

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 10-K**

**(Mark One)**

- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended December 31, 2022
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number: 001-36870

**TopBuild Corp.**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation or  
Organization)

**47-3096382**

(I.R.S. Employer  
Identification No.)

**475 North Williamson Boulevard  
Daytona Beach, Florida**  
(Address of Principal Executive Offices)

**32114**  
(Zip Code)

**(386) 304-2200**  
(Registrant's telephone number, including area code)

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, par value \$0.01 per share | BLD               | New York Stock Exchange                   |

Securities registered pursuant to section 12(g) of the Act:

**None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes  No

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 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 emerging growth company. See the definitions 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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant based on the closing price of \$167.16 per share as reported on the New York Stock Exchange on June 30, 2022, the last business day of the registrant's most recently completed second fiscal quarter, was approximately \$5.4 billion.

Number of shares of common stock outstanding as of February 16, 2023: 31,669,260

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the Registrant's Proxy Statement for its 2022 Annual Meeting of Shareholders, to be filed with the Securities and Exchange Commission no later than 120 days after December 31, 2022, are incorporated by reference into Part III of this Form 10-K.

**TOPBUILD CORP.**  
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## GLOSSARY

We use acronyms, abbreviations, and other defined terms throughout this Annual Report on Form 10-K, as defined in the glossary below:

| <b>Term</b>                         | <b>Definition</b>  |
|-------------------------------------|--|
| 3.625% Senior Notes                 | TopBuild's 3.625% senior unsecured notes issued March 15, 2021 and due March 15, 2029  |
| 4.125% Senior Notes                 | TopBuild's 4.125% senior unsecured notes issued October 14, 2021 and due February 15, 2032   |
| 5.625% Senior Notes                 | TopBuild's 5.625% senior unsecured notes which were due on May 1, 2026 and redeemed in full on March 15, 2021  |
| 2015 LTIP                           | 2015 Long-Term Incentive Program authorizes the Board to grant stock options, stock appreciation rights, restricted shares, restricted share units, performance awards, and dividend equivalents |
| 2022 ASR Agreement                  | \$100 million accelerated share repurchase agreement with Bank of America, N.A.  |
| 2019 Repurchase Program             | \$200 million share repurchase program authorized by the Board on February 22, 2019  |
| 2021 Repurchase Program             | \$200 million share repurchase program authorized by the Board on July 26, 2021  |
| 2022 Repurchase Program             | \$200 million share repurchase program authorized by the Board on July 25, 2022  |
| ABS                                 | American Building Systems, Inc.  |
| Amendment No. 1 to Credit Agreement | Amendment No. 1 to the Credit Agreement dated March 8, 2021  |
| Amendment No. 2 to Credit Agreement | Amendment No. 2 to the Credit Agreement dated October 7, 2021  |
| Amendment No. 3 to Credit Agreement | Amendment No. 3 to the Credit Agreement dated December 9, 2022   |
| Annual Report                       | Annual report filed with the SEC on Form 10-K pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934   |
| ASC                                 | Accounting Standards Codification  |
| ASU                                 | Accounting Standards Update  |
| Assured                             | Assured Insulating Inc.  |
| Board                               | Board of Directors of TopBuild   |
| BofA                                | Bank of America, N.A.  |
| Billings                            | Billings Insulation Service, Inc.  |
| Credit Agreement                    | Amended and Restated Credit Agreement, dated March 20, 2020, among TopBuild Corp., Bank of America, N.A. as administrative agent, and the other lenders and agents party thereto.                |
| Current Report                      | Current report filed with the SEC on Form 8-K pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934   |
| DI                                  | DI Super Holdings, Inc.  |
| EBITDA                              | Earnings before interest, taxes, depreciation, and amortization  |
| Exchange Act                        | The Securities Exchange Act of 1934, as amended  |
| FASB                                | Financial Accounting Standards Board   |
| GAAP                                | Generally accepted accounting principles in the United States of America   |
| Lenders                             | Bank of America, N.A., together with the other lenders party to "Credit Agreement"   |
| LCR                                 | L.C.R. Contractors, LLC  |
| LIBOR                               | London interbank offered rate  |
| Net Leverage Ratio                  | As defined in the "Credit Agreement," the ratio of outstanding indebtedness, less up to \$100 million of unrestricted cash, to EBITDA  |
| NYSE                                | New York Stock Exchange  |
| Quarterly Report                    | Quarterly report filed with the SEC on Form 10-Q pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  |
| ROU                                 | Right of use (asset), as defined in ASC 842  |
| RSA                                 | Restricted stock award   |
| SEC                                 | United States Securities and Exchange Commission   |
| Secured Leverage Ratio              | As defined in the "Credit Agreement," the ratio of outstanding indebtedness, including letters of credit, to EBITDA  |
| SOFR                                | Secured overnight financing rate   |
| Term Loan                           | Amendment No. 2 to Credit Agreement provided for a term loan facility in an aggregate principal amount of \$600.0 million with a maturity date of October 2026                                   |
| TopBuild                            | TopBuild Corp. and its wholly-owned consolidated domestic subsidiaries. Also, the "Company," "we," "us," and "our"   |

#### SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Statements contained in this Annual Report that reflect our views about future periods, including our future plans and performance, constitute “forward-looking statements” under the Private Securities Litigation Reform Act of 1995. Forward-looking statements can be identified by words such as “will,” “would,” “anticipate,” “expect,” “believe,” “designed,” “plan,” “may,” “project,” “estimate” or “intend,” the negative of these terms, and similar references to future periods. These views involve risks and uncertainties that are difficult to predict and, accordingly, our actual results may differ materially from the results discussed in our forward-looking statements. We caution you against unduly relying on any of these forward-looking statements. Our future performance may be affected by the duration and impact of negative macro-economic impacts on the United States economy, specifically with respect to residential, commercial/industrial construction, our ability to collect our receivables from our customers, our reliance on residential new construction, residential repair/remodel, and commercial/industrial construction; our reliance on third-party suppliers and manufacturers; our ability to attract, develop, and retain talented personnel and our sales and labor force; our ability to maintain consistent practices across our locations; our ability to maintain our competitive position; and our ability to realize the expected benefits of our acquisitions. We discuss the material risks we face under the caption entitled “Risk Factors” in Item 1A of this Annual Report. Our forward-looking statements in this Annual Report speak only as of the date of this Annual Report. Factors or events that could cause our actual results to differ may emerge from time to time and it is not possible for us to predict all of them. Unless required by law, we undertake no obligation to update publicly any forward-looking statements as a result of new information, future events, or otherwise.

## PART I

### Item 1. BUSINESS

#### Overview

TopBuild Corp., headquartered in Daytona Beach, Florida, is a leading installer and specialty distributor of insulation and other building material products to the construction industry in the United States and Canada. On July 1, 2015, we began trading on the NYSE under the symbol “BLD.”

#### Segment Overview

We operate in two segments: our Installation segment, which accounts for approximately 59% of our sales, and our Specialty Distribution segment, which accounts for approximately 41% of our sales.

We believe that having both Installation and Specialty Distribution provides us with a number of distinct competitive advantages. First, the combined buying power of our two business segments, along with our scale, strengthens our ties to the major manufacturers of insulation and other building material products. This helps to ensure we are buying competitively and ensures the availability of supply to our local branches and distribution centers. The overall effect is driving efficiencies through our supply chain. Second, being a leader in both installation and specialty distribution allows us to reach a broader set of builders and contractors more effectively, regardless of their size or geographic location in the U.S. and Canada, and leverage housing and commercial/industrial construction growth wherever it occurs. Third, during housing industry downturns, many insulation contractors who buy directly from manufacturers during industry peaks return to purchasing through specialty distributors. As a result, this helps to reduce our exposure to cyclical swings in our business.

#### Installation

We provide insulation installation services nationwide through our Installation segment which has approximately 230 branches located across the United States.

Various insulation applications we install include:

- Fiberglass batts and rolls
- Blown-in loose fill fiberglass
- Polyurethane spray foam
- Blown-in loose fill cellulose

In addition to insulation products, which represented 79% of our Installation segment's sales during the year ended December 31, 2022, we install other building products including glass and windows, rain gutters, afterpaint products, fireproofing, garage doors, and fireplaces.

We handle every stage of the installation process including material procurement supplied by leading manufacturers, project scheduling and logistics, multi-phase professional installation, and installation quality assurance. The amount of insulation installed in a new home or commercial/industrial building is regulated by various building and energy codes.

Our Installation customer base includes national and regional single-family homebuilders, single-family custom builders, multi-family builders, commercial/industrial general contractors, remodelers, and individual homeowners.

Through our TopBuild Home Services, Inc. subsidiary ("Home Services") and our Environments for Living® program, we offer services and tools designed to assist builders with applying the principles of building science to new home construction. We offer pre-construction plan reviews using industry-standard home-energy analysis software, various inspection services, and diagnostic testing. TopBuild Home Services is one of the top ten Home Energy Rating System Index (HERS) raters in the U.S.

#### **Specialty Distribution**

We distribute building and mechanical insulation, insulation accessories, rain gutters and other building product materials for the residential and commercial/industrial end markets through our Specialty Distribution business. Insulation and insulation accessories, primarily fiberglass and spray foam, comprise approximately 89% of our Specialty Distribution sales. We have approximately 162 distribution centers across the United States and 17 distribution centers in Canada. Our customer base consists of thousands of insulation contractors of all sizes serving a wide variety of residential and commercial/industrial industries, gutter contractors, weatherization contractors, other contractors, dealers, metal building erectors, and modular home builders.

For further information on our segments, see *Item 8. Financial Statements and Supplementary Data – Note 8. Segment Information*.

#### **Demand for Our Products and Services**

Demand for our insulation products and services is driven by new single-family residential and multi-family home construction, commercial/industrial construction, residential remodel and repair activity, commercial/industrial maintenance and repair, and the growing need for more energy efficient homes, commercial structures, and industrial plants. Being a leader in both insulation installation and specialty distribution allows us to reach a broader set of customers more effectively. We recognize that competition for the installation and sale of insulation and other building material products occurs in localized geographic markets in the U.S. and Canada, and, as such, our operating model is based on geographically diverse branches that develop and maintain local customer relationships. At the same time, our dispersed branches benefit from centralized functions such as purchasing, information technology, sales and marketing support, and credit and collections.

#### **Competitive Advantages**

The market for the distribution and installation of building product materials is highly fragmented and competitive. Barriers to entry for local competitors are relatively low, increasing the risk that additional competitors will emerge. Our ability to maintain our competitive position depends on a number of factors including our scale, sales channels, diversified product lines, operation capabilities and strong local presence.

**Scale.** Within our geographic footprint, we provide products and services to each major construction line of business in the U.S. and provide commercial/industrial products in Canada. Our scale and local market presence combined with our various centralized corporate functions and corporate executive management team, enable us to successfully compete as we:

- Leverage systems, management, and best practice processes across both our Installation and Specialty Distribution businesses;
- Provide national and regional home builders and commercial/industrial general contractors with broad geographic reach, while maintaining consistent policies and practices that enable reliable, high-quality products and services across many geographies and building sites;
- Provide designers and installers of mechanical systems for commercial/industrial buildings, technical knowledge and expertise, and value-add fabrication services;
- Leverage our strong ties to major manufacturers of insulation and other building products to help ensure we are buying competitively, maintaining our supply to our local branches and distribution centers, and driving efficiencies throughout our supply chain;
- Provide consistent, customized support and geographic coverage to our customers; and
- Maintain an operating capacity that allows us to ramp-up rapidly, without major incremental investment, to target forecasted growth in housing starts and construction activity in each of our lines of business throughout the U.S. and Canada.

**Two avenues to reach builders and contractors.** We believe that having both installation and specialty distribution businesses provides a number of advantages to reaching our customers and driving share gains. Our Installation business customer base includes builders of all sizes. Our branches go to market with the local brands that regional and custom builders recognize and value, and our national footprint is appealing to large builders who value consistency across a broad geography. Our Specialty Distribution business focuses on selling to small contractors who generally have strong local relationships with smaller custom builders and general contractors, and to industrial general contractors and facilities requiring customized solutions on a recurring basis. Being a leader in both installation and specialty distribution allows us to more effectively reach a broader set of builder customers and contractors, regardless of their size or geographic location within the U.S. and Canada, and leverage new construction housing, and commercial/industrial growth wherever it occurs.

**Diversified lines of business.** In response to the housing downturn in prior years and to mitigate the cyclical nature of residential new home construction, we expanded and enhanced our ability to serve the commercial/industrial construction markets. This included expanding our commercial/industrial operations and sales capacity, adding commercial/industrial product offerings, developing relationships with commercial/industrial general contractors, and building our expertise and reputation for quality service for both light and heavy commercial/industrial construction projects. Although commercial/industrial construction is affected by many of the same macroeconomic and local economic factors that drive residential new construction, commercial/industrial construction has historically followed different cycles than residential new construction.

**Strong local presence.** Competition for the installation and sale of insulation and other building material products to builders occurs in localized geographic markets throughout the U.S. and Canada. Builders and contractors in each local market have different options in terms of choosing among insulation installers and specialty distributors for their projects, and value local relationships, quality, and timeliness. Our Installation branches are locally branded businesses that are recognized within the communities in which they operate. Our Specialty Distribution centers service primarily local contractors, lumberyards, retail stores and others who, in turn, service local homebuilders and other customers, while also servicing industrial customers with customized recurring requirements. Our operating model, in which individual branches and distribution centers maintain local customer relationships, enables us to develop local, long-tenured relationships with these customers, build local reputations for quality, service and timeliness, and provide specialized products and personalized services tailored to a geographic region or customer. At the same time, our local operations benefit from centralized functions, such as purchasing, information technology, sales support, and credit and collections, and the resources and scale efficiencies of an installation and distribution business that has a presence across the U.S. and Canada.

**Unique ability to offset decreases in demand for services with our Specialty Distribution business.** During industry downturns many insulation contractors, who buy directly from manufacturers during industry peaks, return to purchasing through distributors for small, “Less Than Full Truckload” shipments. This tends to drive incremental customers to our Specialty Distribution business, which could offset a decrease in demand for installation services in our Installation business because of a downturn. We believe that our leadership position in both installation and specialty distribution businesses helps to reduce exposure to cyclical swings in our lines of business.

**Strong cash flow and favorable working capital fund organic growth.** Over the last several years, we have reduced fixed costs and improved our labor utilization. As a result, we can achieve profitability at lower levels of demand as compared to historical periods. For further discussion on our cash flows and liquidity, see *Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources*.

#### **Major Customers**

We have a diversified portfolio of customers. Our top customer accounted for approximately three percent of our total revenues for the year ended December 31, 2022. Our top ten customers accounted for approximately 12 percent of our total sales in 2022.

#### **Suppliers**

Our businesses depend on our ability to obtain an adequate supply of high-quality products and components from manufacturers and other suppliers. We source the majority of our fiberglass building products from four primary U.S.-based residential fiberglass insulation manufacturers: Knauf, CertainTeed, Johns Manville, and Owens Corning. Failure by our suppliers to provide us with an adequate supply of high-quality products on commercially reasonable terms, or to comply with applicable legal requirements, could have a material, adverse effect on our financial condition or operating results. We believe we generally have positive relationships with our suppliers and are in continuous contact and work closely with our suppliers regarding the quality of materials. Our current business model with material suppliers affords us flexibility in maximizing material purchasing, which is often driven by region, demand, supply, and pricing, without the constraints of exclusivity agreements.

#### **Human Capital**

As a leading installer of insulation and specialty distributor of insulation and building material products to the construction industry in the U.S. and Canada, our performance relies heavily on human capital and relationships with customers and suppliers. Accordingly, our success depends on our ability to attract, retain, protect, and develop our employees. To support these objectives, we have designed and implemented a human capital management program that fosters a culture of inclusivity, collaboration, support, and innovation where every voice is welcome, heard, and respected.

#### **Employee Recruiting & Retention**

As of December 31, 2022, we had 13,119 employees (excluding contingent workers), of which 7,832 were installers. Over 800 of our employees are currently covered by 65 collective bargaining agreements that expire on various dates through 2026. We believe that our relationship with our unions is good.

The residential new construction housing market remained strong through most of 2022, which continued the shortage of construction industry labor. To attract and retain experienced employees in such a tight labor market, we strive to offer a competitive compensation and benefits program to all our employees that meets their diverse needs, such as tuition reimbursement, career growth, matching 401k contributions, multiple dental and medical plan options, and paid time off, including for entry-level employees.

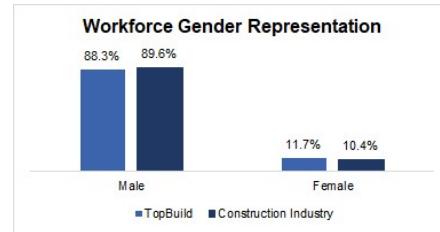
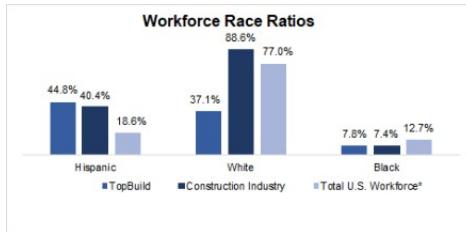
We take proactive steps to recruit construction labor, led by our Friends and Family Referral Program which we expanded in 2022. This program has been very successful since its launch in 2020. In 2022, it led to the hiring and retention of 1,424 installers. In addition to hiring directly from the local communities in which our branches operate, we partner with organizations that help source talent with diverse backgrounds, including veterans, refugees, and trade school students and graduates.

Voluntary turnover across all employees in 2022 was 33.2%. As reported by Gallup (August 2022), annual turnover below 40% is considered low in today's employment environment. We attribute our effective retention rate to an engaging culture, competitive wages, comprehensive benefits, and positive employee relations.

To build a pipeline of leadership talent, we recruit internally and externally into our Manager in Training program, which fosters development of participants into leaders of our company and high performers in our industry. The program lasts 12-24 months and participants are supported by our executive management team as they are immersed in all aspects of our operations and directly serve and support our customers and suppliers. At any time, we have 15-20 employees enrolled in our Manager in Training program and, upon completion of the program, they are promoted into branch leadership roles within our company. In 2022, more than 50% of those promoted from the Manager in Training program were women.

#### **Diversity and Inclusion**

We are taking steps as an employer to embrace and expand diversity and inclusion as part of our culture and talent practices. As of December 31, 2022, our employees self-identified as 44.8% Hispanic, 37.1% White, 7.8% Black, and 10.3% Other or Undisclosed. Our employees represent a higher racial diversification in comparison to both the construction industry and the total U.S. workforce, as reported by the Bureau of Labor Statistics (December 2022). In addition, our workforce female representation as of December 31, 2022, was higher than the U.S. construction industry. Our corporate leadership team (Managers and above) self-identifies as approximately 47% female and 24% non-white or undisclosed.



\*Sums to >100% due to multi-racial reporting.

We acknowledge and are committed to respecting and upholding the human rights and dignity of all individuals within our operations. We have adopted a company-wide Human Rights policy, which is designed to promote a workplace that values and respects the contributions and perspectives of all employees from a variety of backgrounds, skills, and experiences. Company policies, including the Human Rights Policy, are published in the ESG section of our website.

#### **Safety**

The success of our business is fundamentally connected to safety. Safety is one of our core values, is engrained in our culture, and is an important metric in how we measure our success as a company. A primary responsibility of our employees is to provide a safe environment for their co-workers, our customers, and our suppliers. To align our team with our safety goals, a portion of our annual incentive compensation for all eligible employees, including our senior leadership, is tied to our safety performance. While our ultimate goal is to have zero incidents, we set aggressive annual targets based on reductions from prior year performance across each business segment and the company as a whole. For 2022, the total incident rate safety target for our company was 2.55 and our actual incident rate incurred was 1.92, which significantly beat our target and remained well below the industry average of 3.4 as reported by the Bureau of Labor and Statistics for NAICS 23831 (2021). Our focus and investment in safety has led to consistent improvement year-over-year, as reflected in the graphs below.

We strive to achieve continuous improvement in safety by providing our employees with ongoing, specialized safety training sessions, information, and programs. This training commences at hiring, with additional sessions delivered at every branch operation and at our Branch Support Center in Daytona Beach, Florida throughout the year. During 2022, we assigned each of our employees an average of 17.4 hours of safety training. In addition, our regional Safety Managers audit both field locations and our Branch Support Center to assess compliance with company policy, practices, and procedures.

We closely monitor injury trends and conduct extensive research to better understand and improve our work environments. We have realized continuous improvement in our safety performance year-over-year as indicated in the graphs below. In 2022, our total incident rate improved by over 25% against prior year to 1.92 per the OSHA guidelines with no fatalities, and our lost time case rate of 0.56 remains below industry average of 1.5 as reported by the Bureau of Labor and Statistics for NAICS 23831 (2021) and has continually improved. Our incident rate does not include the impact of acquired companies in the year of acquisition or potential work-related COVID-19 exposures.



#### **Community Involvement**

TopBuild has a long-standing commitment to service in our communities. We provided ongoing support to a number of national and local charitable organizations in 2022, including:

**Habitat For Humanity.** One of our most impactful partnerships is Habitat for Humanity. Our annual fundraiser raised \$650,000 in 2022, increasing the total raised to over \$2.6M over the past 6 years with this event. In addition to monetary donations to Habitat for Humanity, our teams in the field support families on their journey towards home ownership by donating material, volunteering their time at local Habitat Builds, and attending dedication ceremonies, where the impacts of living our core values of Unity and Community are truly seen and felt.

**The Salvation Army.** We continued to sponsor the Salvation Army's Angel Tree initiative, which provides new clothing and toys to families in need each year during the holiday season.

**The NASCAR Foundation.** We continued our partnership with the NASCAR foundation and expanded our sponsorship commitment to fund and build playsets for pediatric cancer patients.

**Payit4ward.** We sponsored Payit4ward's annual summer Back to School Drive for the 5th year running, which provided supplies and backpacks to over 3,000 children.

**The American Red Cross.** We regularly donate to the American Red Cross, helping to ensure they have the necessary funding throughout the year to assist families recovering from natural disasters. In 2022, TopBuild matched employee giving and donated more than \$35,000 for those affected by hurricanes Ian and Nicole.

Our people are our most valuable resources, and together with our affiliate partnerships, we remain committed to supporting and improving the communities where we live and work.

### **Employee Feedback**

Employee engagement is important to us as we continue to establish and develop our initiatives to create a positive employee experience. In 2022, we added new hire and exit surveys and use their feedback to continually improve our offerings and communication. Additionally, we conduct an all-employee survey bi-annually, most recently in 2021, and 62% of our employees responded. Our engagement index score was 84%. This score is made up of key questions related to pride in the company, sense of accomplishment, and intent to stay. We shared the results with our leadership at all levels and locations and with our Board. The leaders reviewed areas of satisfaction and dissatisfaction and continue to work with their teams to prioritize actions and activities in response. Overall areas of strength include employee perception of a solid culture of safety within our company and satisfaction with our company's direction and culture.

### **Executive Officers**

Set forth below is information about our executive officers. There are no family relationships among any of the officers named below.

#### ***Robert M. Buck, age 53***

- Chief Executive Officer and President since January 1, 2021
- President and Chief Operating Officer from June 2015 – December 2020
- Group Vice President of Masco from 2014 – June 2015, responsible for the Installation and Other Services Segment consisting of both Masco Contractor Services and Specialty Distribution
- President of Masco Contractor Services from 2009 – 2014

#### ***Joseph M. Viselli, age 55***

- Vice President and Chief Operating Officer since October 2022
- Senior Vice President and General Manager of Distribution International from June 2020 – October 2022
- Senior Vice President and General Manager of Silvercote from June 2019 – October 2022
- General Manager of Silvercote and Senior Vice President of Knauf Insulation from February 2017 – June 2019

#### ***Robert M. Kuhns, age 49***

- Vice President and Chief Financial Officer since March 2022
- Vice President, Controller from July 2018 – March 2022
- Senior Director, Assistant Corporate Controller of Mohawk Industries, Inc. from July 2015 – July 2018
- Senior Director, International Finance of Mohawk Industries, Inc. from March 2013 – July 2015

#### ***Luis F. Machado, age 60***

- Vice President, General Counsel and Corporate Secretary since August 2020
- Vice President, General Counsel and Secretary of CTS Corporation from 2015 – August 2020
- Senior Vice President, Legal, and Assistant Secretary of L Brands, Inc. from 2010 – 2015

#### ***Jennifer J. Shoffner, age 50***

- Chief Human Resources Officer since August 2020
- Vice President, Talent Management from February 2020 – August 2020
- Vice President, Human Resources of Liberty Hardware, a Masco Company, from 2006 – 2011 and 2013 – January 2020

***Steven P. Raia, age 67***

- President, TruTeam Operations since March 2019
- Senior Vice President of Operations, from November 2015 – March 2019
- Various operations management and roles in insulation businesses prior to 2015

***Robert J. Franklin, age 63***

- President, Specialty Distribution since October 2022
- President, Service Partners Operations from September 2019 to October 2022
- Vice President of Operations, TruTeam from 2017 – September 2019
- Regional Leader, TruTeam from 2015 – 2016
- Various operations management and roles in insulation businesses prior to 2015

**Legislation and Regulation**

We are subject to U.S. and Canadian federal, state, provincial, and local laws and regulations, particularly those pertaining to health and safety (including protection of employees and consumers), labor standards/regulations, contractor licensing, and environmental issues. In addition to complying with currently effective legal requirements and preparing for proposed future requirements, even more stringent legal requirements could eventually be imposed on our industries. Additionally, some of our products and services require certification by industry or other organizations. Maintaining compliance with potentially changing legal requirements and industry standards may require us to alter our specialty distribution and installation processes and our sourcing, which could adversely impact our business. Further, as discussed in our Item 1A (Risk Factors), if we do not effectively and timely comply with legal requirements and industry standards, our operating results could be negatively affected.

**Additional Information**

We provide our Annual Reports, Quarterly Reports, Current Reports and amendments to those reports free of charge on our website, [www.topbuild.com](http://www.topbuild.com), as soon as reasonably practicable after these reports are filed with or furnished to the SEC. We also provide Environmental, Social and Governance (“ESG”) information, including with respect to certain safety metrics, on our website. Information contained on our website is not incorporated by reference into this Form 10-K, and you should not consider information contained on our website to be part of this Form 10-K or in deciding whether to purchase shares of our common stock.

**Use of our Website to Distribute Material Company Information**

We use our website, [www.topbuild.com](http://www.topbuild.com), as a channel of distribution and routinely post important Company information including press releases, investor presentations and financial information. We may also use our website to expedite public access to time-critical information regarding our Company in advance of or in lieu of distributing a press release or a filing with the SEC disclosing the same information. Visitors to our website can also register to receive automatic e-mail and other notifications alerting them when new information is made available.

## **Item 1A. RISK FACTORS**

A number of risks and uncertainties could affect our business and cause our actual results to differ from past performance or expected results. We consider the following risks and uncertainties to be those material to our business. If any of these risks occur, our business, financial condition and results of operations could suffer, and the trading price of our common stock could decline. We urge investors to consider carefully the risk factors described below in evaluating the information contained in this Annual Report.

### **Risks Which May Be Material to Our Business**

#### **Risks Relating to Products and Supply Chain**

*We are dependent on third-party suppliers and manufacturers to provide us with an adequate supply of high-quality products, and the loss of a large supplier or manufacturer could negatively affect our operating results.*

Failure by our suppliers to provide us with an adequate supply of high-quality products on commercially reasonable terms, or to comply with applicable legal requirements, could have a material adverse effect on our financial condition or operating results. While we believe that we have positive relationships with our suppliers, the fiberglass insulation industry has encountered both shortages and periods of significant oversupply during past housing market cycles, leading to volatility in prices and allocations of supply, which affect our results. While we do not believe we depend on any sole or limited source of supply, we source the majority of our building products, primarily insulation, from a limited number of large suppliers. The loss of a large supplier, or a substantial decrease in the availability of products or components from our suppliers, could disrupt our business and adversely affect our operating results.

*Our profit margins could decrease due to changes in the costs of the products we install and/or distribute.*

The principal building products that we install and distribute have been subject to price changes in the past, some of which have been significant. Our results of operations for individual quarters can be, and have been, hurt by a delay between the time building product or material cost increases are implemented and the time we are able to increase prices for our installation or specialty distribution services, if at all. Our supplier purchase prices may depend on our purchasing volume or other arrangements with any given supplier. While we have been able to achieve cost savings through volume purchasing or other arrangements with suppliers in the past, we may not be able to consistently continue to receive advantageous pricing for the products we distribute and install. If we are unable to maintain purchase pricing consistent with prior periods or are unable to pass on price increases, our costs could increase and our margins may be adversely affected.

*The development of alternatives to distributors in the supply chain could cause a decrease in our sales and operating results and limit our ability to grow our business.*

Our Specialty Distribution customers could begin purchasing more of their products directly from manufacturers, which would result in decreases in our net sales and earnings. Our suppliers could invest in infrastructure to expand their own local sales force and sell more products directly to our Specialty Distribution customers, which also would negatively impact our business.

*New product innovations or new product introductions could negatively impact our business.*

New product innovations or new product introductions could negatively impact demand for the products we install and distribute.

*Issues with product quality or performance could negatively impact our business.*

Our business depends on high-quality products from manufacturers and other suppliers, and issues with the quality or performance of such products could negatively impact our business. While we are generally indemnified by our manufacturers and suppliers for claims relating to the quality of their products, our business could be negatively impacted by product quality or performance issues, including exposure to legal claims and regulatory proceedings and damage to our reputation.

*We may not be able to identify new products or new product lines and integrate them into our specialty distribution network, which may impact our ability to compete. Our expansion into new markets may present competitive, distribution, and regulatory challenges that differ from current ones.*

Our business depends, in part, on our ability to identify future products and product lines that complement existing products and product lines and that respond to our customers' needs. We may not be able to compete effectively unless our product selection keeps up with trends in the markets in which we compete, or trends in new products, which could cause us to lose market share. Our expansion into new markets, new products, or new product lines may present competitive, distribution and regulatory challenges, as well as divert management's attention away from our core business. In addition, our ability to integrate new products and product lines into our specialty distribution network could affect our ability to compete.

#### **Risks Relating to Events Beyond Our Control**

*A decline in general economic conditions could materially reduce demand for our services or the products that we distribute.*

Demand for our products and services depends heavily on the operating level of our customers and the economic factors that affect them, including general economic conditions. In a recession or economic downturn, our customers may materially reduce construction activities because of lower consumer demand, which in turn will decrease their need for our services and the products that we distribute. Volatile economic and credit conditions also make it more difficult for our customers to forecast and plan future business activities and may prevent them from ordering our products or services as frequently or in the quantities they otherwise would. We may experience materially adverse impacts to our business because of any economic recession or slowing in the rate of growth.

*An epidemic, pandemic, or similar serious public health issue (such as COVID-19), and the measures undertaken by governmental authorities to address it, may cause business and market disruptions, impacting demand for our services or the products we distribute, our ability to provide services, or our results of operations or financial condition.*

The spread of highly infectious or contagious diseases (such as COVID-19) could cause quarantines, business shutdowns, reduction in business activity and financial transactions, labor shortages, supply chain interruptions, and overall economic and financial market instability, all of which may impact general economic conditions or consumer confidence. To the extent that economic activity, business conditions, and the industries in which we operate deteriorate as a result of such disruptions, we would expect to experience an adverse impact on demand for our services and the products we distribute, our ability to provide services, or our results of operations or financial condition.

#### **Risks Relating to Human Capital**

*The long-term performance of our businesses relies on our ability to attract, develop, and retain talented personnel, including sales representatives, branch managers, installers, and truck drivers, while controlling our labor costs.*

We are highly dependent on the skills and experience of our senior management team and other skilled and experienced personnel. The failure to attract and retain key employees could negatively affect our competitive position and operating results.

Our business results also depend upon our branch managers and sales personnel, including those of businesses acquired. Our ability to control labor costs and attract qualified labor is subject to numerous external factors including prevailing wage rates, the labor market, the demand environment, the impact of legislation or regulations governing wages and hours, labor relations, immigration, healthcare benefits, and insurance costs. In addition, we compete with other companies to recruit and retain qualified installers and truck drivers in a tight labor market, and we invest significant resources in training and motivating them to maintain a high level of job satisfaction. These positions generally have high turnover rates, which can lead to increased training and retention costs. If we fail to attract qualified labor on favorable terms, we may not be able to meet the demand of our customers, which could adversely impact our business, financial condition, and results of operations.

***Changes in employment and immigration laws and regulations may adversely affect our business.***

Various federal and state labor laws and regulations govern the relationship with our employees and impact operating costs. These laws include:

- employee classification as exempt or non-exempt for overtime and other purposes;
- workers' compensation rates;
- immigration status;
- mandatory health benefits;
- tax reporting; and
- other wage and benefit requirements.

We have a significant exposure to changes in laws governing our relationships with our employees, including wage and hour laws and regulations, fair labor standards, minimum wage requirements, overtime pay, unemployment tax rates, workers' compensation rates, citizenship requirements, payroll taxes, and the enforcement of non-competition agreements, as well as vaccination and testing mandates which may be imposed in connection with the occurrence of pandemic or health concerns, which changes would have a direct impact on our operating costs. Significant additional government-imposed increases in the preceding areas could have a material adverse effect on our business, financial condition, and results of operations.

In addition, various states in which we operate are considering or have already adopted new immigration laws or enforcement programs, and the U.S. Congress and Department of Homeland Security from time to time consider and implement changes to federal immigration laws, regulations, or enforcement programs. These changes may increase our compliance and oversight obligations, which could subject us to additional costs and make our hiring process more cumbersome, or reduce the availability of potential employees. Although we verify the employment eligibility status of all our employees, including through participation in the "E-Verify" program where required, some of our employees may, without our knowledge, be unauthorized workers. Use of the verification tools and/or "E-Verify" program does not guarantee that we will properly identify all applicants who are ineligible for employment. Unauthorized workers are subject to deportation and may subject us to fines or penalties and, if any of our workers are found to be unauthorized, we could experience adverse publicity that negatively impacts our brand and may make it more difficult to hire and retain qualified employees, which could disrupt our operations. We could also become subject to fines, penalties, and other costs related to claims that we did not fully comply with all recordkeeping obligations of federal and state immigration laws. These factors could have a material adverse effect on our business, financial condition, and results of operations.

***Union organizing activity and work stoppages could delay or reduce availability of products that we install and increase our costs.***

Approximately 800 of our employees are currently covered by collective bargaining or other similar labor agreements that expire on various dates through 2026. Any inability by us to negotiate collective bargaining arrangements could cause strikes or other work stoppages, and new contracts could result in increased operating costs. If any such strikes or other work stoppages occur, or if other employees become represented by a union, we could experience a disruption of our operations and higher labor costs. Further, if a significant number of additional employees were to unionize, including in the wake of any future legislation or regulation that makes it easier for employees to unionize, these risks would increase. In addition, certain of our suppliers have unionized work forces, and certain of the products we install and/or distribute are transported by unionized truckers. Strikes, work stoppages, or slowdowns could result in slowdowns or closures of facilities where the products that we install and/or distribute are manufactured, or could affect the ability of our suppliers to deliver such products to us. Any interruption in the production or delivery of these products could delay or reduce availability of these products and increase our costs.

***Our business relies significantly on the expertise of our employees and we generally do not have intellectual property that is protected by patents.***

Our business is significantly dependent upon our expertise in installation and distribution logistics, including significant expertise in the application of building science through our Environments for Living® program. We rely on a combination of trade secrets and contractual confidentiality provisions and, to a much lesser extent, copyrights and trademarks, to protect our proprietary rights. Accordingly, our intellectual property is more vulnerable than it would be if it were protected primarily by patents. We may be required to spend significant resources to monitor and protect our proprietary rights, and in the event a misappropriation or breach of our proprietary rights occurs, our competitive position in the market may be harmed. In addition, competitors may develop competing technologies and expertise that renders our expertise obsolete or less valuable.

#### **Risks Relating to Mergers and Acquisitions**

***We may not be successful in identifying and making acquisitions. In addition, acquisition integrations involve risks that could negatively affect our operating results, cash flows, and liquidity.***

We have made, and in the future may continue to make, strategic acquisitions as part of our growth strategy. We may be unable to make accretive acquisitions or realize expected benefits of any acquisitions for any of the following reasons:

- failure to identify attractive targets in the marketplace;
- increased competition for attractive targets;
- incorrect assumptions regarding the future results of acquired operations or assets, expected cost reductions, or other synergies expected to be realized as a result of acquiring operations or assets;
- failure to obtain acceptable financing; or
- restrictions in our debt agreements.

Our ability to successfully implement our business plan and achieve targeted financial results is dependent on our ability to successfully integrate acquired businesses. The process of integrating acquired businesses, may expose us to operational challenges and risks, including, but not limited to:

- the ability to profitably manage acquired businesses or successfully integrate the acquired business' operations, financial reporting, and accounting control systems into our business;
- the expense of integrating acquired businesses;
- increased indebtedness;
- the loss of installers, suppliers, customers or other significant business partners of acquired businesses;
- potential impairment of goodwill and other intangible assets;
- risks associated with the internal controls and accounting policies of acquired businesses;
- diversion of management's attention due to the increase in the size of our business;
- the ability to fund cash flow shortages that may occur if anticipated revenue is not realized or is delayed, whether by general economic or market conditions, or unforeseen internal difficulties;

- the availability of funding sufficient to meet increased capital needs;
- difficulties in the assimilation of different corporate cultures and business practices;
- the ability to retain vital employees or hire qualified personnel required for expanded operations;
- failure to identify all known and contingent liabilities during due diligence investigations; and
- the indemnification granted to us by sellers of acquired companies may not be sufficient.

Failure to successfully integrate any acquired business may result in reduced levels of revenue, earnings, or operating efficiency than might have been achieved if we had not acquired such business. In addition, our past acquisitions results, and any future acquisitions could result in the incurrence of additional debt and related interest expense, contingent liabilities, and amortization expenses related to intangible assets, which could have a material adverse effect on our financial condition, operating results, and cash flow.

*We may not be able to achieve the benefits that we expect to realize as a result of future acquisitions. Failure to achieve such benefits could have an adverse effect on our financial condition and results of operations.*

We may not be able to realize anticipated cost savings, revenue enhancements, or other synergies from future acquisitions, either in the amount or within the time frame that we expect. In addition, the costs of achieving these benefits may be higher than, and the timing may differ from, what we expect. Our ability to realize anticipated cost savings, synergies, and revenue enhancements may be affected by a number of factors, including, but not limited to, the following:

- the use of more cash or other financial resources on integration and implementation activities than we expect;
- unanticipated increases in expenses unrelated to any future acquisition, which may offset the expected cost savings and other synergies from any future acquisition;
- our ability to eliminate duplicative back office overhead and redundant selling, general, and administrative functions; and
- our ability to avoid labor disruptions in connection with the integration of any future acquisition, particularly in connection with any headcount reduction.

While we expect future acquisitions to create opportunities to reduce our combined operating costs, these cost savings reflect estimates and assumptions made by our management, and it is possible that our actual results will not reflect these estimates and assumptions within our anticipated timeframe or at all.

If we fail to realize anticipated cost savings, synergies, or revenue enhancements, our financial results may be adversely affected, and we may not generate the cash flow from operations that we anticipate.

#### **Risks Relating to Legal and Regulatory Matters**

*Because we operate our business through highly dispersed locations across the U.S. and Canada, our operations may be materially adversely affected by inconsistent local practices, and the operating results of individual branches and centers may vary.*

We operate our business through a network of highly dispersed locations throughout the United States and Canada, supported by executives and services at our Branch Support Center in Daytona Beach, Florida, with local branch management retaining responsibility for day-to-day operations and adherence to applicable local laws. Our operating structure can make it difficult for us to coordinate procedures across our operations. In addition, our branches and distribution facilities may require significant oversight and coordination from headquarters to support their growth.

Inconsistent implementation of corporate strategy and policies at the local or regional level could materially and adversely affect our business, financial condition, results of operations, and cash flows.

***Claims and litigation could be costly.***

We are, from time to time, involved in various claims, litigation matters, and regulatory proceedings that arise in the ordinary course of our business and which could have a material adverse effect on us. These matters may include contract disputes, automobile liability and other personal injury claims, warranty disputes, environmental claims or proceedings, other tort claims, employment and tax claims, claims relating to the quality of products sourced from our suppliers, and other proceedings and litigation, including class actions. In addition, we are exposed to potential claims by our employees or others based on job related hazards.

We may also be subject to claims or liabilities arising from our acquisitions for the periods prior to our acquisition of them, including environmental, employee-related, and other liabilities and claims not covered by insurance. Our ability to seek indemnification from the former owners of our acquired businesses for these claims or liabilities may be limited by the respective acquisition agreements and the financial ability of the former owners to satisfy our indemnification claims.

Our builder and contractor customers are subject to product liability, casualty, negligence, construction defect, breach of contract, warranty, and other claims in the ordinary course of their business. Our contractual arrangements with our builder and contractor customers may include our agreement to defend and indemnify them against various liabilities.

We rely on manufacturers and other suppliers to provide us with most of the products we install. Because we do not have direct control over the quality of products manufactured or supplied by third-party suppliers, we are exposed to risks relating to the quality of those products. In addition, we are exposed to potential claims arising from the conduct of our employees, homebuilders, and other subcontractors, for which we may be liable contractually or otherwise.

Product liability, workmanship warranty, casualty, negligence, construction defect, breach of contract, and other claims and legal proceedings can be expensive to defend and can divert the attention of management and other personnel for significant periods of time, regardless of fault or the ultimate outcome. In addition, lawsuits relating to construction defects typically have statutes of limitations that can run as long as ten years. Claims of this nature could also have a negative impact on customer confidence in us and our services.

Although we intend to defend all claims and litigation matters vigorously, given the inherently unpredictable nature of claims and litigation, we cannot predict with certainty the outcome or effect of any claim or litigation matter.

We expect to maintain insurance against some, but not all, of our risks of loss resulting from claims and litigation. We may elect not to obtain insurance if we believe the cost of available insurance is excessive relative to the risks presented. The levels of insurance we maintain may not be adequate to fully cover any and all losses or liabilities. If any significant accident, judgment, claim, or other event is not fully insured or indemnified against, it could have a material adverse impact on our business, financial condition, and results of operations.

***Compliance with government regulation and industry standards could impact our operating results.***

We are subject to national, state, provincial, and local government regulations, particularly those pertaining to health and safety, including protection of employees and consumers, employment laws, including immigration and wage and hour regulations, contractor licensing, data privacy, cybersecurity, and climate and environmental issues. In addition to complying with current requirements, even more stringent requirements are under review by the Securities and Exchange Commission and other governmental authorities which could be imposed in the future. Compliance with these regulations and industry standards is costly and may require us to invest additional resources into our compliance infrastructure, thereby increasing our cost structure. We may also be required to alter our installation and distribution processes, product sourcing, or business practices, which could make recruiting and retaining labor in a tight labor market more challenging. If we do not effectively and timely comply with such regulations and industry standards, our results of operations could be negatively affected, and we could become subject to substantial penalties or other legal liability.

***We are subject to environmental regulation and potential exposure to environmental liabilities.***

We are subject to various federal, state, provincial, and local environmental laws and regulations. Although we believe that we operate our business, including each of our locations, in compliance with applicable laws and regulations and maintain all material permits required under such laws and regulations to operate our business, we may be held liable or incur fines or penalties in connection with such requirements. In addition, environmental laws and regulations, including those related to energy use and climate change, may become more stringent over time, and any future laws and regulations could have a material impact on our operations or require us to incur material additional expenses to comply with any such future laws and regulations.

***Changes in building codes and consumer preferences could affect our ability to market our service offerings and our profitability. Moreover, if we do not respond to evolving customer preferences or changes in building standards, or if we do not maintain or expand our leadership in building science, our business, results of operation, financial condition, and cash flow would be adversely affected.***

Each of our lines of business is impacted by building codes and consumer preferences, including a growing focus on energy efficiency. Our competitive advantage is due, in part, to our ability to respond to changes in consumer preferences and building codes. However, if our installation and distribution services and our leadership in building sciences do not adequately or quickly adapt to changing preferences and building standards, we may lose market share to competitors, which would adversely affect our business, results of operation, financial condition, and cash flows. Further, our growth prospects could be harmed if consumer preferences and building standards evolve more slowly than we anticipate towards energy efficient service offerings, which are more profitable than minimum code service offerings.

