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

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): June 10, 2022**

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**Hercules Capital, Inc.**  
(Exact name of registrant as specified in its charter)

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**Maryland**  
(State or other jurisdiction  
of incorporation)

**814-00702**  
(Commission  
File No.)

**74-3113410**  
(I.R.S. Employer  
Identification No.)

**400 Hamilton Ave., Suite 310**  
**Palo Alto, CA**  
(Address of principal executive offices)

**94301**  
(Zip Code)

**Registrant's telephone number, including area code: (650) 289-3060**

**Not Applicable**  
(Former name or address, if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
<b>Common Stock, par value \$0.001 per share</b>	<b>HTGC</b>	<b>New York Stock Exchange</b>
<b>6.25% Notes due 2033</b>	<b>HCTX</b>	<b>New York Stock Exchange</b>

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

Emerging growth company

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

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**Item 1.01. Entry into a Material Definitive Agreement.***Second Amendment to Revolving Credit Agreement*

On June 14, 2022, Hercules Capital, Inc., a Maryland corporation (the “Company”), entered into the Second Amendment to Revolving Credit Agreement (the “SMBC Second Amendment”), which amends the Revolving Credit Agreement, dated as of November 9, 2021, as amended by the First Amendment to Revolving Credit Agreement, dated as of December 31, 2021 (the “SMBC Credit Agreement” and, as amended by the SMBC Second Amendment, the “SMBC Amended Credit Agreement”), with Sumitomo Mitsui Banking Corporation (“SMBC”), as administrative agent, and the lenders and issuing banks from time to time party thereto. The SMBC Second Amendment amends certain provisions of the SMBC Credit Agreement to, among other things, (i) increase the facility amount from \$100.0 million to \$175.0 million, which may be further increased up to \$500.0 million, subject to the terms of the SMBC Amended Credit Agreement, and (ii) replace the LIBOR benchmark provisions with SOFR benchmark provisions, subject to a credit adjustment spread of 0.10% for SOFR loans with a one-month interest period, 0.15% for SOFR loans with a three-month interest period and 0.25% for SOFR loans with a six-month interest period.

The above description is only a summary of the material provisions of the SMBC Second Amendment and is qualified in its entirety by reference to a copy of the SMBC Second Amendment, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated by reference herein.

*Second Amendment to Loan and Security Agreement*

On June 10, 2022, Hercules Funding IV LLC, a Delaware limited liability company (“HFIV”) and a special purpose wholly-owned subsidiary of the Company entered into the Second Amendment to Loan and Security Agreement (the “MUFG Second Amendment”), with the lenders party thereto, MUFG Union Bank, N.A., as resigning agent, and MUFG Bank, Ltd. (as successor to MUFG Union Bank, N.A.), as administrative agent, which amends the Loan and Security Agreement, dated as of February 20, 2020, as amended by the First Amendment to Loan and Security Agreement, dated as of June 18, 2021 (the “MUFG Loan Agreement” and, as amended by the MUFG Second Amendment, the “MUFG Amended Loan Agreement”), with HFIV, as borrower, the lenders from time to time party thereto and MUFG Union Bank, N.A., as administrative agent.

The MUFG Second Amendment amends certain provisions of the MUFG Loan Agreement to, among other things, (i) increase the facility amount from \$400.0 million to up to \$545.0 million and (ii) replace the LIBOR benchmark provisions with SOFR benchmark provisions, subject to a margin of 2.60% for SOFR loans with a one-month interest period and 2.65% for SOFR loans with a three-month interest period.

The above description is only a summary of the material provisions of the MUFG Second Amendment and is qualified in its entirety by reference to a copy of the MUFG Second Amendment, which is filed as Exhibit 10.2 to this Current Report on Form 8-K and incorporated by reference herein.

*Press Release*

On June 15, 2022, the Company issued a press release announcing its entry into the above amendments. The text of the press release is included as an exhibit to this Form 8-K.

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

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

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

Exhibit  
No.

Description

- 10.1 [Second Amendment to Revolving Credit Agreement, dated as of June 14, 2022, among Hercules Capital, Inc., the lenders party thereto and Sumitomo Mitsui Banking Corporation, as administrative agent.](#)
- 10.2 [Second Amendment to Loan and Security Agreement, dated as of June 10, 2022, among Hercules Funding IV LLC, the lenders from time to time party thereto, MUFG Union Bank, N.A., as resigning agent, and MUFG Bank, Ltd. \(as successor to MUFG Union Bank, N.A.\), as administrative agent.](#)
- 99.1 [Press Release dated Amend to June 15, 2022](#)

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**SIGNATURES**

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

June 15, 2022

**HERCULES CAPITAL, INC.**

By: /s/ Kiersten Zaza Botelho  
Kiersten Zaza Botelho  
General Counsel

SECOND AMENDMENT  
TO REVOLVING CREDIT AGREEMENT

THIS SECOND AMENDMENT TO REVOLVING CREDIT AGREEMENT, dated as of June 14, 2022 (this "Amendment"), is among HERCULES CAPITAL, INC., a Maryland corporation (the "Borrower"), the LENDERS party hereto and SUMITOMO MITSUI BANKING CORPORATION ("SMBC"), as Administrative Agent (in such capacity, the "Administrative Agent").

