan Document or any such other documents;

(ii) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect as permitted by the Loan

Documents or any other document relating to the Obligations shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with; provided, however, that the foregoing shall not be deemed a waiver by any Borrower of any right to receive notice expressly granted to such Borrower under any Loan Document or any such other documents;

(iii) if any Lien is granted to, or in favor of, the Administrative Agent or any Lender or Lenders as security for any of the Obligations such Lien shall fail to attach or be perfected; or

(iv) any of the Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Borrower) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Borrower).

Each Borrower expressly waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment and any other notice whatsoever (other than any right to receive notice expressly granted to such Borrower under any Loan Document) and any requirement that the Administrative Agent or any Lender exhaust any right, power or remedy or first proceed against any other Person under any of the Loan Documents or any other document relating to the Obligations or against any other Person under any other guarantee of, or security for, any of the Obligations.

2.17 Extension Option; Replacement of Declining Lenders.

The Borrowers may from time to time extend the Maturity Date (each an “Extension Option”) at the option of the Borrowers by an agreement in writing entered into by the Loan Parties, the Administrative Agent and the Accepting Lenders (the “Extension Amendment”); provided that: (a) each Extension Option shall be for a term of one additional year from the then current Maturity Date; (b) the Parent Borrower shall have given written notice to the Administrative Agent of its request for such Extension Option at least thirty (30) but no more than ninety (90) days prior to the annual anniversary of the Closing Date (which the Administrative Agent shall promptly deliver to the Lenders; (c) no Default shall exist on the effective date of such Extension Option or would exist after giving effect to such Extension Option; (d) the representations and warranties of each Loan Party contained in Article V or any other Loan Document, or which are contained in any report, certificate or similar document executed and delivered by the Borrowers or any other Loan Party and furnished at any time under or in connection herewith or therewith, or furnished pursuant to Article II, Article V or Sections 7.01, 7.02 or 7.03 of this Agreement, shall be true and correct in all material respects on and as of the effective date of such Extension Option, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; (e) the Required Lenders shall have agreed to such Extension Option, provided that (i) no Lender shall be under any obligation to agree to any Extension Option and any such decision to agree to any Extension Option shall be in such Lender’s sole and absolute discretion and (ii) if any Lender fails to respond to a request for an Extension Option within 30 days (or such shorter period as agreed by the Borrowers and the Administrative Agent) of such notice, such Lender shall be deemed to have declined to approve such request; (f) the L/C Issuer and Swing Line Lender shall have approved the Extension Option; and (g) the Borrowers shall deliver to the Administrative Agent: (i) a certificate of each Loan Party dated as of the effective date of such Extension Option signed by a Responsible Officer of such Loan Party (A) certifying and attaching resolutions adopted by the board of directors or equivalent governing body of such Loan Party approving such Extension Option and (B) in the case of the Borrowers, certifying that, before and after giving effect to such Extension Option, the conditions set forth in clauses (c) and (d) of this Section 2.17(a) above are satisfied; and (ii) customary opinions of legal counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, dated as of the effective date of such Extension Option.

An Extension Option shall be effective only with respect to the Loans and Commitments of each Lender that approves such Extension Option (each such Lender, an “Accepting Lender”). The Maturity Date with respect to the Loans and Commitments of any Lender that declines to approve an Extension Option or that is deemed to have declined to approve such Extension Option (each such Lender, a “Declining Lender”) shall not be extended pursuant to such Extension Option and shall remain the Maturity Date in effect immediately prior to such Extension Option.

The Lenders authorize the Administrative Agent to enter into, and the Lenders agree that this Agreement and the other Loan Documents shall be amended by (without any further consent of any Lender being required therefor), each Extension Amendment to the extent the Administrative Agent and the Borrowers deem necessary in order to effect the applicable Extension Option including any amendments necessary to treat the applicable Loans and Commitments of the Accepting Lenders as a new tranche of Loans and Commitments; provided that all Borrowings, all prepayments of Loans and all reductions of Commitments shall continue to be made on a ratable basis among all Lenders, based on the relative amounts of their Commitments (i.e., both extended and non-extended) until the repayment of the Loans attributable to the non-extended Commitments (and the termination of the non-extended Commitments) on the relevant Maturity Date; provided further the allocation of the participation exposure with respect to L/C Obligations and Swing Line Loans as between the extended Commitments and the non-extended Commitments shall be made on a ratable basis as between such extended Commitments and the non-Extended Commitments until the Maturity Date in respect of the non-extended Commitments based on the Applicable Percentages and on the Maturity Date of the non-extended Commitments such participation exposure shall be reallocated among the extended Commitments based on the Applicable Percentages). The Administrative Agent, the Lenders and the Loan Parties acknowledge that the pro rata borrowing, pro rata prepayment and pro rata commitment reduction requirements set forth in this Section 2.17 shall supersede any provisions in this Agreement to the contrary. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Option.

The Borrower will have the right to replace any Declining Lender in accordance with Section 11.13.

ARTICLE III.

TAXES, YIELD PROTECTION AND ILLEGALITY

3.1 Taxes.

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

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Internal Revenue Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below,

(B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Internal Revenue Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Internal Revenue Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. Each of the Loan Parties shall, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within ten days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within ten days after demand therefor, (A) the Administrative Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (B) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the

maintenance of a Participant Register and (C) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

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

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the

reasonable request of the Borrowers or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of a Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed copies (or originals, as required) of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable),

such Lender shall deliver to the Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrowers or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.2 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Credit Extensions whose interest is determined by reference to the BSBY Rate, or to determine or charge interest rates based upon the BSBY Rate, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, (a) any obligation of such Lender to make or continue BSBY Rate Loans or to convert Base Rate Loans to BSBY Rate Loans shall be suspended and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined

by reference to the BSBY component of the Base Rate, the interest rate on Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the BSBY Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all BSBY Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the BSBY Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such BSBY Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such BSBY Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the BSBY Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the BSBY Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the BSBY Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.3 Inability to Determine Rates.

(a) If in connection with any request for a BSBY Rate Loan or a conversion to or continuation thereof, as applicable, (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.03(b), and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred (as applicable) or (B) adequate and reasonable means do not otherwise exist for determining BSBY for any requested Interest Period with respect to a proposed BSBY Rate Loan or in connection with an existing or proposed Base Rate Loan or (ii) the Administrative Agent or the Required Lenders determine that for any reason that the BSBY Rate for any requested Interest Period with respect to a proposed BSBY Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrowers and each Lender. Thereafter,

(x) the obligation of the Lenders to make or maintain BSBY Rate Loans or to convert Base Rate Loans to BSBY Rate Loans shall be suspended (to the extent of the affected BSBY Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the BSBY Rate component of the Base Rate, the utilization of the BSBY Rate component in determining the Base Rate (pursuant to clause (c) of the definition of Base Rate) shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders revokes such notice. Upon receipt of such notice, (i) the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of BSBY Rate Loans (to the extent of the affected BSBY Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein (without regard to clause (c) of the definition of Base Rate) and (ii) any outstanding BSBY Rate Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, but without limiting Section 3.03(a), if the Administrative Agent determines (which determination shall be conclusive and binding upon all parties hereto absent manifest error), or the Borrowers or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrowers) that the Borrowers or Required Lenders (as applicable) have determined (which determination likewise shall be conclusive and binding upon all parties hereto absent manifest error), that:

(i) adequate and reasonable means do not exist for ascertaining one month, three month and six month interest periods of BSBY including, without limitation, because the BSBY Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) Bloomberg or any successor administrator of the BSBY Screen Rate or a Governmental Authority having or purporting to have jurisdiction over the Administrative Agent or Bloomberg or such administrator has made a public statement identifying a specific date after which one month, three month and six month interest periods of BSBY or the BSBY Screen Rate shall or will no longer be representative or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, or that such interest periods or BSBY Screen Rate have failed to comply with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, provided that, at the time of such statement, there is no successor administrator that is reasonably satisfactory to the Administrative Agent, that will continue to provide such representative interest periods of BSBY after such specific date (the latest date on which one month, three month, six month interest periods of BSBY or the BSBY Screen Rate are no longer representative or available permanently or indefinitely, the “Scheduled Unavailability Date”);

then, on a date and time determined by the Administrative Agent (any such date, the “BSBY Replacement Date”), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, BSBY will be replaced hereunder and under any Loan Document with, subject to the proviso below, the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the “Successor Rate”):

(x) Term SOFR plus the SOFR Adjustment; and

(y) Daily Simple SOFR plus the SOFR Adjustment;

provided that, if initially BSBY is replaced with the rate contained in clause (y) above (Daily Simple SOFR plus the SOFR Adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its sole discretion, and the Administrative Agent notifies the Borrowers and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Successor Rate shall be Term SOFR plus the SOFR Adjustment.

If the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a monthly basis.

Notwithstanding anything to the contrary herein, (i) if the Administrative Agent determines that neither of the alternatives set forth in clauses (x) and (y) above is available on or prior to the BSBY Replacement Date or (ii) if the events or circumstances of the type described in Section 3.03(b)(i) or (ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Administrative Agent and the Borrowers may amend this Agreement solely for purpose of replacing BSBY or any then current Successor Rate in accordance with this Section 3.03 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar

denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmarks which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a “Successor Rate”. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrowers unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Borrowers and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero %, the Successor Rate will be deemed to be zero % for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrowers and the Lenders reasonably promptly after such amendment becomes effective.