**Risks Relating to the Industry in Which We Operate**

***Our business relies on residential new construction, commercial construction and industrial manufacturing activity, and to a lesser extent on residential repair/remodel, all of which are cyclical.***

Demand for our services is cyclical and highly sensitive to general macroeconomic and local economic conditions over which we have no control. Macroeconomic and local economic conditions, including consumer confidence levels, fluctuations in home prices, unemployment and underemployment levels, income and wage growth, student loan debt, household formation rates, mortgage tax deduction limits, the age and volume of the housing stock, the availability of home equity loans and mortgages and the interest rates for such loans, and other factors, affect consumers' discretionary spending on both residential new construction projects and residential repair/remodel activity. The commercial and industrial construction markets are affected by macroeconomic and local economic factors including, but not limited to, general economic conditions, cost of financing, credit availability, material costs, labor rates, vacancy and absorption rates, manufacturing capacity and demand, technological advancements, foreign and domestic competition, and import and export activity. Changes or uncertainty regarding these and similar factors could adversely affect our results of operations and our financial position.

***We face significant competition, and increased competitive pressure may adversely affect our business, financial condition, results of operations and cash flows.***

The market for the specialty distribution and installation of building products and materials is highly fragmented and competitive, and barriers to entry are relatively low. Our Installation competitors include national contractors, regional contractors, and local contractors, and we face many or all of these competitors for each project on which we bid. Our Specialty Distribution competitors include numerous specialty insulation distributors. In some instances, our Specialty Distribution business sells products to companies that may compete directly with our installation service business. We also compete with broad line building products distributors, big box retailers, and insulation manufacturers. In addition to price, we believe that competition in our industry is based largely on existing customer relationships, customer service and the quality and timeliness of installation services and distribution product deliveries in each local market. In the event that increased demand leads to higher prices for the products we sell and install, we may have limited ability to pass on price increases in a timely manner, or at all, due to the fragmented and competitive nature of our industry.

***Our business is seasonal and is susceptible to adverse weather conditions and natural disasters. We also may be adversely affected by any natural or man-made disruptions to our facilities.***

We normally experience stronger sales during the third and fourth calendar quarters, corresponding with the peak season for residential new construction and residential repair/remodel activity. Sales during the winter weather months are seasonally slower due to the lower construction activity. Historically, the installation of insulation lags housing starts by several months. In addition, to the extent that hurricanes, severe storms, earthquakes, droughts, floods, fires, other natural disasters, or similar events occur in the geographic areas in which we operate, our business may be adversely affected. Any widespread disruption to our facilities resulting from a natural disaster, an act of terrorism, or any other cause could materially impair our ability to provide installation and/or distribution services for our customers.

***We are subject to competitive pricing pressure from our customers.***

Residential homebuilders historically have exerted significant pressure on their outside suppliers to keep prices low in the highly fragmented building products and materials supply and services industry. In addition, consolidation among homebuilders and changes in homebuilders' purchasing policies or payment practices could result in additional pricing pressure.

#### **Risks Relating to Our Operations Outside of the United States**

***We face risks relating to our operations outside of the United States.***

A portion of our operations are conducted in Canada. As a result, our operating results and financial condition could be materially adversely affected by economic, political, health, regulatory and other factors existing outside of the United States. Our foreign operations are subject to inherent risks, which may materially adversely affect us, including: political and economic changes or instability; expropriation or the imposition of government controls; changes in government regulations; export requirements; trade restrictions; earnings repatriation and expatriation restrictions; exposure to different legal standards, including related to intellectual property and data privacy; health conditions and standards; currency controls; fluctuations in exchange rates; increases in the duties and taxes we pay; inflation or deflation; greater difficulty in collecting accounts receivable and longer payment cycles; changes in labor conditions, staffing, and managing our foreign operations; limitations on insurance coverage against geopolitical risks, natural disasters, and business operations; and communication among management and foreign operations. In addition, these same factors may also place us at a competitive disadvantage compared to foreign competitors.

#### ***FCPA Risk***

We may face risks associated with violations of the Foreign Corrupt Practices Act ("FCPA") and similar anti-bribery laws. The FCPA and similar anti-bribery laws in other jurisdictions generally prohibit companies and their intermediaries from making improper payments to government officials for the purpose of obtaining or retaining business. Our Code of Ethics mandates compliance with these anti-bribery laws. We cannot assure you that our internal controls and procedures will always protect us from the detrimental actions of our employees or agents. If we are found to be liable for FCPA violations (either due to our own acts or inadvertence or due to the acts or inadvertence of others), we could suffer from criminal or civil penalties or other sanctions, which could have a material adverse effect on our business.

***We are exposed to fluctuations in foreign currency exchange rates that may adversely affect our business, financial condition, and operating results.***

We transact business outside of the United States. We present our consolidated financial statements in U.S. dollars, but a portion of our revenues and expenditures are transacted in other currencies. As a result, we are exposed to fluctuations in foreign currencies. Additionally, we may have currency exposure arising from funds held in currencies other than U.S. dollars. Volatility in the exchange rates between the foreign currencies and the U.S. dollar could materially harm our business, financial condition, or operating results.

### Risks Relating to Information Technology and Cybersecurity

*We rely on information technology systems, and in the event of a disruption or security incident, we could experience problems with customer service, inventory, collections, and cost control and incur substantial costs to address related issues.*

Our operations are dependent upon our information technology systems, including systems run by third-party vendors which we do not control, to manage customer orders on a timely basis, to coordinate our installation and specialty distribution activities across locations, and to manage invoicing. If we experience problems with our information technology systems, we could experience, among other things, delays in receiving customer orders, placing orders with suppliers, and scheduling production, installation services, deliveries, or shipments.

A substantial disruption in our information technology systems could have an adverse impact on revenue, harm our reputation, and cause us to incur legal liability and costs, which could be significant, to address and remediate such events and related security concerns.

In addition, we could be adversely affected if any of our significant customers or suppliers experienced any similar events that disrupted their respective business operations or damaged their reputations.

*In the event of a cybersecurity incident, we could experience operational interruptions, incur substantial additional costs, become subject to legal or regulatory proceedings or suffer damage to our reputation.*

In addition to the disruptions that may occur from interruptions in our information technology systems, cybersecurity threats and sophisticated and targeted cyberattacks pose a risk to our information technology systems. We have established security policies, processes and defenses designed to help identify and protect against intentional and unintentional misappropriation or corruption of our information technology systems and disruption of our operations. Despite these efforts, our information technology systems may be damaged, disrupted or shut down due to attacks by unauthorized persons, malicious software, computer viruses, undetected intrusion, hardware failures, or other events, and in these circumstances our disaster recovery plans may be ineffective or inadequate. These breaches or intrusions could lead to business interruptions, exposure of proprietary or confidential information, data corruption, damage to our reputation, exposure to legal and regulatory proceedings, and other costs. Such events could have a material adverse impact on our financial condition, results of operations and cash flows. In addition, we could be adversely affected if any of our significant customers or suppliers experience any similar events that disrupt their business operations or damage their reputations.

We maintain monitoring practices and protections of our information technology to reduce these risks and test our systems on an ongoing basis for potential threats. We carry cybersecurity insurance to help mitigate the financial exposure and related notification procedures in the event of intentional intrusion. There can be no assurance, however, that our efforts will prevent the risk of a security breach of our databases or systems that could adversely affect our business.

### Risks Relating to Liquidity and Our Ability to Finance Our Operations

*If we are required to take significant non-cash charges, our financial resources could be reduced, and our financial flexibility may be negatively affected.*

We have significant goodwill and other intangible assets related to business combinations on our balance sheet. The valuation of these assets is largely dependent upon the expectations for future performance of our businesses. Expectations about the growth of residential new construction, commercial/industrial construction, residential repair/remodel activity, and the utilization of industrial facilities, may impact whether we are required to recognize noncash, pretax impairment charges for goodwill and other indefinite lived intangible assets, or other long-lived assets. If the value of our goodwill, other intangible assets, or long-lived assets is further impaired, our earnings and stockholders' equity would be adversely affected and may impact our ability to raise capital in the future.

***We may have future capital needs and may not be able to obtain additional financing on acceptable terms.***

Our future capital requirements will depend on many factors, including industry and market conditions, our ability to successfully complete future business combinations and the expansion of our existing operations. We anticipate that we may need to raise additional funds in order to grow our business and implement our business strategy. Economic and credit market conditions, the performance of the construction industry, and our financial performance, as well as other factors may constrain our financing abilities. Our ability to secure additional financing and to satisfy our financial obligations will depend upon our future operating performance, the availability of credit, economic conditions, and financial, business, and other factors, many of which are beyond our control. Any financing, if available, may be on terms that are not favorable to us and will be subject to changes in interest rates and the capital markets environment. If we cannot obtain adequate capital, we may not be able to fully implement our business strategy and our business, operational results and financial condition could be adversely affected.

***Our indebtedness and restrictions in our existing credit facility, Senior Notes or any other indebtedness we may incur in the future, could adversely affect our business, financial condition, results of operations, ability to make distributions to shareholders, and the value of our common stock.***

Our indebtedness could have significant consequences on our future operations, including:

- making it more difficult for us to meet our payments and other obligations;
- reducing the availability of our cash flows to fund working capital, capital expenditures, acquisitions or strategic investments and other general corporate requirements, and limiting our ability to obtain additional financing for these purposes;
- subjecting us to increased interest expense related to our indebtedness with variable interest rates, including borrowings under our credit facility;
- limiting our flexibility in planning for, or reacting to, and increasing our vulnerability to changes in our business, the industry in which we operate and the general economy; and
- placing us at a competitive disadvantage compared to our competitors that have less debt or are less leveraged.

Any of the above-listed factors could have an adverse effect on our business, financial condition, results of operations, or ability to meet our payment obligations. If we are not able to generate sufficient cash flow to service our debt obligations, we may need to refinance or restructure our debt, sell certain assets, reduce or delay capital investments, or seek to raise additional capital, and some of these activities may be on terms that are unfavorable or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. If we are unable to implement one or more of these alternatives, we may not be able to meet our payment obligations.

Our existing term loan, revolving credit facility and the indentures governing our Senior Notes limit, and any future credit facility or other indebtedness we enter into may limit our ability to, among other things:

- incur or guarantee additional debt;
- make distributions or dividends on, or redeem or repurchase shares of our common stock;
- make certain investments, acquisitions, or other restricted payments;
- incur certain liens or permit them to exist;
- acquire, merge, or consolidate with another company; and
- transfer, sell, or otherwise dispose of substantially all of our assets.

Our revolving credit facility contains, and any future credit facility or other debt instrument we may enter into will also likely contain, covenants requiring us to maintain certain financial ratios and meet certain tests, such as an interest coverage ratio, a leverage ratio, and a minimum test. Our ability to comply with those financial ratios and tests can be affected by events beyond our control, and we may not be able to comply with those ratios and tests when required to do so under the applicable debt instruments. For additional information regarding our outstanding debt see *Item 8. Financial Statements and Supplementary Data – Note 6. Long-Term Debt*.

***Adverse credit ratings could increase our costs of borrowing money and limit our access to capital markets and commercial credit.***

Moody's Investor Service and Standard & Poor's routinely evaluate our credit ratings related to our Senior Notes. If these rating agencies downgrade any of our current credit ratings, our borrowing costs could increase and our access to the capital and commercial credit markets could be adversely affected.

***In connection with the Separation, Masco indemnified us for certain liabilities, and we indemnified Masco for certain liabilities. If we are required to act under these indemnities to Masco, we may need to divert cash to meet those obligations, which could adversely affect our financial results. Moreover, the Masco indemnity may not be sufficient to compensate us for the full amount of liabilities for which it may be liable, and Masco may not be able to satisfy its indemnification obligations to us in the future.***

Indemnities that we may be required to provide Masco are not subject to any cap, may be significant, and could negatively affect our business, particularly indemnities relating to our actions that could affect the tax-free nature of the Separation. Third parties could also seek to hold us responsible for any of the liabilities that Masco has agreed to retain, and under certain circumstances, we may be subject to continuing contingent liabilities of Masco following the Separation, such as certain shareholder litigation claims. Further, Masco may not be able to fully satisfy its indemnification obligations, or such indemnity obligations may not be sufficient to cover our liabilities. Moreover, even if we ultimately succeed in recovering from Masco any amounts for which we are held liable, we may be temporarily required to bear these losses ourselves. Each of these risks could negatively affect our business, results of operations, liquidity, and financial condition.

***Compliance with and changes in tax laws could adversely affect our performance.***

We are subject to extensive tax liabilities imposed by multiple jurisdictions including income taxes; indirect taxes which include excise and duty, sales and use, and gross receipts taxes; payroll taxes; franchise taxes; withholding taxes; and ad valorem taxes. New tax laws and regulations, and changes in existing tax laws and regulations, are continuously being enacted or proposed which could result in increased expenditures for tax liabilities in the future. Many of these liabilities are subject to periodic audits by the respective taxing authority. Subsequent changes to our tax liabilities as a result of these audits may subject us to interest and penalties.

**Risks Relating to Our Common Stock**

***The price of our common stock may fluctuate substantially, and the value of your investment may decline.***

The market price of our common stock could fluctuate significantly due to a number of factors, many of which are beyond our control, including:

- fluctuations in our quarterly or annual earnings results, or those of other companies in our industry;
- failures of our operating results to meet our published guidance, the estimates of securities analysts or the expectations of our stockholders, or changes by securities analysts in their estimates of our future earnings;
- announcements by us or our customers, suppliers, or competitors;
- changes in laws or regulations which adversely affect our industry or us;

- changes in accounting standards, policies, guidance, interpretations, or principles;
- general economic, industry, and stock market conditions;
- future sales of our common stock by our stockholders;
- future issuances of our common stock by us; and
- other factors described in these “Risk Factors” and elsewhere in this Annual Report.

*Provisions in our certificate of incorporation and bylaws, and certain provisions of Delaware law, could delay or prevent a change in control.*

The existence of some provisions of our certificate of incorporation and bylaws and Delaware law could discourage, delay, or prevent a change in control that a stockholder may consider favorable. These include provisions:

- authorizing a large number of shares of stock that are not yet issued, which could have the effect of preventing or delaying a change in control if our board of directors issued shares to persons that did not support such change in control, or which could be used to dilute the stock ownership of persons seeking to obtain control; and
- prohibiting stockholders from calling special meetings of stockholders or taking action by written consent.

In addition, we are subject to Section 203 of the Delaware General Corporation Law, which may have an anti-takeover effect with respect to transactions not approved in advance by our board of directors, including discouraging takeover attempts that could have resulted in a premium over the market price for shares of our common stock.

These provisions apply even if a takeover offer is considered beneficial by some stockholders and could delay or prevent an acquisition that our board of directors determines is not in our and our stockholders’ best interests.

*Our bylaws designate the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders’ ability to obtain a preferred judicial forum for disputes with us or our directors, officers, or other employees.*

Our bylaws provide that, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, or other employee to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of Delaware General Corporation Law, our certificate of incorporation (including any certificate of designations for any class or series of our preferred stock), or our bylaws, in each case, as amended from time to time, or (iv) any action asserting a claim governed by the internal affairs doctrine, shall be the Court of Chancery of the State of Delaware (provided, however, that in the event that the Court of Chancery of the State of Delaware lacks subject matter jurisdiction over such proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware), in all cases subject to the court having personal jurisdiction over the indispensable parties named as defendants. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock is deemed to have received notice of, and consented to, the foregoing provision. This forum selection provision may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable or cost effective for disputes with us or our directors, officers, or other employees, which may discourage such lawsuits against us and our directors, officers, and employees.

#### **Item 1B. UNRESOLVED STAFF COMMENTS**

None.

**Item 2. PROPERTIES**

We operate approximately 230 Installation branch locations and approximately 180 Specialty Distribution centers in the United States and Canada, most of which are leased. Our 65,700 square foot Branch Support Center is leased and located at 475 North Williamson Boulevard in Daytona Beach, FL 32114. This lease expires in June 2029, assuming no exercise of any options set forth in the lease. We believe that our facilities have sufficient capacity and are adequate for our installation and specialty distribution requirements.

**Item 3. LEGAL PROCEEDINGS**

For information regarding legal proceedings, see *Item 8. Financial Statements and Supplementary Data – Note 11. Other Commitments and Contingencies*, which we incorporate herein by reference.

**Item 4. MINE SAFETY DISCLOSURES**

Not applicable.

**PART II**

**Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS, AND ISSUER PURCHASES OF EQUITY SECURITIES**

**Market Information and Holders of our Common Stock.** Our common stock is traded on the NYSE under the symbol "BLD". As of February 16, 2023, there were approximately 1,590 holders of our issued and outstanding common stock.

**Dividends.** No dividends were paid during the years ended December 31, 2022 and 2021. Our Credit Agreement, in certain circumstances, limits the amount of dividends we may distribute. We do not anticipate declaring cash dividends to holders of our common stock in the foreseeable future.

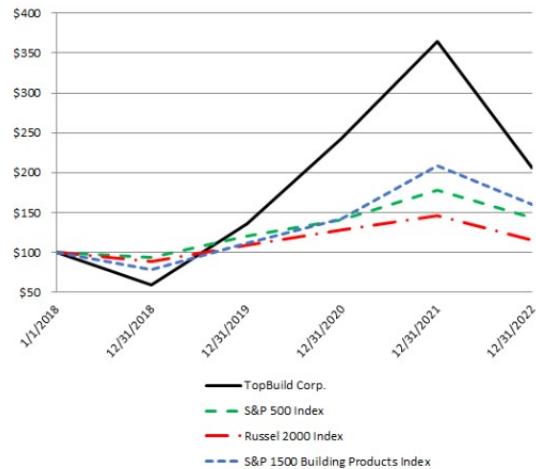
**Issuer Purchases of Equity Securities.** We have \$154.4 million of shares remaining under for repurchase under our 2022 Share Repurchase Program. The following table provides information regarding the repurchase of our common stock for the three months ended December 31, 2022, in thousands, except share and per share data:

| Period                               | Total Number of Shares Purchased | Average Price Paid per Common Share | Number of Shares Purchased as Part of Publicly Announced Plans or Programs | Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs |
|--------------------------------------|----------------------------------|-------------------------------------|--|--|
| October 1, 2022 - October 31, 2022   | -                                | -                                   | -  | \$ 204,406   |
| November 1, 2022 - November 30, 2022 | 331,306                          | \$ 150.92                           | 331,306  | \$ 154,406   |
| December 1, 2022 - December 31, 2022 | -                                | -                                   | -  | \$ 154,406   |
| Total                                | 331,306                          | \$ 150.92                           | 331,306  |  |

Excluded from this disclosure are shares repurchased to settle statutory employee tax withholdings related to the vesting of stock awards.

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**Performance Graph and Table.** The following graph and table compare the cumulative total return of our common stock for the five-year period beginning January 1, 2018, through December 31, 2022, with the total cumulative return of the Russell 2000 Index, the Standard & Poor's 500 Index, and the Standard & Poor's 1500 Building Products Index. The graph and table assume an initial investment of \$100 in our common stock and each of the three indices at the opening of business on January 1, 2018, and reinvestment of dividends.



|  | <b>12/31/2018</b> | <b>12/31/2019</b> | <b>12/31/2020</b> | <b>12/31/2021</b> | <b>12/31/2022</b> |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|
| TopBuild Corp.                                 | \$ 59             | \$ 136            | \$ 243            | \$ 364            | \$ 207            |
| Standard & Poor's 500 Index                    | \$ 94             | \$ 120            | \$ 140            | \$ 178            | \$ 144            |
| Russell 2000 Index                             | \$ 88             | \$ 108            | \$ 129            | \$ 146            | \$ 115            |
| Standard & Poor's 1500 Building Products Index | \$ 78             | \$ 111            | \$ 142            | \$ 209            | \$ 160            |

**Item 6. [Reserved]**

## **Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*The financial and business analysis below provides information which we believe is relevant to an assessment and understanding of our financial position, results of operations, and cash flows. This financial and business analysis should be read in conjunction with the financial statements and related notes.*

*In this section, we generally discuss the results of our operations for the year ended December 31, 2022 compared to the year ended December 31, 2021. For a discussion of the year ended December 31, 2021 to the year ended December 31, 2020, please refer to Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the year ended December 31, 2021, filed with the SEC on February 22, 2022, which discussion is hereby incorporated herein by reference.*

### **Executive Summary**

We are a leading installer and specialty distributor of insulation and related building material products to the construction industry in the United States and Canada. Demand for our products and services is driven primarily by residential and commercial/industrial construction and by industrial manufacturing activity. A number of local and national factors influence activity in each of our lines of business, including demographic trends, interest rates, employment levels, business investment, supply and demand for housing, availability of credit, foreclosure rates, consumer confidence, and general economic conditions.

The core of our business is inherently environmentally friendly. The insulation we install and distribute drives thermal efficiency, lowers energy usage, and reduces carbon emissions. We are a leader in delivering these benefits for new and existing homes and commercial/industrial facilities across the United States and Canada.

### **Strategy**

We are a leading installer and specialty distributor of insulation for the residential and commercial/industrial end markets in the United States and Canada. We also distribute a range of other related building material products including gutters, garage doors, windows, and glass. We are committed to creating long-term value for all stakeholders – employees, customers, suppliers, and investors. Our core values include:

- Safety – We put the safety of our people first.
- Integrity – We deliver results with integrity, respect, and accountability.
- Focus – We are customer-focused, grounded in strong relationships.
- Innovation – We are continuously improving and encourage idea sharing.
- Unity – We are united as one team, valuing diversity.
- Community – We make a difference in the communities we serve.
- Empowerment – We are empowered to be our best, individually and as a team.

Our strategy is focused on growth and productivity including:

- Attracting and retaining top talent
- Leveraging technology to streamline processes;
- Expanding our business and market share in the residential and commercial/industrial end-markets;
- Acquiring strategically aligned businesses;
- Driving operational efficiencies throughout the business.

Our operating results depend heavily on residential new construction activity and, to a lesser extent, on commercial/industrial construction and industrial manufacturing activity, all of which are cyclical. We are also dependent on third-party suppliers and manufacturers providing us with an adequate supply of high-quality products.

## Material Trends in Our Business

We recognize that there is uncertainty around the economy as the Federal Reserve seeks to slow inflation by raising interest rates. Higher interest rates and overall inflation have led to many consumers being priced out of the housing market as evidenced by our homebuilders reporting higher cancellation rates, declining order volumes, and decreasing housing starts in the second half of 2022. The backlog of houses under construction supported our sales through the back half of 2022 and we anticipate that trend to continue into the second quarter of 2023 for single family homes and into the fourth quarter of 2023 for multi-family homes. We remain optimistic about the long-term fundamentals of the U.S. housing market and believe that when mortgage rates eventually stabilize consumer demand will rebound.

The commercial/industrial end-markets are showing mixed signals, in part due to higher interest rates. However, our bidding and order activity remains strong and we remain optimistic about the long-term fundamentals for these markets as well.

### Seasonality

Sales across our end markets are typically slower during the winter months due to lower construction activity.

### Results of Operations

We report our financial results in conformity with GAAP.

The following table sets forth our net sales, gross profit, operating profit, and margins, as reported in our Consolidated Statements of Operations, in thousands:

|  | Year Ended December 31, |                   |
|--|-------------------------|-------------------|
|  | 2022                    | 2021              |
| <b>Net sales</b>   | \$ 5,008,744            | \$ 3,486,207      |
| Cost of sales  | 3,522,025               | 2,511,818         |
| <i>Cost of sales ratio</i>   | 70.3 %                  | 72.1 %            |
| <b>Gross profit</b>  | <b>1,486,719</b>        | <b>974,389</b>    |
| <i>Gross profit margin</i>   | 29.7 %                  | 27.9 %            |
| Selling, general, and administrative expense                       | 689,555                 | 497,970           |
| <i>Selling, general, and administrative expense to sales ratio</i> | 13.8 %                  | 14.3 %            |
| <b>Operating profit</b>  | <b>797,164</b>          | <b>476,419</b>    |
| <i>Operating profit margin</i>                                     | 15.9 %                  | 13.7 %            |
| Other expense, net   | (55,029)                | (42,976)          |
| Income tax expense   | (186,146)               | (109,427)         |
| <b>Net income</b>  | <b>\$ 555,989</b>       | <b>\$ 324,016</b> |
| <i>Net margin</i>  | 11.1 %                  | 9.3 %             |

### Comparison of the Years Ended December 31, 2022 and December 31, 2021

#### *Sales and Operations*

Net sales for 2022 increased 43.7 percent, or \$1.5 billion, to \$5.0 billion. The increase was driven by a 24.9 percent increase in sales from acquisitions, 13.4 percent impact from higher selling prices, and a 5.4 percent increase in sales volume.

Our gross profit margins were 29.7 percent and 27.9 percent for 2022 and 2021, respectively. Gross profit margin improved primarily due to higher selling prices, higher sales volume, and productivity initiatives partially offset by an increase in cost of material.

Selling, general, and administrative expenses as a percentage of sales were 13.8 percent and 14.3 percent for 2022 and 2021, respectively. Decreased selling, general, and administrative expense as a percent of sales was primarily the result of higher sales, partially offset by higher amortization of intangible assets related to purchase accounting and acquisition integration costs.

Operating margins were 15.9 percent and 13.7 percent for 2022 and 2021, respectively. The increase in operating margins related to higher selling prices, higher sales volume, and productivity initiatives, partially offset by an increase in cost of material, and higher amortization of intangible assets related to purchase accounting and acquisition integration costs.

#### ***Other Expense, Net***

Other expense, net, which primarily consists of interest expense, increased \$12.1 million to \$55.0 million in 2022 compared with 2021. The increase is primarily related to increased average debt outstanding in 2022 and higher interest rates on our Term Loan, partially offset by increased interest income.

#### ***Income Tax Expense***

Our effective tax rate decreased from 25.2 percent in 2021 to 25.1 percent in 2022. The lower 2022 rate is primarily related to a decrease in non-deductible items offset by a decrease in the benefit related to share-based compensation.

#### **2022 and 2021 Business Segment Results**

The following table sets forth our net sales and operating profit information by business segment, in thousands:

|  | <b>Year Ended December 31,</b> |                     | <b>Percent Change</b> |
|--|--------------------------------|---------------------|-----------------------|
|  | <b>2022</b>                    | <b>2021</b>         |                       |
| <b>Net sales by business segment:</b>                    |                                |                     |                       |
| Installation   | \$ 2,969,978                   | \$ 2,378,401        | 24.9 %                |
| Specialty Distribution                                   | 2,278,261                      | 1,287,176           | 77.0 %                |
| Intercompany eliminations                                | (239,495)                      | (179,370)           |                       |
| <b>Net sales</b>   | <b>\$ 5,008,744</b>            | <b>\$ 3,486,207</b> | <b>43.7 %</b>         |
| <b>Operating profit by business segment (a):</b>         |                                |                     |                       |
| Installation   | \$ 548,795                     | \$ 383,722          | 43.0 %                |
| Specialty Distribution                                   | 326,226                        | 169,368             | 92.6 %                |
| Intercompany eliminations                                | (39,839)                       | (29,653)            |                       |
| Operating profit before general corporate expense        | 835,182                        | 523,437             | 59.6 %                |
| General corporate expense, net (b)                       | (38,018)                       | (47,018)            |                       |
| <b>Operating profit</b>                                  | <b>\$ 797,164</b>              | <b>\$ 476,419</b>   | <b>67.3 %</b>         |
| <b>Operating profit margins:</b>                         |                                |                     |                       |
| Installation   | 18.5 %                         | 16.1 %              |                       |
| Specialty Distribution                                   | 14.3 %                         | 13.2 %              |                       |
| Operating profit margin before general corporate expense | 16.7 %                         | 15.0 %              |                       |
| <b>Operating profit margin</b>                           | <b>15.9 %</b>                  | <b>13.7 %</b>       |                       |

- (a) Segment operating profit includes an allocation of general corporate expenses attributable to the operating segments which is based on direct benefit or usage (such as salaries of corporate employees who directly support the segment).
- (b) General corporate expense, net includes expenses not specifically attributable to our segments for functions such as corporate human resources, finance and legal, including salaries, benefits, and other related costs.

#### **2022 and 2021 Business Segment Results Discussion**

Changes in operating profit margins in the following business segment results discussion exclude general corporate expense, net in 2022 and 2021, as applicable.

**Installation****Sales**

Sales increased \$591.6 million, or 24.9 percent, in 2022 compared to 2021. Sales increased 12.2 percent due to higher selling prices, 9.2 percent from higher sales volume and 3.4 percent from acquisitions.

**Operating Results**

Operating margins in the Installation segment were 18.5 percent and 16.1 percent for 2022 and 2021, respectively. The increase in operating margin was driven by higher selling prices, higher sales volume, and productivity initiatives, partially offset by an increase in cost of material.

**Specialty Distribution****Sales**

Sales increased \$991.1 million, or 77.0 percent, in 2022 compared to 2021. Sales increased 61.8 percent from acquisitions, 15.8 percent due to higher selling prices partially offset by a slight decrease in volume of 0.6 percent.

**Operating Results**

Operating margins in the Specialty Distribution segment were 14.3 percent and 13.2 percent for 2022 and 2021, respectively. The increase in operating margin was driven primarily by higher selling prices and productivity initiatives, partially offset by higher amortization of intangible assets related to purchase accounting.

**Commitments and Contingencies**

We are subject to certain claims, charges, litigation, and other proceedings in the ordinary course of our business. We believe we have adequate defenses in these matters, and we do not believe that the ultimate outcome of these matters will have a material adverse effect on us. For additional information see *Item 8. Financial Statements and Supplementary Data – Note 11. Other Commitments and Contingencies*.

**Liquidity and Capital Resources**

We have access to liquidity through our cash from operations and available borrowing capacity under our Credit Agreement, which provides for borrowing and/or standby letter of credit issuances of up to \$500 million under the revolving facility. For additional information regarding our outstanding debt and borrowing capacity see *Item 8. Financial Statements and Supplementary Data – Note 6. Long-Term Debt*.

The following table summarizes our total liquidity, in thousands:

|                                       | As of                |                      |
|---------------------------------------|----------------------|----------------------|
|                                       | December 31,<br>2022 | December 31,<br>2021 |
| Cash and cash equivalents (a)         | \$ 240,069           | \$ 139,779           |
| Revolving facility                    | 500,000              | 500,000              |
| Less: standby letters of credit       | (67,689)             | (69,936)             |
| Availability under revolving facility | 432,311              | 430,064              |
| Total liquidity                       | \$ 672,380           | \$ 569,843           |

(a) Our cash and cash equivalents consist of AAA-rated money market funds as well as cash held in our demand deposit accounts.

We believe that our cash flows from operations, combined with our current cash levels and available borrowing capacity, will be adequate to support our ongoing operations and known contractual obligations including funding our debt service requirements, capital expenditures, lease obligations and working capital needs for at least the next twelve months. We also have adequate liquidity to maintain off-balance sheet arrangements for short-term leases, letters of credit, and performance and license bonds. See *Item 8. Financial Statements and Supplementary Data* of this Annual Report for related disclosures.

#### Cash Flows

The following table presents a summary of our cash flows provided by (used in) operating, investing and financing activities for the periods indicated, in thousands:

|  | Year Ended December 31, |                     |
|--|-------------------------|---------------------|
|  | 2022                    | 2021                |
| Changes in cash and cash equivalents:                |                         |                     |
| Net cash provided by operating activities            | \$ 495,801              | \$ 403,025          |
| Net cash used in investing activities                | (93,907)                | (1,322,245)         |
| Net cash (used in) provided by financing activities  | (300,073)               | 729,007             |
| Impact of exchange rate changes on cash              | (1,531)                 | (15)                |
| Net increase (decrease) in cash and cash equivalents | <u>\$ 100,290</u>       | <u>\$ (190,228)</u> |

Net cash flows provided by operating activities increased \$92.8 million for the year ended December 31, 2022, as compared to December 31, 2021. Net income was up \$231.9 million, or 71.6%, compared with the prior year period, driven by the impact of our acquisitions, higher sales prices and sale volumes. That increase was largely offset by the impact of higher levels of working capital, particularly receivables and inventory.

Net cash used in investing activities was \$93.9 million for the year ended December 31, 2022, primarily comprised of \$76.4 million for purchases of property and equipment (primarily vehicles, equipment and computer hardware and software), as well as \$20.5 million for acquisitions. Net cash used in investing activities was \$1,322.2 million for the year ended December 31, 2021, primarily comprised of \$1,267.1 million for acquisitions and \$55.5 million for purchases of property and equipment, primarily vehicles.

Net cash used in financing activities was \$300.1 million for the year ended December 31, 2022. During the year ended December 31, 2022, we used \$250.0 million for the repurchase of common stock, \$38.7 million for debt repayments, and \$9.7 million net activity related to exercise of share-based incentive awards and stock options. Additionally, we borrowed and repaid \$70 million on our Revolving Facility, all within the second quarter of 2022. Net cash provided by financing activities was \$729.0 million for the year ended December 31, 2021. Cash increased by \$1,218.8 million from proceeds received on Amendment No. 1 to Credit Agreement as well as the 4.125% Senior Notes issuance used to fund the acquisition of DI. These increases were partially offset by repayments of \$433.1 million including \$400.0 million to redeem our 5.625% Senior Notes and payments on our term loan and equipment notes as well as \$15.0 million used for debt issuance costs related to Amendment No. 1 to Credit Agreement as well as the 4.125% Senior Notes issuance. Additionally, we used \$35.6 million for the repurchase of common stock as well as \$5.5 million net activity related to exercise of share-based incentive awards and stock options.

#### Critical Accounting Policies and Estimates

We prepare our Consolidated Financial Statements in conformity with GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts and disclosure of assets and liabilities, and any related contingencies, at the date of the financial statements, as well as the reported amounts of sales and expenses during the reporting period. Actual results could differ from those estimates.

Our significant accounting policies are more fully described in *Item 8. Financial Statements and Supplementary Data – Note 1. Summary of Significant Accounting Policies*. However, certain of our accounting policies considered critical are those we believe are both most important to the portrayal of our financial condition and operating results and require our most difficult, subjective, or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. Judgments and uncertainties affecting the application of those policies may result in materially different amounts being reported under different conditions or using different assumptions. We consider the following policies to be most critical in understanding the judgments that are involved in preparing our Consolidated Financial Statements.

**Revenue Recognition and Receivables**

We recognize revenue for our Installation segment over time as the related performance obligation is satisfied with respect to each particular order within a given customer's contract. Progress toward complete satisfaction of the performance obligation is measured using a cost-to-cost measure of progress method. The cost input is based on the amount of material installed at that customer's location and the associated labor costs, as compared to the total expected cost for the particular order. The total expected cost is a significant estimate in the revenue recognition process, requires judgment, and is subject to variability throughout the duration of the contract as a result of contract modifications and other circumstances impacting job completion. Generally, this results in revenue being recognized as the customer is able to receive and utilize the benefits provided by our services. Each contract contains one or more individual orders, which are based on services delivered. When material and installation services are bundled in a contract, we combine these items into one performance obligation as the overall promise is to transfer the combined item.

Revenue from our Specialty Distribution segment is recognized when title to products and risk of loss transfers to our customers. This represents the point in time when the customer is able to direct the use of and obtain substantially all the benefits from the product. The determination of when control is deemed transferred depends on the shipping terms that are agreed upon in the contract.

At time of sale, we record estimated reductions to revenue for customer programs and incentive offerings, including special pricing and other volume-based incentives based on historical experience, which is continuously adjusted. The duration of our contracts with customers is relatively short, generally less than a 90-day period, and therefore there is not a significant financing component when considering the determination of the transaction price which gets allocated to the individual performance obligations, generally based on standalone selling prices. Additionally, we consider shipping costs charged to a customer as a fulfillment cost rather than a promised service and expense as incurred. Sales taxes, when incurred, are recorded as a liability and excluded from revenue on a net basis.

We record a contract asset when we have satisfied our performance obligation prior to billing and a contract liability when a customer payment is received prior to the satisfaction of our performance obligation. The difference between the beginning and ending balances of our contract assets and liabilities primarily results from the timing of our performance and the customer's payment.

We maintain allowances for estimated losses resulting from the inability of customers to make required payments. In addition, we monitor our customer receivable balances and the credit worthiness of our customers on an on-going basis. During downturns in our markets, declines in the financial condition and creditworthiness of customers impact the credit risk of the receivables involved and we have incurred additional bad debt expense related to customer defaults.

**Business Combinations**

The purchase price for business combinations is allocated to the estimated fair values of acquired tangible and intangible assets, including goodwill, and assumed liabilities, where applicable. Additionally, we recognize customer relationships, trademarks and trade names, and non-compete agreements as identifiable intangible assets, which are recorded at fair value as of the transaction date. The fair value of the customer relationships intangible assets was determined by management using the multi-period excess earnings method under the income approach. Assumptions used in determining the fair value of the customer relationships intangible asset included forecasted revenue growth

rate, customer attrition rate, and discount rate. The fair value of other intangible assets is determined primarily using current industry information. Goodwill is recorded when consideration transferred exceeds the fair value of identifiable assets and liabilities. Measurement-period adjustments to assets acquired and liabilities assumed with a corresponding offset to goodwill are recorded in the period they occur, which may include up to one year from the acquisition date. Contingent consideration is recorded at fair value at the acquisition date.

***Goodwill and Other Intangible Assets***

We have two reporting units, which are also our operating and reporting segments: Installation and Specialty Distribution, and both contain goodwill. Our operating segments engage in business activities for which discrete financial information including long range forecasts is available, and we complete the impairment testing of goodwill at this level, as defined by accounting guidance. Assets acquired and liabilities assumed are assigned to the applicable reporting unit based on whether the acquired assets and liabilities relate to the operations of such unit and determination of its fair value. Goodwill assigned to the reporting unit is the excess of the fair value of the acquired business over the fair value of the individual assets acquired and liabilities assumed for the reporting unit.

We perform our annual impairment testing of goodwill in the fourth quarter of each year, or as events occur or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. When assessing goodwill for impairment, we have the option to first assess qualitative factors to determine whether the existence of events or circumstances leads to a determination that it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If, after assessing the totality of events or circumstances, we determine it is more likely than not that the fair value of a reporting unit is less than its carrying amount, then we recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. If we conclude otherwise, then no further action is taken. We also have the option to bypass the qualitative assessment and only perform a quantitative assessment. For the year ended December 31, 2022, we performed a quantitative assessment.

Fair value for our reporting units is determined using a discounted cash flow method which includes significant unobservable inputs (Level 3 inputs). We believe this methodology is comparable to what would be used by other market participants. Using the discounted cash flow method requires us to make significant estimates and assumptions, including long term projections of cash flows, market conditions, and appropriate discount rates. Our judgments are based on historical experience, current market trends, consultations with external valuation specialists and other information. While we believe that the estimates and assumptions underlying the valuation methodology are reasonable, changes to estimates and assumptions could result in different outcomes. In estimating future cash flows, we rely on internally generated long-range forecasts for sales and operating profits, and generally a one to three percent long term assumed annual growth rate of cash flows for periods after the long-range forecast. We generally develop these forecasts based upon, among other things, recent sales data for existing products, and estimated U.S. housing starts.

When necessary, an impairment loss is recognized to the extent that a reporting unit's recorded goodwill exceeds its fair value. In the fourth quarters of 2022 and 2021, we performed an assessment on our goodwill and determined that the estimated fair value of each reporting unit substantially exceeded its carrying value at December 31, 2021, and therefore the goodwill was not impaired.

We did not recognize any impairment charges for goodwill for the years ended December 31, 2022, 2021, and 2020. As of December 31, 2022, net goodwill reflected \$762.0 million of accumulated impairment losses, relating primarily to impairment charges taken in 2008-2010 following the substantial decrease in U.S. housing starts after the financial crisis of 2007-2008.

Intangible assets with finite useful lives are amortized using the straight-line method over their estimated useful lives. We evaluate the remaining useful lives of amortizable identifiable intangible assets at each reporting period to determine whether events and circumstances warrant a revision to the remaining periods of amortization.

**Income Taxes**

If, based upon all available evidence, both positive and negative, it is more likely than not (more than 50 percent likely) deferred tax assets will not be realized, a valuation allowance is recorded. Significant weight is given to positive and negative evidence that is objectively verifiable. A company's three year cumulative loss position is significant negative evidence in considering whether deferred tax assets are realizable and the accounting guidance restricts the amount of reliance we can place on projected taxable income to support the recovery of deferred tax assets.

While we believe we have adequately assessed for our uncertain tax positions, amounts asserted by taxing authorities could vary from our assessment of uncertain tax positions. Accordingly, provisions for tax-related matters, including interest and penalties, could be recorded in income tax expense in the period revised assessments are made.

**Recently Issued Accounting Pronouncements**

Recently issued accounting pronouncements and their expected or actual effect on our reported results of operations are addressed in *Item 8. Financial Statements and Supplementary Data – Note 1. Summary of Significant Accounting Policies*.

**Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

*Interest Rate Risk*

We have a Term Loan outstanding with a principal balance of \$566.3 million and a revolving facility with an aggregate borrowing capacity of \$500.0 million. We also have outstanding 3.625% Senior Notes with an aggregate principal balance of \$400.0 million and 4.125% Senior Notes with an aggregate principal balance of \$500.0 million. The 3.625% Senior Notes and 4.125% Senior Notes bear a fixed rate of interest and therefore are excluded from the calculation below as they are not subject to fluctuations in interest rates.

On December 9, 2022, the Company entered into Amendment No. 3 to Credit Agreement. Amendment No. 3 to Credit Agreement replaces LIBOR with SOFR as the reference interest rate benchmark.

Interest payable on both the aggregate Term Loan and revolving facility is based on a variable interest rate. As a result, we are exposed to market risks related to fluctuations in interest rates on this outstanding indebtedness. As of December 31, 2022, the applicable interest rate as of such date was 5.42%. Based on our outstanding borrowings as of December 31, 2022, a 100 basis point increase in the interest rate would result in a \$5.6 million increase in our annualized interest expense. There was no outstanding balance under the revolving facility as of December 31, 2022.

**Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders of TopBuild Corp.

***Opinions on the Financial Statements and Internal Control over Financial Reporting***

We have audited the accompanying consolidated balance sheets of TopBuild Corp. and its subsidiaries (the “Company”) as of December 31, 2022 and 2021, and the related consolidated statements of operations, of comprehensive income, of changes in equity and of cash flows for each of the three years in the period ended December 31, 2022, including the related notes (collectively referred to as the “consolidated financial statements”). We also have audited the Company’s internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the COSO.

***Basis for Opinions***

The Company’s management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in Management’s Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on the Company’s consolidated financial statements and on the Company’s internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

***Definition and Limitations of Internal Control over Financial Reporting***

A company’s internal control over financial reporting is a process designed 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. A company’s internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that

transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

**Critical Audit Matters**

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that (i) relates to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

*Revenue Recognition—Total Expected Costs for Performance Obligations Satisfied Over Time*

As described in Notes 1 and 3 to the consolidated financial statements, \$2,970 million of the Company's total revenues for the year ended December 31, 2022 was generated from the Installation segment. Revenue is recognized for the Installation segment over time as the related performance obligation is satisfied with respect to each particular order within a given customer's contract. Progress toward complete satisfaction of the performance obligation is measured using a cost-to-cost measure of progress method. The cost input is based on the amount of material installed at that customer's location and the associated labor costs, as compared to the total expected cost for the particular order. The total expected cost is a significant estimate in the revenue recognition process, requires judgment, and is subject to variability throughout the duration of the contract as a result of contract modifications and other circumstances impacting job completion. Revenue is recognized over time as the customer is able to receive and utilize the benefits provided.

The principal considerations for our determination that performing procedures relating to revenue recognition – total expected costs for performance obligations satisfied over time is a critical audit matter are (i) the significant judgment by management when determining the total expected costs for a customer contract and (ii) a high degree of auditor judgment and effort in performing procedures and evaluating management's significant assumptions related to the estimated amount of material installed and the associated labor costs.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to the revenue recognition process, including controls over the estimation of total expected costs for performance obligations satisfied over time. The procedures also included, among others (i) testing management's process for determining the total expected costs for a sample of customer contracts and (ii) evaluating the reasonableness of significant assumptions related to the estimated amount of material to be installed and the associated labor costs used by management and considering the factors that can affect the accuracy of those estimates. Evaluating the reasonableness of significant assumptions used involved assessing management's ability to reasonably estimate total expected costs for customer contracts by (i) performing a comparison of the originally estimated and actual costs incurred on completed contracts and (ii) evaluating the timely identification of circumstances that may warrant a modification to total expected cost, including actual costs in excess of estimates.