WITNESSETH

WHEREAS, the Borrower, the Lenders and Issuing Banks party thereto and the Administrative Agent, are parties to the Revolving Credit Agreement, dated as of November 9, 2021 (as amended by the First Amendment to Revolving Credit Agreement, dated as of December 31, 2021 (the "Existing Credit Agreement"), and as amended by this Amendment and as the same may be further amended, supplemented, amended and restated or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, the Borrower has requested that the Lenders and the Administrative Agent agree to amend the Existing Credit Agreement, and the Lenders party hereto and the Administrative Agent are willing, on the terms and subject to the conditions hereinafter set forth, to agree to the amendment set forth below and the other terms hereof; and

NOW, THEREFORE, the parties hereto hereby covenant and agree as follows:

## ARTICLE I

## DEFINITIONS

SECTION 1.1. Certain Definitions. The following terms when used in this Amendment shall have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

"Administrative Agent" is defined in the preamble.

"Amendment" is defined in the preamble.

"Borrower" is defined in the preamble.

"Credit Agreement" is defined in the first recital.

"Existing Credit Agreement" is defined in the first recital.

"Second Amendment Effective Date" is defined in Section 4.1.

SECTION 1.2. Other Definitions. Capitalized terms for which meanings are provided in the Existing Credit Agreement are, unless otherwise defined herein or the context otherwise requires, used in this Amendment with such meanings.

ARTICLE II

JOINER OF SYNOVUS BANK

SECTION 2.1. Synovus Bank as a Lender. Subject to the occurrence of the Second Amendment Effective Date (as hereinafter defined), each of the parties hereto hereby agrees that Synovus Bank will (and does hereby) become a “Lender” under and for all purposes of the Credit Agreement with a Dollar Commitment equal to \$75,000,000 and Synovus Bank hereby agrees to be bound by and comply with all of the terms and provisions of the Credit Agreement applicable to it as a “Lender” thereunder and that it will perform all of the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender. Synovus Bank represents and warrants that it has full power and authority, and has taken all action necessary, to execute this Amendment and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement.

ARTICLE III

AMENDMENT TO EXISTING CREDIT AGREEMENT

SECTION 3.1. Subject to the occurrence of the Second Amendment Effective Date, the Existing Credit Agreement (including the Exhibits and Schedules thereto) is hereby amended in its entirety in the form of Exhibit A attached hereto.

ARTICLE IV

CONDITIONS TO EFFECTIVENESS

SECTION 4.1. Effective Date. This Amendment shall become effective on the date (the “Second Amendment Effective Date”) when the Administrative Agent shall have received the following:

(a) from each party hereto either (i) a counterpart of this Amendment signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include teletype transmission of a signed signature page to this Amendment) that such party has signed a counterpart of this Amendment;

(b) a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated as of the date hereof) of counsel for the Borrower, in form and substance reasonably acceptable to the Administrative Agent (and the Borrower hereby instructs such counsel to deliver such opinion to the Administrative Agent and the Lenders);

(c) such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Borrower, the authorization of this Amendment and any other legal matters relating to the Borrower, this Amendment or the transactions contemplated hereby, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel; provided that, any portion of the condition set out in this clause (c) may be satisfied by providing a certification that the materials previously provided to the Administrative Agent have not been amended, amended and restated, supplemented or otherwise modified since the date the Borrower last provided such materials to the Administrative Agent; and

(d) for the benefit of the Administrative Agent and each of the Lenders party hereto, as applicable, (i) all fees required to be paid by the Borrower in connection with this Amendment and (ii) all reasonable and documented out-of-pocket costs and expenses due and owing by the Borrower in connection with the preparation, due diligence and documentation of this Amendment as of the date hereof, in each case of this clause (ii), to the extent invoiced two (2) Business Days prior to the Second Amendment Effective Date (it being understood and agreed that such invoice may include Administrative Agent's reasonable estimate of out-of-pocket costs and expenses incurred or to be incurred by it through the closing proceedings).

## ARTICLE V

### MISCELLANEOUS

SECTION 5.1. Representations. The Borrower hereby represents and warrants that (i) this Amendment constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as such enforceability may be limited by (x) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (y) the applicable of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), (ii) no Default or Event of Default has occurred and is continuing on the Second Amendment Effective Date or after giving effect to this Amendment and (iii) its representations and warranties as set forth in the other Loan Documents, as applicable, are true and correct in all material respects (except those representations and warranties (or any portion thereof) qualified by materiality or by reference to a material adverse effect, which are complete and correct in all respects) on and as of the date hereof as though made on and as of the date hereof (unless such representations and warranties specifically refer to a specific day, in which case, they shall be complete and correct in all material respects (or, with respect to such representations or warranties (or such portion thereof) qualified by materiality or by reference to a material adverse effect, complete and correct in all respects) on and as of such specific day).