3.4 Increased Costs.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the BSBY Rate) or the L/C Issuer; or

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the BSBY Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender

or the L/C Issuer, the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer reasonably determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrowers shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.5 Compensation for Losses.

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

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by any Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by such Borrower; or

(c) any assignment of a BSBY Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrowers pursuant to Section 11.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

3.6 Mitigation of Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. Each Lender may make any Credit Extension to the Borrowers through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrowers to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrowers such Lender or the L/C Issuer, as applicable, shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, as applicable, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrowers may replace such Lender in accordance with Section 11.13.

3.7 Survival.

Each party's obligations under this Article III shall survive termination of the Commitments, repayment of all other Obligations hereunder and resignation or replacement of the Administrative Agent.

ARTICLE IV. GUARANTY

4.1 The Guaranty.

Each of the Guarantors hereby jointly and severally guarantees to the Administrative Agent, the L/C Issuer, the Lenders, the Hedge Banks, the Cash Management Banks and each other holder of the Obligations, as primary obligor and not as surety, the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of the applicable Loan Documents. Upon the failure by any Borrower or any other applicable Loan Party to pay any such amount when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), subject to any applicable grace or notice and cure period, each of the Guarantors agrees that it will, jointly and severally with the other Guarantors, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the

Obligations, will promptly pay the same, without any demand or notice whatsoever, in accordance with the terms of such extension or renewal.

Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents or the other documents relating to the Obligations, the obligations of each Guarantor under this Agreement and the other Loan Documents shall not exceed an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under applicable Debtor Relief Laws.

4.2 Obligations Unconditional.

The obligations of the Guarantors under Section 4.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or other documents relating to the Obligations, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 4.02 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against any Borrower or any other Guarantor for amounts paid under this Article IV until such time as the Obligations have been paid in full and the Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by applicable Law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

- (a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any of the acts mentioned in any of the provisions of any of the Loan Documents or any other document relating to the Obligations shall be done or omitted;
- (c) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents or any other document relating to the Obligations shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;
- (d) any Lien granted to, or in favor of, the Administrative Agent or any other holder of the Obligations as security for any of the Obligations shall fail to attach or be perfected; or
- (e) any of the Obligations shall be determined to be void or voidable (including for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever (other than any notices expressly required herein or under the other Loan Documents) and any requirement that the Administrative Agent or any other holder of the Obligations exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents or any other document relating to the Obligations or against any other Person under any other guarantee of, or security for, any of the Obligations.

4.3 Reinstatement.

The obligations of each Guarantor under this Article IV shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any Debtor Relief Law or otherwise, and each Guarantor agrees that it will reimburse the Administrative Agent and each other holder of the Obligations on demand for all reasonable costs and expenses (including reasonable fees and disbursements of counsel) incurred by the Administrative Agent or such holder of the Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law.

4.4 Certain Additional Waivers.

Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 4.02 and through the exercise of rights of contribution pursuant to Section 4.06.

4.5 Remedies.

The Guarantors agree that, to the fullest extent permitted by Law, as between the Guarantors, on the one hand, and the Administrative Agent and the other holders of the Obligations, on the other hand, the Obligations may be declared to be forthwith due and payable as specified in Section 9.02 (and shall be deemed to have become automatically due and payable in the circumstances specified in Section 9.02) for purposes of Section 4.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 4.01.

4.6 Rights of Contribution.

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable law. Such contribution rights shall be subordinate and subject in right of payment to the obligations of such Guarantors under the Loan Documents and no Guarantor shall exercise such rights of contribution until the Obligations (other than indemnification and other contingent obligations not yet due) have been paid in full and the Commitments have terminated.

4.7 Guarantee of Payment; Continuing Guarantee.

The guarantee in this Article IV is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to the Obligations whenever arising.

4.8 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty in this Article IV by any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (a “Specified Loan Party”) or the grant of a security interest under the Loan Documents by any such Specified Loan Party, in either case, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or

other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article IV voidable under applicable Debtor Relief Laws, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Facility Termination Date. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each Specified Loan Party for all purposes of the Commodity Exchange Act.

ARTICLE V.

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

5.1 Conditions of Effectiveness.

This Agreement shall be effective as of the Closing Date, subject to satisfaction of the following conditions precedent in each case in a manner reasonably satisfactory to the Administrative Agent and each Lender:

(a) Loan Documents. Receipt by the Administrative Agent of executed counterparts of this Agreement and the other Loan Documents, each properly executed by a Responsible Officer of each applicable Loan Party and, in the case of this Agreement, by each Lender and the Administrative Agent.

(b) Opinions of Counsel. Receipt by the Administrative Agent of favorable opinions of legal counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, dated as of the Closing Date.

(c) Organization Documents, Resolutions, Etc. Receipt by the Administrative Agent of the following:

(i) copies of the Organization Documents of each Loan Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of such Loan Party to be true and correct as of the Closing Date;

(ii) such certificates of resolutions, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to execute and deliver this Agreement and the other Loan Documents to which such Loan Party is a party; and

(iii) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and is validly existing, in good standing and qualified to engage in business in its state of organization or formation.

(d) Refinance of Existing Indebtedness. The Parent Borrower and its Subsidiaries shall have repaid (or shall have delivered to the Administrative Agent a payoff letter in form and substance reasonably acceptable to the Administrative Agent and shall have delivered a Loan Notice for Loans that will repay) the Existing Credit Agreement and terminated all commitments to extend credit with respect

to the Existing Credit Agreement (in each case other than the Existing Letters of Credit which shall remain outstanding pursuant to the terms of this Agreement).

(e) Fees. Receipt by the Administrative Agent of any fees required to be paid to the Administrative Agent on or before the Closing Date pursuant to the Fee Letter.

(f) Attorney Costs. Unless waived by the Administrative Agent, the Parent Borrower shall have paid all accrued reasonable and documented fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel) required to be paid by the Parent Borrower pursuant to the terms of the Loan Documents, to the extent invoiced and provided to the Parent Borrower prior to or on the Closing Date, plus such additional amounts of such reasonable fees, charges and disbursements as shall constitute the Administrative Agent's reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Parent Borrower and the Administrative Agent).

Without limiting the generality of the provisions of the last paragraph of Section 10.03, for purposes of determining compliance with the conditions specified in this Section 5.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

5.2 Conditions to all Credit Extensions.

The obligation of each Lender to honor any Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of BSBY Rate Loans) is subject to the following conditions precedent:

(a) Subject to the provisions of Section 2.01(b) to the contrary, the representations and warranties of each Loan Party contained in Article VI or any other Loan Document, or which are contained in any report, certificate or similar document executed and delivered by the Borrowers or any Loan Party and furnished at any time under or in connection herewith or therewith, or furnished pursuant to Article II, Article V or Sections 7.01, 7.02 or 7.03 hereof, shall be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(b) No Default shall exist or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of BSBY Rate Loans) submitted by a Borrower shall be deemed to be a representation and warranty by such Borrower that the conditions specified in Sections 5.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE VI. REPRESENTATIONS AND WARRANTIES

The Loan Parties represent and warrant to the Administrative Agent and the Lenders that:

6.1 Existence, Qualification and Power.

The Parent Borrower and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.2 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is party have been duly authorized by all necessary corporate or other organizational action, and do not (a) contravene the terms of any of such Loan Party's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any material Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or a material portion of the properties of such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or (c) violate any Law.

6.3 Governmental Authorization; Other Consents.

No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document other than those that have already been obtained and are in full force and effect.

6.4 Binding Effect.

Each Loan Document, when delivered hereunder, will have been duly executed and delivered by each Loan Party that is party thereto. Each Loan Document, when so delivered, will constitute a legal, valid and binding obligation of each Loan Party party thereto, enforceable against such Loan Party that is party thereto in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally, (b) general principles of equity, regardless of whether considered in a proceeding in equity or at law and (c) requirements of reasonableness, good faith and fair dealing.

6.5 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein;
(ii) fairly present the financial condition of the Parent Borrower and its Subsidiaries as of the date thereof

and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Parent Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The Interim Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein;
(ii) fairly present the financial condition of the Parent Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to customary and reasonable year-end audit adjustments; and
(iii) show all material indebtedness and other liabilities, direct or contingent, of the Parent Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(c) From the date of the Interim Financial Statements to and including the Closing Date, there has been no Disposition or any Recovery Event of any material part of the business or property of the Parent Borrower and its Subsidiaries, taken as a whole, and no purchase or other acquisition by any of them of any business or property (including any Equity Interests of any other Person) material in relation to the consolidated financial condition of the Parent Borrower and its Subsidiaries, taken as a whole, in each case, other than any such Disposition, Recovery Event, purchase or other acquisition that is reflected in the Interim Financial Statements or in the notes thereto or has otherwise been disclosed in writing to the Lenders on or prior to the Closing Date.

(d) The financial statements delivered pursuant to Section 7.01(a) and (b) have been prepared in accordance with GAAP (except as may otherwise be permitted under Section 7.01(a) and (b)) and present fairly (on the basis disclosed in the footnotes to such financial statements) the consolidated financial condition, results of operations and cash flows of the Parent Borrower and its Subsidiaries as of the dates thereof and for the periods covered thereby.