/s/ PricewaterhouseCoopers LLP  
Tampa, Florida  
February 23, 2023

We have served as the Company's auditor since 2015.

**TOPBUILD CORP.**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands except share amounts)

|   | As of                |                      |
|---|----------------------|----------------------|
|   | December 31,<br>2022 | December 31,<br>2021 |
| <b>ASSETS</b>   |                      |                      |
| Current assets:   |                      |                      |
| Cash and cash equivalents   | \$ 240,069           | \$ 139,779           |
| Receivables, net of an allowance for credit losses of \$16,281 at December 31, 2022, and \$8,798 at December 31, 2021   | 836,071              | 668,419              |
| Inventories, net  | 438,644              | 352,801              |
| Prepaid expenses and other current assets   | 34,257               | 26,692               |
| Total current assets  | <u>1,549,041</u>     | <u>1,187,691</u>     |
| Right of use assets   | 205,892              | 177,177              |
| Property and equipment, net   | 253,484              | 244,574              |
| Goodwill  | 1,966,994            | 1,949,763            |
| Other intangible assets, net  | 614,967              | 684,209              |
| Other assets  | 16,453               | 15,116               |
| Total assets  | <u>\$ 4,606,831</u>  | <u>\$ 4,258,530</u>  |
| <b>LIABILITIES AND EQUITY</b>   |                      |                      |
| <b>Current liabilities:</b>   |                      |                      |
| Accounts payable  | \$ 487,114           | \$ 461,917           |
| Current portion of long-term debt   | 40,068               | 38,640               |
| Accrued liabilities   | 199,370              | 175,891              |
| Short-term operating lease liabilities  | 60,880               | 54,591               |
| Short-term finance lease liabilities  | 2,207                | 2,387                |
| Total current liabilities   | <u>789,639</u>       | <u>733,426</u>       |
| Long-term debt  | 1,417,257            | 1,454,483            |
| Deferred tax liabilities, net   | 251,481              | 248,243              |
| Long-term portion of insurance reserves   | 59,783               | 51,875               |
| Long-term operating lease liabilities   | 149,943              | 125,339              |
| Long-term finance lease liabilities   | 6,673                | 7,770                |
| Other liabilities   | 2,349                | 960                  |
| Total liabilities   | <u>2,677,125</u>     | <u>2,622,096</u>     |
| Commitments and contingencies   |                      |                      |
| <b>Equity:</b>  |                      |                      |
| Preferred stock, \$0.01 par value: 10,000,000 shares authorized; 0 shares issued and outstanding  | -                    | -                    |
| Common stock, \$0.01 par value: 250,000,000 shares authorized; 39,325,916 shares issued and 31,642,832 outstanding at December 31, 2022, and 39,165,024 shares issued and 32,927,185 outstanding at December 31, 2021 | 393                  | 391                  |
| Treasury stock, 7,683,084 shares at December 31, 2022, and 6,237,839 shares at December 31, 2021, at cost   | (692,799)            | (431,030)            |
| Additional paid-in capital  | 887,367              | 873,031              |
| Retained earnings   | 1,756,665            | 1,200,676            |
| Accumulated other comprehensive loss  | (21,920)             | (6,634)              |
| Total equity  | <u>1,929,706</u>     | <u>1,636,434</u>     |
| Total liabilities and equity  | <u>\$ 4,606,831</u>  | <u>\$ 4,258,530</u>  |

See notes to our consolidated financial statements.

**TOPBUILD CORP.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(In thousands except share and per common share amounts)**

|  | <b>Year Ended December 31,</b> |                   |                   |
|--|--------------------------------|-------------------|-------------------|
|  | <b>2022</b>                    | <b>2021</b>       | <b>2020</b>       |
| Net sales                                    | \$ 5,008,744                   | \$ 3,486,207      | \$ 2,718,038      |
| Cost of sales                                | 3,522,025                      | 2,511,818         | 1,971,677         |
| Gross profit                                 | 1,486,719                      | 974,389           | 746,361           |
| Selling, general, and administrative expense | 689,555                        | 497,970           | 391,315           |
| Operating profit                             | 797,164                        | 476,419           | 355,046           |
| Other income (expense), net:                 |                                |                   |                   |
| Interest expense                             | (56,716)                       | (29,143)          | (32,456)          |
| Loss on extinguishment of debt               | —                              | (13,837)          | (233)             |
| Other, net                                   | 1,687                          | 4                 | 733               |
| Other expense, net                           | (55,029)                       | (42,976)          | (31,956)          |
| Income before income taxes                   | 742,135                        | 433,443           | 323,090           |
| Income tax expense                           | (186,146)                      | (109,427)         | (76,067)          |
| Net income                                   | <u>\$ 555,989</u>              | <u>\$ 324,016</u> | <u>\$ 247,023</u> |
| <b>Net income per common share:</b>          |                                |                   |                   |
| Basic  | \$ 17.26                       | \$ 9.88           | \$ 7.50           |
| Diluted                                      | \$ 17.14                       | \$ 9.78           | \$ 7.42           |
| <b>Weighted average shares outstanding:</b>  |                                |                   |                   |
| Basic  | 32,213,839                     | 32,801,906        | 32,917,971        |
| Diluted                                      | 32,440,405                     | 33,146,171        | 33,299,986        |

See notes to our consolidated financial statements.

**TOPBUILD CORP.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
**(In thousands)**

|   | <b>Year Ended December 31,</b> |                   |                   |
|---|--------------------------------|-------------------|-------------------|
|   | <b>2022</b>                    | <b>2021</b>       | <b>2020</b>       |
| Net income                              | \$ 555,989                     | \$ 324,016        | \$ 247,023        |
| Other comprehensive loss:               |                                |                   |                   |
| Foreign currency translation adjustment | (15,286)                       | (6,634)           | -                 |
| Comprehensive income                    | <u>\$ 540,703</u>              | <u>\$ 317,382</u> | <u>\$ 247,023</u> |

See notes to our consolidated financial statements.

**TOPBUILD CORP.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

|   | Year Ended December 31, |                    |                   |
|---|-------------------------|--------------------|-------------------|
|   | 2022                    | 2021               | 2020              |
| <b>Cash Flows Provided by (Used in) Operating Activities:</b>                     |                         |                    |                   |
| Net income  | \$ 555,989              | \$ 324,016         | \$ 247,023        |
| Adjustments to reconcile net income to net cash provided by operating activities: |                         |                    |                   |
| Depreciation and amortization   | 123,335                 | 79,390             | 62,410            |
| Share-based compensation  | 12,310                  | 11,316             | 14,752            |
| Loss on extinguishment of debt  | -                       | 13,837             | 233               |
| Loss (gain) on sale of property and equipment                                     | 1,833                   | 1,356              | (88)              |
| Amortization of debt issuance costs   | 2,867                   | 2,036              | 1,491             |
| Provision for bad debt expense  | 5,510                   | 7,304              | 6,270             |
| Loss from inventory obsolescence  | 6,659                   | 2,637              | 2,512             |
| Deferred income taxes, net  | 6,041                   | (2,818)            | (4,070)           |
| Change in certain assets and liabilities:   |                         |                    |                   |
| Receivables, net  | (169,327)               | (69,042)           | 2,612             |
| Inventories, net  | (93,874)                | (46,518)           | (11,843)          |
| Prepaid expenses and other current assets   | (9,222)                 | 558                | (460)             |
| Accounts payable  | 26,581                  | 54,961             | 16,844            |
| Accrued liabilities   | 20,703                  | 24,816             | 20,545            |
| Other, net  | 6,396                   | (824)              | (347)             |
| Net cash provided by operating activities   | <u>495,801</u>          | <u>403,025</u>     | <u>357,884</u>    |
| <b>Cash Flows Provided by (Used in) Investing Activities:</b>                     |                         |                    |                   |
| Purchases of property and equipment   | (76,382)                | (55,546)           | (40,938)          |
| Acquisition of businesses, net of cash acquired                                   | (20,500)                | (1,267,114)        | (83,408)          |
| Proceeds from sale of property and equipment                                      | 2,975                   | 415                | 2,463             |
| Net cash used in investing activities   | <u>(93,907)</u>         | <u>(1,322,245)</u> | <u>(121,883)</u>  |
| <b>Cash Flows Provided by (Used in) Financing Activities:</b>                     |                         |                    |                   |
| Proceeds from issuance of long-term debt  | -                       | 1,218,750          | 300,000           |
| Repayment of long-term debt   | (38,658)                | (433,070)          | (324,948)         |
| Payment of debt issuance costs  | -                       | (14,965)           | (2,280)           |
| Proceeds from revolving credit facility   | 70,000                  | -                  | -                 |
| Repayment of revolving credit facility  | (70,000)                | -                  | -                 |
| Taxes withheld and paid on employees' equity awards                               | (11,719)                | (8,805)            | (14,932)          |
| Exercise of stock options   | 2,028                   | 3,303              | 1,438             |
| Repurchase of shares of common stock  | (250,050)               | (35,556)           | (49,151)          |
| Payment of contingent consideration   | (1,674)                 | (650)              | (928)             |
| Net cash (used in) provided by financing activities                               | <u>(300,073)</u>        | <u>729,007</u>     | <u>(90,801)</u>   |
| Impact of exchange rate changes on cash   | (1,531)                 | (15)               | -                 |
| Net increase (decrease) in cash and cash equivalents                              | 100,290                 | (190,228)          | 145,200           |
| Cash and cash equivalents- Beginning of period                                    | 139,779                 | 330,007            | 184,807           |
| Cash and cash equivalents- End of period  | <u>\$ 240,069</u>       | <u>\$ 139,779</u>  | <u>\$ 330,007</u> |
| <b>Supplemental disclosure of cash paid for:</b>                                  |                         |                    |                   |
| Interest  | \$ 49,888               | \$ 22,144          | \$ 30,896         |
| Income taxes  | 186,722                 | 109,179            | 77,689            |
| <b>Supplemental disclosure of noncash activities:</b>                             |                         |                    |                   |
| Leased assets obtained in exchange for new operating lease liabilities            | \$ 103,997              | \$ 131,909         | \$ 38,646         |
| Leased assets obtained in exchange for new finance lease liabilities              | —                       | 10,469             | —                 |
| Accruals for property and equipment   | 141                     | 1,060              | 645               |

See notes to our consolidated financial statements .

**TOPBUILD CORP.**  
**CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY**  
(In thousands, except share amounts)

|   | <b>Common Stock<br/>(\$0.01 par value)</b> | <b>Treasury Stock<br/>at cost</b> | <b>Additional Paid-in Capital</b> | <b>Retained Earnings</b> | <b>Accumulated Other Comprehensive Income</b> | <b>Equity</b>       |
|---|--|-----------------------------------|-----------------------------------|--------------------------|---|---------------------|
| <b>Balance at December 31, 2019</b>   | \$ 388                                     | \$ (330,018)                      | \$ 849,657                        | \$ 632,862               | \$ -  | \$ 1,152,889        |
| Cumulative-effect of accounting change  | -  | -                                 | -                                 | (3,225)                  | -   | (3,225)             |
| Net income  | -  | -                                 | -                                 | 247,023                  | -   | 247,023             |
| Share-based compensation  | -  | -                                 | 14,752                            | -                        | -   | 14,752              |
| Issuance of 253,470 restricted share awards under long-term equity incentive plan | 1  | -                                 | (1)                               | -                        | -   | -                   |
| Repurchase of 542,772 shares pursuant to 2019 Repurchase Program                  | -  | (49,151)                          | -                                 | -                        | -   | (49,151)            |
| Repurchase of 73,455 shares pursuant to the settlement of the 2019 ASR Agreement  | -  | (7,500)                           | 7,500                             | -                        | -   | -                   |
| 142,822 shares withheld to pay taxes on employees' equity awards                  | -  | -                                 | (14,932)                          | -                        | -   | (14,932)            |
| 19,242 shares issued upon exercise of stock options                               | -  | -                                 | 1,438                             | -                        | -   | 1,438               |
| <b>Balance at December 31, 2020</b>   | <b>\$ 389</b>                              | <b>\$ (386,669)</b>               | <b>\$ 858,414</b>                 | <b>\$ 876,660</b>        | <b>\$ -</b>                                   | <b>\$ 1,348,794</b> |
| Net income  | -  | -                                 | -                                 | 324,016                  | -   | 324,016             |
| Share-based compensation  | -  | -                                 | 11,316                            | -                        | -   | 11,316              |
| Issuance of 144,679 restricted share awards under long-term equity incentive plan | 2  | -                                 | (2)                               | -                        | -   | -                   |
| Repurchase of 183,136 shares pursuant to 2019 Repurchase Program                  | -  | (35,556)                          | -                                 | -                        | -   | (35,556)            |
| 43,715 shares withheld to pay taxes on employees' equity awards                   | -  | (8,805)                           | -                                 | -                        | -   | (8,805)             |
| 53,275 shares issued upon exercise of stock options                               | -  | -                                 | 3,303                             | -                        | -   | 3,303               |
| Other comprehensive loss, net of tax  | -  | -                                 | -                                 | -                        | (6,634)                                       | (6,634)             |
| <b>Balance at December 31, 2021</b>   | <b>\$ 391</b>                              | <b>\$ (431,030)</b>               | <b>\$ 873,031</b>                 | <b>\$ 1,200,676</b>      | <b>\$ (6,634)</b>                             | <b>\$ 1,636,434</b> |
| Net income  | -  | -                                 | -                                 | 555,989                  | -   | 555,989             |
| Share-based compensation  | -  | -                                 | 12,310                            | -                        | -   | 12,310              |
| Issuance of 168,137 restricted share awards under long-term equity incentive plan | 2  | -                                 | (2)                               | -                        | -   | -                   |
| Repurchase of 1,390,667 shares pursuant to the Share Repurchase Programs          | -  | (250,050)                         | -                                 | -                        | -   | (250,050)           |
| 53,593 shares withheld to pay taxes on employees' equity awards                   | -  | (11,719)                          | -                                 | -                        | -   | (11,719)            |
| 25,215 shares issued upon exercise of stock options                               | -  | -                                 | 2,028                             | -                        | -   | 2,028               |
| Other comprehensive loss, net of tax  | -  | -                                 | -                                 | -                        | (15,286)                                      | (15,286)            |
| <b>Balance at December 31, 2022</b>   | <b>\$ 393</b>                              | <b>\$ (692,799)</b>               | <b>\$ 887,367</b>                 | <b>\$ 1,756,665</b>      | <b>\$ (21,920)</b>                            | <b>\$ 1,929,706</b> |

See notes to our consolidated financial statements.

**TOPBUILD CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of Presentation.** TopBuild is a Delaware corporation and trades on the NYSE under the symbol “BLD.” We report our business in two segments: Installation and Specialty Distribution. Our Installation segment primarily installs insulation and other building products. Our Specialty Distribution segment primarily sells and distributes insulation and other building products. Our segments are based on our operating units, for which financial information is regularly evaluated by our Chief Operating Decision Maker.

**Financial Statement Presentation.** The consolidated financial statements have been developed in conformity with GAAP. All intercompany transactions between the TopBuild entities have been eliminated.

**Use of Estimates and Assumptions in the Preparation of Financial Statements.** The preparation of our consolidated financial statements in conformity with GAAP requires us to make certain estimates and assumptions that affect the reported amounts of assets and liabilities, and disclosure of any contingent assets and liabilities, at the date of the financial statements, and the reported amounts of sales and expenses during the reporting period. Actual results may differ from these estimates and assumptions.

**Revenue Recognition.** Revenue is disaggregated between our Installation and Specialty Distribution segments. A reconciliation of disaggregated revenue by segment is included in *Note 8 – Segment Information*.

We recognize revenue for our Installation segment over time as the related performance obligation is satisfied with respect to each particular order within a given customer’s contract. Progress toward complete satisfaction of the performance obligation is measured using a cost-to-cost measure of progress method. The cost input is based on the amount of material installed at that customer’s location and the associated labor costs, as compared to the total expected cost for the particular order. The total expected cost is a significant estimate in the revenue recognition process, requires judgment, and is subject to variability throughout the duration of the contract as a result of contract modifications and other circumstances impacting job completion. Generally, this results in revenue being recognized as the customer is able to receive and utilize the benefits provided by our services. Each contract contains one or more individual orders, which are based on services delivered. When material and installation services are bundled in a contract, we combine these items into one performance obligation as the overall promise is to transfer the combined item.

Revenue from our Specialty Distribution segment is recognized when title to products and risk of loss transfers to our customers. This represents the point in time when the customer is able to direct the use of and obtain substantially all the benefits from the product. The determination of when control is deemed transferred depends on the shipping terms that are agreed upon in the contract.

At time of sale, we record estimated reductions to revenue for customer programs and incentive offerings, including special pricing and other volume-based incentives based on historical experience, which is continuously adjusted. The duration of our contracts with customers is relatively short, generally less than a 90-day period, therefore there is not a significant financing component when considering the determination of the transaction price which gets allocated to the individual performance obligations, generally based on standalone selling prices. Additionally, we consider shipping costs charged to a customer as a fulfillment cost rather than a promised service and expense as incurred. Sales taxes, when incurred, are recorded as a liability and excluded from revenue on a net basis.

We record a contract asset when we have satisfied our performance obligation prior to billing and a contract liability when a customer payment is received prior to the satisfaction of our performance obligation. The difference between the beginning and ending balances of our contract assets and liabilities primarily results from the timing of our performance and the customer’s payment. See *Note 3 – Revenue Recognition* for more information.

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**Business Combinations.** The purchase price for business combinations is allocated to the estimated fair values of acquired tangible and intangible assets, including goodwill, and assumed liabilities, where applicable. Additionally, we recognize customer relationships, trademarks and trade names, and non-compete agreements as identifiable intangible assets, which are recorded at fair value as of the transaction date. The fair value of the customer relationships intangible assets were determined by management using the multi-period excess earnings method under the income approach. Assumptions used in determining the fair value of the customer relationships intangible asset included forecasted revenue growth rate, customer attrition rate, and discount rate. The fair value of other intangible assets is determined primarily using current industry information. Goodwill is recorded when consideration transferred exceeds the fair value of identifiable assets and liabilities. Measurement-period adjustments to assets acquired and liabilities assumed with a corresponding offset to goodwill are recorded in the period they occur, which may include up to one year from the acquisition date. Contingent consideration is recorded at fair value at the acquisition date.

**Cash and Cash Equivalents.** We consider our highly liquid investments with a maturity of three months or less at the time of purchase to be cash and cash equivalents.

**Receivables, net.** We do business with a significant number of customers, principally homebuilders and contractors. We monitor our exposure for credit losses on our customer receivable balances and the credit worthiness of our customers on an on-going basis. Expected credit losses are measured by segment using historical loss rate information adjusted for current conditions, with changes in the allowance recorded as a provision for (or reversal of) credit loss expense. Expected losses are charged against the allowance when management believes a receivable is uncollectible. During downturns in our markets, declines in the financial condition and creditworthiness of customers impact the credit risk of the receivables involved and we have incurred additional expense related to customer defaults. Receivables, net are presented net of certain allowances, including allowance for credit losses.

**Inventories, net.** Inventories, net consist primarily of insulation and insulation accessories, rain gutters, garage doors, fireplaces, glass and windows, shelving, and other products. We value inventory at the lower of cost or net realizable value, where cost is determined by the first in-first out cost method. Net realizable value is the estimated selling price in the ordinary course of business, less reasonably predictable cost of completion, disposal, and transportation. Inventory value is evaluated at each balance sheet date to ensure that it is carried at the lower of cost or net realizable value.

Inventory provisions are recorded to reduce inventory to the lower of cost or net realizable value for obsolete or slow moving inventory based on assumptions about future demand and marketability of products, the impact of new product introductions, inventory levels and turns, product spoilage, and specific identification of items such as product discontinuance, engineering/material changes, or regulatory-related changes. Our inventory reserve balances were \$17.3 million and \$11.2 million as of December 31, 2022 and 2021, respectively. As of December 31, 2022, and 2021, primarily all inventory consisted of finished goods.

**Property and Equipment, net.** Property and equipment, net, including significant improvements to existing facilities, are recorded at cost. Upon retirement or disposal, the cost and accumulated depreciation are removed from the accounts and any gain or loss is included in the Consolidated Statements of Operations. Maintenance and repair costs are charged against earnings as incurred. Gains and losses on the disposal of equipment are included in selling, general, and administrative expense.

We review our property and equipment as an event occurs or circumstances change that would more likely than not reduce the fair value of the property and equipment below the carrying amount. If the carrying amount is not recoverable from its undiscounted cash flows, we would recognize an impairment loss for the difference between the carrying amount and the current fair value. Further, we evaluate the remaining useful lives of property and equipment at each reporting period to determine whether events and circumstances warrant a revision to the remaining depreciation periods.

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**Depreciation.** Depreciation expense is computed principally using the straight-line method over the estimated useful lives of the assets. Estimated useful lives are generally as follows:

| Asset Class                     | Estimated Useful Life |
|---------------------------------|-----------------------|
| Buildings and land improvements | 20 – 40 years         |
| Software                        | 3 – 6 years           |
| Company vehicles                | 3 – 8 years           |
| Equipment                       | 6 – 10 years          |

**Leases.** At the inception of a contract, we determine whether the contract is, or contains, a lease based on the unique facts and circumstances present. Our facilities operating leases and various vehicle and equipment finance leases have lease and non-lease fixed cost components, which we account for as one single lease component in calculating the present value of minimum lease payments. Variable lease and non-lease cost components are expensed as incurred and are primarily included in cost of sales on the accompanying consolidated statement of operations.

Lease payments are recognized as an expense in the consolidated statements of operations on a straight-line basis over the lease term, including future option periods the Company reasonably expects to exercise, whereby an equal amount of rent expense is attributed to each period during the term of the lease, regardless of when actual payments are made. This generally results in rent expense in excess of cash payments during the early years of a lease and rent expense less than cash payments in later years. The difference between rent expense recognized and actual rental payments is typically represented as the spread between the ROU asset and lease liability.

We recognize a ROU asset and a lease liability at the lease commencement date. Our leases may include options to extend or terminate the lease, which will be reflected in the calculation of the lease liability and corresponding ROU asset when it is reasonably certain that we will exercise that option. We do not recognize ROU assets and lease liabilities for short-term leases that have an initial lease term of 12 months or less. We recognize the lease payments associated with short-term leases as an expense on a straight-line basis over the lease term.

The lease liability is initially measured as the present value of the unpaid lease payments as of the lease commencement date. The lease liability is discounted based on our IBR at the time of modification for an existing lease or at the time of lease commencement for new leases. Our IBR includes significant assumptions regarding our secured borrowing rates obtained on equipment note issuances and adjustments for differences in the remaining lease term, underlying assets and market conditions for companies with similar credit qualities as well as interest rate index fluctuations. The ROU asset is initially measured at cost, which comprises the initial amount of the lease liability adjusted for lease payments made at or before the lease commencement date, plus any initial direct costs incurred less any lease incentives received. The ROU asset is subsequently measured throughout the lease term as the carrying amount of the lease liability, plus initial direct costs, plus (minus) any prepaid (accrued) lease payments, less the unamortized balance of lease incentives received. Certain vehicle lease agreements have residual value guarantees at the end of the lease which require us to return the asset with a specified percentage of the original or other calculated value.

**Fair Value.** The fair value measurement standard defines fair value as the price that would be received to sell an asset, or paid to transfer a liability, in an orderly transaction between market participants at the measurement date (referred to as an “exit price”). A fair value hierarchy is established that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted market prices in active markets for identical assets and liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are:

Level 1: Quoted prices in active markets for identical assets or liabilities.

Level 2: Observable inputs other than Level 1 prices, such as quoted market prices for similar assets or liabilities or other inputs that are observable or can be corroborated by market data.

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Level 3: Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

**Goodwill and Other Intangible Assets.** We perform our annual impairment testing of goodwill in the fourth quarter of each year, or as events occur or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount.

We have defined our reporting units and completed the impairment testing of goodwill at the operating segment level. Our operating segments are reporting units that engage in business activities for which discrete financial information, including long-range forecasts, are available. When assessing goodwill for impairment, we have the option to first assess qualitative factors to determine whether the existence of events or circumstances leads to a determination that it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If, after assessing the totality of events or circumstances, we determine it is more likely than not that the fair value of a reporting unit is less than its carrying amount, then we recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. If we conclude otherwise, then no further action is taken. We also have the option to bypass the qualitative assessment and only perform a quantitative assessment.

Fair value for our reporting units is determined using a discounted cash flow method, which includes significant unobservable inputs (Level 3 inputs). Using the discounted cash flow method requires us to make significant estimates and assumptions, including long term projections of cash flows, market conditions, and appropriate discount rates. Our judgments are based upon historical experience, current market trends, consultations with external valuation specialists and other information. In estimating future cash flows, we rely on internally generated long-range forecasts for sales and operating profits, including capital expenditures.

Intangible assets with finite useful lives are amortized using the straight-line method over their estimated useful lives. We evaluate the remaining useful lives of amortizable intangible assets at each reporting period to determine whether events and circumstances warrant a revision to the remaining periods of amortization. For additional information, see *Note 5 – Goodwill and Other Intangibles*.

**Insurance Reserves.** We use a combination of high deductible and matching deductible insurance programs for a number of risks including, but not limited to, workers' compensation, general liability, vehicle, and property liabilities. Our workers' compensation insurance is primarily a high-deductible insurance program and our primary general liability insurance is a matching deductible program. We are insured for covered claims above the deductibles and retentions on an excess basis. The liabilities represent our best estimate of our costs, using generally accepted actuarial reserving methods, of the ultimate obligations for reported claims plus those incurred but not reported claims through December 31, 2022 and 2021. The accruals are adjusted as new information develops or circumstances change that would affect the estimated liability. We also record an insurance receivable for claims that exceeded the stop loss limit included in other assets on our Consolidated Balance Sheets which offsets an equal liability included within the reserve amount recorded in other liabilities on our Consolidated Balance Sheets. At December 31, 2022 and 2021, the amount of this receivable and liability was \$16.5 million and \$13.2 million, respectively.

**Advertising.** Advertising costs are expensed as incurred. Advertising expense, net of manufacturers support, was approximately \$2.9 million, \$2.3 million, and \$1.4 million for the years ended December 31, 2022, 2021 and 2020, respectively, and is included in selling, general, and administrative expense.

**Share-based Compensation.** Our share-based compensation program currently consists of RSAs and stock options. Share-based compensation expense is reported in selling, general, and administrative expense. We do not capitalize any compensation cost related to share-based compensation awards. The income tax benefits and deficiencies associated with share-based awards are reported as a component of income tax expense. Excess tax benefits and deficiencies are included in net cash provided by (used in) operating activities while shares withheld for tax-withholding are reported in financing activities under the caption "Taxes withheld and paid on employees' equity awards" in our Consolidated Statements of Cash Flows. Award forfeitures are accounted for in the period they occur.

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| Award Type:                    | Fair Value Determination             | Vesting               | Expense Recognition‡  | Expense Measurement  |
|--------------------------------|--------------------------------------|-----------------------|---|--|
| <b>Restricted Share Awards</b> |                                      |                       |   |  |
| Service Condition              | Closing stock price on date of grant | Ratably; 3 years      | Straight-line   | Fair value at grant date   |
| Performance Condition          | Closing stock price on date of grant | Cliff; 3 years        | Straight-line; Adjusted based on meeting or exceeding performance targets | Evaluated quarterly; 0 - 200% of fair value at grant date depending on performance |
| Market Condition               | Monte-Carlo Simulation               | Cliff; 3 years        | Straight-line; Recognized even if condition is not met                    | Fair value at grant date   |
| <b>Stock Options†</b>          | Black-Scholes Options Pricing Model  | Ratably; 3 or 5 years | Straight-line   | Fair value at grant date   |

†Stock options expire no later than 10 years after the grant date.

‡Expense is reversed if award is forfeited prior to vesting.

**Debt Issuance Costs.** Debt issuance costs are amortized as interest expense over the life of the respective debt, which approximates the effective interest rate method. Unamortized debt issuance costs are presented as a direct deduction from the related debt on our Consolidated Balance Sheets.

**Income Taxes.** We account for income taxes using the asset and liability method, which requires recognition of deferred tax assets and liabilities for expected future tax consequences of temporary differences that currently exist between tax basis and financial reporting basis of our assets and liabilities. Deferred tax assets and liabilities are measured using enacted tax rates in the respective jurisdictions in which we operate.

Valuation allowances are established against deferred tax assets when it is more likely than not that the realization of those deferred tax assets will not occur. In evaluating our ability to recover our deferred tax assets within the jurisdiction from which they arise, we consider all available positive and negative evidence. If, based upon all available evidence, both positive and negative, it is more likely than not (more than 50 percent likely) such deferred tax assets will not be realized, a valuation allowance is recorded. Significant weight is given to positive and negative evidence that is objectively verifiable.

Only those income tax positions that have a greater than 50 percent likelihood of being sustained upon examination by taxing authorities are recognized. There is an increased potential for volatility in our effective tax rate because of future changes in the income tax environment and the inherent complexities of income tax law in the various jurisdictions. Accordingly, provisions for tax-related matters, including interest and penalties, could be recorded in income tax expense in the period revised assessments are made.

**Foreign Currency.** Foreign currency assets and liabilities are translated into United States dollars using the exchange rates in effect at the end of each reporting period. Equity accounts are translated at historical rates, except for the change in retained earnings during the year, which is the result of the income statement translation process. Revenue and expense accounts are translated using the weighted average exchange rate during the period. The cumulative translation adjustments associated with the net assets of foreign subsidiaries are recorded in accumulated other comprehensive loss on our Consolidated Statement of Stockholders' Equity. Net foreign currency transaction gains and losses arising during the normal course of business are included in Other, net on our Consolidated Statement of Operations.

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**Recently Adopted Accounting Pronouncements**

**Credit Losses.** In June 2016, the FASB issued ASU 2016-13, “Financial Instruments – Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments,”, which replaces the current incurred loss methodology with an expected loss methodology, referred to as the current expected credit loss (CECL) methodology. We adopted Topic 326 on January 1, 2020, using the modified retrospective method, which resulted in a \$3.2 million cumulative-effect adjustment recorded through retained earnings at the beginning of 2020.

**Contract Assets and Liabilities.** In October 2021, the FASB issued ASU 2021-08, “Accounting for Contract Assets and Contract Liabilities from Contracts with Customers”. This standard improves the accounting for acquired revenue contracts with customers in a business combination by addressing diversity in practice and inconsistency related to recognition of an acquired contract liability, as well as payment terms and their effect on subsequent revenue recognized by the acquirer. This standard became effective for us beginning January 1, 2023, and did not have a material impact to our financial statements upon adoption.

**2. LEASES**

We lease various assets to support our business including warehouses for our installation branch locations and specialty distribution centers, office space for our Branch Support Center in Daytona Beach, Florida and other administrative locations, as well as fleet vehicles and certain equipment. In addition, we lease certain operating facilities from related parties, primarily former owners (and in certain cases, current management personnel) of companies acquired. These related party leases are immaterial to our consolidated statements of operations.

The following table presents lease-related assets and liabilities and their classification on our Consolidated Balance Sheets, in thousands:

|   | Classification                         | As of                |                      |
|---|--|----------------------|----------------------|
|   |  | December 31,<br>2022 | December 31,<br>2021 |
| <b>Assets</b>                                 |  |                      |                      |
| Operating                                     | Right of use assets                    | \$ 205,892           | \$ 177,177           |
| Finance                                       | Property and equipment, net            | <u>6,647</u>         | <u>9,743</u>         |
| Total lease assets                            |  | \$ 212,539           | \$ 186,920           |
| <b>Liabilities</b>                            |  |                      |                      |
| Current                                       |  |                      |                      |
| Operating                                     | Short-term operating lease liabilities | \$ 60,880            | \$ 54,591            |
| Finance                                       | Short-term finance lease liabilities   | 2,207                | 2,387                |
| Non-Current                                   |  |                      |                      |
| Operating                                     | Long-term operating lease liabilities  | 149,943              | 125,339              |
| Finance                                       | Long-term finance lease liabilities    | <u>6,673</u>         | <u>7,770</u>         |
| Total lease liabilities                       |  | \$ 219,703           | \$ 190,087           |
| <b>Weighted-average remaining lease term:</b> |  |                      |                      |
| Operating leases                              |  | 4.2 years            | 4.1 years            |
| Finance leases                                |  | 3.8 years            | 4.4 years            |
| <b>Weighted-average discount rate:</b>        |  |                      |                      |
| Operating leases                              |  | 3.2 %                | 3.1 %                |
| Finance leases                                |  | 2.9 %                | 2.9 %                |

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The components of lease expense were as follows and are primarily included in cost of sales and in selling, general and administrative expenses on the accompanying consolidated statement of operations for finance leases and operating leases, in thousands:

|                                       | Year Ended December 31, |                  |                  |
|---------------------------------------|-------------------------|------------------|------------------|
|                                       | 2022                    | 2021             | 2020             |
| Operating lease cost (a)              | \$ 75,366               | \$ 55,824        | 47,731           |
| Financing lease cost:                 |                         |                  |                  |
| Amortization of leased assets         | 2,815                   | 673              | -                |
| Interest on finance lease obligations | 268                     | 24               | -                |
| Short-term lease cost                 | 18,315                  | 15,258           | 12,397           |
| Sublease income                       | (780)                   | (882)            | (727)            |
| Net lease cost                        | <u>\$ 95,984</u>        | <u>\$ 70,897</u> | <u>\$ 59,401</u> |

(a) Includes variable cost components of \$14,451, \$8,711 and \$6,177 in the years ended December 31, 2022, 2021, and 2020, respectively.

Future minimum lease payments under non-cancellable operating leases as of December 31, 2022, were as follows, in thousands:

| Payments due by Period               | \$                |  |
|--------------------------------------|-------------------|--|
| 2023                                 | 72,253            |  |
| 2024                                 | 59,464            |  |
| 2025                                 | 47,629            |  |
| 2026                                 | 32,455            |  |
| 2027                                 | 18,265            |  |
| 2028 and Thereafter                  | 13,369            |  |
| Total future minimum lease payments  | <u>243,435</u>    |  |
| Less: imputed interest               | (23,732)          |  |
| Lease liability at December 31, 2022 | <u>\$ 219,703</u> |  |

The amounts below are included in the cash flows provided by operating activities section on the accompanying consolidated statement of cash flows, in thousands:

|   | Year Ended December 31, |          |          |
|---|-------------------------|----------|----------|
|   | 2022                    | 2021     | 2020     |
| Cash paid for amounts included in the measurement of lease liabilities: |                         |          |          |
| Operating cash flows from finance leases                                | \$ (268)                | \$ (74)  | -        |
| Operating cash flows from operating leases                              | (74,135)                | (48,125) | (41,773) |
| Financing cash flows from finance leases                                | (2,361)                 | (562)    | -        |

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**3. REVENUE RECOGNITION**

Revenue is disaggregated between our Installation and Specialty Distribution segments and further based on market and product, as we believe this best depicts how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors. The following tables present our revenues disaggregated by market (in thousands):

| <b>Year Ended December 31, 2022</b> |                     |                                   |                     |                     |
|-------------------------------------|---------------------|-----------------------------------|---------------------|---------------------|
|                                     | <b>Installation</b> | <b>Specialty<br/>Distribution</b> | <b>Eliminations</b> | <b>Total</b>        |
| Residential                         | \$ 2,503,123        | \$ 967,687                        | \$ (198,809)        | \$ 3,272,001        |
| Commercial/Industrial               | 466,855             | 1,310,574                         | (40,686)            | 1,736,743           |
| Net sales                           | <u>\$ 2,969,978</u> | <u>\$ 2,278,261</u>               | <u>\$ (239,495)</u> | <u>\$ 5,008,744</u> |

| <b>Year Ended December 31, 2021</b> |                     |                                   |                     |                     |
|-------------------------------------|---------------------|-----------------------------------|---------------------|---------------------|
|                                     | <b>Installation</b> | <b>Specialty<br/>Distribution</b> | <b>Eliminations</b> | <b>Total</b>        |
| Residential                         | \$ 1,919,336        | \$ 825,233                        | \$ (147,276)        | \$ 2,597,293        |
| Commercial/Industrial               | 459,065             | 461,943                           | (32,094)            | 888,914             |
| Net sales                           | <u>\$ 2,378,401</u> | <u>\$ 1,287,176</u>               | <u>\$ (179,370)</u> | <u>\$ 3,486,207</u> |

| <b>Year Ended December 31, 2020</b> |                     |                                   |                     |                     |
|-------------------------------------|---------------------|-----------------------------------|---------------------|---------------------|
|                                     | <b>Installation</b> | <b>Specialty<br/>Distribution</b> | <b>Eliminations</b> | <b>Total</b>        |
| Residential                         | \$ 1,542,515        | \$ 705,554                        | \$ (120,186)        | \$ 2,127,883        |
| Commercial/Industrial               | 400,946             | 220,653                           | (31,444)            | 590,155             |
| Net sales                           | <u>\$ 1,943,461</u> | <u>\$ 926,207</u>                 | <u>\$ (151,630)</u> | <u>\$ 2,718,038</u> |

The following tables present our revenues disaggregated by product (in thousands):

| <b>Year Ended December 31, 2022</b> |                     |                                   |                     |                     |
|-------------------------------------|---------------------|-----------------------------------|---------------------|---------------------|
|                                     | <b>Installation</b> | <b>Specialty<br/>Distribution</b> | <b>Eliminations</b> | <b>Total</b>        |
| Insulation and accessories          | \$ 2,344,807        | \$ 2,019,108                      | \$ (204,849)        | \$ 4,159,066        |
| Glass and windows                   | 227,318             | -                                 | -                   | 227,318             |
| Gutters                             | 106,969             | 189,800                           | (30,412)            | 266,357             |
| All other                           | 290,884             | 69,353                            | (4,234)             | 356,003             |
| Net sales                           | <u>\$ 2,969,978</u> | <u>\$ 2,278,261</u>               | <u>\$ (239,495)</u> | <u>\$ 5,008,744</u> |

| <b>Year Ended December 31, 2021</b> |                     |                                   |                     |                     |
|-------------------------------------|---------------------|-----------------------------------|---------------------|---------------------|
|                                     | <b>Installation</b> | <b>Specialty<br/>Distribution</b> | <b>Eliminations</b> | <b>Total</b>        |
| Insulation and accessories          | \$ 1,880,309        | \$ 1,074,377                      | \$ (149,556)        | \$ 2,805,130        |
| Glass and windows                   | 183,808             | -                                 | -                   | 183,808             |
| Gutters                             | 88,856              | 149,730                           | (25,097)            | 213,489             |
| All other                           | 225,428             | 63,069                            | (4,717)             | 283,780             |
| Net sales                           | <u>\$ 2,378,401</u> | <u>\$ 1,287,176</u>               | <u>\$ (179,370)</u> | <u>\$ 3,486,207</u> |

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|                            | Year Ended December 31, 2020 |                        |                     |                     |  |
|----------------------------|------------------------------|------------------------|---------------------|---------------------|--|
|                            | Installation                 | Specialty Distribution | Eliminations        | Total               |  |
| Insulation and accessories | \$ 1,505,839                 | \$ 766,139             | \$ (123,234)        | \$ 2,148,744        |  |
| Glass and windows          | 164,229                      | -                      | -                   | 164,229             |  |
| Gutters                    | 82,846                       | 102,094                | (22,088)            | 162,852             |  |
| All other                  | 190,547                      | 57,974                 | (6,308)             | 242,213             |  |
| Net sales                  | <u>\$ 1,943,461</u>          | <u>\$ 926,207</u>      | <u>\$ (151,630)</u> | <u>\$ 2,718,038</u> |  |

The following table represents our contract assets and contract liabilities with customers, in thousands:

|                       | Included in Line Item on<br>Consolidated<br>Balance Sheets | As of                |                      |
|-----------------------|--|----------------------|----------------------|
|                       |  | December 31,<br>2022 | December 31,<br>2021 |
| Contract Assets:      |  |                      |                      |
| Receivables, unbilled | Receivables, net   | \$ 75,481            | \$ 71,401            |
| Contract Liabilities: |  |                      |                      |
| Deferred revenue      | Accrued liabilities  | \$ 21,940            | \$ 14,310            |

The aggregate amount remaining on uncompleted performance obligations was \$411.3 million as of December 31, 2022. We expect to satisfy the performance obligations and recognize revenue on substantially all of these uncompleted contracts over the next 18 months.

On certain of our long-term contracts, a percentage of the total project cost is withheld and not invoiced to the customer and collected until satisfactory completion of the customer's project, typically within a year. This amount is referred to as retainage and is common practice in the construction industry. Retainage receivables are classified as a component of Receivables, net on our Consolidated Balance Sheets and were \$63.0 million and \$57.6 million as of December 31, 2022 and 2021, respectively.

#### 4. PROPERTY & EQUIPMENT

The following table sets forth our property and equipment by class as of December 31, 2022 and 2021, in thousands:

|                                   | As of December 31, |                   |
|-----------------------------------|--------------------|-------------------|
|                                   | 2022               | 2021              |
| Land and improvements             | \$ 7,437           | \$ 7,776          |
| Buildings                         | 47,384             | 45,478            |
| Equipment                         | 150,674            | 142,686           |
| Computer hardware and software    | 167,897            | 158,731           |
| Company vehicles                  | 214,137            | 177,061           |
|                                   | 587,529            | 531,732           |
| Less: Accumulated depreciation    | (340,692)          | (296,901)         |
| Total property and equipment, net | <u>\$ 246,837</u>  | <u>\$ 234,831</u> |

For additions to property and equipment as a result of 2022 acquisitions, see *Note 15 – Business Combinations*. As of December 31, 2022 and 2021, property and equipment, net on our Consolidated Balance Sheet includes \$6.6 million and \$9.7 million right of use assets on finance leases, respectively, which is disclosed further in *Note 2 – Leases*.

Depreciation expense was \$52.9 million, \$42.9 million and \$40.5 million for the years ended December 31, 2022, 2021 and 2020, respectively.

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**5. GOODWILL AND OTHER INTANGIBLES**

We have two reporting units which are also our operating and reporting segments: Installation and Specialty Distribution. Both reporting units contain goodwill. Assets acquired and liabilities assumed are assigned to the applicable reporting unit based on whether the acquired assets and liabilities relate to the operations of such unit and determination of its fair value. Goodwill assigned to the reporting unit is the excess of the fair value of the acquired business over the fair value of the individual assets acquired and liabilities assumed for the reporting unit.

In the fourth quarters of 2022 and 2021, we performed annual assessments of our goodwill resulting in no indicators of impairment.

Changes in the carrying amount of goodwill for the years ended December 31, 2022 and 2021, by segment, were as follows, in thousands:

| Goodwill, by segment:               | Gross Goodwill<br>December 31, 2021 | Additions        | Fx Translation Adjustment | Gross Goodwill<br>December 31, 2022 | Accumulated Impairment Losses | Net Goodwill<br>December 31, 2022 |
|-------------------------------------|-------------------------------------|------------------|---------------------------|-------------------------------------|-------------------------------|-----------------------------------|
|                                     | \$ 1,818,872                        | \$ 8,107         | \$ -                      | \$ 1,826,979                        | \$ (762,021)                  | \$ 1,064,958                      |
| Installation Specialty Distribution | 892,912                             | 10,585           | (1,461)                   | 902,036                             | -                             | 902,036                           |
| Total goodwill                      | <u>\$ 2,711,784</u>                 | <u>\$ 18,692</u> | <u>\$ (1,461)</u>         | <u>\$ 2,729,015</u>                 | <u>\$ (762,021)</u>           | <u>\$ 1,966,994</u>               |

| Goodwill, by segment:               | Gross Goodwill<br>December 31, 2020 | Additions         | Fx Translation Adjustment | Gross Goodwill<br>December 31, 2021 | Accumulated Impairment Losses | Net Goodwill<br>December 31, 2021 |
|-------------------------------------|-------------------------------------|-------------------|---------------------------|-------------------------------------|-------------------------------|-----------------------------------|
|                                     | \$ 1,726,356                        | \$ 92,516         | \$ -                      | \$ 1,818,872                        | \$ (762,021)                  | \$ 1,056,851                      |
| Installation Specialty Distribution | 446,350                             | 451,331           | (4,769)                   | 892,912                             | -                             | 892,912                           |
| Total goodwill                      | <u>\$ 2,172,706</u>                 | <u>\$ 543,847</u> | <u>\$ (4,769)</u>         | <u>\$ 2,711,784</u>                 | <u>\$ (762,021)</u>           | <u>\$ 1,949,763</u>               |

The following table sets forth our other intangible assets, in thousands:

|  | As of December 31, |                   |                   |
|--|--------------------|-------------------|-------------------|
|  | 2022               | 2021              | 2020              |
| Gross definite-lived intangible assets                         | \$ 782,316         | \$ 783,843        | \$ 252,751        |
| Accumulated amortization                                       | (167,349)          | (99,634)          | (62,146)          |
| Net definite-lived intangible assets                           | <u>\$ 614,967</u>  | <u>\$ 684,209</u> | <u>\$ 190,605</u> |
| Indefinite-lived intangible assets not subject to amortization | -                  | -                 | -                 |
| Other intangible asset, net                                    | <u>\$ 614,967</u>  | <u>\$ 684,209</u> | <u>\$ 190,605</u> |
| Amortization expense   | \$ 67,620          | \$ 36,501         | \$ 21,886         |

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The following table sets forth a breakout of our intangible assets as of December 31, 2022, in thousands:

|                        | <b>Gross<br/>Definite-lived<br/>Intangible Assets</b> | <b>Accumulated<br/>Amortization</b> | <b>Net Definite-lived<br/>Intangible Assets</b> |
|------------------------|---|-------------------------------------|---|
| Trademarks             | \$ 44,047   | \$ (13,513)                         | \$ 30,534                                       |
| Customer relationships | 730,550   | (146,192)                           | 584,358   |
| Non-compete            | 7,719   | (7,644)                             | 75  |
| Total                  | <u>\$ 782,316</u>                                     | <u>\$ (167,349)</u>                 | <u>\$ 614,967</u>                               |

The following table sets forth a breakout of our intangible assets as of December 31, 2021, in thousands:

|                        | <b>Gross<br/>Definite-lived<br/>Intangible Assets</b> | <b>Accumulated<br/>Amortization</b> | <b>Net Definite-lived<br/>Intangible Assets</b> |
|------------------------|---|-------------------------------------|---|
| Trademarks             | \$ 44,365   | \$ (8,161)                          | \$ 36,204                                       |
| Customer relationships | 731,759   | (84,499)                            | 647,260   |
| Non-compete            | 7,719   | (6,974)                             | 745   |
| Total                  | <u>\$ 783,843</u>                                     | <u>\$ (99,634)</u>                  | <u>\$ 684,209</u>                               |

The following table sets forth the amortization expense related to the definite-lived intangible assets during each of the next five years, in thousands:

|      | <b>Amortization<br/>Expense</b> |
|------|---------------------------------|
| 2023 | \$ 60,870                       |
| 2024 | 60,795                          |
| 2025 | 60,795                          |
| 2026 | 60,795                          |
| 2027 | 57,516                          |

## 6. LONG-TERM DEBT

The following table reconciles the principal balances of our outstanding debt to our Consolidated Balance Sheets, in thousands:

|  | <b>As of December 31,</b>  |                            |
|--|----------------------------|----------------------------|
|  | <b>2022</b>                | <b>2021</b>                |
| 3.625% Senior Notes due 2029                       | \$ 400,000                 | \$ 400,000                 |
| 4.125% Senior Notes due 2032                       | 500,000                    | 500,000                    |
| Term loan  | 566,250                    | 596,250                    |
| Equipment notes                                    | 8,427                      | 17,085                     |
| Unamortized debt issuance costs                    | (17,352)                   | (20,212)                   |
| Total debt, net of unamortized debt issuance costs | <u>1,457,325</u>           | <u>1,493,123</u>           |
| Less: current portion of long-term debt            | 40,068                     | 38,640                     |
| Total long-term debt                               | <u><u>\$ 1,417,257</u></u> | <u><u>\$ 1,454,483</u></u> |

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The following table sets forth our remaining principal payments for our outstanding debt balances as of December 31, 2022, in thousands:

|                     | <b>2023</b>      | <b>2024</b>      | <b>2025</b>      | <b>2026</b>       | <b>2027</b> | <b>Thereafter</b> | <b>Total</b>        |
|---------------------|------------------|------------------|------------------|-------------------|-------------|-------------------|---------------------|
| 3.625% Senior Notes | \$ -             | \$ -             | \$ -             | \$ -              | \$ -        | \$ 400,000        | \$ 400,000          |
| 4.125% Senior Notes | -                | -                | -                | -                 | -           | 500,000           | 500,000             |
| Term loan           | 33,750           | 45,000           | 48,750           | 438,750           | -           | -                 | 566,250             |
| Equipment notes     | 6,318            | 2,109            | -                | -                 | -           | -                 | 8,427               |
| <b>Total</b>        | <b>\$ 40,068</b> | <b>\$ 47,109</b> | <b>\$ 48,750</b> | <b>\$ 438,750</b> | <b>\$ -</b> | <b>\$ 900,000</b> | <b>\$ 1,474,677</b> |

*Credit Agreement*

On December 9, 2022, the Company entered into Amendment No. 3 to Credit Agreement. Amendment No. 3 to Credit Agreement provides a provision that replaces LIBOR with SOFR and makes other conforming changes.

The following table outlines the key terms of the Credit Agreement (dollars in thousands):

|  |            |
|--|------------|
| Senior secured term loan facility  | \$ 300,000 |
| Additional delayed draw term loan  | \$ 300,000 |
| Additional term loan and/or revolver capacity available under incremental facility (a) | \$ 300,000 |
| Revolving facility   | \$ 500,000 |
| Sublimit for issuance of letters of credit under revolving facility (b)                | \$ 100,000 |
| Sublimit for swingline loans under revolving facility (b)                              | \$ 35,000  |
| Interest rate as of December 31, 2022  | 5.42 %     |
| Scheduled maturity date  | 10/7/2026  |

- (a) Additional borrowing capacity is available under the incremental facility, subject to certain terms and conditions (including existing or new lenders providing commitments in respect of such additional borrowing capacity).
- (b) Use of the sublimits for the issuance of letters of credit and swingline loans reduces the availability under the revolving facility.

Interest payable on borrowings under the Credit Agreement is based on an applicable margin rate plus, at our option, either:

- A base rate determined by reference to the highest of either (i) the federal funds rate plus 0.50 percent, (ii) BofA's "prime rate," and (iii) the SOFR rate for U.S. dollar deposits with a term of one month, plus 1.00 percent; or
- A SOFR rate determined by reference to the costs of funds for deposits in U.S. dollars for the interest period relevant to such borrowings, subject to a floor of 0%.

The applicable margin rate is determined based on our Secured Leverage Ratio. In the case of base rate borrowings, the applicable margin rate ranges from 0.00 percent to 1.50 percent and in the case of SOFR rate borrowings, the applicable margin ranges from 0.00 percent to 2.50 percent. Borrowings under the Credit Agreement are prepayable at the Company's option without premium or penalty. The Company is required to make prepayments with the net cash proceeds of certain asset sales and certain extraordinary receipts.

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*Revolving Facility*

The Company has outstanding standby letters of credit that secure our financial obligations related to our workers' compensation, general insurance, and auto liability programs. These standby letters of credit, as well as any outstanding amount borrowed under our revolving facility, reduce the availability under the revolving facility. The following table summarizes our availability under the revolving facility, in thousands:

|                                       | <b>As of December 31,</b> |                   |
|---------------------------------------|---------------------------|-------------------|
|                                       | <b>2022</b>               | <b>2021</b>       |
| Revolving facility                    |                           |                   |
| Less: standby letters of credit       | \$ 500,000                | \$ 500,000        |
| Availability under revolving facility | <u>\$ 432,311</u>         | <u>\$ 430,064</u> |

We are required to pay commitment fees to the Lenders in respect of any unutilized commitments. The commitment fees range from 0.15 percent to 0.275 percent per annum, depending on our Secured Leverage Ratio. We must also pay customary fees on outstanding letters of credit.

*3.625% Senior Notes*

The 3.625% Senior Notes are \$400.0 million senior unsecured obligations and bear interest at 3.625% per year, payable semiannually in arrears on March 15 and September 15, beginning on September 15, 2021. The 3.625% Senior Notes mature on March 15, 2029, unless redeemed early or repurchased. If we undergo a change in control, we must make an offer to repurchase all of the 3.625% Senior Notes then outstanding at a repurchase price equal to 101% of their aggregate principal amount, plus accrued and unpaid interest (if any) to, but not including, the repurchase date.

The Company may redeem the 3.625% Senior Notes, in whole or in part, at any time on or after March 15, 2024 at the redemption prices specified in the notes. The Company may also redeem all or part of the 3.625% Senior Notes at any time prior to March 15, 2024 at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus the Applicable Premium (as defined in the notes), as of, and accrued and unpaid interest to, the redemption date. Additionally, the Company may redeem up to 40% of the aggregate principal amount of the 3.625% Senior Notes prior to March 15, 2024 with the net cash proceeds of certain sales of its capital stock at 103.625% of the principal amount of the notes, plus accrued and unpaid interest, if any, to the date of redemption only if, after the redemption, at least 60% of the aggregate principal amount of the notes originally issued remains outstanding.

*4.125% Senior Notes*

The 4.125% Senior Notes are \$500.0 million senior unsecured obligations and bear interest at 4.125% per year, payable semiannually in arrears on February 15 and August 15, beginning on August 15, 2022. The 4.125% Senior Notes mature on February 15, 2032, unless redeemed early or repurchased. If we undergo a change in control, we must make an offer to repurchase all of the 4.125% Senior Notes then outstanding at a repurchase price equal to 101% of their aggregate principal amount, plus accrued and unpaid interest (if any) to, but not including, the repurchase date.

The Company may redeem the 4.125% Senior Notes, in whole or in part, at any time on or after October 15, 2026 at the redemption prices specified in the notes plus accrued and unpaid interest if redeemed during the 12 month period commencing on October 15 of the years set for: 2026 – 102.063%, 2027 – 101.375%, 2028 – 100.688%, 2029 and thereafter – 100.000%. The Company may also redeem a make-whole redemption of the 4.125% Senior Notes at any time prior to October 15, 2026 at the treasury rate plus \$0 basis points. Additionally, the Company may redeem up to 40% of the aggregate principal amount of the 4.125% Senior Notes prior to October 15, 2024 with the net cash proceeds of certain sales of its capital stock at 104.125% of the principal amount of the notes, plus accrued and unpaid interest, if any, to the date of redemption only if, after the redemption, at least 60% of the aggregate principal amount of the notes originally issued remains outstanding.

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*Equipment Notes*

We did not issue equipment notes during the year ended December 31, 2022. The company issued \$41.6 million of equipment notes for the purpose of financing the purchase of vehicles and equipment in prior years. The Company's equipment notes each have a five year term maturing from 2023 to 2024 and bear interest at fixed rates between 2.8% and 4.4%.

*Covenant Compliance*

The indentures governing our 3.625% Senior Notes and our 4.125% Senior Notes (together, our "Senior Notes") contain restrictive covenants that, among other things, generally limit the ability of the Company and certain of its subsidiaries (subject to certain exceptions) to (i) create liens, (ii) pay dividends, acquire shares of capital stock and make payments on subordinated debt, (iii) place limitations on distributions from certain subsidiaries, (iv) issue or sell the capital stock of certain subsidiaries, (v) sell assets, (vi) enter into transactions with affiliates and (vii) effect mergers. The indentures provide for customary events of default which include (subject in certain cases to customary grace and cure periods), among others: nonpayment of principal or interest; breach of covenants or other agreements in the indenture; defaults in failure to pay certain other indebtedness; and certain events of bankruptcy or insolvency. Generally, if an event of default occurs and is continuing under the indenture, the trustee or the holders of at least 30% in aggregate principal amount of each of our Senior Notes then outstanding may declare the principal of, premium, if any, and accrued interest on the Senior Notes subject to such declaration immediately due and payable. The Senior Notes and related guarantees have not been registered under the Securities Act of 1933, and we are not required to register either the Senior Notes or the guarantees in the future.

The Credit Agreement contains certain covenants that limit, among other things, the ability of the Company to incur additional indebtedness or liens; to make certain investments or loans; to make certain restricted payments; to enter into consolidations, mergers, sales of material assets, and other fundamental changes; to transact with affiliates; to enter into agreements restricting the ability of subsidiaries to incur liens or pay dividends; or to make certain accounting changes. The Credit Agreement contains customary affirmative covenants and events of default.

The Credit Agreement requires that we maintain a Net Leverage Ratio and minimum Interest Coverage Ratio throughout the term of the agreement. The following table outlines the key financial covenants effective for the period covered by this Quarterly Report:

|                                 | <b>As of December 31, 2022</b> |
|---------------------------------|--------------------------------|
| Maximum Net Leverage Ratio      | 3.50:1.00                      |
| Minimum Interest Coverage Ratio | 3.00:1.00                      |
| Compliance as of period end     | In Compliance                  |

**7. FAIR VALUE MEASUREMENTS**

**Fair Value on Recurring Basis**

The carrying values of cash and cash equivalents, receivables, net, and accounts payable are considered to be representative of their respective fair values due to the short-term nature of these instruments. We measure our contingent consideration liabilities related to business combinations at fair value. For more information see *Note 15 – Business Combinations*.

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**Fair Value on Non-Recurring Basis**

Fair value measurements were applied to our long-term debt portfolio. We believe the carrying value of our term loan approximates the fair market value primarily due to the fact that the non-performance risk of servicing our debt obligations, as reflected in our business and credit risk profile, has not materially changed since we assumed our debt obligations under the Credit Agreement. In addition, due to the floating-rate nature of our term loan, the market value is not subject to variability solely due to changes in the general level of interest rates as is the case with a fixed-rate debt obligation. Based on active market trades of our 3.625% Senior Notes and our 4.125% Senior Notes close to December 31, 2022 (Level 1 fair value measurements), we estimate that the fair value of each in the table below:

|                     | <b>As of December 31, 2022</b> |                             |
|---------------------|--------------------------------|-----------------------------|
|                     | <b>Fair Value</b>              | <b>Gross Carrying Value</b> |
| 3.625% Senior Notes | \$ 332,980                     | \$ 400,000                  |
| 4.125% Senior Notes | \$ 415,000                     | \$ 500,000                  |

During all periods presented, there were no transfers between fair value hierarchy levels.

**8. SEGMENT INFORMATION**

Our reportable segments are Installation and Specialty Distribution.

Our Installation segment installs insulation and other building products. We sell primarily to the residential new construction market, with increasing activity in the commercial/industrial construction market, along with repair/remodel of residential housing. In addition to insulation, we install other building products including glass and windows, rain gutters, afterpaint products, fireproofing, garage doors, and fireplaces.

Our Specialty Distribution segment distributes building and mechanical insulation, insulation accessories and other building product materials for the residential and commercial/industrial end markets. In addition to insulation and accessories, it distributes rain gutters, fireplaces, closet shelving, and roofing materials, among other items. Distributed products are sold from distribution centers in various parts of the United States and Canada, primarily to contractors and dealers (including lumber yards) serving a wide variety of commercial/industrial markets.

Our Chief Operating Decision Maker regularly reviews financial information of our segments in determining resource allocation and assessing performance. The key performance metric we use to evaluate our businesses is segment operating profit. Operating profit for the individual segments includes corporate costs which are allocated to the segments based on various metrics including sales and headcount.

Intercompany sales from the Specialty Distribution segment to the Installation segment are recorded by the Specialty Distribution segment with a profit margin and by our Installation segment at cost.

Key information by segment is as follows, for the years ended December 31, in thousands:

|   | <b>Net Sales</b>    |                     |                     | <b>Operating Profit (b)</b> |                |                |
|---|---------------------|---------------------|---------------------|-----------------------------|----------------|----------------|
|   | <b>2022</b>         | <b>2021</b>         | <b>2020</b>         | <b>2022</b>                 | <b>2021</b>    | <b>2020</b>    |
| <b>Operations by segment (a):</b>               |                     |                     |                     |                             |                |                |
| Installation                                    | \$ 2,969,978        | \$ 2,378,401        | \$ 1,943,461        | \$ 548,795                  | \$ 383,722     | \$ 294,793     |
| Specialty Distribution                          | 2,278,261           | 1,287,176           | 926,207             | 326,226                     | 169,368        | 115,343        |
| Intercompany eliminations and other adjustments | (239,495)           | (179,370)           | (151,630)           | (39,839)                    | (29,653)       | (24,305)       |
| <b>Total</b>                                    | <b>\$ 5,008,744</b> | <b>\$ 3,486,207</b> | <b>\$ 2,718,038</b> | <b>835,182</b>              | <b>523,437</b> | <b>385,831</b> |
| General corporate expense, net (c)              |                     |                     |                     | (38,018)                    | (47,018)       | (30,785)       |
| Operating profit, as reported                   |                     |                     |                     | 797,164                     | 476,419        | 355,046        |
| Other expense, net                              |                     |                     |                     | (55,029)                    | (42,976)       | (31,956)       |
| <b>Income before income taxes</b>               | <b>\$ 742,135</b>   | <b>\$ 433,443</b>   | <b>\$ 323,090</b>   |                             |                |                |

**TOPBUILD CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

|                                   | Property Additions (d) |                   |                  | Depreciation and Amortization |                  |                  | Total Assets        |                     |
|-----------------------------------|------------------------|-------------------|------------------|-------------------------------|------------------|------------------|---------------------|---------------------|
|                                   | 2022                   | 2021              | 2020             | 2022                          | 2021             | 2020             | 2022                | 2021                |
| <b>Operations by segment (a):</b> |                        |                   |                  |                               |                  |                  |                     |                     |
| Installation                      | \$ 46,518              | \$ 53,996         | \$ 32,084        | \$ 62,483                     | \$ 57,815        | \$ 50,265        | \$ 2,129,255        | \$ 2,024,448        |
| Specialty Distribution            | 17,671                 | 41,847            | 8,530            | 56,881                        | 18,743           | 9,912            | 2,175,835           | 2,080,700           |
| Corporate                         | 10,023                 | 4,539             | 4,259            | 3,971                         | 2,832            | 2,233            | 301,741             | 153,382             |
| Total, as reported                | <b>\$ 74,212</b>       | <b>\$ 100,382</b> | <b>\$ 44,873</b> | <b>\$ 123,335</b>             | <b>\$ 79,390</b> | <b>\$ 62,410</b> | <b>\$ 4,606,831</b> | <b>\$ 4,258,530</b> |

- (a) All of our operations are located primarily in the U.S. and to lesser extent Canada.
- (b) Segment operating profit includes an allocation of general corporate expenses attributable to the operating segments which is based on direct benefit or usage (such as salaries of corporate employees who directly support the segment).
- (c) General corporate expense, net includes expenses not specifically attributable to our segments for functions such as corporate human resources, finance, and legal, including salaries, benefits, and other related costs.
- (d) Property additions include assets acquired in business combinations in each respective year.

## 9. ACCRUED LIABILITIES

The following table sets forth the components of accrued liabilities, in thousands:

|                                    | As of December 31, |                   |
|------------------------------------|--------------------|-------------------|
|                                    | 2022               | 2021              |
| <b>Accrued liabilities:</b>        |                    |                   |
| Salaries, wages, and commissions   | \$ 75,237          | \$ 71,664         |
| Insurance liabilities              | 28,870             | 24,425            |
| Customer rebates                   | 21,561             | 15,625            |
| Deferred revenue                   | 21,940             | 14,311            |
| Employee tax-related liabilities   | 664                | 12,545            |
| Sales and property taxes           | 15,757             | 9,364             |
| Interest payable on long-term debt | 12,146             | 8,798             |
| Other                              | 23,195             | 19,159            |
| Total accrued liabilities          | <b>\$ 199,370</b>  | <b>\$ 175,891</b> |

As of December 31, 2021, employee tax-related liabilities included \$0.2 million for employer portion social security taxes that were deferred under the CARES Act which were paid in the year ended December 31, 2022.

## 10. EMPLOYEE RETIREMENT PLANS

We provide a defined-contribution retirement plan for substantially all employees. In addition, we participate in 56 regional multi-employer pension plans, principally related to building trades; none of the plans are considered material.

The expense related to our participation in the retirement plans was as follows, in thousands:

|                            | Years Ended December 31, |                  |                  |
|----------------------------|--------------------------|------------------|------------------|
|                            | 2022                     | 2021             | 2020             |
| Defined contribution plans | \$ 17,946                | \$ 12,192        | \$ 10,251        |
| Multi-employer plans       | 12,788                   | 12,308           | 11,754           |
|                            | <b>\$ 30,734</b>         | <b>\$ 24,500</b> | <b>\$ 22,005</b> |

The Pension Protection Act ("PPA") defines a zone status for multi-employer pension plans. Plans in the green zone are at least 80 percent funded, plans in the yellow zone are at least 65 percent funded and plans in the red zone are generally less than 65 percent funded.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

We participate in the Carpenters Pension Trust Fund for Northern California (“NCT”), which is our largest multi-employer plan expense and is in the red zone. The NCT has implemented a funding rehabilitation plan in accordance with government requirements. Our contributions to NCT have not exceeded 1 percent of the total contributions to the plan.

| Pension Fund | Employer Identification<br>Number/Plan Number | PPA Zone Status |      | Funding Plan<br>Pending / Implemented | Contributions (in thousands) |         |         | Surcharge<br>Imposed |
|--------------|---|-----------------|------|---------------------------------------|------------------------------|---------|---------|----------------------|
|              |   | 2022            | 2021 |                                       | 2022                         | 2021    | 2020    |                      |
| NCT          | 94-6050970/001                                | Red             | Red  | Yes                                   | \$3,008                      | \$2,326 | \$2,710 | No                   |

#### 11. OTHER COMMITMENTS AND CONTINGENCIES

**Litigation.** We are subject to certain claims, charges, litigation, and other proceedings in the ordinary course of our business, including those arising from or related to contractual matters, intellectual property, personal injury, environmental matters, product liability, product recalls, construction defects, insurance coverage, personnel and employment disputes, antitrust, and other matters, including class actions.

We believe we have adequate defenses in these matters, and we do not believe that the ultimate outcome of these matters will have a material adverse effect on us. However, there is no assurance that we will prevail in any of these pending matters, and we could in the future incur judgments, enter into settlements of claims, or revise our expectations regarding the outcome of these matters, which could materially impact our liquidity and our results of operations.

**Other Matters.** We enter into contracts, which include customary indemnities that are standard for the industries in which we operate. Such indemnities include, among other things, claims against our builder customers for issues relating to our workmanship. We generally exclude from our contracts with builder customers indemnity relating to product quality and warranty claims, as we pass such claims directly to the manufacturers of the products we install or distribute. In conjunction with divestitures and other transactions, we occasionally provide customary indemnities relating to various items including, among others, the enforceability of trademarks, legal and environmental issues, and asset valuations. We evaluate the probability that we may incur liabilities under these customary indemnities and appropriately record an estimated liability when deemed probable.

We also maintain indemnification agreements with our directors and officers that may require us to indemnify them against liabilities that arise by reason of their status or service as directors or officers, except as prohibited by applicable law.

We occasionally use performance bonds to ensure completion of our work on certain larger customer contracts that can span multiple accounting periods. Performance bonds generally do not have stated expiration dates; rather, we are released from the bonds as the contractual performance is completed. We also have bonds outstanding for license and insurance.

The following table summarizes our outstanding performance, licensing, insurance and other bonds, in thousands:

|                                       | As of December 31,       |                          |
|---------------------------------------|--------------------------|--------------------------|
|                                       | 2022                     | 2021                     |
| Outstanding bonds:                    |                          |                          |
| Performance bonds                     | \$ 152,434               | \$ 128,173               |
| Licensing, insurance, and other bonds | 25,439                   | 21,792                   |
| Total bonds                           | <u><u>\$ 177,873</u></u> | <u><u>\$ 149,965</u></u> |

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**12. INCOME TAXES**

| (In thousands)                                     | 2022                     | 2021                     | 2020              |
|--|--------------------------|--------------------------|-------------------|
| Income before income taxes:                        |                          |                          |                   |
| U.S.   | \$ 724,231               | \$ 429,731               | \$ 323,090        |
| Foreign  | 17,904                   | 3,712                    | -                 |
| Total  | <u>\$ 742,135</u>        | <u>\$ 433,443</u>        | <u>\$ 323,090</u> |
| Income tax expense (benefit):                      |                          |                          |                   |
| Current:   |                          |                          |                   |
| U.S. Federal                                       | \$ 136,013               | \$ 88,930                | \$ 66,792         |
| State and local                                    | 39,978                   | 22,006                   | 13,345            |
| Foreign  | 3,406                    | 1,039                    | -                 |
| Deferred:  |                          |                          |                   |
| U.S. Federal                                       | 7,016                    | (4,123)                  | (8,087)           |
| State and local                                    | (510)                    | 1,769                    | 4,017             |
| Foreign  | 243                      | (194)                    | -                 |
|  | <u>\$ 186,146</u>        | <u>\$ 109,427</u>        | <u>\$ 76,067</u>  |
| Deferred tax assets at December 31:                |                          |                          |                   |
| Receivables, net                                   | \$ 5,114                 | \$ 3,578                 |                   |
| Inventories, net                                   | 6,989                    | 5,961                    |                   |
| Other assets, principally share-based compensation | 3,409                    | 4,219                    |                   |
| Accrued liabilities                                | 18,980                   | 19,206                   |                   |
| Lease liability                                    | 13,212                   | 14,367                   |                   |
| Long-term liabilities                              | 10,934                   | 9,821                    |                   |
| Long-term lease liability                          | 35,451                   | 33,526                   |                   |
| Net operating loss carryforward                    | 6,655                    | 7,747                    |                   |
| Disallowed interest carryforward                   | -                        | 11,108                   |                   |
|  | <u>100,744</u>           | <u>109,533</u>           |                   |
| Deferred tax liabilities at December 31:           |                          |                          |                   |
| Right of use assets                                | 49,120                   | 48,300                   |                   |
| Property and equipment, net                        | 46,031                   | 42,150                   |                   |
| Intangibles, net                                   | 254,101                  | 263,327                  |                   |
| Other  | 2,973                    | 2,094                    |                   |
|  | <u>352,225</u>           | <u>355,871</u>           |                   |
| Net deferred tax liability at December 31          | <u><u>\$ 251,481</u></u> | <u><u>\$ 246,338</u></u> |                   |

A valuation allowance must be established for deferred tax assets when it is more-likely-than-not that they will not be realized. After review of all available positive and negative evidence, the Company has determined that no valuation allowance was required for the deferred tax assets as of December 31, 2022 or December 31, 2021.

At December 31, 2022, the net deferred tax liability is \$251.5 million, all of which is reported as long-term deferred tax liabilities. At December 31, 2021, the net deferred tax liability of \$246.3 million consisted of net long-term deferred tax assets of \$1.9 million and net long-term deferred tax liabilities of \$248.2 million. The deferred assets and deferred liabilities also include the state deferreds net of the federal benefit.

Of the deferred tax asset related to the net operating loss carryforward at December 31, 2022, \$.1 million will expire between 2023 and 2040. Of the deferred tax asset related to the net operating loss carryforward at December 31, 2021, \$5.3 million will expire between 2022 and 2040.

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A reconciliation of the U.S. Federal statutory tax rate to the income tax expense (benefit) on income was as follows:

|  | <b>2022</b>   | <b>2021</b>   | <b>2020</b>   |
|--|---------------|---------------|---------------|
| U.S. Federal statutory tax rate                        | 21.0 %        | 21.0 %        | 21.0 %        |
| State and local taxes, net of U.S. Federal tax benefit | 4.2           | 4.3           | 4.2           |
| Share based compensation                               | (0.2)         | (0.5)         | (2.1)         |
| Non-deductible/non-taxable items (1)                   | 0.1           | 0.1           | 0.2           |
| Effect of rates different than statutory               | 0.1           | —             | —             |
| Other, net (1)   | (0.1)         | 0.3           | 0.2           |
| <b>Effective tax rate</b>                              | <b>25.1 %</b> | <b>25.2 %</b> | <b>23.5 %</b> |

(1) Certain prior year amounts have been reclassified to conform to current year presentation

A tax benefit of \$1.7 million, \$2.4 million and \$7.8 million related to share-based compensation was recognized in income tax expense for the years ended December 31, 2022, 2021 and 2020, respectively.

We file income tax returns in the U.S. Federal jurisdiction, various U.S. state and local jurisdictions, and foreign jurisdictions. With few exceptions, we are no longer subject to income tax examinations on filed returns for years before 2017.

### 13. NET INCOME PER SHARE

Basic net income per share is calculated by dividing net income by the weighted average shares outstanding during the period, without consideration for common stock equivalents.

Diluted net income per share is calculated by adjusting weighted average shares outstanding for the dilutive effect of common stock equivalents outstanding for the period, determined using the treasury stock method.

Basic and diluted net income per share were computed as follows:

|  | <b>Years Ended December 31,</b> |                |                |
|--|---------------------------------|----------------|----------------|
|  | <b>2022</b>                     | <b>2021</b>    | <b>2020</b>    |
| Net income (in thousands)                                      | \$ 555,989                      | \$ 324,016     | \$ 247,023     |
| Weighted average number of common shares outstanding - basic   | 32,213,839                      | 32,801,906     | 32,917,971     |
| Dilutive effect of common stock equivalents:                   |                                 |                |                |
| RSAs with service-based conditions                             | 15,199                          | 21,130         | 51,324         |
| RSAs with market-based conditions                              | 59,561                          | 127,723        | 150,530        |
| RSAs with performance-based conditions                         | 46,601                          | 65,262         | 41,807         |
| Stock options  | 105,205                         | 130,150        | 138,354        |
| Weighted average number of common shares outstanding - diluted | 32,440,405                      | 33,146,171     | 33,299,986     |
| <b>Basic net income per common share</b>                       | <b>\$ 17.26</b>                 | <b>\$ 9.88</b> | <b>\$ 7.50</b> |
| <b>Diluted net income per common share</b>                     | <b>\$ 17.14</b>                 | <b>\$ 9.78</b> | <b>\$ 7.42</b> |

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

The following table summarizes shares excluded from the calculation of diluted net income per share because their effect would have been anti-dilutive:

|  | Years Ended December 31, |               |               |
|--|--------------------------|---------------|---------------|
|  | 2022                     | 2021          | 2020          |
| Anti-dilutive common stock equivalents:      |                          |               |               |
| RSAs with service-based conditions           | 14,882                   | 1,206         | 3,138         |
| RSAs with market-based conditions            | 157                      | 6,926         | 2,085         |
| RSAs with performance-based conditions       | 9,251                    | -             | -             |
| Stock options                                | 21,006                   | 19,121        | 29,998        |
| Total anti-dilutive common stock equivalents | <u>45,296</u>            | <u>27,253</u> | <u>35,221</u> |

#### 14. SHARE-BASED COMPENSATION

Effective July 1, 2015, our eligible employees commenced participation in the 2015 LTIP. The 2015 LTIP authorizes the Board to grant stock options, stock appreciation rights, restricted shares, restricted share units, performance awards, and dividend equivalents. All grants are made by issuing new shares and no more than 4.0 million shares of common stock may be issued under the 2015 LTIP. As of December 31, 2022, we had 1.9 million shares remaining available for issuance under the 2015 LTIP.

Share-based compensation expense is included in selling, general, and administrative expense. The income tax effect associated with share-based compensation awards is included in income tax expense.

The following table presents share-based compensation amounts recognized in our consolidated statements of operations, in thousands:

|                                  | Year Ended December 31, |           |           |
|----------------------------------|-------------------------|-----------|-----------|
|                                  | 2022                    | 2021      | 2020      |
| Share-based compensation expense | \$ 12,310               | \$ 11,316 | \$ 14,752 |
| Income tax benefit               | \$ 1,733                | \$ 2,419  | \$ 7,772  |

The following table presents a summary of our share-based compensation activity for the year ended December 31, 2022, in thousands, except per share amounts:

|                                   | RSAs             |  | Stock Options    |  |   |                           |
|-----------------------------------|------------------|--|------------------|--|---|---------------------------|
|                                   | Number of Shares | Weighted Average Grant Date Fair Value Per Share | Number of Shares | Weighted Average Grant Date Fair Value Per Share | Weighted Average Exercise Price Per Share | Aggregate Intrinsic Value |
| Balance December 31, 2021         | 244.4            | \$ 119.41  | 210.5            | \$ 32.35   | \$ 87.30                                  | \$ 39,692.4               |
| Granted                           | 108.8            | \$ 181.11  | —                | \$ —   | \$ —                                      | \$ —                      |
| Converted/Exercised               | (168.1)          | \$ 75.65   | (25.2)           | \$ 27.92   | \$ 80.40                                  | \$ 3,183.0                |
| Forfeited/Expired                 | (11.9)           | \$ 221.25  | (3.1)            | \$ 68.81   | \$ 174.76                                 | \$ —                      |
| Balance December 31, 2022         | <u>173.2</u>     | <u>\$ 195.06</u>                                 | <u>182.2</u>     | <u>\$ 32.25</u>                                  | <u>\$ 86.79</u>                           | <u>\$ 13,992.3</u>        |
| Exercisable December 31, 2022 (a) |                  |  | 148.4            | \$ 25.71   | \$ 69.94                                  | \$ 13,274.7               |

(a) The weighted average remaining contractual term for vested stock options is 5.2 years.

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We had unrecognized share-based compensation expense relating to unvested awards as shown in the following table, dollars in thousands:

|  | As of December 31, 2022                                    |     | Weighted Average<br>Remaining<br>Compensation Expense<br>Period |
|--|--|-----|---|
|  | Unrecognized<br>Compensation Expense<br>on Unvested Awards |     |   |
|  |  |     |   |
| RSAs   | \$ 13,408  | 1.0 |   |
| Stock options  | 528  | 0.6 |   |
| Total unrecognized compensation expense related to unvested awards | <u>\$ 13,936</u>   |     |   |

Our RSAs with performance-based conditions are evaluated on a quarterly basis with adjustments to compensation expense based on the likelihood of the performance target being achieved or exceeded. The following table shows the range of payouts and the related expense for our outstanding RSAs with performance-based conditions, in thousands:

| RSAs with Performance-Based Conditions | Grant Date<br>Fair Value | Payout Ranges and Related Expense |        |          |          |
|--|--------------------------|-----------------------------------|--------|----------|----------|
|  |                          | 0%                                | 25%    | 100%     | 200%     |
| February 17, 2020                      | \$ 2,503                 | \$ 0                              | \$ 626 | \$ 2,503 | \$ 5,006 |
| February 16, 2021                      | \$ 2,352                 | \$ 0                              | \$ 588 | \$ 2,352 | \$ 4,704 |
| February 15, 2022                      | \$ 3,382                 | \$ 0                              | \$ 846 | \$ 3,382 | \$ 6,764 |

During the first quarter of 2023, RSAs with performance-based conditions that were granted on February 17, 2020, vested based on cumulative three-year achievement of 200%. Total compensation expense recognized over the three-year performance period, net of forfeitures, was \$5.0 million.

The fair value of our RSAs with a market-based condition granted under the 2015 LTIP was determined using a Monte Carlo simulation. The following are key inputs in the Monte Carlo analysis for awards granted in 2022 and 2021:

|   | 2022      | 2021      |
|---|-----------|-----------|
| Measurement period (years)                              | 2.87      | 2.87      |
| Risk free interest rate                                 | 1.76 %    | 0.22 %    |
| Dividend yield  | 0.00 %    | 0.00 %    |
| Estimated fair value of market-based RSAs at grant date | \$ 298.20 | \$ 298.66 |

The fair value of stock options granted under the 2015 LTIP was calculated using the Black-Scholes Options Pricing Model. The following table presents the assumptions used to estimate the fair values of the stock options granted 2021. There were no stock options issued in 2022.

|  | 2021     |
|--|----------|
| Risk free interest rate  | 0.76 %   |
| Expected volatility, using historical return volatility and implied volatility | 43.29 %  |
| Expected life (in years)   | 6.0      |
| Dividend yield   | 0.00 %   |
| Estimated fair value of stock options at grant date                            | \$ 89.59 |

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**15. BUSINESS COMBINATIONS**

Acquiring businesses is a key part of our ongoing strategy to grow our company and expand our market share. Each acquisition has been accounted for as a business combination under ASC 805, “Business Combinations.” Acquisition related costs for the years ended December 31, 2022 and 2021, were \$1.3 million and \$15.3 million, respectively. Acquisition related costs are included in selling, general, and administrative expense in our consolidated statements of operations. The table below provides a summary of businesses acquired in 2022 including, for significant acquisitions, the net sales and net income incurred for the year ended December 31, 2022:

| <b>2022 Acquisitions</b> | <b>Date</b> | <b>Cash Paid</b> | <b>Contingent Consideration</b> | <b>Total Purchase Price</b> | <b>Goodwill Acquired</b> | <b>Net Sales</b> | <b>Net Income</b> |
|--------------------------|-------------|------------------|---------------------------------|-----------------------------|--------------------------|------------------|-------------------|
| Billings                 | 2/3/2022    | \$ 7,005         | \$ —                            | \$ 7,005                    | \$ 3,313                 | \$ 8,001         | \$ 1,754          |
| Assured                  | 4/7/2022    | 4,719            | 500                             | 5,219                       | 3,317                    | 4,242            | 443               |
| All others               | Various     | 3,258            | —                               | 3,258                       | 1,726                    | (a)              | (a)               |
| <b>Total</b>             |             | <b>\$ 14,982</b> | <b>\$ 500</b>                   | <b>\$ 15,482</b>            | <b>\$ 8,356</b>          | <b>\$ 12,243</b> | <b>\$ 2,197</b>   |

(a) The acquisitions' net sales and net income are immaterial.

The estimate of acquired customer relationships related to the 2022 acquisitions was \$4.1 million and the weighted average useful live is 12 years.

**Purchase Price Allocations**

As third-party or internal valuations are finalized, certain tax aspects of the foregoing transactions are completed, and customer post-closing reviews are concluded, adjustments may be made to the fair value of assets acquired, and in some cases total purchase price, through the end of each measurement period, generally one year following the applicable acquisition date. Primarily all of the goodwill recorded during the years ended December 31, 2022 and 2021, respectively, is deductible for income tax purposes with the exception of DI. We recorded goodwill on the DI acquisition of \$450.7 million, of which \$64.7 million is deductible for income tax purposes.

During the year ended December 31, 2022, DI's goodwill increased by \$0.7 million primarily as a result of payment of additional consideration of \$4.5 million during 2022 and the finalization of purchase price adjustments to acquisition date sales and use tax liabilities, net working capital adjustments, property, plant and equipment, and true-ups to supplier rebate receivables.

The table below represents the final fair value of DI's assets and liabilities assumed:

| <b>Finalized purchase price fair values:</b> |                     |
|--|---------------------|
| Accounts receivable                          | 145,042             |
| Inventories                                  | 133,004             |
| Prepaid and other assets                     | 8,820               |
| Property and equipment                       | 37,562              |
| ROU asset (operating)                        | 66,698              |
| Intangible assets                            | 458,000             |
| Goodwill                                     | 450,716             |
| Accounts payable                             | (68,367)            |
| Lease liabilities                            | (76,066)            |
| Deferred tax liabilities                     | (83,590)            |
| All other liabilities                        | (35,854)            |
| <b>Net assets acquired</b>                   | <b>\$ 1,035,965</b> |

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The table below provides a summary as of December 31, 2022 for businesses acquired during the year ended December 31, 2021:

| <b>2021 Acquisitions</b> | <b>Date</b> | <b>Cash Paid</b>    | <b>Contingent Consideration</b> | <b>Total Purchase Price</b> | <b>Goodwill Acquired</b> |
|--------------------------|-------------|---------------------|---------------------------------|-----------------------------|--------------------------|
| LCR                      | 1/20/2021   | \$ 53,700           | —                               | 53,700                      | 19,500                   |
| ABS                      | 4/5/2021    | 124,348             | —                               | 124,348                     | 54,229                   |
| DI                       | 10/15/2021  | 1,035,965           | —                               | 1,035,965                   | 450,716                  |
| All others               | Various     | 58,666              | 1,200                           | 59,866                      | 30,087                   |
| <b>Total</b>             |             | <b>\$ 1,272,679</b> | <b>\$ 1,200</b>                 | <b>\$ 1,273,879</b>         | <b>\$ 554,532</b>        |

**Contingent Consideration**

Payments of contingent consideration are classified as either financing or operating activities in our consolidated statements of cash flows in accordance with ASC 230-10-45. We made contingent payments of \$0.5 million and \$1.2 million for Viking and Valley, respectively, during the year ended December 31, 2022, which completed the arrangements for those acquisitions. The acquisition of Assured included a consideration arrangement of \$0.5 million to be paid based on achievement of annual gross revenue targets over a two-year period.

**16. SHARE REPURCHASE PROGRAMS**

On July 25, 2022, our Board authorized the 2022 Repurchase Program, pursuant to which the Company may purchase up to \$200 million of our common stock. Share repurchases may be executed through various means including open market purchases, privately negotiated transactions, accelerated share repurchase transactions, or other available means. The 2022 Repurchase Program does not obligate the Company to purchase any shares and has no expiration date. Authorization for the 2022 Repurchase Program may be terminated, increased, or decreased by the Board at its discretion at any time. As of December 31, 2022, the Company has \$154.4 million remaining under the 2022 Share Repurchase Program.

On July 26, 2021, our Board authorized the 2021 Repurchase Program, pursuant to which the Company may purchase up to \$200.0 million of our common stock. The company completed its 2021 Repurchase Program during 2022 for a total of 1,067,411 shares of our common stock at a weighted average cost of \$187.37 per share.

On February 22, 2019, our Board authorized the 2019 Repurchase Program, pursuant to which the Company may purchase up to \$200.0 million of our common stock. The company completed its 2019 Repurchase Program during 2022 for a total of 1,935,951 shares of our common stock at an average price of \$103.31.

On May 5, 2022, the Company entered into the 2022 ASR Agreement under the 2021 Repurchase Program. We paid \$100 million in exchange for an initial delivery of 409,312 shares of our common stock on May 9, 2022, representing an estimated 80% of the total number of shares we expected to receive under the 2022 ASR Agreement at the time we entered into the agreement. During the quarter ended September 30, 2022, we received an additional 142,351 shares of our common stock representing the final settlement of the 2022 ASR Agreement. We purchased a total of 551,663 shares of our common stock under the 2022 ASR Agreement at an average price per share of \$181.27.

The following table sets forth our share repurchases under the Repurchase Program during the periods presented:

|                                      | <b>Year Ended December 31,</b> |             |
|--------------------------------------|--------------------------------|-------------|
|                                      | <b>2022</b>                    | <b>2021</b> |
| Number of shares repurchased         | 1,390,667                      | 183,136     |
| Share repurchase cost (in thousands) | \$ 250,050                     | \$ 35,556   |

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**17. SUBSEQUENT EVENTS**

On January 26, 2023, we acquired the assets of the residential insulation business of SRI Holdings, LLC. This installation acquisition enhanced our presence in Georgia, Michigan, Ohio, Florida, Alabama and South Carolina. The acquisition will be accounted for as a business combination under ASC 805, "Business Combinations." The purchase price of approximately \$45.9 million was funded by cash on hand. During the measurement period, we expect to receive additional detailed information to complete the purchase price allocation.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**Item 9A. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

As of the end of the period covered by this Annual Report, we carried out an evaluation, under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective as of December 31, 2022.

*Management's Report on Internal Control over Financial Reporting*

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. The Company's internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2022. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control—Integrated Framework* (2013). Based on our assessment and those criteria, management concluded that the Company's internal control over financial reporting was effective as of December 31, 2022.

The effectiveness of the Company's internal control over financial reporting as of December 31, 2022, has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report appearing under *Item 8. Financial Statements and Supplementary Data – Report of Independent Registered Public Accounting Firm*.

*Changes in Internal Control Over Financial Reporting*

There was no change in the Company's internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) in the fiscal quarter ended December 31, 2022, that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

**Item 9B. OTHER INFORMATION**

None.

## PART III

### **Item 10. DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE**

For information regarding our executive officers see *Item 1. Business – Executive Officers*, which we incorporate herein by reference. Further information required by this item will be set forth in our definitive proxy statement for the 2023 Annual Meeting of Shareholders (“2023 Proxy Statement”) to be filed with the SEC within 120 days of the year ended December 31, 2022, and is incorporated herein by reference.

Our Board of Directors adopted a Code of Business Conduct and Ethics (the “Code”) that applies to all of our employees, officers, and directors, including our Chief Executive Officer, Chief Financial Officer, and other senior officers, in accordance with applicable rules and regulations of the SEC and the NYSE. Our Code is available on our website at <https://www.topbuild.com/ESG/corporate-governance>. We will disclose any amendments to or waivers of this Code for directors, executive officers, or senior officers on our website. The reference to our website address does not constitute incorporation by reference of the information contained on the website, and such information is not a part of this Annual Report.