(e) Since the date of the Audited Financial Statements, there has been no event or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

6.6 Litigation.

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Responsible Officers of the Loan Parties threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against the Parent Borrower or any Subsidiary or against any of their properties that (a) purport to affect or pertain to this Agreement or any other Loan Document or any of the Credit Extensions or (b) could reasonably be expected to have a Material Adverse Effect.

6.7 No Default.

(a) Neither the Parent Borrower nor any Subsidiary is in default under or with respect to any Contractual Obligation, other than any default that could not reasonably be expected to result in a Material Adverse Effect.

(b) No Default has occurred and is continuing.

6.8 Ownership of Property; Liens.

Each of the Parent Borrower and its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its

business, except for such defects in title as could not reasonably be expected to have a Material Adverse Effect. The property of the Parent Borrower and its Subsidiaries is not subject to any Liens other than Permitted Liens.

6.9 Environmental Compliance.

Except as could not reasonably be expected to have a Material Adverse Effect:

(a) Each of the facilities and real properties owned, leased or operated by the Parent Borrower or any Subsidiary (the “Facilities”) and all operations of the Parent Borrower and its Subsidiaries at the Facilities (the “Businesses”) are in compliance with all applicable Environmental Laws, and there are no conditions relating to the Facilities or the Businesses that could reasonably be expected to give rise to liability under any applicable Environmental Laws.

(b) None of the Facilities contains, or has previously contained, any Hazardous Materials at, on or under the Facilities in amounts or concentrations that constitute or constituted a violation of, or could reasonably be expected to give rise to liability under, Environmental Laws.

(c) Neither the Parent Borrower nor any Subsidiary has received any written notice of, or written inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Facilities or the Businesses, nor does any Responsible Officer of any Loan Party have knowledge or a reasonable expectation that any such notice will be received or is being threatened.

(d) Hazardous Materials have not been transported or disposed of from the Facilities, or generated, treated, stored or disposed of at, on or under any of the Facilities or any other location, in each case by or on behalf of the Parent Borrower or any Subsidiary in violation of, or in a manner that would be reasonably be expected to result in liability under, any applicable Environmental Law.

(e) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Responsible Officers of the Loan Parties, threatened, under any Environmental Law to which the Parent Borrower or any Subsidiary is named as a party, nor is the Parent Borrower or any Subsidiary a party to any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Parent Borrower, any Subsidiary, the Facilities or the Businesses except for such routine administrative requirements as are applicable to the Facilities or the Business under Environmental Law.

(f) There has been no release or threat of release of Hazardous Materials at or from the Facilities, or arising from or related to the operations (including disposal) of the Parent Borrower or any Subsidiary in connection with the Facilities or otherwise in connection with the Businesses, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under Environmental Laws.

6.10 Insurance.

The properties of the Parent Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Parent Borrower, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Party operates.

6.11 Taxes.

The Parent Borrower and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. To each Loan Party's knowledge, there are no proposed tax assessments against the Parent Borrower or any Subsidiary or claims or adjustments proposed for any of such Loan Party's prior tax years which would, if made, have a Material Adverse Effect. Neither the Parent Borrower nor any Subsidiary is party to any tax sharing agreement.

6.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code and other Federal or state laws, except for any noncompliance that would not reasonably be expected to have a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has received a favorable determination, opinion or advisory letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Internal Revenue Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Internal Revenue Code, or an application for such a letter is currently being processed by the IRS. To the knowledge of the Responsible Officers of the Loan Parties, nothing has occurred that could reasonably be expected to prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of the Responsible Officers of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except for any event, occurrence, circumstance, condition or transaction that would not reasonably be expected to have a Material Adverse Effect; (i) no ERISA Event has occurred, and neither any Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Internal Revenue Code) is 60% or higher and neither any Loan Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) neither any Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

6.13 Subsidiaries.

Set forth on Schedule 6.13 is a complete and accurate list as of the Closing Date of each Subsidiary, together with (a) jurisdiction of incorporation or organization, (b) number or percentage, as applicable, of shares of each class of Equity Interests outstanding, and (c) number or percentage, as applicable, of outstanding shares of each class of Equity Interests owned by the Parent Borrower or any Subsidiary. The outstanding Equity Interests of each Subsidiary are validly issued, fully paid and non-assessable.

6.14 Margin Regulations; Investment Company Act.

(a) No Borrower is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of each Borrower only or of the Parent Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Section 8.01 or Section 8.05 or subject to any restriction contained in any agreement or instrument between any Borrower and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 9.01(e) will be margin stock.

(b) None of the Parent Borrower or any Subsidiary is, or is required to be registered as, an “investment company” under the Investment Company Act of 1940.

6.15 Disclosure.

Each Loan Party has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

6.16 Compliance with Laws.

Each of the Parent Borrower and each Subsidiary is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.17 Intellectual Property; Licenses, Etc.

The Parent Borrower and its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “IP Rights”) that are reasonably necessary for the operation of their respective businesses. Except for such claims and infringements that could not reasonably be expected to have a Material Adverse Effect, no claim has been asserted and is pending by any Person challenging or

questioning the use of any IP Rights or the validity or effectiveness of any IP Rights, nor does any Responsible Officer of any Loan Party know of any such claim, and, to the knowledge of the Responsible Officers of the Loan Parties, the use of any IP Rights by the Parent Borrower or any Subsidiary, the granting of a right or a license in respect of any IP Rights from the Parent Borrower or any Subsidiary or any slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Parent Borrower or any Subsidiary does not infringe on any rights of any other Person.

6.18 Solvency.

After giving effect to this Agreement and the transactions to occur under this Agreement as of the Closing Date, the Parent Borrower and its Subsidiaries, taken as a whole, are Solvent on a consolidated basis.

6.19 Taxpayer Identification Number.

Set forth on Schedule 6.19 is the U.S. tax payer identification number of each Loan Party as of the Closing Date.

6.20 OFAC.

No Loan Party, nor any of their Subsidiaries, nor, to the knowledge of the Loan Parties and their Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions or (ii) located, organized or resident in a Designated Jurisdiction.

6.21 Anti-Corruption Laws.

The Loan Parties and their Subsidiaries have conducted their businesses in compliance in all material respects with applicable anti-corruption laws and have instituted and maintained policies and procedures reasonably designed to promote and achieve such compliance with such laws.

6.22 No Affected Financial Institution.

No Loan Party is an Affected Financial Institution.

6.23 Covered Entities.

No Loan Party is a Covered Entity.

6.24 Beneficial Ownership Certification.

To the knowledge of the Parent Borrower, the information included in the Beneficial Ownership Certification delivered to any Lender in connection with this Agreement on or prior to the effective date of the First Amendment to this Agreement, if applicable, is true and correct in all respects.

ARTICLE VII. AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than indemnification or other contingent obligations not yet due) shall remain unpaid or

unsatisfied, or any Letter of Credit shall remain outstanding, the Loan Parties shall and shall (except in the case of the covenants set forth in Sections 7.01, 7.02 and 7.03) cause each Subsidiary not a Loan Party hereunder (if any) to:

7.1 Financial Statements.

Deliver to the Administrative Agent, for delivery by the Administrative Agent to each Lender, in form and detail reasonably satisfactory to the Administrative Agent:

(a) as soon as available, but in any event within 120 days after the end of each fiscal year of the Parent Borrower, commencing with the fiscal year ending December 31, 2017, a consolidated balance sheet of the Parent Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of Ernst & Young, or another independent certified public accountant reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within 45 days (or up to 50 days if the filing period with respect to the applicable Form 10-Q is extended to a corresponding date) after the end of each of the first three fiscal quarters of each fiscal year of the Parent Borrower, commencing with the fiscal quarter ending September 30, 2017, a consolidated balance sheet of the Parent Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations for such fiscal quarter and for the portion of the Parent Borrower's fiscal year then ended, and the related consolidated statements of changes in shareholders' equity and cash flows for the portion of the Parent Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be unaudited (management prepared) and certified by a Responsible Officer of the Parent Borrower (in such capacity, and not individually and without personal liability) as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Parent Borrower and its Subsidiaries in accordance with GAAP, subject only to customary and reasonable year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, but in any event within 45 days after the end of each fiscal year of the Parent Borrower, commencing with the fiscal year ending December 31, 2018, forecasts prepared by management of the Parent Borrower, in form reasonably satisfactory to the Administrative Agent, of consolidated balance sheets and statements of income or operations and cash flows of the Parent Borrower and its Subsidiaries on a monthly basis for the immediately following fiscal year (including the fiscal year in which the Maturity Date occurs).

As to any information contained in materials furnished pursuant to Section 7.02(b), the Loan Parties shall not be separately required to furnish such information under clause (a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Loan Parties to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

7.2 Certificates; Other Information.

Deliver to the Administrative Agent, for delivery by the Administrative Agent to each Lender, in form and detail reasonably satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 7.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Parent Borrower (which delivery may, unless the Administrative Agent or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes);

(b) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the equityholders of the Parent Borrower or any Subsidiary, and, to the extent applicable, copies of all annual, regular, periodic and special reports and registration statements which the Parent Borrower or any Subsidiary may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(c) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Parent Borrower by independent accountants in connection with the accounts or books of the Parent Borrower or any Subsidiary, or any audit of any of them;

(d) promptly, and in any event within five Business Days after receipt thereof by the Parent Borrower or any Subsidiary, copies of each written notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of the Parent Borrower or any Subsidiary;

(e) to the extent any Loan Party qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, an updated Beneficial Ownership Certification promptly following any change in the information provided in the Beneficial Ownership Certification delivered to any Lender, if any, in relation to such Loan Party that would result in a change to the list of beneficial owners identified in such certification; and

(f) promptly, such additional information regarding the business, financial or corporate affairs of the Parent Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 7.01(a) or (b) or Section 7.02(b) (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 Parent Borrower posts such documents, or provides a link thereto on the Parent Borrower’s website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Parent 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 Parent Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Parent Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Parent Borrower shall notify the Administrative Agent (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall

have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Parent Borrower 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.

The Loan Parties hereby acknowledge that (a) the Administrative Agent and/or the Arrangers may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system; provided, however, that any other electronic system utilized has safeguards that (i) are intended to protect against unauthorized access to Borrower Materials or (ii) are otherwise reasonably satisfactory to the Borrowers (it being acknowledged and agreed that the safeguards utilized as of the date hereof in Debt Domain, IntraLinks and Syndtrak are satisfactory to the Borrowers) (the “Platform”) and (b) certain of the Lenders (each a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Parent Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Loan Parties hereby agree that so long as the Parent Borrower or any of its Subsidiaries is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Loan Parties shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Parent Borrower or its Affiliates or the respective securities of the foregoing for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information”. Notwithstanding the foregoing, the Loan Parties shall be under no obligation to mark any Borrower Materials “PUBLIC.”

7.3 Notices.

Promptly notify the Administrative Agent of:

- (a) the occurrence of any Default.
- (b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect.
- (c) the occurrence of any ERISA Event that could reasonably be expected to result in a Material Adverse Effect.

(d) To the extent any Loan Party qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, any change in the information provided in the Beneficial Ownership Certification delivered to any Lender pursuant to this Agreement, if any, in relation to such Loan Party that would result in a change to the list of beneficial owners identified in such certification (accompanied by an updated Beneficial Ownership Certification); and

(e) any material change in accounting policies or financial reporting practices by the Parent Borrower or any Subsidiary, including any determination by the Borrowers referred to in Section 2.10(b).

Each notice pursuant to this Section 7.03 shall be accompanied by a statement of a Responsible Officer of the Parent Borrower (in such capacity, and not individually and without personal liability) setting forth details of the occurrence referred to therein and stating what action the Parent Borrower and its Subsidiaries, as applicable, have taken and propose to take with respect thereto. Each notice pursuant to Section 7.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

7.4 Payment of Taxes.

Pay and discharge as the same shall become due and payable all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Parent Borrower or such Subsidiary.

7.5 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 8.04 or 8.05.

(b) Preserve, renew and maintain in full force and effect its good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 8.04 or 8.05.

(c) Take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(d) Preserve or renew all of its IP Rights, the non-preservation or non-renewal of which could reasonably be expected to have a Material Adverse Effect.

7.6 Maintenance of Properties.

(a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted.

(b) Make all necessary repairs thereto and renewals and replacements thereof, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(c) Use the standard of care typical in the industry in the operation and maintenance of its facilities.

7.7 Maintenance of Insurance.

Maintain with financially sound and reputable insurance companies not Affiliates of the Parent Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

7.8 Compliance with Laws.

Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

7.9 Books and Records.

(a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Parent Borrower or such Subsidiary, as the case may be.

(b) Maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Parent Borrower or such Subsidiary, as the case may be.

7.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (each, an “Inspection”), upon at least three Business Days advance notice (which may be by telephone), or, if an Event of Default exists and is continuing, at any time with or without notice, all at such times during normal business hours and as often as the Administrative Agent or such Lender may request, all at the expense of the Borrowers; provided, however, that, unless an Event of Default has occurred and is continuing (in which case the limitations in this proviso shall not apply), (a) the Administrative Agent shall make all requests for Inspections on behalf of itself and the Lenders and not more than one Inspection in any fiscal quarter shall be requested, (b) the Lenders shall only participate in Inspections requested by the Administrative Agent and (c) the Borrowers shall be required to pay or reimburse only the Administrative Agent (and not the Lenders) for the reasonable costs and expenses relating to one (1) Inspection in any fiscal year.

7.11 Use of Proceeds.

(a) Use the proceeds of the Credit Extensions for working capital, capital expenditures and other general corporate purposes including refinancing the Existing Credit Agreement, in each case not in contravention of any Law or of any Loan Document; provided that the Borrowers shall not use the proceeds of any such Credit Extension to make any cash payment or prepayment of principal of Additional Indebtedness unless (i) the Borrowers shall have so notified the Administrative Agent of such use in writing prior to or concurrent with the delivery of the Loan Notice for such Credit Extension and (ii) the Loan Parties would be in compliance with the financial covenants set forth in Section 8.11 recomputed as of the end of the Applicable Period after giving effect to such Credit Extension and the use of the proceeds thereof on a Pro Forma Basis.

7.12 Additional Guarantors.

Within sixty (60) days (or such later date as the Administrative Agent may agree in its sole discretion) after any Person becomes a Domestic Subsidiary (unless such Domestic Subsidiary holds no assets, conducts no business and is formed solely for the purposes of completing a Permitted Acquisition, Investment or other transaction permitted hereby, in which case such sixty (60) day period shall not commence unless and until such Permitted Acquisition, Investment or other transaction permitted hereby

occurs) , cause such Person to (i) become a Guarantor by executing and delivering to the Administrative Agent a Joinder Agreement, and (ii) deliver to the Administrative Agent documents of the types referred to in Section 5.01(c) and, if requested by the Administrative Agent, favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the Joinder Agreement), all in form, content and scope reasonably satisfactory to the Administrative Agent.

7.13 Anti-Corruption Laws.

Conduct its businesses in compliance in all material respects with applicable anti-corruption laws and maintain policies and procedures reasonably designed to promote and achieve such compliance with such laws.

ARTICLE VIII. NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

8.1 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens pursuant to any Loan Document;
- (b) Liens existing on the date hereof and listed on Schedule 8.01 and any refinancings, renewals or extensions thereof, provided that the property covered thereby is not increased;
- (c) Liens (other than Liens imposed under ERISA) for taxes, assessments or governmental charges or levies not yet overdue for more than thirty days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (d) Liens of landlords, suppliers, carriers, warehousemen, mechanics, workmen, materialmen and repairmen and other like Liens imposed by Law or arising in the ordinary course of business, provided that such Liens secure only amounts not overdue for more than thirty days or, if overdue for more than thirty days, are being contested in good faith by appropriate proceedings diligently conducted for which adequate reserves determined in accordance with GAAP have been established;
- (e) Liens incurred or pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;
- (f) Liens incurred or deposits made to secure the performance of bids, tenders, sales, trade contracts, leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

- (g) ground leases or other leases in respect of real property on which facilities owned or leased by the Parent Borrower or a Subsidiary are located;
- (h) easements, licenses, rights-of-way, building restrictions, minor defects or irregularities in title and other similar charges or encumbrances affecting real property which, in the aggregate, do not materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;
- (i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 9.01(h);
- (j) Liens securing Indebtedness permitted under Section 8.03(f); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) such Liens attach to such property concurrently with or within ninety (90) days after the acquisition thereof;
- (k) 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;
- (l) Liens on goods the purchase price of which is financed by a documentary letter of credit issued for the account of the Parent Borrower or any Subsidiary provided that such Lien secures only the obligations of the Parent Borrower or such Subsidiary in respect of such letter of credit to the extent such obligations are permitted under this Agreement;
- (m) leases, licenses, subleases or sublicenses granted to others not interfering in any material respect with the business of the Parent Borrower and its Subsidiaries taken as a whole;
- (n) any interest or title of a lessor under, and Liens arising from UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases permitted by this Agreement;
- (o) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 8.02;
- (p) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions;
- (q) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection;
- (r) Liens arising from precautionary Uniform Commercial Code financing statements or similar filings made in respect of operating leases entered into by the Parent Borrower or any Subsidiaries which are otherwise permitted under this Agreement;
- (s) Liens arising on any real property as a result of any eminent domain, condemnation or similar proceeding being commenced with respect to such real property;
- (t) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Parent Borrower and its Subsidiaries, taken as a whole;

- (u) Liens pursuant to insurance premium financing arrangements securing insurance proceeds solely to the extent of such premiums;
- (v) Liens incurred in the ordinary course of business in connection with the purchase and shipping of goods or assets (or the related assets and proceeds thereof), which Liens are in favor of the seller or shipper of such goods or assets and only attached to such goods or assets during transit;
- (w) Liens securing Acquired Indebtedness, provided that (i) such Liens do not at any time encumber any property other than the property acquired in the applicable Permitted Acquisition and (ii) such Liens shall exist prior to the applicable Permitted Acquisition and shall not be incurred in anticipation of the applicable Permitted Acquisition; and
- (x) minor defects in title or irregularities in title or other similar charges or encumbrances affecting machinery and equipment which, do not materially detract from the value of the property subject thereto, materially interfere with the ordinary conduct of the business of the applicable Person or relate to any property other than the property subject thereto.