### **Item 11. EXECUTIVE COMPENSATION**

Information required by this item will be set forth in our 2023 Proxy Statement, and is incorporated herein by reference.

### **Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT, AND RELATED STOCKHOLDER MATTERS**

Information required by this item will be set forth in our 2023 Proxy Statement, and is incorporated herein by reference.

### **Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

Information required by this item will be set forth in our 2023 Proxy Statement, and is incorporated herein by reference.

### **Item 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

Information required by this item will be set forth in our 2023 Proxy Statement, and is incorporated herein by reference.

## PART IV

### **Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

#### a. Listing of Documents:

- i. *Financial Statements.* Our Consolidated Financial Statements included in Item 8 hereof, as required at December 31, 2022 and 2021, and for the years ended December 31, 2022, 2021, and 2020, consist of the following:
  - Consolidated Balance Sheets
  - Consolidated Statements of Operations
  - Consolidated Statements of Comprehensive Income
  - Consolidated Statements of Cash Flows
  - Consolidated Statements of Changes in Equity
  - Notes to Consolidated Financial Statements
- ii. *Exhibits.* See separate Index to Exhibits hereafter.

**Item 16. FORM 10-K SUMMARY**

None.

**INDEX TO EXHIBITS**

| <b>Exhibit No.</b> | <b>Exhibit Title</b>  | <b>Incorporated by Reference</b> |                |                    | <b>Filed<br/>Herewith</b> |
|--------------------|---|----------------------------------|----------------|--------------------|---------------------------|
|                    |   | <b>Form</b>                      | <b>Exhibit</b> | <b>Filing Date</b> |                           |
| 2.1***             | <a href="#"><u>Separation and Distribution Agreement, dated as of June 29, 2015, by and between Masco Corporation and TopBuild Corp.</u></a>  | 8-K                              | 2.1            | 7/6/2015           |                           |
| 2.2***             | <a href="#"><u>Agreement and Plan of Merger, dated as of March 1, 2018, by and among Legend Holdings LLC, USI Legend Parent, Inc., TopBuild Corp. and Racecar Acquisition Corp.</u></a> | 8-K                              | 2.1            | 3/2/2018           |                           |
| 3.1                | <a href="#"><u>Composite Certificate of Incorporation of TopBuild Corp.</u></a>   | 10-Q                             | 3.2            | 7/8/2018           |                           |
| 3.2                | <a href="#"><u>Amended and Restated Bylaws of TopBuild Corp., as Amended July 29, 2019</u></a>  | 10-K                             | 3.2            | 2/25/2020          |                           |
| 3.3                | <a href="#"><u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation</u></a>  | 8-K                              | 3.1            | 4/30/2019          |                           |
| 4.1                | <a href="#"><u>Description of TopBuild Securities Registered Under Section 12 of the Exchange Act</u></a>   | 10-K                             | 4.3            | 2/25/2020          |                           |
| 4.2                | <a href="#"><u>Indenture, dated March 15, 2021, by and among TopBuild Corp., the Guarantors party thereto and U.S. Bank National Association, as Trustee</u></a>                        | 8-K                              | 4.01           | 03/16/2021         |                           |
| 4.3                | <a href="#"><u>Form of 3.625% Senior Note due 2029</u></a>  | 8-K                              | 4.02           | 03/16/2021         |                           |
| 4.4                | <a href="#"><u>Indenture, dated October 14, 2021, by and among TopBuild Corp., the Guarantors party thereto and U.S. Bank National Association, as Trustee</u></a>                      | 8-K                              | 4.01           | 10/15/2021         |                           |
| 4.5                | <a href="#"><u>Form of 4.125% Senior Note due 2032</u></a>  | 8-K                              | 4.02           | 10/15/2021         |                           |
| 10.1†              | <a href="#"><u>Change in Control and Severance Agreement between Gerald Volas and TopBuild Corp.</u></a>  | 10-K                             | 10.11          | 3/3/2016           |                           |
| 10.2†              | <a href="#"><u>Amended and Restated TopBuild Corp. 2015 Long Term Stock Incentive Plan ("A&amp;R LTIP")</u></a>   | 10-Q                             | 10.2           | 5/11/2016          |                           |
| 10.3†              | <a href="#"><u>Form of Restricted Stock Award ("RSA") Agreement under A&amp;R LTIP</u></a>  | 10-K                             | 10.7           | 2/25/2020          |                           |
| 10.4†              | <a href="#"><u>Form of Performance RSA Agreement (EPS) under A&amp;R LTIP</u></a>   | 10-K                             | 10.8           | 2/25/2020          |                           |
| 10.5†              | <a href="#"><u>Form of Performance RSA Agreement (RTSR) under A&amp;R LTIP</u></a>  | 10-K                             | 10.9           | 2/25/2020          |                           |
| 10.6†              | <a href="#"><u>Form of Option Award Agreement under A&amp;R LTIP</u></a>  | 10-K                             | 10.10          | 2/25/2020          |                           |
| 10.7†              | <a href="#"><u>Form of RSA Agreement for Non-Employee Director under A&amp;R LTIP</u></a>   | 10-K                             | 10.11          | 2/25/2020          |                           |
| 10.8†              | <a href="#"><u>Amendment to the TopBuild Corp. 2015 Long Term Stock Incentive Plan</u></a>  | 8-K                              | 10.1           | 2/22/2019          |                           |
| 10.9†              | <a href="#"><u>Amendment to Change in Control and Severance Agreement dated as March 1, 2016 between TopBuild Corp. and Gerald Volas</u></a>  | 8-K                              | 10.3           | 2/22/2019          |                           |

| Exhibit No. | Exhibit Title  | Incorporated by Reference |         |             | Filed<br>Herewith |
|-------------|--|---------------------------|---------|-------------|-------------------|
|             |  | Form                      | Exhibit | Filing Date |                   |
| 10.10†      | <a href="#"><u>Employment and Retirement Transition Agreement, dated as of January 9, 2020, between TopBuild Corp. and Gerald Volas.</u></a>   | 8-K                       | 10.1    | 1/10/2020   |                   |
| 10.11       | <a href="#"><u>Amended and Restated Security and Pledge Agreement, dated March 20, 2020, among TopBuild Corp., Bank of America, N.A., as administrative agent, and the grantors party thereto.</u></a>   | 8-K                       | 10.2    | 3/23/2020   |                   |
| 10.12†      | <a href="#"><u>TopBuild Corp. Executive Severance Plan, as Amended and Restated effective December 31, 2020</u></a>  | 8-K                       | 10.1    | 12/14/2020  |                   |
| 10.13       | <a href="#"><u>Amendment No. 3 to Amended and Restated Credit Agreement, dated December 9, 2022 among TopBuild Corp., Bank of America, N.A. as administrative agent, and the other lenders and agents party thereto.</u></a>                                   |                           |         |             | X                 |
| 10.14       | <a href="#"><u>Amended and Restated Credit Agreement, dated March 20, 2020, among TopBuild Corp., Bank of America, N.A. as administrative agent, and the other lenders and agents party thereto, as amended by Amendment No. 3.</u></a>                        |                           |         |             | X                 |
| 10.15       | <a href="#"><u>Form of Loan Notice to Amended and Restated Credit Agreement, dated March 20, 2020, among TopBuild Corp., Bank of America, N.A. as administrative agent, and the other lenders and agents party thereto, as amended by Amendment No. 3.</u></a> |                           |         |             | X                 |
| 21.1        | <a href="#"><u>List of Subsidiaries of TopBuild Corp.</u></a>  |                           |         |             | X                 |
| 23.1        | <a href="#"><u>Consent of PricewaterhouseCoopers, LLP</u></a>  |                           |         |             | X                 |
| 31.1        | <a href="#"><u>Principal Executive Officer Certification required by Rules 13a-14 and 15d-14 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u></a>  |                           |         |             | X                 |
| 31.2        | <a href="#"><u>Principal Financial Officer Certification required by Rules 13a-14 and 15d-14 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u></a>  |                           |         |             | X                 |
| 32.1‡       | <a href="#"><u>Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of Sarbanes Oxley Act of 2002</u></a>   |                           |         |             |                   |
| 32.2‡       | <a href="#"><u>Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of Sarbanes Oxley Act of 2002</u></a>   |                           |         |             |                   |
| 101.INS     | Inline XBRL Instance Document - the Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.   |                           |         |             | X                 |
| 101.SCH     | Inline XBRL Taxonomy Extension Schema Document   |                           |         |             | X                 |
| 101.CAL     | Inline XBRL Taxonomy Extension Calculation Linkbase Document   |                           |         |             | X                 |

| Exhibit No. | Exhibit Title  | Incorporated by Reference |         |             | Filed<br>Herewith |
|-------------|--|---------------------------|---------|-------------|-------------------|
|             |  | Form                      | Exhibit | Filing Date |                   |
| 101.DEF     | Inline XBRL Taxonomy Extension Definition Linkbase                                       |                           |         |             | X                 |
| 101.LAB     | Inline XBRL Taxonomy Extension Label Linkbase Document                                   |                           |         |             | X                 |
| 101.PRE     | Inline XBRL Taxonomy Extension Presentation Linkbase Document                            |                           |         |             | X                 |
| 104         | Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101) |                           |         |             | X                 |

† Indicates management contract or compensatory plan, contract or arrangement.

\*\*\* The schedules and exhibits to this agreement have been omitted pursuant to Item 601(c) of Regulation S-K. The Company agrees to supplementally furnish to the SEC, upon request, a copy of any omitted schedule or exhibit.

‡Furnished herewith.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

**TOPBUILD CORP.**

By: /s/ Robert Kuhns  
Name: Robert Kuhns  
Title: Vice President and Chief Financial Officer

February 23, 2023

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| <b>Signature</b>  | <b>Title</b>   | <b>Date</b>       |
|---|--|-------------------|
| <u>/s/ Robert Buck</u><br>Robert Buck                     | Director, Chief Executive Officer<br>(Principal Executive Officer)       | February 23, 2023 |
| <u>/s/ Robert Kuhns</u><br>Robert Kuhns                   | Vice President, Chief Financial Officer<br>(Principal Financial Officer) | February 23, 2023 |
| <u>/s/ Carrie Wood</u><br>Carrie Wood                     | Chief Accounting Officer<br>(Principal Accounting Officer)               | February 23, 2023 |
| <u>/s/ Alec C. Covington</u><br>Alec C. Covington         | Chairman of the Board  | February 23, 2023 |
| <u>/s/ Ernesto Bautista, III</u><br>Ernesto Bautista, III | Director   | February 23, 2023 |
| <u>/s/ Joseph S. Cantie</u><br>Joseph S. Cantie           | Director   | February 23, 2023 |
| <u>/s/ Tina M. Donikowski</u><br>Tina M. Donikowski       | Director   | February 23, 2023 |
| <u>/s/ Deirdre Drake</u><br>Deirdre Drake                 | Director   | February 23, 2023 |
| <u>/s/ Mark A. Petrarca</u><br>Mark A. Petrarca           | Director   | February 23, 2023 |
| <u>/s/ Nancy M. Taylor</u><br>Nancy M. Taylor             | Director   | February 23, 2023 |

**AMENDMENT NO. 3 TO  
AMENDED AND RESTATED CREDIT AGREEMENT**

This **AMENDMENT NO. 3 TO AMENDED AND RESTATED CREDIT AGREEMENT** (this “Amendment”) dated as of December 9, 2022, is made by and among **TOPBUILD CORP.**, a Delaware corporation (the “Borrower”), each of the undersigned Guarantors, **BANK OF AMERICA, N.A.**, a national banking association organized and existing under the laws of the United States (“Bank of America”), in its capacity as administrative agent for the Lenders (in such capacity, the “Administrative Agent”), and each of the Lenders party hereto. Except as expressly provided herein, capitalized terms used but not otherwise defined herein have the respective meanings ascribed to them in the Credit Agreement.

**W I T N E S S E T H:**

**WHEREAS**, the Borrower, the Guarantors, Bank of America, as Administrative Agent, Swing Line Lender and an L/C Issuer, and certain financial institutions from time to time party thereto, including the Lenders party hereto, have entered into that certain Amended and Restated Credit Agreement dated as of March 20, 2020 (as amended by that certain Amendment No. 1 to Amended and Restated Credit Agreement dated as of March 8, 2021, that certain Amendment No. 2 to Amended and Restated Credit Agreement dated as of October 7, 2021 and as further amended, supplemented, restated or otherwise modified from time to time, the “Credit Agreement”);

**WHEREAS**, the Borrower has requested that the Lenders make certain amendments to the Credit Agreement, as set forth herein; and

**WHEREAS**, the Administrative Agent, the L/C Issuers and the Lenders are willing to effect such amendments on the terms and conditions contained in this Amendment.

**NOW, THEREFORE**, in consideration of the premises and further valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Amendments to Credit Agreement.** Subject to the covenants, terms and conditions set forth herein and in reliance upon the representations and warranties set forth herein, the parties hereto agree that the Credit Agreement is hereby amended as follows:

(a) the Credit Agreement (excluding the Schedules and Exhibits thereto (other than as set forth below)) is hereby amended such that, after giving effect to all such amendments, it shall read in its entirety as set forth on **Annex A** attached hereto; and

(b) **Exhibit A** (Loan Notice) to the Credit Agreement is hereby amended such that, after giving effect to all such amendments, it shall read in its entirety as set forth on **Annex B** attached hereto.

2. **Outstanding Eurodollar Rate Loans.** The parties hereto agree that all Eurodollar Rate Loans outstanding under the Credit Agreement on the Amendment No. 3 Effective Date shall continue as Eurodollar Rate Loans (as defined in the Credit Agreement prior to the effectiveness of this Amendment) under the Credit Agreement solely for the remainder of the Interest Periods applicable thereto immediately prior to the effectiveness of this Amendment; it being understood that such Eurodollar Rate Loans and Interest Periods are not being renewed or extended as a result of this Amendment and, upon the expiration of such Interest Periods, such Eurodollar Rate Loans shall be converted to Term SOFR Loans having a

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one-month Interest Period, unless such Eurodollar Rate Loans are terminated or repaid prior to the expiration thereof.

3. **Effectiveness; Conditions Precedent.** The effectiveness of this Amendment shall be as of the date hereof upon each of the following conditions precedent having been satisfied or waived (the “Amendment No. 3 Effective Date”):

(a) the Administrative Agent shall have received counterparts of this Amendment, duly executed by the Borrower, the Guarantors, the Administrative Agent and the Lenders; and

(b) all fees and expenses payable to the Administrative Agent (including the fees and expenses of counsel to the Administrative Agent to the extent due and payable under Section 11.04 of the Credit Agreement) estimated to date and invoiced at least two (2) Business Days prior to the Amendment No. 3 Effective Date shall have been or (concurrently herewith) will be, paid in full.

4. **No Novation; Consent and Confirmation of the Guarantors.** Neither the execution and delivery of this Amendment nor the consummation of any other transaction contemplated hereunder is intended to constitute a novation of the Credit Agreement or of any of the other Loan Documents or any obligations thereunder. Each of the Guarantors absolutely and unconditionally (a) confirms and ratifies all of its respective obligations pursuant to the Collateral Documents to which such Guarantor is a party and the Guaranty (including without limitation the continuation of each such Guarantor’s payment and performance obligations thereunder upon and after the effectiveness of this Amendment and the amendments contemplated hereby), (b) confirms the enforceability of such Collateral Documents and the Guaranty against such Guarantor in accordance with their respective terms and (c) agrees that this Amendment and all documents executed in connection herewith (i) do not operate to reduce or discharge any Guarantor’s obligations under the Loan Documents and (ii) in no manner impair or otherwise adversely affect any of the Liens granted in or pursuant to the Loan Documents.

5. **Representations and Warranties.** In order to induce the Administrative Agent and the Lenders to enter into this Amendment, the Borrower represents and warrants to the Administrative Agent and the Lenders as follows:

(a) The representations and warranties contained in Article V of the Credit Agreement and in the other Loan Documents are true and correct on and as of the date hereof in all material respects, except those representations and warranties that contain materiality qualifiers, which are true and correct in all respects, and except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date;

(b) Since December 31, 2021, no act, event, condition or circumstance has occurred or arisen which, singly or in the aggregate with one or more other acts, events, occurrences or conditions (whenever occurring or arising), has had or could reasonably be expected to have a Material Adverse Effect;

(c) This Amendment has been duly authorized, executed and delivered by the Borrower and the Guarantors party hereto and constitutes a legal, valid and binding obligation of such parties, enforceable against each such party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting creditors’ rights generally and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); and

(d) No Default or Event of Default has occurred and is continuing or will exist after giving effect to this Amendment.

6. **Entire Agreement.** This Amendment is a Loan Document. This Amendment, together with the other Loan Documents (collectively, the “Relevant Documents”), sets forth the entire understanding and agreement of the parties hereto in relation to the subject matter hereof and supersedes any prior negotiations and agreements among the parties relating to such subject matter. No promise, condition, representation or warranty, express or implied, not set forth in the Relevant Documents shall bind any party hereto, and no such party has relied on any such promise, condition, representation or warranty. Each of the parties hereto acknowledges that, except as otherwise expressly stated in the Relevant Documents, no representations, warranties or commitments, express or implied, have been made by any party to the other in relation to the subject matter hereof or thereof. None of the terms or conditions of this Amendment may be changed, modified, waived or canceled orally or otherwise, except in writing and in accordance with Section 11.01 of the Credit Agreement.

7. **Full Force and Effect of Amendment.** Except as hereby specifically amended, modified or supplemented, the Credit Agreement and all other Loan Documents are hereby confirmed and ratified in all respects and shall be and remain in full force and effect according to their respective terms.

8. **Counterparts.** This Amendment may be executed by one or more of the parties to this Amendment on any number of separate counterparts (including by telecopy), and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or other electronic imaging means (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Amendment. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Amendment and/or any document to be signed in connection with this Amendment shall be deemed to include Electronic Signatures or execution in the form of an Electronic Record, and deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Each of the Loan Parties agrees that any Electronic Signature or execution in the form of an Electronic Record shall be valid and binding on itself and each of the other parties hereto to the same extent as a manual, original signature. For purposes hereof, “Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

9. **Governing Law.** This Amendment shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, and shall be further subject to the provisions of Sections 11.12, 11.14 and 11.15 of the Credit Agreement.

10. **Enforceability.** Should any one or more of the provisions of this Amendment be determined to be illegal, invalid or unenforceable (a) the legality, validity and enforceability of the remaining provisions of this Amendment 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.

11. **References.** All references in any of the Loan Documents to the “Credit Agreement” shall mean the Credit Agreement, as amended hereby.

12. **Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent, the Guarantors, the Lenders and their respective successors and assignees to the extent such assignees are permitted assignees as provided in Section 11.06 of the Credit Agreement.

*[Signature pages follow.]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be made, executed and delivered by their duly authorized officers as of the day and year first above written.

**BORROWER:**

**TOPBUILD CORP.**, a Delaware corporation

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

**GUARANTORS:**

**ADO PRODUCTS, LLC**,  
a Minnesota limited liability company

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

**AMERICAN COMMERCIAL INSULATION, LLC**, a  
Delaware limited liability company

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

**AMERICAN NATIONAL INSULATION,  
INC.**, a Delaware corporation

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

**BUILDER PROCUREMENT SERVICES, LLC**,  
a Delaware limited liability company

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

TopBuild Corp.  
Amendment No. 3 to Amended and Restated Credit Agreement  
Signature Page

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**BUILDER SERVICES GROUP, INC.,**  
a Florida corporation

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

**SERVICE PARTNERS, LLC,**  
a Virginia limited liability company

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

**TOPBUILD HOME SERVICES, INC.,**  
a Delaware corporation

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

**TOPBUILD SUPPORT SERVICES, INC.,**  
a Delaware corporation

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

**DISTRIBUTION INTERNATIONAL, INC.,**  
a Delaware corporation

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

**IDEAL PRODUCTS OF AMERICA HOLDINGS, LLC,**  
a Delaware limited liability company

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

**DI SUPER HOLDINGS, INC.,**  
a Delaware limited liability company

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

TopBuild Corp.  
Amendment No. 3 to Amended and Restated Credit Agreement  
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**DISTRIBUTION INTERNATIONAL SOUTHWEST, INC.,**  
a Delaware limited liability company

By: /s/ George Sellew  
Name: George Sellew  
Title: Treasurer

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**BANK OF AMERICA, N.A.,**  
as Administrative Agent

By: /s/ Eric Truette  
Name: Eric Truette  
Title: Vice President

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

By: /s/ Cameron Cardozo  
Name: Cameron Cardozo  
Title: Senior Vice President

TopBuild Corp.  
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**JPMORGAN CHASE BANK, N.A.,**  
as a Lender

By: /s/ Blakely Engel  
Name: Blakely Engel  
Title: Executive Director

TopBuild Corp.  
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**PNC BANK, NATIONAL ASSOCIATION,**  
as a Lender

By: /s/ Ryan Garr  
Name: Ryan Garr  
Title: Vice President

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**FIFTH THIRD BANK, NATIONAL ASSOCIATION,**  
as a Lender

By: /s/ David A. Austin  
Name: David A. Austin  
Title: Senior Vice President

TopBuild Corp.  
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**CITIZENS BANK, NATIONAL ASSOCIATION,**  
as a Lender

By: /s/ Carmen Malizia

Name: Carmen Malizia

Title: Vice President

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**CAPITAL ONE, NATIONAL ASSOCIATION,**  
as a Lender

By: /s/ Dmitry Zagarsky  
Name: Dmitry Zagarsky  
Title: Duly Authorized Signatory

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**U.S. BANK NATIONAL ASSOCIATION,**  
as a Lender

By: /s/ Sawyer Johnson  
Name: Sawyer Johnson  
Title: Assistant Vice President

TopBuild Corp.  
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**REGIONS BANK,**  
as a Lender

By: /s/ Tim Blakley  
Name: Tim Blakley  
Title: Managing Director

TopBuild Corp.  
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**CITY NATIONAL BANK,**  
as a Lender

By: /s/ Edward E. Wooten  
Name: Edward E. Wooten  
Title: SVP

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TopBuild Corp.  
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ANNEX A  
to Amendment No. 3 to Amended and Restated Credit Agreement

**Amended Credit Agreement**

*See attached.*

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Published CUSIP Number: 89054MAG4  
Published Revolving Facility CUSIP Number: 89054MAH2  
Published Term Facility CUSIP Number: 89054MAJ8

**AMENDED & RESTATED CREDIT AGREEMENT<sup>1</sup>**

**Dated as of March 20, 2020**

among

**TOPBUILD CORP.,**  
as the Borrower,

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

and

**THE OTHER LENDERS PARTY HERETO**

**PNC BANK, NATIONAL ASSOCIATION**  
and  
**JPMORGAN CHASE BANK, N.A.,**  
as Co-Syndication Agents,

**FIFTH THIRD BANK, NATIONAL ASSOCIATION,**  
as Documentation Agent

and

**BOFA SECURITIES, INC.,**  
**PNC CAPITAL MARKETS LLC,**  
and  
**JPMORGAN CHASE BANK, N.A.,**  
as Joint Lead Arrangers and Joint Bookrunners

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<sup>1</sup> Conformed Credit Agreement incorporating Amendment No. 1 to Amended and Restated Credit Agreement dated as of March 8, 2021, Amendment No. 2 to Amended and Restated Credit Agreement dated as of October 7, 2021 and Amendment No. 3 to Amended and Restated Credit Agreement dated as of December 9, 2022.

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I Term Loan Facility Amortization Schedule

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## AMENDED AND RESTATED CREDIT AGREEMENT

This **AMENDED AND RESTATED CREDIT AGREEMENT** (“Agreement”) is entered into as of March 20, 2020, among **TOPBUILD CORP.**, a Delaware corporation (the “Borrower”), each of the undersigned Subsidiaries of the Borrower, in its capacity as Guarantor, each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), and **BANK OF AMERICA, N.A.**, as Administrative Agent, Swing Line Lender and an L/C Issuer.

### PRELIMINARY STATEMENTS:

The Borrower, Bank of America, N.A., as administrative agent, and the lenders party thereto (collectively, in such capacity the “Existing Lenders”) previously entered into that certain Credit Agreement, dated as of May 5, 2017 (as amended by that certain Amendment No. 1 to Credit Agreement dated March 28, 2018 and as amended by that certain Amendment No. 2 to Credit Agreement dated April 27, 2018, and further amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the “Existing Credit Agreement”), pursuant to which the Existing Lenders provided a term loan facility and revolving credit facility to the Borrower in accordance with the terms thereof.

The Borrower and the Lenders desire to renew, amend and restate the Existing Credit Agreement in its entirety to provide for (i) a term loan facility in an aggregate principal amount of \$300,000,000, to be drawn on the Closing Date and (ii) a revolving credit facility in an initial aggregate principal amount of \$450,000,000, which will include (x) a sublimit for the making of one or more Letters of Credit from time to time and a (y) Swing Line Loans. The Lenders have indicated their willingness to lend and the L/C Issuers have indicated its willingness to issue letters of credit, in each case, on the terms and subject to the conditions set forth herein.

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

### ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

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

“Acquisition” means the acquisition, whether through a single transaction or a series of related transactions, by the Borrower and/or any of its Subsidiaries of, or any transaction that results in the Borrower and/or any of its Restricted Subsidiaries owning, whether by purchase, merger, or otherwise, (a) a controlling equity interest or other controlling ownership interest in another Person (including the purchase of an option, warrant or convertible or similar type of security to acquire such a controlling interest at the time it becomes exercisable by the holder thereof), whether by purchase of such equity or other ownership interest or upon the exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, or (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person.

“Additional Secured Obligations” means (a) all obligations of the Borrower or any Restricted Subsidiary arising under Secured Cash Management Agreements and Secured Hedge Agreements (excluding, for the avoidance of doubt, any Excluded Swap Obligation) and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing to the extent required to be paid by the Loan Parties pursuant to Section 11.04 of this Agreement, including the fees, charges and

disbursements of counsel, in each case 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, expenses and fees that accrue after the commencement by or against any Loan Party or any Restricted Subsidiary thereof of any proceeding under any Debtor Relief Laws naming such Loan Party as the debtor in such proceeding, regardless of whether such interest, expenses and fees are allowed claims in such proceeding.

“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 Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit E-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 any 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.

“Agent Fee Letter” means the letter agreement, dated February 26, 2020, among the Borrower, the Administrative Agent and BAS, in its capacity as an Arranger.

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” means this Credit Agreement.

“Amendment No.1 Effective Date” means March 8, 2021.

“Amendment No. 2” means that certain Amendment No. 2 to the Credit Agreement occurring on the Amendment No. 2 Effective Date.

“Amendment No. 2 Effective Date” means October 7, 2021.

“Amendment No. 2 Term Loan Advance” has the meaning specified in Section 2.01(a).

“Amendment No. 2 Term Loan Commitments” means, as to each Term Lender, its obligation to make or continue Term Loans to the Borrower pursuant to Section 2.01(a) on the Amendment No. 2 Effective Date.

“Applicable Percentage” means (a) in respect of the Term Facility, with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Facility represented by (I) at any time prior to the funding of the Amendment No. 2 Term Loan Advance and the Delayed Draw Term Loan Advance, respectively, such Term Lender’s Amendment No. 2 Term Loan Commitment and Delayed Draw Term Loan Commitment, as applicable, at such time, subject to adjustment as provided in this Agreement including Section 2.17, plus the principal amount of such Term Lender’s Term Loans at such time and (II) thereafter, the principal amount of such Term Lender’s Term Loans at such time and

(b) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Revolving Credit Lender's Revolving Credit Commitment at such time, subject to adjustment as provided in Section 2.17. If the commitment of each Revolving Credit Lender to make Revolving Credit Loans and the obligation of the L/C Issuers to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Credit Commitments have expired, then the Applicable Percentage of each Revolving Credit Lender in respect of the Revolving Credit Facility shall be determined based on the Applicable Percentage of such Revolving Credit Lender in respect of the Revolving Credit Facility most recently in effect, giving effect to any subsequent assignments. If any commitments of the Term Lenders to make Term Loans have been terminated pursuant to Section 8.02, or if the applicable Term Commitments have expired, then the Applicable Percentage of each Term Lender in respect of the Term Facility shall be determined based on the Applicable Percentage of such Term Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender in respect of each Facility 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, as applicable.

**“Applicable Rate”** means, for any day, the rate per annum set forth below opposite the applicable Level then in effect (based on the Consolidated Secured Leverage Ratio), it being understood that the Applicable Rate for (a) Revolving Credit Loans that are Base Rate Loans shall be the percentage set forth under the column “Base Rate”, (b) Revolving Credit Loans that are Daily Simple SOFR Loans or Term SOFR Loans shall be the percentage set forth under the column “Daily Simple SOFR, Term SOFR & Letter of Credit Fee”, (c) that portion of the Term Loan comprised of Base Rate Loans shall be the percentage set forth under the column “Base Rate”, (d) that portion of the Term Loan comprised of Daily Simple SOFR Loans or Term SOFR Loans shall be the percentage set forth under the column “Daily Simple SOFR, Term SOFR & Letter of Credit Fee”, (e) the Letter of Credit Fee shall be the percentage set forth under the column “Term SOFR & Letter of Credit Fee”, and (f) the Commitment Fee shall be the percentage set forth under the column “Commitment Fee”:

| Level | Consolidated Secured Leverage Ratio | Daily Simple SOFR, Term SOFR & Letter of Credit Fee | Base Rate | Commitment Fee |
|-------|-------------------------------------|---|-----------|----------------|
| 1     | $\leq 1.00:1$                       | 1.00 %  | 0.00%     | 0.150%         |
| 2     | $> 1.00:1 \text{ but } \leq 1.50:1$ | 1.25 %  | 0.25%     | 0.175%         |
| 3     | $> 1.50:1 \text{ but } \leq 2.00:1$ | 1.50 %  | 0.50%     | 0.200%         |
| 4     | $> 2.00:1 \text{ but } \leq 2.50:1$ | 1.75 %  | 0.75%     | 0.225%         |
| 5     | $> 2.50:1 \text{ but } \leq 3.00:1$ | 2.00 %  | 1.00%     | 0.250%         |
| 6     | $> 3.00:1$                          | 2.50 %  | 1.50%     | 0.275%         |

As of the Amendment No. 2 Effective Date, the Applicable Rate shall be based on Pricing Level 2. Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Secured Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(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 Level 6 shall apply, in each case as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the first Business Day following the date on which such Compliance Certificate is delivered. In addition, at all times while the Default Rate is in effect, the highest rate set forth in each column of the Applicable Rate shall apply.

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).

“Applicable Revolving Credit Percentage” means with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender’s Applicable Percentage in respect of the Revolving Credit Facility at such time.

“Appropriate Lender” means, at any time, (a) with respect to the Term Facility or the Revolving Credit Facility, a Lender that has a Commitment with respect to such Facility or holds a Term Loan or a Revolving Credit Loan, respectively, at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuers and (ii) if any Letters of Credit have been issued pursuant to Section 2.03(a), the Revolving Credit Lenders and (c) with respect to the Swing Line Sublimit, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders.

“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 BAS (or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or related businesses may be transferred following the date of this Agreement), JPMorgan Chase Bank, N.A. and PNC Capital Markets LLC, in their capacities as lead arrangers and bookrunners.

“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 E-1 or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, but without duplication (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Restricted Subsidiaries for the fiscal year ended December 31, 2019, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Restricted Subsidiaries, including the notes thereto.

“Availability Period” means in respect of the Revolving Credit Facility, the period from and including the Closing Date to the earliest of (a) the Maturity Date for the Revolving Credit Facility, (b) the date of termination of the Revolving Credit Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Revolving Credit Lender to make Revolving Credit Loans and of the obligation of the L/C Issuers to make L/C Credit Extensions pursuant to Section 8.02.

“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.

**BAS** means BofA Securities, Inc.

**Base Rate** means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1% (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate”, and (c) Term SOFR plus 1.00%. 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 such 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. For purposes of this Agreement, if Base Rate shall be less than 1.00%, such rate shall be deemed to be 1.00%.

**Base Rate Loan** means a Revolving Credit Loan or a Term 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 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”.

**Borrower** has the meaning specified in the introductory paragraphs hereto.

**Borrower Materials** has the meaning specified in Section 6.02.

**Borrowing** means a Revolving Credit Borrowing, a Swing Line Borrowing, or a Term Borrowing, as the context may require.

**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, New York or the state where the Administrative Agent’s Office is located.

**Capital Expenditures** means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset that are capital expenditures as determined in accordance with GAAP; provided that the term “Capital Expenditures” shall not include (i) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent made

with (x) insurance proceeds paid on account of the loss of or damage to the assets being replaced, re-stored or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (iii) the purchase of assets that would otherwise constitute Capital Expenditures to the extent financed with the proceeds of Dispositions that are not required to be applied to prepay Term Loans, (iv) expenditures that are accounted for as capital expenditures by Borrower or any Restricted Subsidiary and that actually are paid for by a Person other than the Borrower or any Restricted Subsidiary (whether paid directly by such Person or by reimbursing Borrower or such Restricted Subsidiary) and for which neither Borrower nor any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person (whether before, during or after such period) or (v) expenditures that constitute Permitted Acquisitions.

**“Capitalized Leases”** means, in respect of any Person, all leases by that Person as lessee that have been or should be, in accordance with GAAP, recorded as capitalized or finance leases on the balance sheet of that Person.

**“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 Issuers or Swing Line Lender (as applicable) and the Lenders, as collateral for L/C Obligations, Obligations in respect of Swing Line Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the Administrative Agent, the L/C Issuers or Swing Line Lender shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the L/C Issuers or the Swing Line Lender (as applicable). “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 any of the following types of Investments, to the extent owned by the Borrower or any of its Restricted Subsidiaries free and clear of all Liens (other than Liens created under the Collateral Documents and other Liens permitted hereunder):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least “Prime-1” (or the then equivalent grade) by Moody's or at least “A-2” (or the then equivalent grade) by S&P, in each case with maturities of not more than one year from the date of acquisition thereof;

(d) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Restricted Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition;

(e) Investments of the type described in the investment policy of the Borrower, dated as of September 9, 2015, together with any modifications thereof; and

(f) with respect to any Foreign Subsidiary, (i) Investments of the type and maturity described in the foregoing subdivisions (a) through (e) of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term Investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing Investments in the foregoing clauses (a) through (e).

**Cash Management Agreement** means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

**Cash Management Bank** means any Person that, (a) at the time it enters into a Cash Management Agreement with a Loan Party or any Restricted Subsidiary thereof, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Cash Management Agreement with a Loan Party or any Restricted Subsidiary, in each case in its capacity as a party to such Cash Management Agreement.

**CFC** means a Person that is a controlled foreign corporation under Section 957 of the Code.

**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, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty 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, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States 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 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 securities 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 35% or more of the equity securities of the Borrower

entitled to vote for members of the board of directors or equivalent governing body of the 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 twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the 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.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 11.01.

“CME” means CME Group Benchmark Administration Limited.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means the property over which a Lien has been or is intended to be granted to Administrative Agent pursuant to the Collateral Documents, but excluding, for the avoidance of doubt, the Excluded Property.

“Collateral Documents” means, collectively, the Security Agreement, each of the collateral assignments, Security Agreement supplements, the Intellectual Property Security Agreements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commitment” means a Term Commitment, a Delayed Draw Term Commitment or a Revolving Credit Commitment, as the context may require.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute.

“Compliance Certificate” means a certificate substantially in the form of Exhibit D-1.

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate, Daily Simple SOFR or Term SOFR, as applicable, any conforming changes to the definitions of “Base Rate”, “SOFR”, “Daily Simple SOFR”, “Term SOFR” or “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 definitions of “Business Day” and “U.S. Government Securities 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(s) 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 EBITDA” means, at any date of determination, an amount equal to Consolidated Net Income of the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period plus the sum of:

- (i) interest expense in accordance with GAAP,
- (ii) Federal, state, local and foreign income taxes, paid or accrued,
- (iii) depreciation and amortization expense,
- (iv) extraordinary, unusual or non-recurring non-cash expenses, losses or charges which do not represent a cash charge in any future period (including any such expense, loss or charge from discontinued operations),
- (v) non-cash restructuring and rationalization charges and non-cash charges related to impairment of long-lived assets, intangible assets and goodwill,
- (vi) non-cash expenses related to stock based compensation (other than with respect to phantom stock and stock appreciation rights),
- (vii) other non-cash charges of any kind,
- (viii) cash restructuring and rationalization charges taken during such period in an aggregate amount not to exceed \$20,000,000 during any Measurement Period and \$40,000,000 after the Second Amendment Effective Date,
- (ix) any losses for such period attributable to the early extinguishment of Indebtedness or obligations under any Hedge Agreement,
- (x) cash fees and expenses incurred in connection with acquisitions, equity issuances, debt incurrences, asset sales, Restricted Payments and Dispositions that are not otherwise capitalized (regardless of whether consummated); and
- (xi) pro forma “run rate” cost savings and cost synergies that are reasonably identifiable, factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within twelve (12) months of the subject Measurement Period; provided that the amounts added-back to Consolidated EBITDA pursuant to this clause (xi), together with any pro forma amounts included in Consolidated EBITDA pursuant to Section 1.08, shall not, in the aggregate, exceed 15% of Consolidated EBITDA for such period (calculated prior to giving effect to any amounts that would otherwise be added-back pursuant to this clause (xi) and/or Section 1.08),

*minus*, without duplication and to the extent included in determining such Consolidated Net Income for such period, the sum of:

- (a) interest income,
- (b) income tax credits and refunds (to the extent not netted from tax expense),
- (c) any cash payments made during such period in respect of items described in clauses (iv) through (vii) above subsequent to the fiscal quarter in which the relevant non-cash expenses or losses were incurred,
- (d) extraordinary, unusual or non-recurring non-cash income or gains realized,
- (e) any other non-cash items of income or gains

in each case of or by the Borrower and its Restricted Subsidiaries for such Measurement Period; provided that, for purposes of the definition of "Material Subsidiary", Consolidated EBITDA shall be calculated as described above on the basis the Borrower and all Subsidiaries. In addition, for purposes of calculating Consolidated EBITDA for any period, if during such period the Borrower or any Restricted Subsidiary shall have consummated an Acquisition with a Cost of Acquisition in excess of \$5,000,000 or a Disposition for consideration in excess of \$5,000,000, Consolidated EBITDA for such period shall be calculated after giving Pro Forma Effect thereto in accordance with Section 1.08.

**Consolidated Funded Indebtedness** means, as of any date of determination, for the Borrower and its Restricted Subsidiaries on a consolidated basis, the sum of (a) the outstanding principal amount of all Indebtedness, whether current or long-term, for borrowed money (including the Loans hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all Capitalized Leases and purchase money Indebtedness, (c) all direct obligations arising under standby letters of credit (including issued and undrawn and drawn and unreimbursed letters of credit), bankers' acceptances, bank guaranties, and similar instruments, and (d) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (c) above of Persons other than the Borrower or any Restricted Subsidiary.

**Consolidated Interest Charges** means, for any Measurement Period, 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 in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) subject to Section 1.03, the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, in each case, of or by the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

**Consolidated Interest Coverage Ratio** means, as of any date of determination, the ratio of (a) Consolidated EBITDA to (b) net Consolidated Interest Charges paid in cash for the most recently completed Measurement Period

**Consolidated Net Income** means, at any date of determination, the net income (or loss) of the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period in accordance with GAAP; provided that Consolidated Net Income shall exclude (a) the net income of any Restricted Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Restricted 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 Restricted Subsidiary during such Measurement Period, except that the Borrower's equity in any net loss of any such Restricted Subsidiary for such Measurement Period shall be included in

determining Consolidated Net Income, and (b) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that the Borrower's equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the Borrower or a Restricted Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Restricted Subsidiary, such Restricted Subsidiary is not precluded from further distributing such amount to the Borrower as described in clause (b) of this proviso).

**"Consolidated Net Leverage Ratio"** means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date, minus unrestricted cash and Cash Equivalents of the Loan Parties on deposit with financial institutions located in the United States, not to exceed \$100,000,000 to (b) Consolidated EBITDA of the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

**"Consolidated Secured Indebtedness"** means, the aggregate principal amount of Consolidated Funded Indebtedness that is secured by a Lien on any assets of the Borrower or any of its Restricted Subsidiaries.

**"Consolidated Secured Leverage Ratio"** means, as of any date of determination, the ratio of (a) Consolidated Secured Indebtedness as of such date, to (b) Consolidated EBITDA of the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

**"Consolidated Total Assets"** means, as of any date of determination, the amount which in accordance with GAAP would be set forth under the caption "Total Assets" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries, as of the most recently ended Measurement Period for which financial statements have been delivered to the Administrative Agent pursuant to Section 6.01(a) or (b).

**"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.

**"Cost of Acquisition"** means, with respect to any Acquisition, as at the date of entering into any agreement therefor, the sum of the following (without duplication): (a) the value of the Equity Interests of the Borrower or any Subsidiary to be transferred in connection with such Acquisition, (b) the amount of any cash and fair market value of other property (excluding property described in clause (a) and the unpaid principal amount of any debt instrument) given as consideration in connection with such Acquisition, (c) the amount (determined by using the face amount or the amount payable at maturity, whichever is greater) of any Indebtedness incurred, assumed or acquired by the Borrower or any Subsidiary in connection with such Acquisition, (d) all additional purchase price amounts in the form of earnouts and other contingent obligations that should be recorded on the financial statements of the Borrower and its Subsidiaries in accordance with GAAP in connection with such Acquisition, (e) all amounts paid in respect of covenants not to compete and consulting agreements that should be recorded on the financial statements of the Borrower and its Subsidiaries in accordance with GAAP, and other affiliated contracts in connection with such Acquisition, and (f) the aggregate fair market value of all other consideration given by the Borrower or any Subsidiary in connection with such Acquisition. For purposes of determining the Cost of Acquisition for any transaction, the Equity Interests of the Borrower shall be valued in accordance with GAAP.

"Covered Entity" has the meaning specified in Section 11.20(b).

"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 SOFR published on such date on the Federal Reserve Bank of New York's website (or any successor source), plus the SOFR Adjustment. Any change in Daily Simple SOFR shall be effective from and including the date of such change without further notice. If the rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

"Daily Simple SOFR Loan" means a Loan that bears interest at a rate based on Daily Simple SOFR.

"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.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any 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 under the Term Facility plus (iii) 2% per annum; provided, however, that with respect to a Term SOFR 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 plus 2% per annum.

"Defaulting Lender" means, subject to Section 2.17(b), 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 Borrower 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, any 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 Borrower, the Administrative Agent, any 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 Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) 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 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 2.17(b)) 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 Borrower, the L/C Issuers, the Swing Line Lender and each other Lender promptly following such determination.

**“Delayed Draw Availability Period”** means the period from and including the first day following the Amendment No. 2 Effective Date to the earliest of (a) December 31, 2021 or such later date as may be agreed to in writing by the Borrower, the Term Lenders and the Administrative Agent, (b) the date of termination of the Delayed Draw Term Loan Commitments pursuant to Section 2.06, (c) the Maturity Date of the Term Facility and (d) the date of termination of the Delayed Draw Term Loan Commitments of the respective Term Lenders pursuant to Section 8.02.

**“Delayed Draw Term Loan Commitment”** means, as to each Term Lender, its obligation to make additional Term Loans to the Borrower pursuant to Section 2.01(a) in connection with the consummation of the DI Acquisition, in an aggregate principal amount not to exceed the amount set forth opposite such Term Lender’s name on Schedule 2.01 under the caption “Delayed Draw Term Loan Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable. The Delayed Draw Term Loan Commitment of all of the Term Lenders on the Amendment No. 2 Effective Date is \$300,000,000.

**“Designated Jurisdiction”** means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

**“DI Acquisition”** means the acquisition by the Borrower or a wholly-owned direct or indirect Subsidiary thereof of 100% of the equity interests of DI Super Holdings, Inc., a Delaware corporation, pursuant to the terms and conditions of the DI Merger Agreement in all material respects, without giving effect to any modifications, amendments, consents or waivers thereto that are material and adverse to the interests of the Lenders, as reasonably determined by the Administrative Agent, without the prior consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned).

**“DI Merger Agreement”** means that certain Agreement and Plan of Merger dated as of September 7, 2021 among DI Parent, L.P., DI Super Holdings, Inc., Diameter Merger Co., the Borrower and Advent International GPE VII, LLC, as shareholder representative.