8.2 Investments.

Make any Investments, except:

- (a) Investments in the form of cash or Cash Equivalents;
- (b) Investments outstanding on the date hereof and set forth in Schedule 8.02;
- (c) Investments in any Person that is a Loan Party;
- (d) Investments by any Subsidiary that is not a Loan Party in any other Subsidiary that is not a Loan Party;
- (e) Investments by any Loan Party in any Subsidiary that is not a Loan Party in an aggregate amount not to exceed \$25,000,000 at any time outstanding;
- (f) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;
- (g) advances and loans to, and prepaid expenses for, employees, directors or officers for reasonable travel, relocation and business expenses in the ordinary course of business;
- (h) Guarantees and Swap Contracts permitted by Section 8.03;
- (i) Permitted Acquisitions and, to the extent treated as an Investment, Indebtedness of Persons acquired in Permitted Acquisitions permitted by Section 8.03(h) on the terms and in such amounts permitted therein;
- (j) purchases and acquisitions of inventory, supplies, materials and equipment in the ordinary course of business;
- (k) Investments constituting deposits described in clauses (e) and (f) of Section 8.01;

(l) Investments consisting of Permitted Bond Hedge Transactions and Permitted Warrant Transactions entered into in connection with Permitted Convertible Indebtedness; and

(m) Investments of a nature not contemplated in the foregoing clauses in an amount not to exceed \$20,000,000 in the aggregate at any time outstanding.

8.3 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and set forth in Schedule 8.03 and any refinancings, refundings, renewals and extensions thereof; provided that (i) the maximum principal amount of such Indebtedness is not increased and (ii) the material terms taken as a whole of such refinancing, refunding, renewal or extension are not materially less favorable to the Parent Borrower and its Subsidiaries than the terms of the Indebtedness being refinanced, refunded, renewed or extended;

(c) Indebtedness between and among the Parent Borrower and its Subsidiaries permitted under Section 8.02;

(d) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a “market view;” and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) Indebtedness incurred in the ordinary course of business (including performance bonds, bid bonds, appeal bonds, surety bonds and similar obligations, indemnification obligations arising out of agreements entered into in the ordinary course of business or in connection with any Permitted Acquisition or any Disposition permitted by Section 8.05, and any reimbursement obligations of Loan Parties to the issuers of Existing Letters of Credit) and not incurred through the borrowing of money, provided that such Indebtedness is either unsecured Indebtedness or Indebtedness secured by a Permitted Lien;

(f) Indebtedness (including obligations in respect of capital leases) hereafter incurred to finance the purchase, construction or improvement of fixed assets (whether or not constituting purchase money Indebtedness) and any Indebtedness assumed in connection with the acquisition of such assets or secured by a Lien on any such assets prior to the acquisition thereof, and renewals, refinancings and extensions thereof, provided that (i) the aggregate outstanding principal amount of all such Indebtedness shall not exceed \$50,000,000 at any one time outstanding; and (ii) such Indebtedness when incurred shall not exceed the purchase price of the asset(s) financed;

(g) Subordinated Indebtedness or unsecured Indebtedness (including Convertible Indebtedness) (collectively “Additional Indebtedness”), provided that (i) each of the Standard Conditions shall be satisfied; (ii) such Indebtedness is not at any time guaranteed by any Subsidiary that is not a Guarantor; and (iii) no such Indebtedness shall (A) mature or require any regularly scheduled amortization payment to be made prior to the date that is 91 days after the Maturity Date or (B) be subject to any mandatory redemption, mandatory repurchase or other mandatory prepayments of principal

(including, in the case of Convertible Indebtedness, early conversion triggers) other than those that, in the Parent Borrower's good faith judgment, are customary for senior unsecured high yield notes, senior subordinated high yield notes or senior unsecured or senior subordinated convertible notes, as the case may be;

(h) Indebtedness of Persons acquired in Permitted Acquisitions (the "Acquired Indebtedness"), provided that (i) such Indebtedness shall exist prior to the applicable Permitted Acquisition and shall not be incurred in anticipation of the applicable Permitted Acquisition and (ii) the aggregate principal amount of all such Indebtedness shall not exceed \$75,000,000 at any one time outstanding;

(i) unsecured Indebtedness issued to any seller in any Permitted Acquisition as consideration for such Permitted Acquisition and other unsecured Indebtedness in the form of purchase price adjustments, earn-outs, non-competition agreements and other deferred payment arrangements of a similar nature issued in connection with any Permitted Acquisition;

(j) Guarantees required by the U.S. Department of Transportation as supporting obligations for self-insurance programs of any Subsidiary;

(k) Guarantees with respect to Indebtedness permitted under this Section 8.03;

(l) Indebtedness consisting of Permitted Investments;

(m) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(n) Indebtedness arising from the honoring by a bank or financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, provided such Indebtedness is extinguished within five (5) days of the Borrower having notice or knowledge of its occurrence;

(o) Attributable Indebtedness under any Sale and Leaseback Transaction permitted by Section 8.15;

(p) Permitted Bond Hedge Transactions and Permitted Warrant Transactions entered into in connection with Permitted Convertible Indebtedness; and

(q) unsecured Indebtedness of a nature not contemplated in the foregoing clauses in an amount not to exceed \$20,000,000 in the aggregate at any time outstanding.

8.4 Fundamental Changes.

Merge, dissolve, liquidate or consolidate with or into another Person, except that so long as no Event of Default exists or would result therefrom, (a) the Parent Borrower may merge or consolidate with any of its Subsidiaries (other than the Subsidiary Borrower) provided that the Parent Borrower is the continuing or surviving Person, (b) any Subsidiary may merge or consolidate with any other Subsidiary provided that (i) if the Subsidiary Borrower is a party thereto then the Subsidiary Borrower shall be the continuing or surviving Person and (ii) if the Subsidiary Borrower is not a party thereto and a Guarantor is a party thereto then a Guarantor shall be the continuing or surviving Person, (c) the Parent Borrower or any Subsidiary may merge or consolidate with any other Person in connection with a Permitted Acquisition provided that if a Borrower is a party to such merger or consolidation then such Borrower is

the continuing or surviving Person, (d) any Subsidiary that is not a Guarantor may merge or consolidate with any other Subsidiary that is not a Guarantor and (e) any Subsidiary may dissolve, liquidate or wind up its affairs at any time provided that such dissolution, liquidation or winding up, as applicable, could not reasonably be expected to have a Material Adverse Effect.

8.5 Dispositions.

Make any Disposition other than:

(a) the Disposition of the Equity Interests of or all or substantially all of the property of any Subsidiary that represented less than 10% of Consolidated Tangible Net Worth as of the end of the Applicable Period and that accounted for less than 10% of Consolidated EBITDA for the Applicable Period;

(b) the Disposition of property (including the Equity Interests of any Subsidiary) in a single transaction or series of related transactions for which the total consideration (for such transaction or series of related transactions) is less than or equal to \$20,000,000; and

(c) the Disposition of property (including the Equity Interests of any Subsidiary) in a single transaction or series of related transactions for which the total consideration (for such transaction or series of related transactions) is greater than \$20,000,000, provided that (i) the Parent Borrower shall have given the Administrative Agent thirty (30) days prior written notice of such Disposition and (ii) if the Net Cash Proceeds for any such transaction or series of related transactions exceeds \$5,000,000, the Borrowers shall prepay the Loans by an amount equal to the Net Cash Proceeds thereof (without a corresponding permanent reduction of the Aggregate Revolving Commitments);

provided, however, that any Disposition pursuant to clauses (a) through (c) shall be permitted only if each of the following conditions is satisfied:

(i) each of the Standard Conditions shall be satisfied;

(ii) such Disposition shall not involve the sale, transfer or other disposition of a minority equity interest in any Subsidiary;

(iii) at least seventy-five percent (75%) of the consideration paid in connection therewith shall be cash or Cash Equivalents paid contemporaneous with consummation of the transaction and the aggregate consideration (cash and non-cash) shall be in an amount not less than the fair market value of the property disposed of;

(iv) if such Disposition is a Sale and Leaseback Transaction, such Disposition is not prohibited by the terms of Section 8.15; and

(v) such Disposition does not involve a sale, transfer or other disposition of receivables other than receivables owned by or attributable to other property concurrently being disposed of in a transaction otherwise permitted under this Section 8.05.

8.6 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that so long as no Event of Default has occurred and is continuing:

- (a) each Subsidiary may declare and make Restricted Payments to Persons that own Equity Interests in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;
- (b) the Parent Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in common Equity Interests of such Person;
- (c) the Parent Borrower may declare and make dividend payments and may issue and make redemptions of stock or other ownership interests in accordance with stock option, employee incentive or similar plans for employees, directors or officers of the Parent Borrower;
- (d) the Parent Borrower may make (A) any payment of premium to a counterparty under a Permitted Bond Hedge Transaction, (B) any payment in connection with a Permitted Warrant Transaction (x) by delivery of shares of the Parent Borrower's common stock upon net share settlement thereof or (y) by set-off and/or payment of an early termination payment or similar payment thereunder in the Parent Borrower's common stock upon any early termination thereof;
- (e) the Parent Borrower may issue shares of its common stock to satisfy obligations in respect of Permitted Convertible Notes;
- (f) the Parent Borrower may receive shares of its common stock on account of net share settlements or terminations of any Permitted Bond Hedge Transactions or Permitted Warrant Transactions entered into in connection with Permitted Convertible Notes;
- (g) the Parent Borrower may declare and make other Restricted Payments, including in connection with Permitted Acquisitions, provided that each of the Standard Conditions shall be satisfied; and
- (h) the Parent Borrower and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common Equity Interests.