**“Disposition”** or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), in one transaction or a series of transactions and whether effected pursuant to a Division or otherwise, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

**“Dividing Person”** has the meaning assigned to it in the definition of “Division.”

**“Division”** means the division of the assets, liabilities and/or obligations of a Person (the **“Dividing Person”**) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

**“Division Successor”** means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

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

**“Domestic Subsidiary”** means any Subsidiary that is organized under the laws of the United States, a State thereof or the District of Columbia.

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

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

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

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

**“Environment”** means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetland, flora and fauna.

**“Environmental Laws”** means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, agreements or governmental restrictions relating to pollution or the protection of the Environment or human health (to the extent related to exposure to Hazardous Materials), including those relating to the manufacture, generation, handling, transport, storage, treatment, Release threat of Release of Hazardous Materials.

**“Environmental Liability”** means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) Release or threatened Release of any Hazardous Materials 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.

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

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

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower 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 the Borrower 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 Code or Sections 303, 304 and 305 of ERISA; (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, upon the Borrower or any ERISA Affiliate; or (i) a failure by the Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

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

“Event of Default” has the meaning specified in Section 8.01.

“Exchange Act” means the Securities Exchange Act of 1934 codified at 15 U.S.C. § 78a et seq.

“Excluded Accounts” has the meaning specified in Section 6.12(b).

“Excluded Property” means, with respect to any Loan Party, (a) all leasehold and owned real property, (b) Equity Interests in partnerships, joint ventures and non-wholly-owned subsidiaries, (c) Equity Interests of captive insurance subsidiaries and not-for-profit subsidiaries, and (i) any assets of a Foreign Subsidiary or CFC Holdco, (ii) any Equity Interests of any Foreign Subsidiary or CFC Holdco that is not directly owned by a Loan Party, and (iii) any voting Equity Interests of any Foreign Subsidiary or CFC Holdco that is directly owned by a Loan Party to the extent that such Equity Interests represent more than 65% of the outstanding voting Equity Interests of such Foreign Subsidiary, (d) any property and assets the pledge of which would require governmental consent, approval, license or authorization or is otherwise prohibited by applicable law, (e) all foreign IP Rights and any “intent-to-use” trademark applications prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law, (f) any equipment (and related intangibles) subject to a Permitted Encumbrance securing purchase money Indebtedness or Capitalized Leases permitted hereunder, and any other any asset if the granting of a security

interest in such asset would be prohibited by enforceable anti-assignment provisions of contracts or applicable law or with respect to any assets to the extent such a pledge would violate the terms of any contract or give another Person under such contract the right to terminate or accelerate the obligations under such contract with respect to such assets (in each case, after giving effect to the applicable anti-assignment provisions of the UCC or other applicable law) or would trigger termination pursuant to any “change of control” or similar provision of such contract, (g) motor vehicles and other assets subject to certificates of title, (h) letter of credit rights, (i) commercial tort claims (other than to the extent such rights can be perfected by filing a UCC-1), (j) Excluded Accounts, and (k) those assets as to which the Administrative Agent and the Borrower reasonably determine that the cost of obtaining such a security interest or perfection thereof are excessive in relation to the benefit to the Lenders of the security to be afforded thereby.

**“Excluded Swap Obligation”** means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.11 and any other “keepwell, support or other agreement” for the benefit of such Guarantor and any and all guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or a grant by such Guarantor 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, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to Recipient or required to be withheld or deducted from 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 Borrower under Section 11.13) or (ii) pursuant to Section 3.01(a)(ii), (a)(iii) 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 Taxes imposed pursuant to FATCA.

**“Existing Credit Agreement”** has the meaning specified in the introductory paragraphs hereto.

**“Existing Letters of Credit”** means the Letters of Credit described on Schedule 1.01; provided that in the event that DI Acquisition is consummated, additional letters of credit issued by Bank of America for the account of DI Super Holdings, Inc. or any subsidiary thereof may be added to Schedule 1.01 by a notice delivered to the Administrative Agent identifying such letters of credit by number, issue date, expiry, stated amount and beneficiary so long as such letters of credit could have been issued under Section 2.03 hereof on the date of such consummation.

**“Extraordinary Receipt”** means any cash received by or paid to or for the account of any Person not in the ordinary course of business, as proceeds of insurance (other than proceeds of business interruption insurance or “rep and warranty” insurance) or condemnation awards (and payments in lieu thereof).

“Facility” means the Term Facility or the Revolving Credit Facility, as the context may require.

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

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

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Foreign Lender” means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under laws of a jurisdiction other than that in which the 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 organized under the laws of a jurisdiction other than the United States, a State thereof or the District of Columbia.

“Foreign Subsidiary Holdco” means any Person substantially all of the assets of which consist, directly or indirectly, of equity interests and/or indebtedness of one or more Foreign Subsidiaries.

“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 any 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.

“GAAP” means generally accepted accounting principles in the United States set forth 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 such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

**“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, any (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, (a) each Domestic Subsidiary (other than a CFC Holdco) that is a Material Subsidiary, (b) each other Domestic Subsidiary (other than a CFC Holdco) that is a Restricted Subsidiary of the Borrower that may from time to time become parties to this Agreement pursuant to Section 6.12 and (c) with respect to Additional Secured Obligations owing by any Loan Party or any of its Restricted Subsidiaries and any Swap Obligation of a Specified Loan Party (determined before giving effect to Sections 10.01 and 10.11) under the Guaranty, the Borrower.

**“Guaranty”** means, collectively, the Guarantee made by the Guarantors under Article X in favor of the Secured Parties, together with each other guaranty delivered pursuant to Section 6.12.

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

**“Hedge Bank”** means any Person that, at the time it enters into a Swap Contract permitted under Article VI or VII, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Contract.

**“Impacted Loans”** has the meaning assigned to such term in Section 3.03.

**“Increase Effective Date”** has the meaning assigned to such term in Section 2.15(a).

**“Increase Joinder”** has the meaning assigned to such term in Section 2.15(c).

“Incremental Commitments” means Incremental Revolving Commitments and/or the Incremental Term Commitments.

“Incremental Revolving Commitment” has the meaning assigned to such term in Section 2.15(a).

“Incremental Term Commitments” has the meaning assigned to such term in Section 2.15(a).

“Incremental Term Loan Maturity Date” has the meaning assigned to such term in Section 2.15(c).

“Incremental Term Loans” means any loans made pursuant to any Incremental Term Commitments.

“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 of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and not past due for more than 60 days after the date on which such trade account was created);

(e) 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;

(f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment, in each case prior to the date that is 91 days after the Latest Maturity Date, in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness 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, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

**“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 clause (a), Other Taxes.

**“Indemnitees”** has the meaning specified in [Section 11.04\(b\)](#).

**“Information”** has the meaning specified in [Section 11.07](#).

**“Intellectual Property”** has the meaning set forth in the Security Agreement.

**“Intellectual Property Security Agreements”** means the (i) Notice of Grant of Security Interest in Patents, dated as of September 14, 2018, executed by United Subcontractors, LLC, in favor of the Administrative Agent, for the benefit of the Secured Parties and (ii) Notice of Grant of Security Interest in Trademarks, dated as of September 14, 2018, executed by United Subcontractors, LLC, in favor of the Administrative Agent, for the benefit of the Secured Parties.

**“Interest Payment Date”** means, (a) as to any Term SOFR Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided, however, that if any Interest Period for a Term SOFR 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; (b) as to any Daily Simple SOFR Loan, the last Business Day of each March, June, September and December and the Maturity Date and (c) as to any Base Rate Loan or Swing Line Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made (with Swing Line Loans being deemed made under the Revolving Credit Facility for purposes of this definition).

**“Interest Period”** means, as to each Term SOFR Loan, the period commencing on the date such Term SOFR Loan is disbursed or converted to or continued as a Term SOFR Loan and ending on the date one, three or six months thereafter (in each case, subject to availability), as selected by the Borrower in its Loan Notice, or such other period that is twelve months or less requested by the Borrower and consented to by all the Appropriate Lenders with respect to the applicable Facility; provided that:

(i) the Interest Period for the Amendment No. 2 Term Loan Advance shall commence on the Amendment No. 2 Effective Date and shall end on October 29, 2021;

(ii) 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 Term SOFR Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(iii) any Interest Period pertaining to a Term SOFR 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

(iv) no Interest Period shall extend beyond the Maturity Date.

**“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 interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a

substantial part of the business of, such Person. 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 5.17.

“IRS” means the United States Internal Revenue Service.

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

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by an L/C Issuer and the Borrower (or any Subsidiary) or in favor of such L/C Issuer and relating to such Letter of Credit.

“Latest Maturity Date” means the latest of the Maturity Date for the Revolving Credit Facility or the Term Facility, the final maturity date as specified in the applicable Refinancing Amendment with respect to any Other Term Loans, and any Incremental Term Loan Maturity Date applicable to existing Incremental Term Loans, as of any date of determination; provided however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the Business Day immediately preceding such day.

“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 Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Credit 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 Revolving Credit Borrowing.

“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 Issuer” means, with respect to a particular Letter of Credit, (a) Bank of America in its capacity as issuer of such Letter of Credit, or any successor issuer thereof, (b) such other Lender selected by the Borrower pursuant to Section 2.03(k) from time to time to issue such Letter of Credit (provided that no Lender shall be required to become an L/C Issuer pursuant to this subclause (b) without such Lender’s consent), or any successor issuer thereof or (c) any Lender selected by the Borrower (with the prior consent of the Administrative Agent, which shall not be unreasonably withheld) to replace a Lender who is a Defaulting Lender at the time of such Lender’s appointment as an L/C Issuer (provided that no Lender shall be required to become an L/C Issuer pursuant to this subclause (c) without such Lender’s consent), or any

successor issuer thereof; provided, the L/C Issuers with respect to the Existing Letters of Credit (including any amendment, renewal or extension thereof) shall be Bank of America and PNC Bank, as applicable.

“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.

“Lender” has the meaning specified in the introductory paragraph hereto and, as the context requires, 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 Borrower and the Administrative Agent, 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 by any L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date then in effect for the Revolving Credit Facility (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(h).

“Letter of Credit Sublimit” means an amount equal to \$100,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, easement, right-of-way or other encumbrance on title to real property, 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, and any financing lease having substantially the same economic effect as any of the foregoing).

“Limited Conditionality Acquisition” means any Acquisition that (a) is not prohibited hereunder, (b) is financed in whole or in part with a substantially concurrent incurrence of Indebtedness, and (c) is not conditioned on the availability of, or on obtaining, third-party financing.

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

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) each Security Joinder Agreement, (d) any agreement creating or perfecting rights in cash collateral pursuant to the provisions of

Section 2.16 of this Agreement, (e) the Collateral Documents, (f) the Agent Fee Letter and (g) each Issuer Document.

“Loan Notice” means a notice of (a) a Term Borrowing, (b) a Revolving Credit Borrowing, (c) a conversion of Loans from one Type to the other, or (d) a continuation of Term SOFR Loans, pursuant to Section 2.02(a), 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), appropriately completed and signed by a Responsible Officer of the Borrower.

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

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Loan Parties and their respective subsidiaries, taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Documents, or of the ability of the Loan Parties, taken as a whole, to perform their payment obligations under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Loan Parties, taken as a whole, of any Loan Documents.

“Material Intellectual Property” means any IP Rights, whether now owned or licensed or hereafter acquired, licensed or developed, that are material to the ability of the Loan Parties, taken as a whole, to generate revenue or that are material to the conduct of business of any of the Loan Parties, taken as a whole.

“Material Subsidiary” means any Subsidiary of the Borrower (other than an Unrestricted Subsidiary) that, together with its Subsidiaries, (a) generates more than 5% of Consolidated EBITDA on a Pro Forma Basis for the Measurement Period most recently ended or (b) has tangible assets (including equity interests in other Subsidiaries and excluding investments that are eliminated in consolidation) of equal to or greater than 5% of the total tangible assets of the Borrower and its Subsidiaries, on a consolidated basis as of the end of the most Measurement Period; provided, however, that if at any time there are Domestic Subsidiaries which are not classified as “Material Subsidiaries” but which collectively (i) generate more than 15% of Consolidated EBITDA on a Pro Forma Basis or (ii) have tangible assets (including equity interests in other Subsidiaries and excluding investments that are eliminated in consolidation) of equal to or greater than 15% of the total tangible assets of the Borrower and its Subsidiaries on a consolidated basis, then the Borrower shall promptly designate one or more of such Domestic Subsidiaries that are Restricted Subsidiaries as Material Subsidiaries and cause any such Domestic Subsidiaries to comply with the provisions of Section 6.12 such that, after such Domestic Subsidiaries become Guarantors hereunder, the Domestic Subsidiaries that are Restricted Subsidiaries but are not Guarantors shall (A) generate less than 15% of Consolidated EBITDA and (B) have tangible assets of less than 15% of the total tangible assets of the Borrower and its Restricted Subsidiaries on a consolidated basis.

“Maturity Date” means (a) with respect to the Revolving Credit Facility, October 7, 2026, and (b) with respect to the Term Facility, October 7, 2026; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the Business Day immediately preceding such day.

“Measurement Period” means, at any date of determination, the most recently completed four (4) fiscal quarters of the Borrower (or, for purposes of determining Pro Forma Compliance, the most recently completed four (4) fiscal quarters of the Borrower for which financial statements have been delivered pursuant to Section 6.01).

**"Minimum Collateral Amount"** means, at any time, (a) 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 102% of the Fronting Exposure of the L/C Issuers with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.16(a)(i), (a)(ii) or (a)(iii), an amount equal to 102% of the Outstanding Amount of all L/C Obligations, and (c) otherwise, an amount determined by the Administrative Agent and the L/C Issuers 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 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 the Borrower 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 with respect to any Disposition by the Borrower or any of its Restricted Subsidiaries, or any Extraordinary Receipt received or paid to the account of the Borrower or any of its Restricted Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by the Borrower or such Restricted Subsidiary in connection with such transaction and (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided that, if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds.

**"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"** means Term Note or a Revolving Credit Note, as the context may require.

**"Obligations"** means 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, Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, in each case 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 Restricted Subsidiary 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 that, for the avoidance of doubt, the Obligations shall not include any Excluded Swap Obligations.

“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 constituent 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 Documents).

“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).

“Other Term Loan Commitments” means one or more classes of Term Loan commitments hereunder that result from a Refinancing Amendment.

“Other Term Loans” means one or more classes of Term Loans that result from a Refinancing Amendment.

“Outstanding Amount” means (a) with respect to Term Loans, Revolving Credit Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Credit Loans and Swing Line Loans, as the case may be, 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 the Borrower of Unreimbursed Amounts.

“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 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 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 Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan as defined in Section 3(2) of ERISA (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower 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 Code.

“Permitted Acquisition” means an Acquisition by a Loan Party or a Restricted Subsidiary (the Person or division, line of business or other business unit of the Person to be acquired in such Acquisition shall be referred to herein as the “Target”), in each case that is a type of business (or assets used in a type of business) permitted to be engaged in by the Borrower and its Restricted Subsidiaries pursuant to the terms of this Agreement, in each case so long as:

- (a) subject to the limitations in Section 1.09 in connection with a Limited Condition Acquisition, no Default shall then exist or would exist after giving effect thereto;
- (b) subject to the limitations in Section 1.09 in connection with a Limited Condition Acquisition, the Loan Parties shall demonstrate, after giving effect to the Acquisition on a pro forma basis, (i) the Loan Parties are in Pro Forma Compliance and (ii) the Consolidated Net Leverage Ratio shall be at least 0.25 to 1.0 less than the then applicable level set forth in Section 7.11, calculated using the same Measurement Period used to determine Pro Forma Compliance (and after giving effect to any permitted increase in the then applicable level as provided for in Section 7.11);
- (c) the Administrative Agent, on behalf of the Secured Parties, shall have received (or shall receive after the closing of such Acquisition in accordance with Section 6.12) a security interest in all property (including, without limitation, Equity Interests) acquired with respect to the Target, in each case to the extent required by and in accordance with the terms of Section 6.12;
- (d) (i) prior to the consummation of any such Acquisition with a Cost of Acquisition in excess of \$25,000,000, the Administrative Agent and the Lenders shall have received (x) a description of the material terms of such Acquisition, and (y) such financial statements of the Target that may be reasonably requested by the Administrative Agent, to the extent readily available, and (ii) not less than two (2) Business Days prior to the consummation of any Permitted Acquisition with a Cost of Acquisition in excess of \$75,000,000, a Permitted Acquisition Certificate, executed by a Responsible Officer of the Borrower certifying that such Permitted Acquisition complies with the requirements of this Agreement, and consolidated projected income statements of the Borrower and its Restricted Subsidiaries (giving effect to such Acquisition);
- (e) such Acquisition shall not be a “hostile” Acquisition and shall have been approved by the board of directors (or equivalent) and/or shareholders (or equivalent) of the applicable Loan Party and the Target;
- (f) subject to the limitations in Section 1.09 in connection with a Limited Conditionality Acquisition, after giving effect to such Acquisition and any Borrowings made in connection therewith, the aggregate principal amount of Revolving Credit Loans available to be borrowed under Section 2.01(b) hereof shall be at least \$50,000,000; and

(g) in respect of an Acquisition of Targets that will not become Loan Parties or assets that will be acquired by non-Loan Parties, in each case, after the Second Amendment Effective Date, the aggregate amount of such Investments shall not in the aggregate exceed the greater of (x) \$50,000,000 and (y) 10% of Consolidated EBITDA for the most recently ended Measurement Period at the time of such Acquisition.

**“Permitted Acquisition Certificate”** means a certificate substantially the form of Exhibit F or any other form approved by the Administrative Agent.

**“Permitted Encumbrances”** means Liens of the type permitted by Section 7.01.

**“Permitted Increase Amount”** means \$300,000,000.

**“Permitted Reorganization”** means any re-organization or other similar activities among the Borrower and its Restricted Subsidiaries related to Tax planning and re-organization (including with respect to intercompany Indebtedness), so long as the Administrative Agent and the Lenders are given not less than five (5) Business Days' prior written notice (or such shorter period as the Administrative Agent may reasonably agree) and a summary description thereof, and, after giving effect thereto, (a) the Loan Parties are in compliance with Sections 6.12 and 6.13, (b) taken as a whole, the value of the Collateral securing the Secured Obligations and the Guarantees by the Guarantors of the Secured Obligations are not materially reduced and (c) the Liens in favor of the Administrative Agent for the benefit of the Secured Parties under the Administrative Documents are not impaired.

**“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) (i), maintained for employees of the Borrower or any ERISA Affiliate or (ii) any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees, and/or (iii) to which the Borrower may reasonably be expected to have any liability under.

**“Platform”** has the meaning specified in Section 6.02.

**“Pro Forma Basis”** and **“Pro Forma Effect”** mean, with respect to compliance with any test or covenant or calculation hereunder, the determination or calculation of such test, covenant or ratio in accordance with Section 1.08.

**“Pro Forma Compliance”** means, with respect to any transaction, that such transaction does not cause, create or result in a Default after giving Pro Forma Effect, based upon the results of operations for the most recently completed Measurement Period to (a) such transaction and (b) all other transactions which are contemplated or required to be given Pro Forma Effect hereunder that have occurred on or after the first day of the relevant Measurement Period.

**“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 6.02.

**“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 §1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualifying Control Agreement” means an agreement, among a Loan Party, a depository institution or securities intermediary (other than Bank of America) and the Administrative Agent, which agreement is in form and substance reasonably acceptable to the Administrative Agent and which provides the Administrative Agent with “control” (as such term is used in Article 9 of the UCC) over the deposit account(s) or securities account(s) described therein.

“Recipient” means the Administrative Agent, any Lender, any 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.

“Refinance,” “Refinancing” and “Refinanced” shall have the meanings provided in the definition of the term “Refinancing Indebtedness.”

“Refinanced Indebtedness” has the meaning provided in the definition of the term “Refinancing Indebtedness.”

“Refinancing Amendment” means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent and (c) each additional Lender and Lender that agrees to provide any portion of the Other Term Loans or Other Term Loan Commitments being incurred or provided pursuant thereto, in accordance with Section 2.14.

“Refinancing Indebtedness” means, with respect to any Indebtedness (the ‘Refinanced Indebtedness’), any Indebtedness issued, incurred or otherwise obtained in exchange for or as a replacement of (including by entering into alternative financing arrangements in respect of such exchange or replacement (in whole or in part), including by adding or replacing lenders, creditors, agents, borrowers and/or guarantors, and including in each case, but not limited to, after the original instrument giving rise to such Indebtedness has been terminated and including, in each case, by entering into any credit agreement, loan agreement, note purchase agreement, indenture or other agreement), or the net proceeds of which are to be used for the purpose of modifying, extending, refinancing, renewing, replacing, redeeming, repurchasing, defeasing, amending, supplementing, restructuring, repaying or refunding (collectively to “Refinance” or a “Refinancing” or “Refinanced”), such Refinanced Indebtedness (or previous refinancing thereof constituting Refinancing Indebtedness); provided that (A) except to the extent otherwise permitted under this Agreement (subject to a dollar for dollar usage of any other basket set forth in Section 7.02, if applicable), the principal amount (or accreted value, if applicable) of any such Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Refinanced Indebtedness outstanding immediately prior to such Refinancing except by an amount equal to the unpaid accrued interest and premium (including any tender premiums) and penalties (if any) thereon plus other amounts paid and fees and expenses incurred in connection with such Refinancing plus an amount equal to any existing commitment unutilized and letters of credit undrawn thereunder, (B) if the Indebtedness being Refinanced is Indebtedness permitted by Section 7.02(d) and (h), the direct and contingent obligors with respect to such Refinancing Indebtedness are not changed (except that any Loan Party may be added as an additional direct or contingent obligor in respect of such Refinancing Indebtedness), and (C) other than with respect to a Refinancing in respect of Indebtedness permitted pursuant to Section 7.02(f), such Refinancing Indebtedness shall have a final maturity date equal to or later than the final maturity date of, and shall have a weighted average life to maturity equal to or greater than the weighted average life to maturity of, the Indebtedness being Refinanced (without giving effect to any amortization or prepayments thereof prior to the time of such Refinancing) as of the date of determination.

“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.

“Release” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment, or into, from or through any building, structure or facility.

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

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Credit 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, a Swing Line Loan Notice.

“Required Lenders” means, at any time, Lenders holding more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Commitments; 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.

“Required Revolving Lenders” means, as of any date of determination, Revolving Credit Lenders holding more than 50% of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; provided that the unused Revolving Credit Commitment of, and the portion of the Total Revolving Credit Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Lenders.

“Required Term Lenders” means, as of any date of determination, the Term Lenders holding more than 50% of the Term Facility on such date; provided that the portion of the Term Facility held by any Defaulting Lender with respect to the Term Facility shall be excluded for purposes of making a determination of Required Term Lenders.

“Rescindable Amount” has the meaning specified in Section 2.12(a)(ii).

“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, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, shall include the secretary or any assistant secretary of a

Loan Party and, solely for purposes of notices given to Article II, shall include 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.

**“Restricted Payment”** means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Restricted Subsidiaries, or 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 capital stock or other Equity Interest, or on account of any return of capital to any Person’s stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

**“Restricted Subsidiary”** means any Subsidiary of the Borrower that is not an Unrestricted Subsidiary.

**“Revolving Credit Borrowing”** means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Term SOFR Loans, having the same Interest Period made by each of the Revolving Credit Lenders pursuant to Section 2.01(b).

**“Revolving Credit Commitment”** means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrower pursuant to Section 2.01(b), (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 under the caption “Revolving Credit Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The Revolving Credit Commitments of the Revolving Credit Lenders as of the Amendment No. 2 Effective Date is \$500,000,000.

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

**“Revolving Credit Facility”** means, at any time, the aggregate amount of the Revolving Credit Lenders’ Revolving Credit Commitments at such time.

**“Revolving Credit Lender”** means, at any time, any Lender that has a Revolving Credit Commitment at such time.

**“Revolving Credit Loan”** has the meaning specified in Section 2.01(b).

**“Revolving Credit Note”** means a promissory note made by the Borrower in favor of a Revolving Credit Lender evidencing Revolving Credit Loans or Swing Line Loans, as the case may be, made by such Revolving Credit Lender, substantially in the form of Exhibit C-2.

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

**“Sanction(s)”** means any sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

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

**“Secured Cash Management Agreement”** means any Cash Management Agreement that is entered into by and between the Borrower or any Restricted Subsidiary and any Cash Management Bank.

**“Secured Hedge Agreement”** means any Swap Contract required or permitted under Article VI or VII that is entered into by and between the Borrower or any Restricted Subsidiary and any Hedge Bank.

**“Secured Obligations”** means all Obligations and all Additional Secured Obligations.

**“Secured Parties”** means, collectively, the Administrative Agent, the Lenders, the L/C Issuers, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

**“Securities Act”** means the Securities Act of 1933 codified at 15 U.S.C. § 77a et seq.

**“Security Agreement”** means a security agreement, in substantially the form of Exhibit G (together with each other security agreement and security agreement supplement delivered pursuant to Section 6.12, in each case as amended), duly executed by each Loan Party.

**“Security Joinder Agreement”** means a joinder agreement substantially in the form of Exhibit D-2 executed and delivered in accordance with the provisions of Section 6.12.

**“Senior Notes”** means the Borrower’s (x) 3.625% Senior Notes due 2029, and (y) 4.125% Senior Notes due 2032.

**“SOFR”** means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

**“SOFR Adjustment”** means a rate per annum equal to 0.1000%.

**“Solvent”** and **“Solvency”** mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets 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, (c) 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, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. 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.

**“Specified Loan Party”** means any Loan Party that is not an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.11).

**“Specified Representations”** means the representations set forth in Sections 5.01(a) (with respect to the organizational existence of the Loan Parties only), 5.01(c), 5.02(a) and (c), 5.04, 5.14, 5.18, 5.20, and 5.21 of this Agreement.

**“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 securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or 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 Borrower.

**“Subsidiary Guarantor Deliverables”** has the meaning ascribed to such term in Section 6.12(a).

**“Successor Rate”** has the meaning ascribed to such term in Section 3.03(b).

**“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.

**“Swap Obligations”** 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 Borrowing”** means a borrowing of a Swing Line Loan pursuant to Section 2.04.

**“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 Swing Line Borrowing pursuant to Section 2.04(b), which 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), appropriately completed and signed by a Responsible Officer of the Borrower.

**“Swing Line Sublimit”** means an amount equal to the lesser of (a) \$35,000,000 and (b) the Revolving Credit Facility. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Facility.

**“Synthetic Lease Obligation”** means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

**“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 Borrowing”** means (a) a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Term SOFR Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01(a) and (b) the making of an Incremental Term Loan by a Lender to the Borrower pursuant to Section 2.15.

**“Term Commitment”** means, as to each Term Lender, (a) on the Amendment No. 2 Effective Date, its obligation to make or continue Term Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term Lender’s name on Schedule 2.01 as its Term Commitment under the caption “Aggregate Term Loans”, as such amount may be adjusted from time to time in accordance with this Agreement, (b) its obligation to make Term Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term Lender’s name on Schedule 2.01 as its Delayed Draw Term Commitment under the caption “Delayed Draw Term Loan Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

**“Term Facility”** means, at any time, as the context may require, the Amendment No. 2 Term Loan Commitments, the Delayed Draw Term Loan Commitments, plus the aggregate principal amount of Term Loans of all Term Lenders outstanding at such time.

**“Term Lender”** means, at any time, any Lender that has an Amendment No. 2 Term Loan Commitment, a Delayed Draw Term Commitment and/or holds outstanding Term Loans at such time.

**“Term Loan”** means an advance made by any Term Lender under the Term Facility.

**“Term Note”** means a promissory note made by the Borrower in favor of a Term Lender evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit C-1.

**“Term SOFR”** means:

(i) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities 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 prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, *plus* the SOFR Adjustment for such Interest Period; and

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

*provided* that if the Term SOFR determined in accordance with either of the foregoing provisions (i) or (ii) of this definition would otherwise be less than 0.00%, the Term SOFR shall be deemed to be 0.00% for purposes of this Agreement.

**“Term SOFR Loan”** means a Loan that bears interest at a rate based on clause (i) of the definition of Term SOFR.

**“Term SOFR Screen Rate”** means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) 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).

**“Threshold Amount”** means \$50,000,000.

**“Total Credit Exposure”** means, as to any Lender at any time, the unused Commitments and Revolving Credit Exposure of such Lender at such time.

**“Total Outstandings”** means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

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

**“Type”** means, with respect to a Loan, its character as a Base Rate Loan, a Daily Simple SOFR Loan or a Term SOFR Loan.

**“UCC”** means the Uniform Commercial Code as in effect in the State of New York *provided* that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “**UCC**” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

**“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(c)(i).

“Unrestricted Subsidiary” means any Subsidiary of the Borrower designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 6.16 subsequent to the date hereof, in each case, until such Person ceases to be an Unrestricted Subsidiary of the Borrower in accordance with Section 6.16 or ceases to be a Subsidiary of the Borrower.

“U.S. Government Securities Business Day” means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

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

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

“Withholding Agent” means any Loan Party and the Administrative Agent.

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

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

(a)     The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to

include such Person's successors and assigns, (iii) the words "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, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each 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).

1.03 Accounting Terms. (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 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. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein, and the determination of Indebtedness hereunder, shall be made without giving effect to Financial Accounting Standards Board (FASB) Standard ASC 842 (Leases) (or any other applicable financial accounting standard having a similar result or effect) and related interpretations, in each case, to the extent any lease (or similar arrangement conveying the right to use) would be required to be treated as a capital lease thereunder where such lease (or similar arrangement) would have been treated as an operating lease under GAAP as in effect immediately prior to the effectiveness of the ASC 842.

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

or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

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

1.04 **Rounding.** Any financial ratios required to be maintained by the Borrower 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).

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

1.06 **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 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.

1.07 **Currency Equivalents Generally.** Any amount specified in this Agreement (other than in Articles II, IX and X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.07, the "Spot Rate" for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

1.08 **Pro Forma Calculations.** All pro forma computations required to be made hereunder giving effect to any Acquisition or Disposition, or issuance, incurrence or assumption of Indebtedness, or other transaction shall in each case be calculated giving Pro Forma Effect thereto (and, in the case of any pro forma computation made hereunder to determine whether such acquisition or disposition, or issuance, incurrence or assumption of Indebtedness, or other transaction is permitted to be consummated hereunder, to any other such transaction consummated since the first day of the period covered by any component of such pro forma computation and on or prior to the date of such computation) as if such transaction had occurred on the first day of the period of four consecutive fiscal quarters ending with the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 6.01(a) or 6.01(b) (or, prior to the delivery of any such financial statements, ending with the last fiscal quarter included in the financial statements referred to in Section 5.05(a)), and, to the extent applicable, to the historical earnings

and cash flows associated with the assets acquired or disposed of and any related incurrence or reduction of Indebtedness, all in accordance with Article 11 of Regulation S-X of the SEC. Such computations may give effect to (i) any projected cost savings (net of continuing associated expenses) expected to be realized as a result of such event to the extent such cost savings would be permitted to be reflected in financial statements prepared in compliance with Article 11 of Regulation S-X of the SEC or (ii) any other cost savings (net of continuing associated expenses) that are reasonably anticipated by the Borrower to be achieved in connection with any such event and are attributable to actions started or occurring within the 12-month period following the consummation of such event, which the Borrower, in its reasonable judgment, determines are achievable; provided that if any cost savings included in any pro forma calculations pursuant to this clause (ii) shall at any time cease to be achievable, in the Borrower's reasonable judgment, then on and after such time pro forma calculations to be made hereunder shall no longer reflect such cost savings. Notwithstanding the foregoing, (x) all adjustments pursuant to this paragraph will be without duplication of any amounts that are otherwise included or added back in computing Consolidated EBITDA in accordance with the definition of such term and (y) the aggregate additions to Consolidated EBITDA pursuant to clauses (i) or (ii) above, together with the aggregate additions to Consolidated EBITDA pursuant to clause (xi) thereof for any period being tested shall not exceed 15% of the amount which would have been included in Consolidated EBITDA as a result of the relevant event in the absence of all such adjustments. If any Indebtedness bears a floating rate of interest and is being given Pro Forma Effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Hedge Agreement applicable to such Indebtedness).

1.09 Limited Conditionality Acquisitions. In the event that the Borrower notifies the Administrative Agent in writing that any proposed Acquisition is a Limited Conditionality Acquisition and that the Borrower wishes to test the conditions to such Acquisition and the availability of Indebtedness that is to be used to finance such Acquisition in accordance with this Section, then the following provisions shall apply:

(a) any condition to such Acquisition or such Indebtedness that requires that no Default or Event of Default shall have occurred and be continuing at the time of such Acquisition or the incurrence of such Indebtedness, shall, if agreed to by the lenders providing such Indebtedness, be satisfied if (i) no Default or Event of Default shall have occurred and be continuing at the time of the execution of the definitive purchase agreement, merger agreement or other acquisition agreement governing such Acquisition and (ii) no Event of Default under any of Sections 8.01(a), (b), (f) or (g) shall have occurred and be continuing both before and after giving effect to such Acquisition and any Indebtedness incurred in connection therewith (including such additional Indebtedness);

(b) any condition to such Acquisition and/or such Indebtedness that the representations and warranties in this Agreement and, if applicable, the other Loan Documents shall be true and correct at the time of such Acquisition or the incurrence of such Indebtedness may, if agreed to by the lenders providing such Indebtedness, be limited to the Specified Representations only, so long as all such representations and warranties in this Agreement and, if applicable, the other Loan Documents are true and correct in all material respects (or in all respects if qualified by materiality) at the time of the execution of the definitive purchase agreement, merger agreement or other acquisition agreement governing such Acquisition;

(c) any financial ratio test or condition, may upon the written election of the Borrower delivered to the Administrative Agent prior to the execution of the definitive agreement for such Acquisition, be tested either (i) upon the execution of the definitive agreement with respect to such Limited Conditionality Acquisition or (ii) upon the consummation of the Limited Conditionality Acquisition and related incurrence of Indebtedness, in each case, after giving effect to the relevant Limited Conditionality Acquisition and related incurrence of Indebtedness, on a Pro Forma Basis; provided that the failure to

deliver a notice under this Section 1.09(c) prior to the date of execution of the definitive agreement for such Limited Conditionality Acquisition shall be deemed an election to test the applicable financial ratio under subclause (ii) of this Section 1.09(c); and

(d) if the Borrower has made an election with respect to any Limited Conditionality Acquisition to test a financial ratio test or condition at the time specified in clause (c)(i) of this Section, then in connection with any subsequent calculation of any ratio (other than the financial covenants tested pursuant to Section 7.11) or basket on or following the relevant date of execution of the definitive agreement with respect to such Limited Conditionality Acquisition and prior to the earlier of (i) the date on which such Limited Conditionality Acquisition is consummated or (ii) the date that the definitive agreement for such Limited Conditionality Acquisition is terminated or expires without consummation of such Limited Conditionality Acquisition, any such ratio (other than the financial covenants tested pursuant to Section 7.11) or basket shall be required to be satisfied (x) on a Pro Forma Basis assuming such Limited Conditionality Acquisition and other transactions in connection therewith (including the incurrence or assumption of Indebtedness) have been consummated and (y) assuming such Limited Conditionality Acquisition and other transactions in connection therewith (including the incurrence or assumption of Indebtedness) have not been consummated.

The foregoing provisions shall apply with similar effect during the pendency of multiple Limited Conditionality Acquisitions such that each of the possible scenarios is separately tested. Notwithstanding anything to the contrary herein, in no event shall the Borrower elect to have this Section 1.09 apply to more than two Limited Conditionality Acquisitions at any time outstanding and not consummated.

1.10 Interest Rates.

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 any reference rate referred to herein 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 any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

ARTICLE II  
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 The Loans. (a) The Term Borrowings. Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make or continue, as applicable, Term Loans to the Borrower on the Amendment No. 2 Effective Date in the aggregate principal amount of \$300,000,000, being the \$292,500,000 Outstanding Amount of Term Loans immediately prior to the Amendment No. 2 Effective

Date plus the readvance of \$7,500,000 (the “Amendment No. 2 Term Loan Advance”) on the Amendment No. 2 Effective Date, and a single additional drawing to occur, if at all, during the Delayed Draw Availability Period in an aggregate amount not to exceed \$300,000,000 (such drawing the “Delayed Draw Term Loan Advance”), with such Term Loans by each Term Lender not to exceed such Term Lender’s Term Commitment. Each Term Borrowing shall consist of Term Loans made simultaneously by the Term Lenders in accordance with their respective Applicable Percentages. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans, Daily Simple SOFR Loans or Term SOFR Loans, as further provided herein.

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

2.02 Borrowings, Conversions and Continuations of Loans. (a) Each Term Borrowing, each Revolving Credit Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Term SOFR Loans shall be made upon the Borrower’s irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Loan Notice; provided that any telephone notice must be confirmed immediately by delivery to the Administrative Agent of a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. (i) two Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Term SOFR Loans or of any conversion of Term SOFR Loans to Base Rate Loans or Daily Simple SOFR Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans or Daily Simple SOFR Loans. Each Borrowing of, conversion to or continuation of Term SOFR Loans or Daily Simple SOFR Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Except as provided in Sections 2.03(c) 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 Borrower is requesting a Term Borrowing, a Revolving Credit Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other, or a continuation of Term SOFR 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 Term Loans or Revolving Credit Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Term Loans or Revolving Credit 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 Term SOFR Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Term SOFR Loans in any such 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 Daily Simple SOFR Loan or a Term SOFR Loan.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage under the applicable Facility of the applicable

Term Loans or Revolving Credit Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Term Borrowing or a Revolving Credit Borrowing, each Appropriate 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 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, however, that if, on the date a Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Term SOFR Loan may be continued or converted only on the last day of an Interest Period for such Term SOFR Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Daily Simple SOFR Loans or Term SOFR Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Term SOFR Loans upon determination of such interest rate.

(e) After giving effect to all Term Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than five (5) Interest Periods in effect in respect of the Term Facility. After giving effect to all Revolving Credit Borrowings, all conversions of Revolving Credit Loans from one Type to the other, and all continuations of Revolving Credit Loans as the same Type, there shall not be more than seven (7) Interest Periods in effect in respect of the Revolving Credit Facility.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all of 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 Borrower, the Administrative Agent, and such Lender.

(g) With respect to SOFR, Daily Simple SOFR or Term SOFR, 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 Borrower and the Lenders reasonably promptly after such amendment becomes effective.

### 2.03 Letters of Credit

#### (a) The Letter of Credit Commitment

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this Section 2.03, (1)

from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrower or its Restricted Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower or its Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, (y) the Revolving Credit Exposure shall not exceed such Lender's Revolving Credit Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) No L/C Issuer shall issue any Letter of Credit if:

(A) subject to Section 2.03(b)(iii), the expiry date of the requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Revolving Lenders have approved such expiry date; or

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Credit Lenders and the applicable L/C Issuer have approved such expiry date (it being agreed that following the Letter of Credit Expiration Date, any outstanding Letter of Credit would be required to be cash collateralized by the Borrower on terms and pursuant to arrangements reasonably satisfactory to such L/C Issuer).

(iii) No L/C Issuer shall 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 such L/C Issuer from issuing the Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

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

(C) except as otherwise agreed by the Administrative Agent and the applicable L/C Issuer, the Letter of Credit is in an initial stated amount less than \$100,000;

(D) the Letter of Credit is to be denominated in a currency other than Dollars;

(E) any Revolving Credit Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such L/C Issuer (in its sole discretion) with the Borrower or such Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.17(a)(iv) 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 such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

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

(iv) No L/C Issuer shall amend any Letter of Credit if such L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

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

(vi) Each L/C Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuers shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuers 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 IX included the L/C Issuers with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuers.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by such L/C Issuer, by personal delivery or by any other means acceptable to the applicable L/C Issuer. Such Letter of Credit Application must be received by the applicable L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Administrative Agent and such L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application

shall specify in form and detail satisfactory to such L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the applicable L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the applicable L/C Issuer may require. Additionally, the Borrower shall furnish to the L/C Issuers and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as such L/C Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Unless such L/C Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower (or the applicable Restricted Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with such L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit (and on the Closing Date with respect to the Existing Letters of Credit), each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from such L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable L/C Issuer may, in its 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 must permit such 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 at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to such L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) such L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that such L/C Issuer shall not permit any such extension if (A) such 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 revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Revolving Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or the Borrower

that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing such L/C Issuer not to permit such extension.

(c) Drawings and Reimbursements; Funding of Participations

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by such L/C Issuer under a Letter of Credit (each such date, an "Honor Date"), the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If the Borrower fails to so reimburse such L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Revolving Credit Lender's Applicable Revolving Credit Percentage thereof. In such event, the Borrower shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Credit Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Loan Notice). Any notice given by the applicable L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) 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.

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the applicable L/C Issuer at the Administrative Agent's Office in an amount equal to its Applicable Revolving Credit Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to such L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender's payment to the Administrative Agent for the account of such L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Credit Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Revolving Credit Percentage of such amount shall be solely for the account of such L/C Issuer.

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the applicable L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other

right which such Lender may have against any L/C Issuer, the Borrower 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 Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse each L/C Issuer for the amount of any payment made by each L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, such 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 such L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by such L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by such 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 Credit Loan included in the relevant Revolving Credit Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after any L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the applicable L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Revolving Credit Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Revolving Credit Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Applicable Revolving Credit Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse each L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that the 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), any 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 therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
- (iv) waiver by an L/C Issuer of any requirement that exists for such L/C Issuer's protection and not the protection of the Borrower or any waiver by an L/C Issuer which does not in fact materially prejudice the Borrower;
- (v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;
- (vi) any payment made by any 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) any payment by any L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by an 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 circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any of its Subsidiaries.

The 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 Borrower's instructions or other irregularity, the Borrower will immediately notify such L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against such L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuers. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, no L/C Issuer shall have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving

Credit Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (viii) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuers may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Applicability of ISP. Unless otherwise expressly agreed by such applicable L/C Issuer and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, no L/C Issuer shall be responsible to the Borrower for, and no L/C Issuer's rights and remedies against the Borrower shall be impaired by, any action or inaction of any applicable 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 any applicable 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.

(h) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit 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 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) due and payable on the first Business Day after 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, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis 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 Revolving Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the applicable L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate per annum specified in the Agent Fee Letter, 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 on the tenth Business Day after the end of each March, June, September and December in respect of 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 Letter of Credit Expiration 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 Borrower shall pay directly to the applicable L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such 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.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Appointment of Additional L/C Issuers. In addition to Bank of America (and PNC Bank, National Association with respect to certain of the Existing Letters of Credit), the Borrower may from time to time, with notice to the Revolving Credit Lenders and the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) and the applicable Revolving Credit Lender being so appointed, appoint additional Revolving Credit Lenders to be L/C Issuers and increase the Letter of Credit Sublimit by the aggregate amount consented to by the consenting increasing or additional L/C Issuers; provided, that at no time shall there be more than three (3) L/C Issuers. Upon the appointment of a Lender as an L/C Issuer hereunder such Person shall become vested with all of the rights, powers, privileges and duties of an L/C Issuer hereunder.

(l) Letters of Credit Issued for Restricted 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 Restricted Subsidiary, the Borrower shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Restricted Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Restricted Subsidiaries.

(m) Reporting of Letter of Credit Information. At any time that any Lender other than the Person serving as the Administrative Agent is an L/C Issuer, then (i) on the last Business Day of each calendar month, (ii) on each date that a Letter of Credit is amended, terminated or otherwise expires, (iii) on each date that an L/C Credit Extension occurs with respect to any Letter of Credit, and (iv) upon the request of the Administrative Agent, each L/C Issuer (or, in the case of part (ii), (iii) or (iv), the applicable L/C Issuer) shall deliver to the Administrative Agent a report setting forth in form and detail reasonably satisfactory to the Administrative Agent information (including, without limitation, any reimbursement, Cash Collateral, or termination in respect of Letters of Credit issued by such L/C Issuer) with respect to each Letter of Credit issued by such L/C Issuer that is outstanding hereunder. No failure on the part of any L/C Issuer to provide such information pursuant to this Section 2.03(m) shall limit the obligation of the Borrower or any applicable Lender hereunder with respect to its reimbursement and participation obligations, respectively, pursuant to this Section 2.03.

#### 2.04 Swing Line Loans.

(a) The Swing Line. 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, may in its sole

discretion make loans (each such loan, a “Swing Line Loan”) to the Borrower 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 Revolving Credit Percentage of the Outstanding Amount of Revolving Credit Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender’s Revolving Credit Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility at such time, and (ii) the Revolving Credit Exposure of any Revolving Credit Lender shall not exceed such Lender’s Revolving Credit Commitment, (y) the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and (z) 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 Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall bear interest only at a rate based on the Base Rate. Immediately upon the making of a Swing Line Loan, each Revolving Credit 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 Revolving Credit Lender’s Applicable Revolving Credit Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the 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 of \$100,000, 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 Revolving Credit Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (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 IV 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 Borrower at its office by crediting the account of the Borrower on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Loan in an amount equal to such Lender’s Applicable Revolving Credit Percentage of the amount of Swing Line Loans then outstanding. 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 Revolving Credit Facility and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrower with a copy of the

applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Revolving Credit 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 Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the 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 Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for 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 Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Credit 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 Revolving Credit 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 Credit Loan included in the relevant Revolving Credit 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 Revolving Credit Lender's obligation to make Revolving Credit 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 which such Lender may have against the Swing Line Lender, the Borrower 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 Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Credit 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 Revolving Credit Lender its

Applicable Revolving Credit 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 Revolving Credit Lender shall pay to the Swing Line Lender its Applicable Revolving Credit 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 Borrower for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Credit Lender's Applicable Revolving Credit Percentage of any Swing Line Loan, interest in respect of such Applicable Revolving Credit Percentage shall be solely for the account of the Swing Line Lender.

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

## 2.05 Prepayments.

### (a) Optional.

(i) Subject to the last sentence of this Section 2.05(a)(i), the Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans and Revolving Credit Loans in whole or in part without premium or penalty; provided that (A) such notice must be in a form reasonably acceptable to the Administrative Agent and be received by the Administrative Agent not later than 11:00 a.m. (1) two Business Days prior to any date of prepayment of Term SOFR Loans and (2) on the date of prepayment of Base Rate Loans and Daily Simple SOFR Loans; (B) any prepayment of Daily Simple SOFR Loans or Term SOFR Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; 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, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Term SOFR 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 ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a) shall be applied to the principal repayment installments thereof as directed by the Borrower in writing (and in the absence of any direction, in direct order of maturity to the remaining quarterly principal installments thereof). Subject to Section 2.17, each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the Term Facility.

(ii) The Borrower may, upon notice 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 (A) 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 (B) any such prepayment shall be in a minimum principal amount of \$100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory.

(i) If the Borrower or any of its Restricted Subsidiaries Disposes of any property (other than any Disposition of any property permitted by Section 7.05(a) – (h), (j), (k), (l) or (n) which results in the realization by such Person of aggregate Net Cash Proceeds in excess of \$15,000,000 in any fiscal year, the Borrower shall prepay an aggregate principal amount of Term Loans equal to 100% of such Net Cash Proceeds in excess of \$15,000,000 within three Business Days after receipt thereof by such Person (such prepayments to be applied as set forth in clause (iii) below); provided, however, that, with respect to any Net Cash Proceeds realized under a Disposition described in this Section 2.05(b)(i), at the election of the Borrower (as notified by the Borrower to the Administrative Agent within three Business Days after the date of such Disposition), and so long as no Default shall have occurred and be continuing or would result therefrom, the Borrower or such Restricted Subsidiary may reinvest all or any portion of such Net Cash Proceeds in operating assets so long as within 365 days after the receipt of such Net Cash Proceeds, such reinvestment shall have been consummated or the Borrower or such Restricted Subsidiary shall have entered into a binding agreement for such reinvestment (as certified by the Borrower in writing to the Administrative Agent); and provided further, however, that an amount equal to any Net Cash Proceeds not subject to such definitive agreement or so reinvested shall be immediately applied to the prepayment of the Term Loans as set forth in this Section 2.05(b)(i).

(ii) Upon any Extraordinary Receipt received by or paid to or for the account of the Borrower or any of its Restricted Subsidiaries, and not otherwise included in clause (i) of this Section 2.05(b), which results in the realization by such Person of aggregate Net Cash Proceeds in excess of \$15,000,000 in any Fiscal Year, the Borrower shall prepay an aggregate principal amount of Term Loans equal to 100% of all Net Cash Proceeds received therefrom within three Business Days after receipt thereof by the Borrower or such Restricted Subsidiary (such prepayments to be applied as set forth in clauses (vi) and (ix) below); provided, however, at the election of the Borrower (as notified by the Borrower to the Administrative Agent within three Business Days after the date of receipt of such Net Cash Proceeds), and so long as no Default shall have occurred and be continuing or would result therefrom, the Borrower or such Restricted Subsidiary may have 365 days after the receipt of such cash proceeds, to apply such proceeds to replace, rebuild, restore or repair the property in respect of which such Net Cash Proceeds were received; and provided, further, however, that an amount equal to any cash proceeds not so applied within such 365 day period shall be immediately applied to the prepayment of the Term Loans as set forth in this Section 2.05(b)(ii).

(iii) Each prepayment of Term Loans pursuant to the foregoing provisions of this Section 2.05(b) shall be applied, first, to the next four scheduled principal repayment installments thereof in order of maturity, and, second, pro rata, to the remaining amortization installments pursuant to Section 2.07(a).

(iv) If for any reason the Total Revolving Credit Outstandings at any time exceed the Revolving Credit Facility at such time, the Borrower shall immediately prepay Revolving Credit Loans, Swing Line Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations (other than the L/C Borrowings) in an aggregate amount equal to such excess.

(v) Prepayments of the Revolving Credit Facility made pursuant to Section 2.05(b)(iv), first, shall be applied ratably to the L/C Borrowings and the Swing Line Loans, second, shall be applied ratably to the outstanding Revolving Credit Loans, and third, shall be used to Cash Collateralize the remaining L/C Obligations. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the applicable L/C Issuer or the Revolving Credit Lenders, as applicable.

(vi) Notwithstanding any other provisions of this Section 2.05, (i) to the extent that the repatriation to the United States of any Net Cash Proceeds attributable to Foreign Subsidiaries would be (x) prohibited by applicable local law (including as a result of financial assistance, corporate benefit, thin capitalization, capital maintenance and similar legal principles, restrictions on upstreaming of cash intra group and the fiduciary and statutory duties of the directors of the relevant Subsidiaries), (y) restricted by applicable material constituent documents or other material agreements, or (z) reasonably be expected to result in a Tax liability or otherwise result in adverse Tax cost consequences for the Borrower or any Subsidiaries, an amount equal to the portion of such Net Cash Proceeds that would be so affected were the Borrower to attempt to repatriate such cash will not be required to be applied to repay Term Loans pursuant to this Section 2.05.

**2.06 Termination or Reduction of Commitments.** (a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit, or from time to time permanently reduce the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit; 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 termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the occurrence of one or more events specified therein, in which case such notice may be revoked by the Borrower (by notice to Administrative Agent on or prior to the specified effective date) if such condition is not satisfied and (iv) the Borrower shall not terminate or reduce (A) the Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Swing Line Sublimit. In addition, during the Delayed Draw Availability Period, the Borrower may, upon notice to the Administrative Agent as set forth above, from time to time terminate (in whole or in part) the unused Delayed Draw Term Loan Commitments.

(b) Mandatory.

(i) Reserved.

(ii) The aggregate Amendment No. 2 Term Loan Commitments shall be automatically and permanently reduced to zero upon the funding of the Amendment No. 2 Term Loan Advance. The aggregate Delayed Draw Term Loan Commitments shall be automatically and permanently

reduced to zero on the earlier to occur of the funding of the Delayed Draw Term Loan Advance or the last day of the Delayed Draw Availability Period.

(iii) If after giving effect to any reduction or termination of Revolving Credit Commitments under this Section 2.06, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the Revolving Credit Facility at such time, the Letter of Credit Sublimit or the Swing Line Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

(c) Application of Commitment Reductions; Payment of Fees

The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit or the Revolving Credit Commitment under this Section 2.06. Upon any reduction of the Revolving Credit Commitments, the Revolving Credit Commitment of each Revolving Credit Lender shall be reduced by such Lender's Applicable Revolving Credit Percentage of such reduction amount. All fees in respect of the Revolving Credit Facility accrued until the effective date of any termination of the Revolving Credit Facility shall be paid on the effective date of such termination.

2.07 Repayment of Loans

(a) Term Loans. The Borrower shall repay to the Term Lenders the aggregate principal amount of all Term Loans in the amounts and on the dates as set forth on Annex I under the column "Principal Amortization Payment as of the Second Amendment Effective Date" (which principal amounts shall be (i) reduced as a result of the application of prepayments in accordance with Section 2.05 and (ii) increased proportionally as set forth in Annex I under the column "Additional Principal Amortization Payment if Delayed Draw Term Loans are Made" to account for the Delayed Draw Term Loan Advance, if made, beginning with the March 31, 2022 Interest Payment Date); provided, however, that the final principal repayment installment of the Term Loans shall be repaid on the Maturity Date for the Term Facility and in any event shall be in an amount equal to the aggregate principal amount of Term Loans outstanding on such date.

(b) Revolving Credit Loans. The Borrower shall repay to the Revolving Credit Lenders on the Maturity Date for the Revolving Credit Facility the aggregate principal amount of all Revolving Credit Loans outstanding on such date.

(c) Swing Line Loans. The Borrower shall repay each Swing Line Loan on the earlier to occur of (i) the date ten Business Days after such Loan is made and (ii) the Maturity Date for the Revolving Credit Facility.

2.08 Interest

(a) Subject to the provisions of Section 2.08(b), (i) each Term SOFR Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to Term SOFR for such Interest Period plus the Applicable Rate for such Facility; (ii) each Daily Simple SOFR Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Daily Simple SOFR plus the Applicable Rate for such Facility; (iii) each Base Rate Loan under a Facility 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 for such Facility; and (iv) 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 the Base Rate plus the Applicable Rate for the Revolving Credit Facility.

(b) Default Rate.

(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 thereafter bear interest at a fluctuating interest rate per annum at all times 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 the 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 thereafter bear interest at a fluctuating interest rate per annum at all times 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 (other than as set forth in clauses 2.08(b)(i) and (b)(ii) above), the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times 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.

2.09 Fees. In addition to certain fees described in Sections 2.03(h) and (i):

(a) The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, a commitment fee in Dollars equal to the Applicable Rate times the actual daily amount by which the Revolving Credit Facility exceeds the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) 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 Revolving Credit Facility for purposes of determining the commitment fee.

(b) The commitment fee with respect to the Revolving Credit Facility shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV 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 for the Revolving Credit Facility. The commitment fees 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 Applicable Rate was in effect.

(c) Other Fees.

(i) The Borrower shall pay to the Administrative Agent for its own accounts fees in the amounts and at the times specified in the Agent Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower 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 Daily Simple SOFR or Term SOFR) 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 financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Secured Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Secured Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or applicable 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 the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or any 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 any L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(i) or 2.08(b) or under Article VIII. The Borrower's obligations under this paragraph shall survive the termination of the Aggregate 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 Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), 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 Borrower 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 Borrower 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 in respect of the relevant Facility (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 the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(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 Daily Simple SOFR Loans or Term SOFR 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 Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower 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 the 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 the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays 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 the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or any L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable L/C Issuers, 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 any 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 Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (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 applicable L/C Issuers, 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 such 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 Borrower with respect to any amount owing under this clause (a) shall be conclusive, absent manifest error.

(b) 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 Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(c) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Credit 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).

(d) 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.

(e) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

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 (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b)

Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time 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 Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, 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 the 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 2.16, 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 Borrower or any Restricted Subsidiary thereof (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 Refinancing Amendments.

(a) At any time after the Closing Date, the Borrower may obtain, from any Lender or any additional Term Lender, Other Term Loans to refinance all or any portion of the Term Loans then outstanding under this Agreement which will be made pursuant to Other Term Loan Commitments pursuant to a Refinancing Amendment; provided that such Other Term Loans (i) may rank equal in priority in right of payment and of security with the other Loans and Commitments hereunder, (ii)(A) will have interest rates (including through fixed interest rates), interest margins, rate floors, upfront fees, funding discounts, original issue discounts and prepayment terms and premiums as may be agreed by the Borrower and the Lenders thereof and/or (B) additional fees and/or premiums may be payable to the Lenders providing such Other Term Loans in addition to any of the items contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Refinancing Amendment, (iii) may have optional prepayment terms (including call protection and prepayment terms and premiums) as may be agreed between the Borrower and the Lenders thereof, (iv) will have a final maturity date no earlier than, and will have a weighted average life to maturity equal to or greater than, the Loans being refinanced (except by virtue of amortization or prepayment of the Loans prior to the time of such refinancing) and (v) will have such other terms and conditions (other than as provided in foregoing clauses (ii) through (iv)) that are identical in all material respects to, or (taken as a whole) are no more favorable to the additional lenders or holders providing such Other Term Loan Commitments and Other Term Loans than those applicable to the Loans being refinanced any Other Term Loans may participate on a pro rata basis or on a less than pro rata basis (but, except as

otherwise permitted by this Agreement, not on a greater than pro rata basis) in any mandatory prepayments under Section 2.05(b)(i), (ii) or (iii), as specified in the applicable Refinancing Amendment. In connection with any Refinancing Amendment, the Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Other Term Loans are provided with the benefit of the applicable Loan Documents.

(b) Each class of Other Term Loan Commitments and Other Term Loans incurred under this Section 2.14 shall be in an aggregate principal amount that is not less than \$20,000,000 (or, if less, the remaining permitted amount of such Other Term Loan Commitments and Other Term Loans). The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Other Term Loan Commitments and Other Term Loans incurred pursuant thereto (including any amendments necessary to treat the Other Term Loans and/or Other Term Loan Commitments as Loans and Commitments). Any Refinancing Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14.

(c) This Section 2.14 shall supersede any provisions in Section 2.12, 2.13 or 11.01 to the contrary. For the avoidance of doubt, any of the provisions of this Section 2.14 may be amended with the consent of the Required Lenders. For the avoidance of doubt, no Refinancing Amendment shall effect any amendments that would require the consent of each affected Lender or all Lenders pursuant to the proviso in the first paragraph of Section 11.01, unless each such Lender has, or all such Lenders have, as the case may be, given its or their consent to such amendment. No Lender shall be under any obligation to provide any Other Term Loan Commitment unless such Lender executes a Refinancing Amendment.

2.15 Increase in Commitments.

(a) **Borrower Request.** The Borrower may by written notice to the Administrative Agent elect to request (x) prior to the Maturity Date for the Revolving Credit Facility, an increase to the existing Revolving Credit Commitments (each, an "Incremental Revolving Commitment") and/or (y) the establishment of one or more new term loan commitments (each, an "Incremental Term Commitment"), by an aggregate amount incurred after the Second Amendment Effective Date not in excess of the Permitted Increase Amount. Each such notice shall specify (i) the date (each, an "Increase Effective Date") on which the Borrower proposes that the Incremental Commitments shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to the Administrative Agent and (ii) the identity of each Eligible Assignee to whom the Borrower proposes any portion of such Incremental Commitments be allocated and the amounts of such allocations; provided that any existing Lender approached to provide all or a portion of the Incremental Commitments may elect or decline, in its sole discretion, to provide such Incremental Commitment. A maximum of five Incremental Commitments after the Second Amendment Effective Date shall be permitted. Each Incremental Commitment shall be in an aggregate amount of \$20,000,000 or any whole multiple of \$5,000,000 in excess thereof (provided that such amount may be less than \$20,000,000 if such amount represents all remaining availability under the aggregate limit in respect of Incremental Commitments set forth in above).

(b) **Conditions.** No Incremental Commitments shall become effective as of the Increase Effective Date unless (but subject to Section 1.09 in each case):

- (i) each of the conditions set forth in Section 4.02 shall be satisfied;

(ii) no Default shall have occurred and be continuing or would result from the borrowings to be made on the Increase Effective Date;

(iii) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall have been true and correct in all material respects as of such earlier date, and except that for purposes of this Section 2.15(b), the representations and warranties contained in Section 5.05(a) and Section 5.05(b) shall be deemed to refer to the most recent financial statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01; provided that, in the case of an Incremental Commitment being used to consummate a Limited Conditionality Acquisition, at the Borrower's election, to the extent acceptable to the Lenders providing the relevant Incremental Commitment, the only representations and warranties that will be required to be true and correct will be the Specified Representations (conformed as necessary for such acquisition) and such of the representations made by or on behalf of the applicable target, its affiliates, its subsidiaries or their respective businesses in the acquisition agreement governing such Limited Conditionality Acquisition as are material to the interests of the Lenders, but only to the extent that a Loan Party has the right to terminate its obligations under such acquisition agreement or to decline to consummate such Limited Conditionality Acquisition as a result of a breach of such representations in the acquisition agreement;

(iv) on a pro forma basis (assuming, in the case of Incremental Revolving Commitments, that such Incremental Revolving Commitments are fully drawn), the Borrower shall be in compliance with each of the covenants set forth in Section 7.11 as of the end of the latest fiscal quarter for which internal financial statements are available;

(v) the Borrower shall make any breakage payments in connection with any adjustment of Revolving Credit Loans pursuant to Section 2.15(d); and

(vi) as a condition precedent to each Incremental Commitment, the Borrower shall deliver or cause to be delivered officer's certificates, Organization Documents and legal opinions of the type delivered on the Closing Date to the extent reasonably requested by, and in form and substance reasonably satisfactory to, the Administrative Agent, and if such Incremental Commitment is being provided in connection with a Limited Conditionality Acquisition, such certificate shall provide that the above requirements were satisfied in accordance with Section 1.09; and

(vii) (x) upon the reasonable request of any Lender, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, and (y) any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(c) Terms of New Loans and Commitments. The terms and provisions of Loans made pursuant to Incremental Commitments shall be as follows:

(i) terms and provisions of Incremental Term Loans shall be, except as otherwise set forth herein or in the Increase Joinder, identical to the Term Loans (it being understood that Incremental Term Loans may be a part of the Term Loans) and to the extent that the terms and

provisions of Incremental Term Loans are not identical to the Term Loans (except to the extent permitted by clause (iii), (iv) or (v) below) they shall be reasonably satisfactory to the Administrative Agent; provided that in any event the Incremental Term Loans must comply with clauses (iii), (iv) and (v) below;

- (ii) the terms and provisions of Revolving Credit Loans made pursuant to new Commitments shall be identical to the Revolving Credit Loans;
- (iii) the weighted average life to maturity of any Incremental Term Loans shall be no shorter than the remaining weighted average life to maturity of the then existing Term Loans;
- (iv) the maturity date of Incremental Term Loans (the "Incremental Term Loan Maturity Date") shall not be earlier than the then Latest Maturity Date;
- (v) the Applicable Rate for Incremental Term Loans shall be determined by the Borrower and the Lenders of the Incremental Term Loans.

The Incremental Commitments shall be effected by a joinder agreement (the "Increase Joinder") executed by the Borrower, the Administrative Agent and each Lender making such Incremental Commitment, in form and substance reasonably satisfactory to each of them. Notwithstanding the provisions of Section 11.01, the Increase Joinder may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.15. Within a reasonable time after the effective date of any increase or joinder, the Administrative Agent shall distribute such Increase Joinder to each of the Lenders. In addition, unless otherwise specifically provided herein, all references in Loan Documents to Revolving Credit Loans or Term Loans shall be deemed, unless the context otherwise requires, to include references to Revolving Credit Loans made pursuant to Incremental Revolving Commitments and Incremental Term Loans that are Term Loans, respectively, made pursuant to this Agreement. This Section 2.15 shall supersede any provisions in Section 2.13 or Section 11.01 to the contrary.

(d) Adjustment of Revolving Credit Loans. To the extent the Commitments being increased on the relevant Increase Effective Date are Incremental Revolving Commitments, then each Revolving Credit Lender that is acquiring an Incremental Revolving Commitment on the Increase Effective Date shall make a Revolving Credit Loan, the proceeds of which will be used to prepay the Revolving Credit Loans of the other Revolving Credit Lenders immediately prior to such Increase Effective Date, so that, after giving effect thereto, the Revolving Credit Loans outstanding are held by the Revolving Credit Lenders pro rata based on their Revolving Credit Commitments after giving effect to such Increase Effective Date. If there is a new borrowing of Revolving Credit Loans on such Increase Effective Date, the Revolving Credit Lenders after giving effect to such Increase Effective Date shall make such Revolving Credit Loans in accordance with Section 2.01(b).

(e) Making of New Term Loans. On any Increase Effective Date on which new Commitments for Term Loans are effective, subject to the satisfaction of the foregoing terms and conditions, each Lender of such new Commitment shall make a Term Loan to the Borrower in an amount equal to its new Commitment.

(f) Equal and Ratable Benefit. The Loans and Commitments established pursuant to this paragraph shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Collateral Documents, except that the

new Loans may be subordinated in right of payment or the Liens securing the new Loans may be subordinated, in each case, to the extent set forth in the Increase Joinder. The Loan Parties shall take any actions reasonably required by the Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Collateral Documents continue to be perfected under the UCC or otherwise after giving effect to the establishment of any such class of Term Loans or any such new Commitments.

2.16 Cash Collateral.

(a) Certain Credit Support Events If (i) such 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 Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) the Borrower shall be required to provide Cash Collateral pursuant to Section 8.02(c), or (iv) there shall exist a Defaulting Lender, the Borrower shall immediately (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 2.17(a)(iv) and any Cash Collateral provided by the Defaulting Lender). If at any time the Administrative Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Administrative Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse such L/C Issuer.

(b) Grant of Security Interest. The 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 Issuers 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 hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.16(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 Issuers as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower 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 Borrower 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 2.16 or Sections 2.04, 2.05, 2.06, 2.17 or 8.02 in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, 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 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 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 such 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 conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (y) the Person providing Cash Collateral and the applicable L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.17 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 Section 11.01 and in the definition of "Required Lender".

(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 VIII 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 Issuers or Swing Line Lender hereunder; *third*, to Cash Collateralize each L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.16; *fourth*, as the Borrower 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 Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize each 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 2.16; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuers or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any 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 the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the 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 4.02 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 2.17(a)(iv). 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 2.17(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 Borrower 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 2.16.

(C) With respect to any fee payable under Section 2.09(a) or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swing Line Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each L/C Issuer and Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) 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 Revolving Credit Commitment. Subject to Section 11.20, 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.

(v) Cash Collateral, Repayment of Swing Line Loans If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrower 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 2.16.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, Swing Line Lender and the L/C Issuers 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 Revolving Credit 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 2.17(a)(iv)), 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 the 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.

### ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

#### 3.01 Taxes. (a) Payments Free 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 law. If any applicable Laws (as determined in the good faith discretion of the applicable Withholding 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 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 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. Notwithstanding the foregoing, if any Loan Party determines, in its good faith discretion, that the Administrative Agent did not or does not intend to withhold or deduct any Taxes that any Loan Party or the Administrative Agent is required to withhold or deduct from any payment then any Loan Party shall be entitled (after notification to the Administrative Agent) to make such deductions or withholdings.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the 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 Borrower. 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 10 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 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 Borrower by a Lender or the L/C Issuers (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 10 days after demand therefor, for any amount which a Lender or the L/C Issuers for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below; provided, that the Loan Parties shall not be required to indemnify the Administrative Agent for any amount attributable solely to the Administrative Agent's gross negligence or willful misconduct.

(ii) Each Lender and each L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender or such 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), (y) 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 (z) 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 each 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 the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required

by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation

(i) 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 Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, and at the time or times prescribed by applicable Law such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent or prescribed by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in 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 the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower 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 Borrower or the Administrative Agent), executed originals 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 Borrower 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 Borrower 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 Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the 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-SECT, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-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 H-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 Borrower 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 Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made;

(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 Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount 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; and

(E) on or before the date on which the Administrative Agent (including any successor or replacement Administrative Agent) becomes the Administrative Agent hereunder, it shall deliver to the Borrower two executed copies of either (a) IRS Form W-9 or (b) with respect to amounts received on its own account, IRS Form W-8ECI and with respect to amounts received on account of any

Lender, IRS Form W-8IMY certifying that it is a U.S. branch that has agreed to be treated as a U.S. Person for U.S. federal tax purposes or a qualified intermediary that has agreed to assume primary withholding obligations for Chapter 3 and Chapter 4 of the Code with respect to payments received by it from the Loan Parties in its capacity as Administrative Agent, as applicable.

(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 Borrower 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 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 Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require 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.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to SOFR, Daily Simple SOFR or Term SOFR, or to determine or charge interest rates based upon SOFR, Daily Simple SOFR or Term SOFR, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (a) any obligation of such Lender to make or continue Daily Simple SOFR Loans or Term SOFR Loans or to convert Base Rate Loans to Daily Simple SOFR or Term SOFR Loans in each case 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 Term SOFR component of the Base Rate, 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 Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such

Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Daily Simple SOFR or Term SOFR Loans, as applicable, 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 Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Loan to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Loan and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon SOFR, Daily Simple SOFR or Term SOFR, as applicable, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR 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 SOFR, Daily Simple SOFR or Term SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

**3.03     Inability to Determine Rates.**

(a)     **Inability to Determine Rates.** If in connection with any request for a Daily Simple SOFR Loan, Term SOFR Loan or a conversion of Base Rate Loans to Daily Simple SOFR Loans or Term SOFR Loans or a continuation of any of such Loans, 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, or (B) adequate and reasonable means do not otherwise exist for determining Daily Simple SOFR or Term SOFR, as applicable, for any requested determination date or Interest Period with respect to a proposed 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 Daily Simple SOFR or Term SOFR for any determination date or requested Interest Period, as applicable, with respect to a proposed Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender.

Thereafter, (x) the obligation of the Lenders to make or maintain Daily Simple SOFR Loans or Term SOFR Loans, as applicable, or to convert Base Rate Loans to Daily Simple SOFR Loans or Term SOFR Loans, as applicable shall be suspended (to the extent of the affected Daily Simple SOFR Loans or Term SOFR Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the 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 Borrower may revoke any pending request for a Borrowing of, or conversion to, or continuation of Daily Simple SOFR Loans or Term SOFR Loans, as applicable (to the extent of the affected Daily Simple SOFR Loans, Term SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding Daily Simple SOFR Loans or Term SOFR Loans, as applicable, shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(b)     **Replacement of Daily Simple SOFR, Term SOFR or Successor Rate.** Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

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

(ii) CME or any successor administrator of SOFR or the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of SOFR or Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which SOFR or one-month, three-month and six-month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide SOFR or such interest periods of Term SOFR after such specific date (the latest date on which SOFR or the one-month, three-month and six-month interest periods of Term SOFR or the Term SOFR Screen Rate, as applicable, are no longer available permanently or indefinitely, the "Scheduled Unavailability Date");

or, 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 Borrower may amend this Agreement solely for the purpose of replacing Term SOFR or Daily Simple SOFR or any then current Successor Rate, as applicable, 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 an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark, 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 Dollar denominated credit facilities syndicated and agented in the United States for such benchmark any such proposed rate (including for the avoidance of doubt, any adjustment thereto, 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 Borrower 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.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than 0.00%, the Successor Rate shall be deemed to be 0.00% for the purposes of this Agreement and the other Loan Documents.

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.

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 Borrower and the Lenders reasonably promptly after such amendment becomes effective.

For purposes of this Section 3.03, those Lenders that either have not made or do not have an obligation under this Agreement to make the relevant Loans shall be excluded from any determination of Required Lenders with respect to such Loans.

3.04 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 contemplated by Section 3.04(e)) or the L/C Issuer;

(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; or

(iii) impose on any Lender or any L/C Issuer any other condition, cost or expense affecting this Agreement or Daily Simple SOFR or Term SOFR Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or, in the case of clause (ii) above, any Loan), or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender or such 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 such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such L/C Issuer, the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such 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 such 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 such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such 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 and liquidity), then from time to time the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such 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 Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or an 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 such L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such 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).

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly, but in any event within 10 days after such demand, 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 the 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 the Borrower; or
- (c) any assignment of a Term SOFR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13;

including any out of pocket 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 (but excluding loss of anticipated profits). The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Term SOFR Loan made by it at the Term SOFR for such Loan by a matching deposit or other borrowing in the applicable interbank market for a comparable amount and for a comparable period, whether or not such Term SOFR Loan was in fact so funded. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error.

3.06 Mitigation Obligations; Replacement of Lenders. (a) Designation of a Different Lending Office. Each Lender may make any Credit Extension to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrower to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, any L/C Issuer, or any Governmental Authority for the account of any Lender or any 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 Borrower such Lender or such L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or such L/C Issuer, 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 such L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or such L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or any 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 Borrower is 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 Borrower may replace such Lender in accordance with Section 11.13.

3.07 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

#### ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension. The obligation of the L/C Issuers and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders:

- (i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;
- (ii) subject to Schedule 6.14, Notes executed by the Borrower in favor of each Lender requesting Notes;
- (iii) evidence that the Collateral Documents shall be effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable first security interest and Lien upon the Collateral, including, without limitation:
  - (A) searches of UCC filings in the jurisdiction of organization or formation of each Loan Party, in each jurisdiction where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral, and in each other jurisdiction requested by the Administrative Agent,
  - (B) financing statements on file in such jurisdictions and evidence that no Liens exist other than Liens permitted hereunder,
  - (C) proper UCC-1 financing statements in form appropriate for filing under the Uniform Commercial Code of each jurisdiction that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created thereby;

(D) certificates and instruments representing the Securities Collateral referred to therein accompanied by undated stock powers or instruments of transfer executed in blank; and

(E) evidence that all other actions, recordings and filings that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement has been taken (including receipt of duly executed payoff letters and UCC-3 termination statements);

(iv) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(v) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that the Borrower is validly existing, in good standing and qualified to engage in business in its jurisdiction of organization;

(vi) a favorable opinion of Greenberg Traurig, LLP, counsel to the Loan Parties, customary for transactions of this type and in form and substance reasonably satisfactory to the Administrative Agent, addressed to the Administrative Agent and each Lender;

(vii) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the consummation by such Loan Party of this Agreement and the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(viii) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that there has been no event or circumstance since December 31, 2019 that has had or would be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(ix) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with certificates of insurance;

(x) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuers, the Swing Line Lender or any Lender reasonably may require.

(b) (i) All fees required to be paid to the Administrative Agent and the Arranger on or before the Closing Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Closing Date shall have been paid.

(c) Unless waived by the Administrative Agent, the Borrower shall have paid all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its 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 Borrower and the Administrative Agent).

(d) (x) The Administrative Agent and Lenders shall have received all documentation and other information requested by the Administrative Agent and Lenders in order to comply with requirements of regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and (y) at least five days prior to the Closing Date, any Loan Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests at least seven days prior to the Closing Date, a Beneficial Ownership Certification in relation to such Loan Party.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 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 Term SOFR Loans) is subject to the following conditions precedent:

(a) Except as set forth in Section 1.09 in the case of Incremental Commitment in connection with a Limited Conditionality Acquisition, the representations and warranties of the Borrower and each Restricted Subsidiary contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, 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 as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively;

(b) Except as set forth in Section 1.09 in the case of Incremental Commitment in connection with a Limited Conditionality Acquisition, 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, a L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof; and

(d) In the case of the Delayed Draw Term Loan Advance, the Borrower shall have timely delivered to the Administrative Agent a duly completed Permitted Acquisition Certificate for the DI Acquisition and shall have certified in writing to the Administrative Agent that the proceeds of the Delayed Draw Term Loan Advance will be used to pay, in part, the purchase price for the DI Acquisition and related transaction costs.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Term SOFR Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V  
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01 Existence, Qualification and Power. Each Loan Party and each Restricted Subsidiary thereof (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 would not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien (other than Liens created under the Loan Documents) under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any material applicable Law, except, in each case referred to in clauses (b) and (c), to the extent that such conflict, breach, contravention, creation, payment or violation would not reasonably be expected to have a Material Adverse Effect.

5.03 Governmental Authorization; Other Consents. No 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 (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof, subject to Permitted Encumbrances) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, in each case other than (i) those that have been obtained or made and are in full force and effect, (ii) filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Administrative Agent for filing and/or recordation and (iii) those the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting creditors' rights generally and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5.05 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 in all material respects the financial condition

of the 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 Borrower and its Subsidiaries as of the date thereof, including liabilities for Taxes, material commitments and Indebtedness, in each case as required by GAAP.

(b) Since December 31, 2020, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

5.06 Litigation. There is no action, suit or proceeding pending against, or to the knowledge of the Borrower, threatened in writing against the Borrower or any of its Subsidiaries, before any court or arbitrator or any Governmental Authority which, in the reasonable opinion of the Borrower, has resulted in or is likely to result in a Material Adverse Effect or which in any manner draws into question the validity of any Loan Document.

5.07 No Default. Neither any Loan Party nor any Restricted Subsidiary is in default under or with respect to, or a party to, any Contractual Obligation that would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.08 Ownership of Property; Liens. (a) Each Loan Party and each of its Restricted 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 would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The property of each Loan Party and each of its Restricted Subsidiaries is subject to no Liens, other than Permitted Encumbrances.

5.09 Environmental Compliance. The Loan Parties and their respective Restricted Subsidiaries are in compliance with all applicable Environmental Laws, except the non-compliance thereof that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.10 Insurance. The properties of the Borrower and its Restricted Subsidiaries are insured with insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks that Borrower reasonably believes is reasonably prudent in light of the size, location and nature of the business and assets of such Person (and taking into account any self-insurance programs in effect from time to time).

5.11 Taxes. The Borrower and each of its Restricted 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, except, in each case, where the failure to do so would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

5.12 ERISA Compliance. (a) Except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. As of the Closing Date, each Plan that is intended to be a qualified plan under Section 401(a) of the Code is subject to a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue

Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status, except as would not reasonably be expected to result in material liability to the Borrower.

(b) There are no pending or, to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that would reasonably be expected to have a Material Adverse Effect. To the best knowledge of the Borrower, there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or would reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) no ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that would reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan; (ii) 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 Code) is 60% or higher and neither the Borrower nor any ERISA Affiliate knows of any facts or circumstances that would 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; (iii) neither the Borrower 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; (iv) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that would be subject to Section 4069 or Section 4212(c) of ERISA; and (v) 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 would reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

5.13 Subsidiaries; Equity Interests; Loan Parties. As of the Closing Date, all Material Subsidiaries of the Borrower are specifically disclosed in Part (a) of Schedule 5.13, and, as of the Closing Date, all of the outstanding Equity Interests in such Material Subsidiaries organized as a corporation or limited liability company have been validly issued, are fully paid (if applicable) and, in the case of a corporation, non-assessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except Permitted Encumbrances. Set forth on Part (b) of Schedule 5.13 is a complete and accurate list of all Loan Parties as of the Closing Date, showing as to each Loan Party, the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation, in each case as of the Closing Date.

5.14 Margin Regulations; Investment Company Act. (a) The Borrower is not 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.

(b) None of the Borrower or any Restricted Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure. The Borrower has made available, through the reports and other filings made by the Borrower under the Exchange Act or Securities Act or through the Administrative Agent, to the Lenders all material agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject and all reports or other filings made by the Borrower under the Exchange Act or Securities Act, and disclosed, through the reports and other filings made by the Borrower under the

Exchange Act or Securities Act or otherwise, all other matters known to it that, individually or in the aggregate, 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, and when taken together with any disclosures made by the Borrower in any publicly available filings with the SEC) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, taken as a whole, in the light of the circumstances under which they were made, not misleading; provided that, with respect to financial estimates, projected or forecasted financial information and other forward-looking information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time made, it being understood that (a) such estimates, projections, forecasts and other forward-looking information, as to future events, are not to be viewed as facts and that the actual results may differ significantly from the projected or forecasted information or results and that such differences may be material and that such estimates, projections, forecasts and forward-looking information are not a guarantee of financial performance and (b) no representation or warranty is made with respect to information of a general economic or general industry nature.

5.16 Compliance with Laws. Each Loan Party is in compliance in all material respects 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, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

5.17 Intellectual Property; Licenses, Etc. The Borrower and each of its Restricted 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, without conflict with the rights of any other Person, except where the failure to own or possess the right to use such IP Rights or such conflicts would not reasonably be expected to have a Material Adverse Effect. Schedule 5.17 hereto sets forth a complete and accurate list of all U.S. registered trademarks, patents and copyrights owned by any Loan Party as of the Closing Date. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened in writing, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

5.18 Solvency. The Borrower is, together with its Subsidiaries on a consolidated basis, Solvent.

5.19 [Reserved].

5.20 OFAC. Neither the Borrower, nor any of its Restricted Subsidiaries, nor, to the knowledge of any Loan Party, any director, officer, or agent thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (a) currently the subject or target of any Sanctions, (b) included on OFAC’s List of Specially Designated Nationals, HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (c) located, organized or resident in a Designated Jurisdiction.

5.21 Anti-Corruption Laws. The Borrower and its Restricted Subsidiaries have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-bribery and anti-corruption legislation in other jurisdictions and have

instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.22     Affected Financial Institutions No Loan Party is an Affected Financial Institution.

5.23     Borrower ERISA Status. The Borrower is not and will not be using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

5.24     Beneficial Ownership Certificate. As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

5.25     Covered Entities. No Loan Party is a Covered Entity.

## ARTICLE VI AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than contingent indemnification obligations) shall remain unpaid or unsatisfied, or any Letter of Credit that has not been Cash Collateralized shall remain outstanding, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Restricted Subsidiary to:

6.01     Financial Statements. Deliver to the Administrative Agent (which will promptly furnish such information to each Lender):

(a)     as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower (or, if earlier, fifteen (15) days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)), commencing with the fiscal year ended December 31, 2020, a consolidated balance sheet of the Borrower and its Restricted 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, audited by an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, and accompanied by an opinion of such accountants which 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 (other than solely with respect to, or resulting solely from an upcoming maturity date under this Agreement occurring within one year from the time such opinion is delivered) or any qualification or exception as to the scope of such audit;

(b)     as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (or, if earlier, five (5) days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)), a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form 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, certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Borrower

and its Restricted Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) in the event that any Unrestricted Subsidiaries exist at such time, then simultaneously with the delivery of each set of consolidated financial statements referred to in clauses (a) and (b) above, a summary statement, prepared in good faith by a Responsible Officer of the Borrower, reflecting adjustments necessary to eliminate the accounts of such Unrestricted Subsidiaries from such consolidated financial statements.

As to any information contained in materials furnished pursuant to Section 6.02(b), the Borrower shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein.

Documents required to be delivered pursuant to this Section or Section 6.02(b) (to the extent any such documents are included in materials otherwise filed with the SEC and available in EDGAR) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provide a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 11.02; (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); or (iii) on which such report is filed electronically with the SEC's EDGAR system. Notwithstanding anything contained herein, unless the Administrative Agent otherwise agrees, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02 to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

6.02 Certificates; Other Information. Deliver to the Administrative Agent (which will promptly furnish such information to each Lender):

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (i) a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower (which delivery may be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes); which shall contain a listing of each Unrestricted Subsidiary designated as of the date thereof;

(b) promptly after the same are publicly available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(c) promptly after the furnishing thereof, copies of any material statement or report furnished to any holder of debt securities of any Loan Party pursuant to the terms of any indenture, loan or credit or similar agreement in each case with an outstanding principal amount above the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(d) promptly, and in any event within five Business Days after receipt thereof by any Loan Party, copies of each 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 that the Borrower believes is reasonably likely to lead to an investigation) by such agency regarding financial or other operational results of the Borrower or any Subsidiary thereof, to the extent permitted by Law;

(e) promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act and the Beneficial Ownership Regulation;

(f) concurrently with the delivery of the financial statements referred to in Section 6.01(a) for each fiscal year, a report supplementing Schedule 5.17 hereto, setting forth (A) a list of registration numbers for all patents, trademarks, and copyrights of any Loan Party registered with the U.S. Patent and Trademark Office and the U.S. Copyright Office during such fiscal year and (B) a list of all patent applications, trademark applications, and copyright applications submitted by any Loan Party to the U.S. Patent and Trademark Office or the U.S. Copyright Office during such fiscal year; each such report to be signed by a Responsible Officer of the Borrower and to be in a form reasonably satisfactory to the Administrative Agent;

(g) from time to time, such additional information regarding the business, financial, or corporate affairs of any Loan Party or any Restricted Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger may, but shall not be obligated to, make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar, or a substantially similar electronic transmission system (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 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 Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger, the L/C Issuers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities 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 Arranger 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.”

6.03 Notices. Promptly notify the Administrative Agent and each Lender:

(a) of the occurrence of any Default;

(b) of the occurrence of any matter or event (including but not limited to (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Restricted Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Restricted Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Restricted Subsidiary, including pursuant to any applicable Environmental Laws) that has resulted or would reasonably be expected to result in a Material Adverse Effect;

(c) of the occurrence of any ERISA Event that would reasonably be expected to result in liability to a Loan Party in excess of \$35,000,000;

(d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Restricted Subsidiary thereof, including any determination by the Borrower referred to in Section 2.10(b);

(e) of the (i) occurrence of any Disposition of property or assets for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(i), and (ii) receipt of any Extraordinary Receipt for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(ii);

(f) any change in the information provided in any Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification;

Each notice pursuant to clauses (a)- (c) of this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Obligations.** Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all 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 Borrower or such Restricted Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, in each case, except the extent that the failure to pay and discharge such obligations, taxes, assessments, charges, levies, claims, Indebtedness and liabilities would not reasonably be expected to have a Material Adverse Effect.

**6.05 Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing (or equivalent status, if any) under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05 and except, in the case of any Restricted Subsidiary, where the failure to so maintain in good standing would not reasonably be expected to have a Material Adverse Effect; (b) 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 failure to do so would not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, except to the extent the non-preservation of such registered patent, trademark, trade name or service mark would not reasonably be expected to have a Material Adverse Effect.

6.06 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, and (b) make all necessary repairs thereto and renewals and replacements thereof, except in each case where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the 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 and all such insurance shall (i) provide for not less than 30 days' (or such shorter period as may be acceptable to the Administrative Agent) prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance and (ii) name the Administrative Agent as additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws (including Environmental 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 would not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records. Maintain proper books of record and account, in which full, true and correct entries in conformity in all material respects with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be.

6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its officers, and independent public accountants, all at such reasonable times during normal business hours, with reasonable frequency and upon reasonable advance notice to the Borrower; provided, however, that, excluding any such visits and inspections during the continuation of an Event of Default, (x) only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 6.10, (y) the first such inspection in each calendar year shall be conducted at the sole expense (which expenses shall be documented, reasonable and customary) of the Borrower without charge to the Administrative Agent and (z) any additional such inspections in a calendar year after the first such inspection in such calendar year shall be conducted at the sole expense of the Administrative Agent without charge to the Borrower; provided further however, that when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and with reasonable notice. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's accountants.

6.11 Use of Proceeds. Use the proceeds of the Credit Extensions for general corporate purposes not in contravention of any Law or of any Loan Document, including without limitation, for working capital, to refinance, amend or amend and restate Indebtedness under the Existing Credit Agreement, and to finance Permitted Acquisitions and Restricted Payments permitted under Section 7.06.

6.12 Covenant to Guarantee Obligations and Give Security.

(a) If as of the last day of any Measurement Period any Person becomes a Material Subsidiary that is a Domestic Subsidiary (other than a CFC Holdco) and is a Restricted Subsidiary, whether upon formation or acquisition or growth during such Measurement Period or the Borrower's redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary or the Borrower's designation as referred to in the definition of "Material Subsidiary", the Borrower will deliver, or cause to be delivered to, the Administrative Agent, as soon as practicable but in any event within 30 days (or such longer period as may be approved by the Administrative Agent in its reasonable discretion) after the date that the Borrower delivers the financial statements to the Administrative Agent pursuant to Section 6.01(a) or (b) for such Measurement Period, the following documents (collectively, the "Subsidiary Guarantor Deliverables"):

- (i) a Security Joinder Agreement duly executed by such Subsidiary (with all schedules thereto appropriately completed);
  - (ii) (A) a Security Joinder Agreement or supplement to the Security Agreement schedules, as appropriate, duly executed by each Loan Party that owns any Equity Interest in such Subsidiary (with all schedules thereto appropriately completed), and (B) to the extent any of such Equity Interests constitutes a security under Article 8 of the Uniform Commercial Code, (x) the certificates representing such Equity Interests and (y) duly executed, undated stock powers or other appropriate powers of assignment in blank affixed thereto;
  - (iii) Uniform Commercial Code financing statement naming such Subsidiary as "Debtors" and naming the Administrative Agent as "Secured Party", to be filed in the applicable Uniform Commercial Code filing office necessary to perfect in favor of the Administrative Agent the Liens on the Collateral conferred under the Collateral Documents to the extent such Liens may be perfected by Uniform Commercial Code filings;
  - (iv) current copies of the Organization Documents of such Subsidiary and resolutions of the board of directors, or equivalent governing body, of such Subsidiary, together with such other documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing (or the local equivalent) of such Subsidiary, the authorization of the transactions contemplated by the Loan Documents and any other legal matters relating to such Subsidiary, the Loan Documents or the transactions contemplated thereby;
  - (v) if requested by the Administrative Agent, opinions of counsel to such Subsidiary with respect to the documents delivered and the transactions contemplated by this Section 6.12 substantially similar in form and substance to the opinion(s) of counsel delivered on the Closing Date pursuant to Section 4.01(a); and
  - (vi) such documentation and other information requested by the Administrative Agent or any Lender in order to comply with requirements of the Act, applicable "know your customer" and anti-money laundering rules and regulations; provided, the foregoing shall not be required in connection with any Excluded Property.
- (b) Each of the Loan Parties shall not open, maintain or otherwise have any deposit or other accounts (including securities accounts) at any bank or other financial institution, or any other account where money or securities are or may be deposited or maintained with any Person, other than (i) the accounts set forth on Schedule 6.12 and other accounts from time to time; provided that the daily balance in any such account does not exceed \$2,000,000 and the aggregate daily balance in all such accounts does

not exceed \$7,500,000, (ii) deposit accounts that are maintained at all times with depository institutions as to which the Administrative Agent shall have received a Qualifying Control Agreement, (iii) deposit accounts that are held at Bank of America or any other Lender, as to which no Qualifying Control Agreement will be required, (iv) securities accounts that are maintained at all times with financial institutions as to which the Administrative Agent shall have received a Qualifying Control Agreement, (v) deposit accounts established solely as payroll accounts, employee wage and benefit accounts, tax withholding accounts, escrow accounts, or fiduciary or trust accounts, and (vi) zero balance accounts (all such accounts described in (b)(i) through (vi) being “Excluded Accounts”); provided with respect to accounts acquired by the Loan Parties on or after the Second Amendment Effective Date, this clause 6.12(b) shall not apply until 180 days (or such longer period as the Administrative Agent may reasonably agree) after the acquisition thereof.