8.7 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Parent Borrower and its Subsidiaries on the Closing Date or any business reasonably related or incidental thereto.

8.8 Transactions with Affiliates.

Enter into or permit to exist any transaction or series of transactions with any Affiliate of the Parent Borrower other than (a) advances of working capital to any Loan Party, (b) transfers of cash or other assets to any Loan Party, (c) intercompany transactions expressly permitted by Section 8.02, Section 8.03, Section 8.04, Section 8.05 or Section 8.06, or otherwise in this Agreement, (d) the payment of reasonable fees to directors, and compensation and employee benefit arrangements paid to, reimbursement of expenses of and indemnities provided for the benefit of officers, directors and employees, (e) arrangements described on Schedule 8.08 and (f) except as otherwise specifically limited in this Agreement, other transactions which are on terms and conditions substantially as favorable to the Parent Borrower or such Subsidiary, as applicable, as would be obtainable by it in a comparable arms-length transaction with a Person other than an Affiliate.

8.9 Burdensome Agreements.

Enter into, or permit to exist, any Contractual Obligation that (a) prohibits any such Person from

(i) making Restricted Payments to any Loan Party, (ii) repaying any Indebtedness or other obligation owed to any Loan Party, (iii) making loans or advances to any Loan Party, (iv) transferring any of its property to any Loan Party, (v) pledging its property pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof or (vi) acting as a Loan Party pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (i)-(v) above) for (1) this Agreement and the other Loan Documents, (2) restrictions or conditions existing on the date hereof and identified on Schedule 8.09, (3) any document or instrument governing Indebtedness incurred pursuant to Section 8.03(e), provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (4) any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (5) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 8.05 pending the consummation of such sale, or (6) customary provisions in leases and other contracts restricting the assignment thereof, or (b) requires the grant of any security for any obligation if such property is given as security for the Obligations.

8.10 Use of Proceeds.

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

8.11 Financial Covenants.

(a) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as of the end of any fiscal quarter of the Parent Borrower to be greater than 3.00:1.0.

(b) Consolidated Interest Coverage Ratio. Permit the Consolidated Interest Coverage Ratio as of the end of any fiscal quarter of the Parent Borrower to be less than 2.00:1.0.

8.12 Additional Indebtedness.

(a) Amend or modify any Subordinated Indebtedness if such amendment or modification would add or change any terms in a manner materially adverse to the Parent Borrower or any Subsidiary or to the Lenders (including any amendment or modification that would shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled or increase the interest rate applicable thereto), in each case except to the extent such amendment or modification is expressly permitted by the subordination provisions of such Subordinated Indebtedness.

(b) Make (or give any notice with respect thereto) any voluntary or optional payment or prepayment or redemption or acquisition for value of (including without limitation, by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), refund, refinance or exchange of any Additional Indebtedness in excess of \$5,000,000 in any fiscal year, other than with the proceeds of any substantially concurrent issuance of Additional Indebtedness of the Parent Borrower or any Subsidiary or Equity Interests of the Parent Borrower.

(c) Make any payment of principal or interest on any Subordinated Indebtedness in violation of the subordination provisions of such Subordinated Indebtedness.

8.13 Organization Documents; Fiscal Year.

- (a) Amend, modify or change its Organization Documents in a manner materially adverse to the Lenders.
- (b) Change its fiscal year.

8.14 Ownership of Subsidiaries.

Notwithstanding any other provisions of this Agreement to the contrary, (a) permit any Person (other than the Parent Borrower or any Wholly Owned Subsidiary) to own any Equity Interests of any Subsidiary, except to qualify directors where required by applicable Law or to satisfy other requirements of applicable Law with respect to the ownership of Equity Interests of Foreign Subsidiaries, or (b) permit any Subsidiary to issue or have outstanding any shares of preferred Equity Interests.

8.15 Sale Leasebacks.

Enter into any Sale and Leaseback Transaction other than property with an aggregate fair market value of not more than \$50,000,000 during the term of this Agreement.

8.16 Sanctions.

Directly or, to its knowledge, indirectly, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swing Line Lender, or otherwise) of Sanctions.

8.17 Anti-Corruption Laws.

Directly or, to its knowledge, indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, or other similar legislation in other jurisdictions applicable to the Borrowers or their Subsidiaries.

ARTICLE IX.

EVENTS OF DEFAULT AND REMEDIES

9.1 Events of Default.

Any of the following shall constitute an Event of Default:

- (a) Non-Payment. Any Loan Party fails to pay (i) when due and payable, any amount of principal of any Loan or any L/C Obligation, or (ii) within five days after the same becomes due and payable, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five days after the same becomes due, any other amount payable hereunder or under any other Loan

Document (unless a longer grace or cure period is provided in such Loan Document with respect to such payment, in which event the longer grace or cure period shall apply); or

(b) Specific Covenants.

(i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 7.01 or 7.02 and such failure continues for a period in excess of five days after the applicable due date therefor; or

(ii) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 7.03(a), 7.05(a), 7.10 or 7.11 or Article VIII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for a period of thirty days after the earlier of (i) any Loan Party obtains actual knowledge thereof or (ii) written notice thereof is sent by the Administrative Agent to the Parent Borrower (unless a longer grace or cure period is provided in such Loan Document with respect to such covenant or agreement, in which event the longer grace or cure period shall apply); or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any report, certificate or similar document executed and delivered by any Loan Party in connection herewith or therewith, or delivered pursuant to Article II, Article V or Sections 7.01, 7.02 or 7.03 hereof, shall prove to have been incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) The Parent Borrower or any Subsidiary fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness and such failure continues for a period in excess of any applicable grace period provided therein; (ii) the Parent Borrower or any Subsidiary fails to observe or perform any other agreement or condition relating to any Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs (and such failure continues for a period in excess of any applicable grace period provided therein), the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, such Material Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Material Indebtedness to be made, prior to its stated maturity; provided that this clause (e) shall not apply to any requirement for conversion of Permitted Convertible Notes (unless such conversion results from any default or event of default by the Parent Borrower or any Subsidiary thereunder or from a “change of control”, “fundamental change” or similar event, however denominated, thereunder) to the extent payment is made on the date when due; or (iii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Parent Borrower or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Parent Borrower or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Parent Borrower or such Subsidiary as a result thereof is greater than the Threshold Amount; or (iv) there occurs under any Permitted Bond Hedge Transactions or Permitted Warrant Transactions an early termination resulting from any event of default thereunder as to which the Parent Borrower or any of its Subsidiaries is the Defaulting Party (as defined therein) and the termination value owed by the Parent Borrower or such Subsidiary as a result thereof, taken together, is greater than

the Threshold Amount; and, provided further, that any Event of Default under this paragraph shall be immediately cured and no longer continuing (without any action on the part of the Administrative Agent, any Lender or otherwise) as and when any such failure (x) is cured by the Parent Borrower or applicable Subsidiary or (y) is waived in writing (including in the form of amendment) by the requisite holders of the applicable item of Material Indebtedness, in either case, prior to the acceleration of all the Loans pursuant to Section 9.01; or

(f) Insolvency Proceedings, Etc. The Parent Borrower or any Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part (with a value in excess of the Threshold Amount) of the property of the Parent Borrower or any Subsidiary and is not released, vacated or fully bonded within thirty days after its issue or levy; or

(h) Judgments. There is entered against the Parent Borrower or any Subsidiary (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of the claim and does not dispute coverage), or

(ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of one or more Loan Parties under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) one or more Loan Parties or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Subordinated Debt Documentation. The subordination provisions of the documents evidencing or governing any Subordinated Indebtedness in excess of the Threshold Amount shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness, unless such Subordinated Indebtedness is thereafter otherwise permitted under Section 8.03.

9.2 Remedies Upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

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

(c) require that the Borrowers Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents or applicable Law or at equity;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to a Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

9.3 Application of Funds.

After the exercise of remedies provided for in Section 9.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 9.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.14 and 2.15, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including reasonable fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer (including fees and time charges for attorneys who may be employees of any

Lender or the L/C Issuer) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to (a) payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, (b) payment of Obligations then owing under any Secured Hedge Agreements, (c) payments of Obligations then owing under any Secured Cash Management Agreements and (d) Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, ratably among the Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law.

Subject to Sections 2.03(p) and 2.14, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above. Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party or such Loan Party's assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be (unless such Cash Management Bank or Hedge Bank is the Administrative Agent or an Affiliate thereof). Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article X hereof for itself and its Affiliates as if a "Lender" party hereto.

ARTICLE X. ADMINISTRATIVE AGENT

10.1 Appointment and Authority.

Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and no Loan Party shall have rights as a third party

beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

10.2 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Parent Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

10.3 Exculpatory Provisions.

The Administrative Agent or the Arrangers, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its or their duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent or the Arrangers, as applicable, and its or their Related Parties:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 9.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The

Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by a Loan Party, a Lender or the L/C Issuer.

Neither the Administrative Agent nor any of its Related Parties have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.4 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance, extension, renewal or increase of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.5 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

10.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders

shall have the right, in consultation with the Borrowers, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above, provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause
(d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrowers and such Person remove such Person as Administrative Agent and, in consultation with the Borrowers, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (B) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) Any resignation by or removal of Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer

hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(f). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment by the Borrowers of a successor L/C Issuer or Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as applicable, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

10.7 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

10.8 No Other Duties; Etc.

Anything herein to the contrary notwithstanding, none of the bookrunners, arrangers, syndication agents, documentation agents or co-agents shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

10.9 Administrative Agent May File Proofs of Claim.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on any Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(l) and (m), 2.09 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

10.10 Guaranty Matters.

Without limiting the provisions of Section 10.09, each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this Section 10.10.

10.11 Secured Cash Management Agreements and Secured Hedge Agreements. No Cash Management Bank or Hedge Bank that obtains the benefit of the provisions of Section 9.03, the Guaranty or any Collateral by virtue of the provisions hereof or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article X to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements except to the extent expressly provided herein and unless the Administrative Agent has received a Secured Party Designation Notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements in the case of the Facility Termination Date.

10.12 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for

the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that at least one of the following is and will be true:

- (i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments, or this Agreement;
- (ii) the transaction exemption set forth in one or more PTEs, such as PTE 84–14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95–60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90–1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91–38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96–23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;
- (iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84–14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of subsections (b) through (g) of Part I of PTE 84–14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84–14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or
- (iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

In addition, unless either (1) clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

10.13 Recovery of Erroneous Payments.

Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender Recipient Party, whether or not in respect of an Obligation due and owing by the Borrowers at such time, where such payment is a Rescindable Amount, then in any such event, each Lender Recipient Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender

Recipient Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender Recipient Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender Recipient Party promptly upon determining that any payment made to such Lender Recipient Party comprised, in whole or in part, a Rescindable Amount.

ARTICLE XI. MISCELLANEOUS

11.1 Amendments, Etc.

Unless otherwise expressly provided herein or therein, but subject to Section 3.03, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the applicable Loan Party and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that

(a) no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent set forth in Section 5.02 or of any Default is not considered an extension or increase in Commitments of any Lender);

(ii) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) or under any other Loan Document without the written consent of each Lender entitled to receive such payment or whose Commitments are to be reduced;

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (i) of the final proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to receive such amount; provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of “Default Rate” or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(iv) change Section 9.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly affected thereby;

(v) change any provision of this Section 11.01 or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required

to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender directly affected thereby;

(vi) release any Borrower without the consent of each Lender, or, except in connection with a transaction permitted under Section 8.04 or Section 8.05, all or substantially all of the value of the Guaranty without the written consent of each Lender whose Obligations are guaranteed thereby, except to the extent such release is permitted pursuant to Section 10.10 (in which case such release may be made by the Administrative Agent acting alone); or

(b) prior to the termination of the Revolving Commitments, unless also signed by Lenders (other than Defaulting Lenders) holding at least a majority of the Revolving Credit Exposure, no such amendment, waiver or consent shall, (i) waive any Default for purposes of Section 5.02(b), (ii) amend, change, waive, discharge or terminate Sections 5.02 or 9.01 in a manner adverse to such Lenders or (iii) amend, change, waive, discharge or terminate Section 8.11 (or any defined term used therein) or this Section 11.01(b); or

(c) unless also signed by the L/C Issuer, no amendment, waiver or consent shall affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it;

(d) unless also signed by the Swing Line Lender, no amendment, waiver or consent shall affect the rights or duties of the Swing Line Lender under this Agreement; and

(e) unless also signed by the Administrative Agent, no amendment, waiver or consent shall affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document;

provided, however, that notwithstanding anything to the contrary herein,

(i) the Fee Letter and any Auto Borrow Agreement may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto,

(ii) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (A) the Commitment of such Lender may not be increased or extended without the consent of such Lender and (B) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender,

(iii) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein,

(iv) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders,

(v) an Incremental Facility Amendment shall be effective if signed by the Loan Parties, the Administrative Agent and each Person that agrees to provide a portion of the applicable Incremental Facility;

(vi) an Extension Amendment shall be effective if signed by the Loan Parties, the Administrative Agent and the Approving Lenders with respect to the applicable Extension Option; and

(vii) this Agreement may be amended by the Borrowers and the Administrative Agent (or, as applicable, solely the Administrative Agent) as contemplated by Section 3.03 to give effect to any Successor Rate and any Conforming Changes as contemplated therein.

11.2 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Loan Party, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Parent Borrower and its Affiliates).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swing Line Lender, the L/C Issuer, the Parent Borrower or the Subsidiary Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses resulted from the gross negligence or willful misconduct of such Agent Party.

(d) Change of Address, Etc. Each Loan Party, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, electronic mail address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, electronic mail address, facsimile or telephone number for notices and other communications hereunder by notice to each Loan Party, the Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Parent Borrower or its Affiliates or the respective securities of the foregoing for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Loan Notices, Letter of Credit Applications and Swing Line Loan Notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the

terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.3 No Waiver; Cumulative Remedies; Enforcement.

No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document (including the imposition of the Default Rate) preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided and provided under each other Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 9.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.4 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative 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 Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated),

(ii) all reasonable out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and

(iii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the reasonable fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, any Lender or the L/C Issuer, in connection with the enforcement

or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans 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.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee), incurred by any Indemnatee or asserted against any Indemnatee by any Person (including any Loan Party) other than such Indemnatee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby (including, without limitation, the Indemnatee’s reliance on any Communication executed using an Electronic Signature, or in the form of an Electronic Record), the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Parent Borrower or any Subsidiary, or any Environmental Liability related in any way to the Parent Borrower or any Subsidiary, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Loan Party, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee or (y) result from a claim brought by any Loan Party against an Indemnatee for breach in bad faith of such Indemnatee’s obligations hereunder or under any other Loan Document, if such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of Section 3.01(c), this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that any Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer, the Swing Line Lender or such Related Party, as the case may be, such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender’s share of the Total Credit Exposures of all Lenders at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders’ Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swing Line Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the L/C Issuer or the

Swing Line Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.5 Payments Set Aside.

To the extent that any payment by or on behalf of any Loan Party is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.6 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder or thereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of

this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Parent Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's Loans and Commitments, and rights and obligations with respect thereto, assigned, except that this clause (ii) shall not (A) apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations in respect of its Revolving Commitment (and the related Revolving Loans thereunder) on a non pro rata basis;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Parent Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender (other than a Declining Lender), an Affiliate of a Lender (other than a Declining Lender) or an Approved Fund; provided that the Parent Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within seven (7) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Revolving Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the L/C Issuer and the Swing Line Lender shall be required for any assignment in respect of Revolving Loans and Revolving Commitments.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Parent Borrower or any of the Parent Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B) or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrowers and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Assignee is not a Competitor. Each assignee represents and warrants in writing to the Borrowers that such assignee is not a Competitor.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such

Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by any Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person), a Defaulting Lender, the Parent Borrower or any of the Parent Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the Borrowers, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (iv) such Participant represents and warrants in writing to the Borrowers that such Participant is not a Competitor. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the

applicable participation. 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 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; 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.

(f) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Commitment and Revolving Loans pursuant to subsection (b) above, Bank of America may, (i) upon thirty days' notice to the Borrowers and the Lenders, resign as L/C Issuer and/or (ii) upon thirty days' notice to the Borrowers, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrowers shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Borrowers to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(f)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (1) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (2) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

11.7 Treatment of Certain Information: Confidentiality.

Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.01(b) or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to any Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Parent Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Parent Borrower or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Parent Borrower. For purposes of this Section, "Information" means all information received from the Parent Borrower or any Subsidiary relating to the Parent Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Parent Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning the Parent Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities Laws.

11.8 Right of Setoff.

If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates, in connection with any exercise of remedies under Section 9.02 or under any Loan Document, is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, the L/C Issuer or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such

indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.9 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Integration; Effectiveness.

This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent or the L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.11 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith (as the same may have been supplemented in writing prior to the Second Amendment Effective Date) shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.12 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders.

If the Borrowers are entitled to replace a Lender pursuant to the provisions of Section 2.17 or Section 3.06, or if any Lender is a Defaulting Lender, Declining Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrowers shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);
- (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;
- (d) such assignment does not conflict with applicable Laws;
- (e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent; and
- (f) in the case of an assignment from a Declining Lender, the applicable assignee shall have consented to the applicable Extension Option.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY OTHER PARTY HERETO, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO ENFORCEMENT OF ANY SUCH JUDGMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY OF THE LOAN PARTIES IN THE COURTS OF ANY JURISDICTION IN WHICH SUCH PROPERTY IS LOCATED.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.15 Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN

ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Loan Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers and the Lenders are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Arrangers and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, any Arranger nor any Lender has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Administrative Agent, any Arranger nor any Lender has any obligation to disclose any of such interests to the Loan Parties and their respective Affiliates. To the fullest extent permitted by Law, each of the Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, each Arranger or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.17 Electronic Execution; Electronic Records; Counterparts.