(c) At any time upon request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem reasonably necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such guaranties, Security Joinder Agreements, and other security and pledge agreements.

6.13 Further Assurances. Promptly upon reasonable request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any obvious material error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law and the Loan Documents, subject any Loan Party’s or any of its Restricted Subsidiaries’ properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect any of the Liens intended to be created under the Collateral Documents and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party is or is to be a party.

6.14 Post-Closing Obligations. Borrower shall, or shall cause the applicable Loan Party, to deliver such documents or take such actions set forth on Schedule 6.14 within the timeframes set forth for the taking of such actions on Schedule 6.14 (as such time frames may be extended by the Administrative Agent in its reasonable discretion from time to time), in each case in form and substance reasonably acceptable to Administrative Agent (it being understood and agreed that all representations, warranties and covenants of the Loan Documents with respect to the taking of such actions are qualified by the non-completion of such actions until such time as they are completed or required to be completed in accordance with this Section 6.14).

6.15 Information Regarding Collateral. Not affect any change (i) in any Loan Party’s legal name, (ii) in any Loan Party’s organizational identity, (iii) in any Loan Party’s Federal Taxpayer Identification Number or organizational identification number, if any, or (iv) in any Loan Party’s jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), unless (A) it shall have given the Administrative Agent not less than 10 days’ prior written notice (in the form of certificate signed by a Responsible Officer), or such lesser notice period agreed to by the Administrative Agent, of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Administrative Agent may reasonably request and (B) it shall have taken all action reasonably satisfactory

to the Administrative Agent to maintain the perfection and priority of the security interest of the Administrative Agent for the benefit of the Secured Parties in the Collateral, if applicable. Each Loan Party agrees to promptly provide the Administrative Agent with certified Organization Documents reflecting any of the changes described in the preceding sentence.

6.16 Designation of Subsidiaries. The Borrower may at any time after the Closing Date designate (or re-designate) any Restricted Subsidiary as an Unrestricted Subsidiary or designate (or re-designate, as the case may be) any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately before and after such designation (or re-designation), no Event of Default shall have occurred and be continuing, (ii) no Subsidiary may be designated as an Unrestricted Subsidiary if, after such designation, it would be a "Restricted Subsidiary" for the purpose of any Incremental Term Commitments or Refinancing Indebtedness or if such Subsidiary owns Material Intellectual Property, and (iii) the Investment resulting from the designation of such Subsidiary as an Unrestricted Subsidiary as described in the immediately succeeding sentence is permitted by Section 7.02. The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the fair market value as determined by the Borrower in good faith of the Borrower's or a Subsidiary's (as applicable) Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time and a return on any Investment by the Borrower or the applicable Subsidiary in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value as determined by the Borrower in good faith at the date of such designation of the Borrower's or a Subsidiary's (as applicable) Investment in such Subsidiary.

6.17 Anti-Corruption Laws. Conduct its businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-bribery and anti-corruption legislation in other jurisdictions, and maintain policies and procedures designed to promote and achieve compliance with such laws.

## ARTICLE VII NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than contingent indemnification obligations), shall remain unpaid or unsatisfied, or any Letter of Credit that has not been Cash Collateralized shall remain outstanding, the Borrower shall not, nor shall it permit any Restricted Subsidiary to:

7.01 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 5.08(b) and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed (other than (I) after-acquired property that is affixed or incorporated into the property covered by such Lien and (II) proceeds and products thereof), (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(d), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(d) or such obligations do not constitute Indebtedness;

(c) Liens for taxes not yet due 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) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 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;

(e) pledges or deposits 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) deposits to secure the performance of bids, trade contracts and 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) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) Liens securing Indebtedness permitted under Section 7.02(f); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness (and any accessions, additions, replacements or improvements thereon, intangibles relating thereto and proceeds thereof) and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(j) other Liens securing obligations in an aggregate principal amount not to exceed the greater of (x) \$30,000,000 and (y) 7% of Consolidated EBITDA for the most recently ended Measurement Period at the time of incurrence, provided that no such Lien shall extend to or cover any Collateral;

(k) any pledge of the Equity Interests of an Unrestricted Subsidiary to secure Indebtedness of such Unrestricted Subsidiary so long as no such Indebtedness is recourse to the Borrower or any Restricted Subsidiary;

(l) Liens on assets of Foreign Subsidiaries securing Indebtedness or other obligations of such Subsidiary permitted by Section 7.02(g);

(m) Liens on any assets of any Person at the time such assets are acquired by the Borrower or a Restricted Subsidiary or such Person becomes a Restricted Subsidiary (in a transaction otherwise permitted hereunder) or is merged, amalgamated or consolidated with or into the Borrower or a Restricted Subsidiary and, in each case, not created in contemplation of or in connection with such event; provided that (i) no such Lien shall extend to or cover any other property or assets of any Loan Party or any Restricted Subsidiary (including such Person), as the case may be, and (ii) such Lien shall secure only those obligations that it secures on the date of such Acquisition or the date such Person becomes a Restricted Subsidiary (or is so merged, amalgamated or consolidated) and any refinancing or replacement thereof;

(n) Liens that are licenses of Intellectual Property granted by any Loan Party in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Loan Parties;

(o) Liens of sellers of goods to the Borrower and its Restricted Subsidiaries arising under Article 2 of the UCC or similar provisions of applicable Law in the ordinary course of business, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses;

(p) Liens arising pursuant to Law in favor of a Governmental Authority in connection with the importation of goods in the ordinary course of business;

(q) Liens arising as a matter of law or created in the ordinary course of business in the nature of (i) normal and customary rights of setoff and banker's liens upon deposits of cash in favor of banks or other depository institutions and (ii) Liens securing reasonable and customary fees for services in favor of banks, securities intermediaries or other depository institutions; and

(r) Liens attaching to earnest money deposits (or equivalent deposits otherwise named) made in connection with proposed acquisitions permitted under this Agreement.

7.02 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) obligations (contingent or otherwise) existing or arising under any Cash Management Agreement or Swap Contract, provided that such obligations under Swap Contracts are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates;

(b) intercompany Indebtedness among any of Borrower and its Subsidiaries permitted under the provisions of Section 7.03;

(c) Indebtedness under the Loan Documents;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension; and provided, still further (x) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity (measured as of the refinancing, renewal, or extension) of the Indebtedness so refinanced, renewed, or extended, and (y) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable to the Secured Parties as those that were applicable to the refinanced, renewed, or extended Indebtedness;

(e) Indebtedness consisting of (i) unsecured Guarantees arising with respect to customary indemnification obligations to purchasers in connection with Dispositions permitted under this Agreement, and (ii) unsecured Guarantees with respect to Indebtedness of Borrower or one of its Restricted Subsidiaries, to the extent that the Person that is obligated under such Guarantee could have incurred such underlying Indebtedness;

(f) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i); provided, however, that the aggregate outstanding principal amount of all such Indebtedness (together with renewals, extensions and refinancings thereof) shall not exceed (i) the greater of (x) \$40,000,000 and (y) 9% of Consolidated EBITDA for the most recently ended Measurement Period at the time of incurrence for all such Indebtedness incurred in any Fiscal Year or (ii) the greater of (x) \$150,000,000 and (y) 30% of Consolidated EBITDA for the most recently ended Measurement Period in the aggregate at any one time outstanding;

(g) additional Indebtedness of the Borrower or any of its Restricted Subsidiaries in an amount not to exceed the sum of (x) \$35,000,000 plus (y) such additional amount, if any, that after giving effect thereto at the time of incurrence (including the application of the proceeds thereof), would allow the Consolidated Net Leverage Ratio to be 0.25 to 1.0 less than the then applicable level set forth in Section 7.11; provided that the aggregate principal amount of Indebtedness of Restricted Subsidiaries that are not Guarantors incurred in reliance on this clause (g) shall not exceed \$50,000,000 at any time outstanding.

(h) any Refinancing Indebtedness incurred, issued or otherwise obtained to Refinance (in whole or in part) such Indebtedness (and any Refinancing Indebtedness in respect thereof);

(i) Indebtedness incurred in the ordinary course of business under surety and appeal bonds, performance bonds, bid bonds, appeal bonds, and similar obligations;

(j) unsecured Indebtedness owing to former employees, officers or directors of Borrower or any of its Restricted Subsidiaries (or any spouses, ex-spouses, or estates of any of the foregoing) incurred in connection with the repurchase by Borrower of the Equity Interests of Borrower that has been issued to such Persons, so long as the aggregate amount of all such Indebtedness outstanding at any one time does not exceed \$1,000,000 in the aggregate;

(k) unsecured Indebtedness in respect of earn-outs, contingent liabilities in respect of any indemnification obligation, adjustments of purchase price, or similar obligations owing to sellers of assets or Equity Interests to Borrower or its Restricted Subsidiaries that are incurred in connection with the consummation of one or more Permitted Acquisitions;

(l) Indebtedness incurred in the ordinary course of business in respect of employee severance and employment agreements, workers' compensation claims, unemployment or other insurance or self-insurance obligations, health, disability or other benefits to employees or former employees and their families;

(m) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to Borrower or any of its Restricted Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year;

(n) to the extent constituting Indebtedness, obligations in respect of bankers' acceptances, and completion guarantees, standby letters of credit and warranty and contractual service obligations of a like nature, trade letters of credit and documentary letters of credit and similar bonds or guarantees provided in the ordinary course of business in connection with the construction or build out of any owned or leased real property in an aggregate amount not to exceed \$2,000,000 at any one time outstanding;

(o) endorsements of instruments or other payment items for deposit; and

(p) the Senior Notes.

7.03 Investments. Make or hold any Investments, except:

(a) Investments held by the Borrower and its Restricted Subsidiaries in the form of cash and Cash Equivalents;

(b) advances to officers, directors and employees of the Borrower and Restricted Subsidiaries in the ordinary course of business;

(c) (i) Investments by the Borrower and its Restricted Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by the Borrower and its Restricted Subsidiaries in Loan Parties, (iii) additional Investments by Restricted Subsidiaries of the Borrower that are not Loan Parties in other Restricted Subsidiaries that are not Loan Parties and (iv) so long as no Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in Subsidiaries that are not Loan Parties in an aggregate amount invested from the date hereof not to exceed the greater of (x) \$50,000,000 and (y) 10% of Consolidated EBITDA for the most recently ended Measurement Period at the time of incurrence and (v) any Investment made as part of the Permitted Reorganization;

(d) Investments constituting (i) accounts receivable arising, (ii) trade debt granted and trade accounts created or prepaid, or (iii) deposits made by Borrower or a Subsidiary in connection with (A) the purchase price of goods or services, or (B) utilities, security deposits, leases and similar prepaid expenses in each case in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and suppliers;

(e) Guarantees permitted by Section 7.02 (other than those referred to in Section 7.02(b));

(f) Investments existing on the date hereof (other than those referred to in Section 7.03(c)(i)) and set forth on Schedule 7.03;

(g) Permitted Acquisitions;

(h) Investments by the Borrower and its Restricted Subsidiaries not otherwise permitted under this Section 7.03 in an aggregate amount from the date hereof not to exceed the greater of (x) \$40,000,000 and (y) 9% of Consolidated EBITDA for the most recently ended Measurement Period at the time of incurrence;

(i) Investments in Secured Hedge Agreements not entered for speculative purposes, to the extent permitted under Section 7.02(a);

(j) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;

(k) Investments held by a Person acquired in a Permitted Acquisition to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition and were in existence on the date of such Permitted Acquisition; and

(l) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.05.

Notwithstanding anything herein to the contrary, in no event shall any Restricted Subsidiary contribute or otherwise invest any Material Intellectual Property to or in any Unrestricted Subsidiary (other than pursuant to non-exclusive licenses in the ordinary course of business).

**7.04     Fundamental Changes.** Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, including, in each case, pursuant to a Division (except as permitted under Section 7.05), except that, so long as no Default exists or would result therefrom:

(a)     any Restricted Subsidiary may merge with (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Restricted Subsidiaries, provided that when any wholly-owned Restricted Subsidiary is merging with another Restricted Subsidiary, such wholly-owned Restricted Subsidiary shall be the continuing or surviving Person;

(b)     any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party;

(c)     any Restricted Subsidiary that is not a Loan Party may Dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to (i) another Restricted Subsidiary or (ii) to a Loan Party;

(d)     in connection with any acquisition permitted under Section 7.03, any Restricted Subsidiary of the Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that (i) the Person surviving such merger shall be a wholly-owned Restricted Subsidiary of the Borrower (if a party to such merger was a wholly-owned Restricted Subsidiary) and (ii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving Person; and

(e)     so long as no Default has occurred and is continuing or would result therefrom, each of the Borrower and any of its Restricted Subsidiaries may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such merger to which the Borrower is a party, the Borrower is the surviving corporation, (ii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving corporation and (iii) in the case of any wholly-owned Restricted Subsidiary merging with a Person that is not a wholly-owned Restricted Subsidiary, the wholly-owned Restricted Subsidiary shall be the surviving Person.

**7.05     Dispositions.** Make any Disposition, except:

(a)     Dispositions of property that is worn, damaged, unnecessary, no longer used or useful, or obsolete, whether now owned or hereafter acquired, in the ordinary course of business;

(b)     Dispositions of inventory in the ordinary course of business;

(c)     Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property by the Borrower or any Restricted Subsidiary to the Borrower or to a Restricted Subsidiary; provided that if the transferor of such property is a Loan Party, the transferee thereof must be a Loan Party;

(e) Dispositions permitted by Section 7.04 or as an Investment permitted by Section 7.03.

(f) Licenses or sublicenses of Intellectual Property granted to third parties in the ordinary course of business not interfering in any material respect with the business of Borrower or any of its Restricted Subsidiaries;

(g) issuances of Equity Interests so long as no Change of Control occurs;

(h) any abandonment, lapse or cancellation of intellectual property that, in the reasonable good faith judgment of Borrower, is no longer used or useful in any material respect in the business of Borrower and its Restricted Subsidiaries taken as a whole, or which abandonment, lapse or cancellation is not within the reasonable control of Borrower or its Subsidiaries;

(i) any Disposition of real property as a result of a condemnation, eminent domain, confiscation or requisition of such real property required by a Governmental Authority; provided still further that, the Net Cash Proceeds of such Disposition are applied as set forth in Section 2.05(b)(i);

(j) the sale or discount, in each case without recourse, of accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof;

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

(l) Dispositions of cash and Cash Equivalents in the ordinary course of business;

(m) Dispositions by the Borrower and its Restricted Subsidiaries not otherwise permitted under this Section 7.05; provided that at the time of such Disposition, (i) no Default shall exist or would result from such Disposition, (ii) the aggregate book value of all property Disposed of in reliance on this clause (f) (after giving effect to such Disposition) in any fiscal year shall not exceed an amount equal to 5% of Consolidated Total Assets as of the last day of the immediately preceding fiscal year; and (iii) such Disposition shall be for fair market value; provided that, the Net Cash Proceeds of such Disposition are applied as set forth in Section 2.05(b)(i); and

(n) any Disposition made as a part of the Permitted Reorganization.

Notwithstanding anything herein to the contrary, in no event shall any Loan Party Dispose of any Material Intellectual Property to any Subsidiary that is not a Loan Party (other than pursuant to non-exclusive licenses in the ordinary course of business).

7.06 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 Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) each Restricted Subsidiary may make Restricted Payments to any Person that owns Equity Interest in such Restricted 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 Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) Restricted Payments to current or former employees, officers, or directors of Borrower or any of its Restricted Subsidiaries (or any spouses, ex-spouses, or estate of any of the foregoing) solely in the form of forgiveness of Indebtedness of such Persons owing to Borrower on account of repurchases of the stock options, restricted stock units, purchased shares or other Equity Interests of Borrower held by such Persons; provided that such Indebtedness was incurred by such Persons solely to acquire Equity Interests of Borrower;

(d) the Borrower 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;

(e) the Borrower may pay any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Agreement (including the other provisions of this Section 7.06);

(f) the Borrower may make cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchange for Equity Interests in the Borrower or arising out of stock dividends, splits, combinations or business combinations;

(g) the Borrower may declare and make other dividend payments or other distributions, or purchase, redeem or otherwise acquire shares of its capital stock, including but not limited to pursuant to any accelerated share repurchase program, so long as immediately after giving Pro Forma Effect to the payment of any such dividend or the making of such purchase, redemption or other acquisition, the Consolidated Net Leverage Ratio is not greater than 2.50 to 1.00;

(h) other Restricted Payments in any fiscal year not to exceed the greater of (x) \$75,000,000 and (y) 15% of Consolidated EBITDA for the Measurement Period ended immediately prior to the beginning of such fiscal year; and

(i) Restricted Payments to the Borrower or any wholly-owned Subsidiary of the Borrower made in connection with the Permitted Reorganization.

7.07 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business substantially related, ancillary, complimentary or incidental thereto.

7.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than (a) on fair and reasonable terms substantially as favorable to the Borrower or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, (b) any transactions between or among the Borrower and any Restricted Subsidiary or between and among any Restricted Subsidiaries to the extent not otherwise prohibited hereunder, (c) Restricted Payments permitted by Section 7.06, Investments permitted by Section 7.03 and Dispositions permitted by Section 7.05 and (d) (i) customary fees to, and indemnifications of, officers and directors of the Loan Parties and their respective Restricted Subsidiaries in the ordinary course of business and (ii) employment and severance arrangements for and compensation, bonuses, stock option and stock ownership plans and indemnification arrangements and benefit plans (and the making of payments, awards or grants in cash, securities or otherwise pursuant thereto or the funding thereof) for officers, directors and employees

of the Loan Parties and their respective Restricted Subsidiaries in the ordinary course of business and approved by the board of directors of the respective Loan Party.

7.09 **Burdensome Agreements**. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Restricted Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to the Borrower or any Guarantor, (ii) of any Restricted Subsidiary to Guarantee the Indebtedness of the Borrower or (iii) of the Borrower or any Restricted Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person, or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; provided, however, that this Section 7.09 shall not prohibit:

(a) a negative pledge contained in any agreement (x) binding on a Restricted Subsidiary in existence on the date that such Restricted Subsidiary became a Restricted Subsidiary so long as such agreement was not entered into solely in contemplation of such Person becoming a Restricted Subsidiary, together with any replacement agreement thereof so long as the terms thereof are not materially less favorable to such Restricted Subsidiary, or (y) outstanding on the date hereof and listed on Schedule 7.09 or in any agreement governing any refinancing or replacement Indebtedness related thereto; provided that the terms of such provisions shall be no less favorable in any material respect to the Administrative Agent and the Lenders as were contained in the Indebtedness being refinanced or replaced;

(b) provisions contained in the terms of any agreement governing Indebtedness permitted under Section 7.02(f) and provisions contained in the terms of any agreement governing Liens permitted under Section 7.01(i) that impose restrictions on the property subject to such Liens and provisions contained in the terms of any agreement governing any Disposition permitted under Section 7.05 solely with respect to the assets that are the subject of such Disposition;

(c) agreements restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, in each case relating solely to the assets subject to such lease or license or assets relating solely to such joint venture agreement;

(d) provisions contained in sales agreements, purchase agreements, acquisition agreements (including by way of merger, acquisition or consolidation) entered into by the Borrower or any Restricted Subsidiary in respect of a transaction permitted hereunder and solely to the extent in effect pending the closing of such transaction and relating solely to the assets covered thereby;

(e) customary provisions in Indebtedness permitted pursuant to this Agreement; provided that no such provision shall prohibit a Subsidiary Guarantor from, or adversely affect a Subsidiary Guarantor's ability to, make dividends or distributions to any Loan Party; and

(f) customary provisions restricting assignment or transfer of any agreement entered into in the ordinary course of business.

7.10 **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.

7.11 Financial Covenants.

(a) Consolidated Net Leverage Ratio. Permit the Consolidated Net Leverage Ratio as of the end of any fiscal quarter of the Borrower to be greater than 3.50:1. Notwithstanding the foregoing, not more than two times after the Closing Date, the Borrower, by notice to the Administrative Agent, shall be permitted to increase the maximum permitted Consolidated Net Leverage Ratio to 4.00 to 1.00 in connection with any Permitted Acquisition occurring after the Closing Date for which the Cost of Acquisition (including, without duplication, the assumption or incurrence of indebtedness in connection with such Acquisition) is equal to or in excess of \$50,000,000, which such increase shall be applicable for the fiscal quarter in which such Acquisition is consummated and the three consecutive fiscal quarters immediately thereafter; provided that, there shall be at least one full fiscal quarter following the cessation of the initial increase period, if any, during which no such increase shall be in effect before the Borrower may be permitted to invoke a second increase in the maximum Consolidated Net Leverage Ratio hereunder.

(b) Consolidated Interest Coverage Ratio. Permit the Consolidated Interest Coverage Ratio as of the end of any fiscal quarter to be less than 3.00 to 1:00.

7.12 Amendments of Organization Documents. Amend any of its Organization Documents in any material respect if such amendment, modification or change is materially adverse to the Lenders or the Administrative Agent.

7.13 Prepayments, Etc. of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Indebtedness, except (a) the prepayment of the Credit Extensions in accordance with the terms of this Agreement, (b) the prepayment of Indebtedness permitted by Sections 7.02(a), (b), (e), (f), (g)(x) and (i)-(o), (c) the payment of regularly scheduled or required repayments or redemptions of Indebtedness permitted by Section 7.02 and refinancings and refundings of such Indebtedness in compliance with Section 7.02(h), (c) the prepayment, redemption, purchase or defeasance of Indebtedness acquired in a Permitted Acquisition, (d) prepayments, redemptions, purchases or defeasances not in excess of \$25,000,000 in the aggregate during any Fiscal Year and (e) other prepayments, redemptions, purchases or defeasances to the extent that the Consolidated Net Leverage Ratio after giving Pro Forma Effect thereto is not greater than 2.50 to 1.00.

7.14 [Reserved.]

7.15 Sanctions. Directly or knowingly indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, 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 individual or entity (including any individual or entity participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swing Line Lender, or otherwise) of Sanctions.

7.16 Anti-Corruption Laws. Directly or knowingly 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, and other similar anti-bribery and anti-corruption legislation in other jurisdictions.

ARTICLE VIII  
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

- (a) Non-Payment. The Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) pay within three Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) pay within five Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or
- (b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained on its part to be performed or observed in any of Section 6.01, 6.02, 6.03, 6.05(a)(solely with respect to the existence of a Loan Party),6.10, 6.11, 6.12, or Article VII; or
- (c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified inSection 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days following the earlier of (i) notice thereof to the Borrower from the Administrative Agent or any Lender and (ii) the date on which a Responsible Officer knew or reasonably should have known; provided that, if the default is curable and such Loan Party is making diligent efforts to cure such default, in each case as determined by the Administrative Agent in its reasonable discretion, such Loan Party shall have an additional 60 days after said 30 days to cure the default; or
- (d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party in Article V or in any other Loan Document shall be incorrect or misleading in any material respect when made or deemed made (except to the extent such representation or warranty is qualified by reference to materiality or Material Adverse Effect, in which case it shall be true and correct in all respects); or
- (e) Cross-Default. (i) Any Loan Party or any Restricted Subsidiary thereof (A) fails to make any principal payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to 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 Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) 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 a Loan Party or any Restricted Subsidiary thereof 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 a Loan Party or any Restricted Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Restricted Subsidiary as a result thereof is greater than the Threshold Amount; provided that, this clause (e) shall not apply to Indebtedness

that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; or

(f) Insolvency Proceedings, Etc. Any Loan Party 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 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party becomes unable or 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 of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not deny coverage), or (ii) any one or more non-monetary final judgments that have, or would reasonably be expected to have, individually or in the aggregate, 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 45 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 would reasonably be expected to result in liability of the Borrower to the Pension Plan, Multiemployer Plan or the PBGC, or (ii) the Borrower 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 either case, in an aggregate amount as between clauses (i) and (ii) 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 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 provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.12 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority Lien (subject to Liens permitted by Section 7.01) on the Collateral purported to be covered thereby.

8.02 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 Issuers 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 Borrower;
- (c) require that the Borrower 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 Issuers all rights and remedies available to it, the Lenders and the L/C Issuers under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuers 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 Borrower 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.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.16 and 2.17, 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 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 Issuers (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuers) 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 Issuers in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and Obligations then owing under Secured Hedge Agreements and Secured Cash

Management Agreements, ratably among the Lenders, the L/C Issuers, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the applicable L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03 and 2.16; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.16, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth 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.

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 written notice thereof, 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. Each Cash Management Bank or Hedge Bank not a party to the Credit 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 IX hereof for itself and its Affiliates as if a “Lender” party hereto.

## ARTICLE IX ADMINISTRATIVE AGENT

**9.01 Appointment and Authority.** (a) Each of the Lenders and each 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. Except as expressly provided in Section 9.06 or 9.10, the provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and the Borrower shall not have rights as a third party beneficiary of any of such provisions (other than the rights of the Borrower and the Subsidiaries as set forth in Section 9.06 and the provisions of Section 9.10). 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.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuers hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuers for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and

remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

9.02 **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 Borrower or any Restricted 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.

9.03 **Exculpatory Provisions.**

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not 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 effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a 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 to the Administrative Agent by the Borrower, a Lender or the L/C Issuers.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with 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 the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, 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 an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 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 nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States, and in each case such successor shall require the consent of the Borrower at all times other than during the existence of an Event of Default under Section 8.01(f) (such consent not to be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, (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 Issuers, 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 Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 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) (1) 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 Issuers under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) 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 each 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 Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 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 or removal by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as an 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 an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all such 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(c). 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 Borrower 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.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each 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 each 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.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Syndication Agents or other similar titles or roles listed on the cover page hereof 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 an L/C Issuer hereunder.

9.09 Administrative Agent May File Proofs of Claim; Credit Bidding 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 the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of 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 Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.03(h) and (i), 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 each L/C Issuer to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, 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 any L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any L/C

Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or any L/C Issuer in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (j) of Section 11.01 of this Agreement), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

9.10 Collateral and Guaranty Matters. Without limiting the provision of Section 9.09, the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and the L/C Issuers irrevocably direct authorize the Administrative Agent:

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the L/C Issuers shall have been made), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document to a Person that is not a Loan

Party, (iii) that constitutes Excluded Property, or (iv) if approved, authorized or ratified in writing in accordance with Section 11.01;

(b) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted under the Loan Documents; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein or in any Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, or any Collateral by virtue of the provisions hereof or of the Collateral Documents shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

9.12 Lender ERISA Status.

(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 the Arrangers and their respective Affiliates, 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 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit, the bankers' acceptance or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the bankers' acceptances, 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, bankers' acceptances, 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 sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the bankers' acceptances, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower 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).

(c) The Administrative Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the bankers' acceptances, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit, the bankers' acceptances or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

9.13 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 or any L/C Issuer (the "Credit Party"), whether or not in respect of an Secured Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Credit 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 Credit 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 Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount.

## ARTICLE X CONTINUING GUARANTY

### 10.01 Guaranty.

Each Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Secured Obligations (for each Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"); provided that (a) the Guaranteed Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor and (b) the liability of each Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any Debtor under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive for the purpose of establishing the amount of the Secured Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Secured Obligations or any instrument or agreement evidencing any Secured Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Secured Obligations which might otherwise constitute a defense to the obligations of the Guarantors, or any of them, under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

### 10.02 Rights of Lenders.

Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Secured Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Secured

Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the L/C Issuers and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Secured Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

10.03 Certain  
Waivers.

Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower or any other Loan Party; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of the Borrower or any other Loan Party; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Borrower or any other Loan Party, proceed against or exhaust any security for the Secured Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Secured Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Secured Obligations.

10.04 Obligations  
Independent.

The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Secured Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

10.05 Subrogation.

No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Secured Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Commitments and the Facilities are terminated. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Secured Obligations, whether matured or unmatured.

10.06 Termination;  
Reinstatement.

This Guaranty is a continuing and irrevocable guaranty of all Secured Obligations now or hereafter existing and shall remain in full force and effect until all Obligations and any other amounts payable under this Guaranty are indefeasibly paid in full in cash and the Commitments and the Facilities with respect to the Obligations are terminated. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or a Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Secured Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be

fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this paragraph shall survive termination of this Guaranty.

10.07 Stay \_\_\_\_\_ of  
Acceleration.

If acceleration of the time for payment of any of the Secured Obligations is stayed, in connection with any case commenced by or against a Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor, jointly and severally, immediately upon demand by the Secured Parties.

10.08 Condition \_\_\_\_\_ of  
Borrower.

Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as such Guarantor requires, and that none of the Secured Parties has any duty, and such Guarantor is not relying on the Secured Parties at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrower or any other guarantor (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

10.09 Appointment \_\_\_\_\_ of  
Borrower.

Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provide such authorizations on behalf of such Loan Parties as the Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent, an L/C Issuer or a Lender to the Borrower shall be deemed delivered to each Loan Party and (c) the Administrative Agent, L/C Issuers or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Loan Parties.

10.10 Right \_\_\_\_\_ 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.

10.11 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Specified Loan Party 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 X voidable under applicable law relating to fraudulent conveyance or

fraudulent transfer, 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 Secured Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a “keepwell, support, or other agreement” for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

## ARTICLE XI MISCELLANEOUS

11.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, 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 in addition to the foregoing requirements no such amendment, waiver or consent shall:

- (a) waive any condition set forth in Section 4.01 (other than Section 4.01(b)(i) or (c)), or, in the case of the initial Credit Extension, Section 4.02, without the written consent of each Lender;
- (b) without limiting the generality of clause (a) above, waive any condition set forth in Section 4.02 as to any Credit Extension under a particular Facility without the written consent of the Required Revolving Lenders or the Required Term Lenders, as the case may be;
- (c) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;
- (d) postpone any date fixed by this Agreement or any other Loan Document for (i) any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment or (ii) any scheduled reduction of any Facility hereunder or under any other Loan Document without the written consent of each Appropriate Lender;
- (e) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second 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 such amount; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) 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;
- (f) (i) without the prior written consent of each Lender directly, adversely affected thereby (A) modify Sections 8.03, 2.12(e) or 2.13 or any other provision hereof in a manner that would have the effect of altering the ratable reduction of Commitments or the pro rata sharing of payments otherwise required hereunder, (B) subordinate, or have the effect of subordinating, the Secured Obligations hereunder to any other Indebtedness and (C) except as provided in Section 9.10, subordinate, or have the effect of subordinating, the Liens securing the Secured Obligations to Liens securing any other Indebtedness or other obligation; provided that, in the case of the preceding subclauses (B) and (C), only those Lenders that are directly and adversely affected thereby (without giving effect to this proviso) that have not been offered an opportunity to fund their pro rata share (based on the amount of Obligations that are adversely affected thereby held by each such Lender and calculated immediately prior to any applicable amendment or priming

Indebtedness) of the priming Indebtedness on the same terms (other than bona fide backstop fees and reimbursement of counsel fees and other expenses in connection with the negotiation of the terms of such transaction) as are offered to all other providers of the priming Indebtedness shall be deemed to be directly and adversely affected by such amendment, waiver or consent; (ii) modify the order of application of any reduction in the Commitments or any prepayment of Loans among the Facilities from the application thereof set forth in the applicable provisions of Section 2.05(b) or 2.06(c), respectively, in any manner that materially and adversely affects the Lenders under a Facility without the written consent of (x) if such Facility is the Term Facility, the Required Term Lenders and (y) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;

(g) change (i) 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 (other than the definitions specified in clause (ii) of this Section 11.01(g)), without the written consent of each Lender or (ii) the definition of "Required Revolving Lenders" or "Required Term Lenders," without the written consent of each Lender under the applicable Facility;

(h) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(i) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Restricted Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone); or

(j) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of (i) if such Facility is the Term Facility, the Required Term Lenders and (iii) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the affected L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Agent Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) 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.

11.02 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 facsimile or electronic mail 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 the Borrower, the Administrative Agent, any 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 Borrower).

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 Issuers 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 any L/C Issuer pursuant to Article II if such Lender or such 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, each L/C Issuer or the 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 the Borrower, any Lender, any 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 the Borrower’s, any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials or notices through the Platform, any other electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, each L/C Issuer and the Swing Line Lender may change its 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, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the L/C Issuers 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 Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuers and Lenders. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices, Loan Notices, Letter of Credit Applications and Swing Line Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify, in accordance with the provisions of Section 11.04(b), the Administrative Agent, the L/C Issuers, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. 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.

11.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender, any 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 preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuers; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as a 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 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### 11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (limited in respect of legal fees to reasonable fees, charges and disbursements of counsel to the Administrative Agent, and of a single reasonably necessary regulatory counsel and single local counsel in each appropriate jurisdiction which may include a special counsel acting in multiple jurisdictions), 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 and documented out-of-pocket expenses incurred by the L/C Issuers in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or any L/C Issuer (limited in respect of legal fees to the reasonable and documented fees, charges and disbursements of one primary counsel and one local counsel in each relevant jurisdiction and one reasonably necessary regulatory counsel for the Administrative Agent and (and, in the case of a conflict of interest, one additional counsel to all such affected Lenders similarly situated, taken as a whole)) the Lenders, 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 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 Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee 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, 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 an 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 at, on, under or emanating from any property owned, leased or operated by the Borrower or any of its Restricted Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Restricted Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a

third party or by the Borrower or any other Loan Party or any of the Borrower's or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are (x) determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties, (y) a result of a material breach of the Loan Documents by any such Indemnitee or one of its Related Parties as determined by a court of competent jurisdiction by a final and nonappealable judgment, or (z) arise from a dispute between and among Indemnitees not arising from any act or omission of the Borrower or any Subsidiary thereof (other than any proceeding against any Indemnitee in its capacity or fulfilling its role as the Administrative Agent, an Arranger, an L/C Issuer or any similar role); provided further that the reimbursement of fees, charges and disbursements of counsel shall exclude the allocated costs of internal counsel and be limited to one primary counsel and one local counsel in each relevant jurisdiction and one reasonably necessary regulatory counsel for all such Indemnitees as a whole (and, in the case of a conflict of interest, one additional counsel to all such affected Indemnitees similarly situated, taken as a whole). 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 the 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), any 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), such 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 Exposure 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), any 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), such 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 fullest extent permitted by applicable law, the Borrower shall not assert, and 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 referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed 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 provision of Section 11.02(e) shall survive the resignation of the Administrative Agent, any L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 **Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any 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, such 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 each 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 Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 **Successors and Assigns.** (a) **Successors and Assigns Generally.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder 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 Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(f) (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 Issuers 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 (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 11.06(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 under any Facility and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such Assignments) 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 applicable 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, in the case of any assignment in respect of the Revolving Credit Facility, or \$1,000,000, in the case of any assignment in respect of the Term Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the 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 rights and obligations under this Agreement with respect to the Loans or the Commitment 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 among separate Facilities on a non-pro rata basis; provided that any assignment of Loans or Commitments under the Term Facility must be made in a proportionate part of all the assigning Lender's rights and obligations with respect to the Term Facility.

(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 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, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; and provided, further, that the Borrower's consent shall not be required for assignments by the Arrangers during the primary syndication of Facilities;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any unfunded Term Commitment or any Revolving Credit Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of each L/C Issuer and the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(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 Borrower or any of the Borrower's Subsidiaries or Affiliates, (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 Borrower 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, any 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) 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, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection 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 Borrower (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 Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender or the Borrower or any of the Borrower’s Affiliates or Restricted 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 and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. 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 Borrower agrees 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 (and subject to the requirements and limitations therein, 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 Borrower’s request and expense, to use reasonable efforts to cooperate with the Borrower 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 a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary 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 or any other L/C Issuer assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to Section 11.06(b), (i) such Person may, upon 30 days' notice to the Borrower and the Lenders, resign as an L/C Issuer and/or (ii) Bank of America may, upon 30 days' notice to the Borrower, resign as Swing Line Lender. In the event of any such resignation as an L/C Issuer or Swing Line Lender, the Borrower 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 Borrower to appoint any such successor shall affect the resignation of Bank of America or the applicable L/C Issuer as an L/C Issuer or Swing Line Lender, as the case may be. If Bank of America or any other L/C Issuer resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of any L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an 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(c)). 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, (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 the case may be, and (b) 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 reasonably satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

11.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, its auditors and 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 2.15 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 the Borrower and its obligations, this Agreement or payments hereunder, in reliance on this clause (f) (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Restricted 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 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, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. The Borrower hereby consents that the Administrative Agent and each Lender may issue and disseminate to the public general information describing the credit accommodation entered into pursuant to this Agreement, including the name of the Borrower and a general description of the Borrower's business and may use the Borrower's name in advertising and other promotional material customary for the syndicated loan market. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section, "Information" means all information received from the Borrower or any Restricted Subsidiary relating to the Borrower or any Restricted Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Restricted Subsidiary, provided that, in the case of information received from the Borrower or any Restricted Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. 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 Issuers acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Restricted 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.

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office or Affiliate of such Lender or such 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 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each 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, such L/C Issuer or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify the Borrower and the Administrative

Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (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 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, and the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or the L/C Issuers, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

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 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, any 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 Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the

Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 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 Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified inSection 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 Borrower (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation underSection 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; and
- (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.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

11.14 Governing Law; Jurisdiction; Etc. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS 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.

- (a) SUBMISSION TO JURISDICTION. THE BORROWER 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 THE ADMINISTRATIVE AGENT, ANY LENDER, ANY L/C ISSUER, 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 THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) WAIVER OF VENUE. THE BORROWER 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.

(c) 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), the Borrower acknowledges and agrees 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 Borrower, and its Affiliates, on the one hand, and the Administrative Agent, the Arrangers, and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower 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 Borrower, or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, any Arranger nor any Lender has any obligation to the Borrower, or any of its 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 Borrower and its Affiliates, and neither the Administrative Agent, any Arranger nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, the Arrangers and the Lenders 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 of Assignments and Certain Other Documents The words “execution,” “execute”, “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other Loan Notices, Swing Line Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

11.18 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 Borrower 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 each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” anti-money laundering rules and regulations, including the Act.

11.19 Acknowledgment and Consent to Bail-In of Affected Financial Institutions Solely to the extent any Lender or any 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 any 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 the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or any 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 undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any applicable Resolution Authority

11.20 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 as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 11.20, the following terms have the following meanings:

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

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

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

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

11.21 Amendment and Restatement; No Novation.

The parties hereto agree that this Agreement shall, and is intended to, constitute an amendment and restatement of the Existing Credit Agreement, effective from and after the Closing Date, and that the execution and delivery of this Agreement shall not constitute a novation of any indebtedness or other obligations owing to the Lenders under the Existing Credit Agreement. On the Closing Date, the credit facilities described in the Existing Credit Agreement shall be amended, supplemented, modified and restated in their entirety by the facilities described herein, and all loans, letters of credit and other obligations of the Borrower outstanding as of such date under the Existing Credit Agreement shall be deemed to be Loans, Letters of Credit and Obligations outstanding under the corresponding facilities of this Agreement, without any further action by any Person.

*[signature pages intentionally omitted]*

**ANNEX B**  
**to Amendment No. 3 to Amended and Restated Credit Agreement**

**Exhibit A****[Form of] Loan Notice**

TO: Bank of America, N.A., as Administrative Agent

RE: Amended and Restated Credit Agreement dated as of March 20, 2020, among TopBuild Corp., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, L/C Issuer and Swing Line Lender (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

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The undersigned hereby requests (select one):

- A Borrowing of [Revolving Credit] [Term] Loans
- A [conversion] or [continuation] of [Revolving Credit] [Term] Loans
  - 1. On \_\_\_\_\_ (a Business Day) (the “Credit Extension Date”).
  - 2. In the amount of \$\_\_\_\_\_.
- 3. Comprised of:  Base Rate Loans  Daily Simple SOFR Loans  
 Term SOFR Loans.
- 4. For Term SOFR Loans: with an Interest Period of \_\_\_\_\_ months.

[The Revolving Credit Borrowing requested herein complies with the proviso to the first sentence of Section 2.01(a) of the Credit Agreement.]

[The Borrower hereby represents and warrants that the conditions specified in Section 4.02 of the Credit Agreement shall be satisfied on and as of the date of the Credit Extension Date.]<sup>1</sup>

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this notice.

TOPBUILD CORP.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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<sup>1</sup> *Include this sentence in the case of a request for Credit Extension other than a conversion or continuation.*

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| <b>SUBSIDIARIES OF TOPBUILD CORP.</b>      |                                     |
|--|-------------------------------------|
| <b>Name</b>                                | <b>Jurisdiction of Organization</b> |
| ADO Products, LLC                          | Minnesota                           |
| American Commercial Insulation, LLC        | Delaware                            |
| American National Insulation, Inc.         | Delaware                            |
| Builder Procurement Services, LLC          | Delaware                            |
| Builder Services Group, Inc.               | Florida                             |
| Crossroads C&I Distributors, Inc.          | B.C., Canada                        |
| DI Super Holdings, Inc.                    | Delaware                            |
| Distribution International Southwest, Inc. | Delaware                            |
| Distribution International, Inc.           | Delaware                            |
| GlassCell Isofab Inc.                      | B.C., Canada                        |
| Ideal Products of America Holdings, LLC    | Delaware                            |
| Ideal Products of Canada Ltd.              | Alberta, Canada                     |
| Ideal Products of Dongguan Ltd.            | China                               |
| Ideal Products of Hong Kong Limited        | Hong Kong                           |
| Service Partners, LLC                      | Virginia                            |
| TopBuild Home Services, Inc.               | Delaware                            |
| TopBuild Support Services, Inc.            | Delaware                            |

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (No.333-205395 and 333-205396) of TopBuild Corp. of our report dated February 23, 2023 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

Tampa, FL

February 23, 2023

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**CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Robert Buck, certify that:

1. I have reviewed this Annual Report on Form 10-K of TopBuild Corp.;
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 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: February 23, 2023

/s/ Robert Buck

Robert Buck

Chief Executive Officer and Director  
(Principal Executive Officer)

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**CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Robert Kuhns, certify that:

1. I have reviewed this Annual Report on Form 10-K of TopBuild Corp.;
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 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: February 23, 2023

/s/ Robert Kuhns

Robert Kuhns  
Vice President and Chief Financial Officer  
(Principal Financial Officer)

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**CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Robert Buck, Chief Executive Officer and Director of TopBuild Corp. (the “Company”), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to the best of my knowledge:

- (1) the Annual Report on Form 10-K of the Company for the year ended December 31, 2022 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); 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: February 23, 2023

/s/ Robert Buck

Robert Buck  
Chief Executive Officer and Director  
(Principal Executive Officer)

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**CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Robert Kuhns, Vice President and Chief Financial Officer of TopBuild Corp. (the “Company”), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to the best of my knowledge:

- (1) the Annual Report on Form 10-K of the Company for the year ended December 31, 2022 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); 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: February 23, 2023

/s/ Robert Kuhns

Robert Kuhns

Vice President and Chief Financial Officer  
(Principal Financial Officer)

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