This Agreement, any Loan Document and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties, and each of the Administrative Agent, the L/C Issuer, the Swing Line Lender, and each Lender (collectively, each a "Credit Party"), agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been

converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Credit Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”), which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record; provided, however, that the existence of multiple Electronic Records or Electronic Copies shall not be deemed or construed to cause to exist more than one original of any document (for example, promissory notes, letters of credit, deeds of trust, mortgages, share certificates, other similar instruments and documents) nor to increase the liability and obligations of the parties beyond what is stated in such single original document. Notwithstanding anything contained herein to the contrary, neither the Administrative Agent, L/C Issuer nor Swing Line Lender is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent, L/C Issuer and/or Swing Line Lender has agreed to accept such Electronic Signature, the Administrative Agent and each of the Loan Parties and Credit Parties shall be entitled (absent manifest error or fraud, gross negligence or willful misconduct by it) to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and/or any Credit Party without further verification and regardless of the appearance or form of such Electronic Signature, and (b) upon the request of the Administrative Agent or any Loan Party or Credit Party, any Communication executed using an Electronic Signature shall be promptly followed by a manually executed counterpart.

Neither the Administrative Agent, L/C Issuer nor Swing Line Lender shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent’s, L/C Issuer’s or Swing Line Lender’s reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means) believed by it in good faith to be valid and genuine. The Administrative Agent, L/C Issuer and Swing Line Lender shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication or any statement made to it orally or by telephone (in the case of the Loan Parties, if made by a Responsible Officer) and believed by it to be genuine and signed or sent or otherwise authenticated.

Each of the Loan Parties and each Credit Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement or any other Loan Document based solely on the lack of paper original copies of this Agreement or such other Loan Document, and (ii) any claim against any Loan Party and any Credit Party and each Related Party for any liabilities arising solely from the Loan Parties’ and/or any Credit Party’s reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties or the Credit Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

11.18 Subordination of Intercompany Indebtedness.

Each holder of Intercompany Indebtedness (each a “Holder”) and each issuer of Intercompany Indebtedness (each a “Maker”) agrees with the Administrative Agent and the other holders of the Obligations as follows:

(a) Subordination. The payment of principal, interest, fees and other amounts with respect to Intercompany Indebtedness is expressly subordinated to the Obligations.

(b) Payments. If an Event of Default has occurred and is continuing, no Maker may make, and no Holder may take, demand, receive or accept, any payment with respect to Intercompany Indebtedness.

(c) Payments Held in Trust. In the event any payment of principal or interest or distribution of property of any Maker on or in respect of Intercompany Indebtedness shall be received by any Holder in violation of this Section 11.18, such payment or distribution shall be held in trust for the Administrative Agent, for the benefit of the holders of the Obligations, and such Holder will forthwith turn over any such payments in the form received, properly endorsed or assigned, to the Administrative Agent, for the benefit of the holders of the Obligations.

(d) Enforcement. No Holder shall be entitled to demand payment of or accelerate any Intercompany Indebtedness or to exercise any remedies or take any actions against any Maker to enforce any of such Holder's rights with respect to Intercompany Indebtedness.

(e) Collateral. No Holder will ask, demand, accept, or receive any collateral security from any Loan Party for the payment of Intercompany Indebtedness, and any collateral security for the payment of Intercompany Indebtedness that any Holder may now or hereafter have on any property of any Loan Party is expressly subordinated to the Liens of the Administrative Agent, for the benefit of the holders of the Obligations, securing the Obligations.

(f) Attorney in Fact. Each Holder irrevocably authorizes and directs the Administrative Agent and any trustee in bankruptcy, receiver, custodian or assignee for the benefit of creditors of any Maker, whether in voluntary or involuntary liquidation, dissolution or reorganization, in its behalf to take such action as may be necessary or appropriate to effectuate the subordination provided for in this Section 11.18 and irrevocably appoints, which appointment is coupled with an interest, upon the occurrence and during the continuation of any Event of Default, the Administrative Agent, or any such trustee, receiver, custodian or assignee, its attorneys in fact for such purpose with full powers of substitution and revocation.

(g) Proof and Vote of Claims. Each Holder irrevocably appoints, which appointment is irrevocable and coupled with an interest, the Administrative Agent as such Holder's true and lawful attorney, with full power of substitution, in the name of such Holder, the Administrative Agent, the holders of the Obligations or otherwise, for the sole use and benefit of the Administrative Agent, to the extent permitted by Law, to prove and vote all claims relating to Intercompany Indebtedness, and to receive and collect all distributions and payments to which such Holder would be otherwise entitled on any liquidation of any Maker or any of its property or in any proceeding affecting any Maker or its property under any Debtor Relief Laws, but not to otherwise affect any rights of such Holder under the Bankruptcy Code.

(h) No Interference. Each Holder agrees (i) not to take any action as the holder of Intercompany Indebtedness that will impede, interfere with or restrict or restrain the exercise by the Administrative Agent of its rights and remedies under the Loan Documents and (ii) upon the commencement of any proceeding under Debtor Relief Laws, to take such actions as the holder of Intercompany Indebtedness as may be reasonably necessary or appropriate to effectuate the subordination provided hereby. In furtherance thereof, each Holder, in its capacity as a holder of Intercompany Indebtedness, to the extent permitted by Law, agrees not to oppose any motion filed or supported by the Administrative Agent or any other holder of the Obligations for relief from stay or for adequate protection in respect of the Obligations and not to oppose any motions supported by the Administrative Agent or any other holder of the Obligations for any Loan Party's use of cash collateral or post petition borrowing from any of the Lenders or the Administrative Agent.

11.19 USA PATRIOT Act.

Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of the Loan Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Loan Parties in accordance with the Act. The Loan Parties shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

11.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Solely to the extent any Lender or L/C Issuer that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or L/C Issuer that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or L/C Issuer that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

11.21 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree that, with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New

York and/or of the U.S. or any other state of the U.S.), in the event a Covered Entity that is party to a Supported QFC (each, a “ Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under such U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the U.S. or a state of the U.S. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under such U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the U.S. or a state of the U.S. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[END]

Annex B

Exhibit A to the Credit Agreement EXHIBIT A
FORM OF LOAN NOTICE

Date: __, __

To: Bank of America, N.A., as Administrative Agent Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of September 29, 2017 (as amended, restated, extended, supplemented, increased or otherwise modified in writing from time to time, the "Agreement;" the terms defined therein being used herein as therein defined), among Forward Air Corporation, a Tennessee corporation (the "Parent Borrower"), Forward Air, Inc., a Tennessee corporation (the "Subsidiary Borrower", together with the Parent Borrower, the "Borrowers"), the Guarantors identified therein, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, L/C Issuer and Swing Line Lender.

The undersigned hereby requests (select one):

☐ A Borrowing of a Revolving Loan

☐ A conversion or continuation of a Revolving Loan

1. On __ (a Business Day).
2. In the principal amount of \$__.
3. Comprised of __.
[Type of Loan requested (i.e., Base Rate Loan, BSBY Rate Loan)]
4. For BSBY Rate Loans: with an Interest Period of __ months.

[With respect to any Borrowing for a Revolving Loan requested herein, (i) such Borrowing complies with the provisos to the first sentence of Section 2.01(a) of the Agreement and (ii) each of the conditions set forth in Section 5.02 of the Agreement have been satisfied on and as of the date of such Borrowing.]

[FORWARD AIR CORPORATION,
a Tennessee corporation]

[FORWARD AIR, INC., a Tennessee corporation]

By: __

Name:

Title: [Insert Name and Title of a Responsible Officer]

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO EXCHANGE ACT RULE 13a-14(a) (17 CFR 240.13a-14(a))**

I, Tom Schmitt, certify that:

- 1 I have reviewed this quarterly report on Form 10-Q for the quarter ended June 30, 2021 of Forward Air Corporation;
- 2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4 The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5 The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2021

/s/ Tom Schmitt

Tom Schmitt
President and Chief Executive Officer

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO EXCHANGE ACT RULE 13a-14(a) (17 CFR 240.13a-14(a))**

I, Rebecca J. Garbrick, certify that:

- 1 I have reviewed this quarterly report on Form 10-Q for the quarter ended June 30, 2021 of Forward Air Corporation;
- 2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4 The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5 The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2021

/s/ Rebecca J. Garbrick

Rebecca J. Garbrick
Chief Financial Officer and Treasurer

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

**PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Forward Air Corporation (the “Company”) on Form 10-Q for the period ended June 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Tom Schmitt, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- 1 The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2 The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 9, 2021

/s/ Tom Schmitt

Tom Schmitt

President and Chief Executive Officer

A signed original of this written statement required by Section 906 has been provided to Forward Air Corporation and will be retained by Forward Air Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

**PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Forward Air Corporation (the “Company”) on Form 10-Q for the period ended June 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Rebecca J. Garbrick, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- 1 The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2 The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 9, 2021

/s/ Rebecca J. Garbrick

Rebecca J. Garbrick
Chief Financial Officer and Treasurer

A signed original of this written statement required by Section 906 has been provided to Forward Air Corporation and will be retained by Forward Air Corporation and furnished to the Securities and Exchange Commission or its staff upon request.