SECTION 5.2. [Reserved].

SECTION 5.3. Loan Document Pursuant to Existing Credit Agreement This Amendment is a Loan Document executed pursuant to the Existing Credit Agreement and shall (unless otherwise expressly indicated therein) be construed, administered and applied in accordance with all of the terms and provisions of the Existing Credit Agreement, as amended hereby, including Article IX thereof.

SECTION 5.4. Successors and Assigns. The provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

SECTION 5.5. Counterparts. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or electronically (e.g., pdf) shall be effective as delivery of a manually executed counterpart of this Amendment.

SECTION 5.6. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 5.7. Full Force and Effect; Limited Amendment. Except as expressly amended hereby, all of the representations, warranties, terms, covenants, conditions and other provisions of the Existing Credit Agreement and the other Loan Documents shall remain unchanged and shall continue to be, and shall remain, in full force and effect in accordance with their respective terms. The amendment set forth herein shall be limited precisely as provided for herein to the provisions expressly amended herein and shall not be deemed to be an amendment to, waiver of, consent to or modification of any other terms or provisions of the Existing Credit Agreement or any other Loan Document or of any transaction or further or future action on the part of the Borrower. Upon and after the execution of this Amendment by each of the parties hereto, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to “the Credit Agreement”, “thereunder”, “thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement as modified hereby. This Amendment does not constitute a novation or termination of the Credit Agreement Obligations (as defined in the Guarantee and Security Agreement) under the Existing Credit Agreement and which remain outstanding.

SECTION 5.8. Assignment and Reallocation of Existing Commitments and Existing Loans.

(a) (a) On the Second Amendment Effective Date, the Borrower shall (A) prepay the outstanding Loans (if any) of the affected Class in full and (B) simultaneously borrow new Loans of such Class in an amount equal to such prepayment; provided that, with respect to subclauses (A) and (B), (x) the prepayment to, and borrowing from, any existing Lender shall be effected by book entry to the extent that any portion of the amount prepaid to such Lender will be subsequently borrowed from such Lender, and (y) the existing Lenders and Synovus Bank, as new lender, shall make and receive payments among themselves, in a manner acceptable to the Administrative Agent, so that, after giving effect thereto, the Loans of such Class are held ratably by the Lenders of such Class in accordance with their Applicable Percentage of Commitments of such Class (after giving effect to this Amendment), which, for the purposes of the Credit Agreement and each other Loan Document, will be as set forth opposite such Person’s name on Schedule 1.01(b) to the Credit Agreement. Concurrently therewith, the Lenders of such Class shall be deemed to have adjusted their participation interests in any outstanding Letters of Credit of such Class so that such interests are held ratably in accordance with their Applicable Percentage of Commitments of such Class (after giving effect to this Amendment).



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(b) Each of the Lenders hereby acknowledges and agrees that (i) no Lender nor the Administrative Agent has made any representations or warranties or assumed any responsibility with respect to (A) any statements, warranties or representations made by any Obligor in or in connection with this Amendment, the Credit Agreement or any other Loan Document or, with respect to any Obligor, the execution, legality, validity, enforceability, genuineness or sufficiency of this Amendment, the Credit Agreement or any other Loan Document or (B) the financial condition of any Obligor or the performance by any Obligor of its obligations hereunder or under the Credit Agreement or any other Loan Document; (ii) it has received such information as it has deemed appropriate to make its own credit analysis and decision to enter into this Amendment; and (iii) it has made and continues to make its own credit decisions in taking or not taking action under the Loan Documents, independently and without reliance upon the Administrative Agent or any other Lender.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment as of the date first above written.

**Borrower:**

**HERCULES CAPITAL, INC.**

By: /s/ Seth H. Meyer

Name: Seth H. Meyer

Title: CFO

*SIGNATURE PAGE TO SECOND AMENDMENT – HERCULES*

**Administrative Agent and Lender:**

**SUMITOMO MITSUI BANKING CORPORATION**

By: /s/ Shane Klein

Name: Shane Klein

Title: Managing Director

*SIGNATURE PAGE TO SECOND AMENDMENT – HERCULES*

**Lender:**

**SYNOVUS BANK**

By: /s/ Jonathan Edwards

Name: Jonathan Edwards

Title: Authorized Signatory

*SIGNATURE PAGE TO SECOND AMENDMENT – HERCULES*

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Consented to and Agreed to by:

**SUMITOMO MITSUI BANKING CORPORATION,**  
as an Issuing Bank

By: /s/ Shane Klein  
Name: Shane Klein  
Title: Managing Director

*SIGNATURE PAGE TO SECOND AMENDMENT – HERCULES*

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**Exhibit A**

[Attached]

REVOLVING CREDIT AGREEMENT  
dated as of

November 9, 2021

and as amended by the First Amendment to Revolving Credit Agreement dated as of December  
31, 2021 and the Second Amendment to Revolving Credit Agreement dated as of June 14, 2022

among

HERCULES CAPITAL, INC.  
as Borrower

The LENDERS and ISSUING BANKS Party Hereto

and

SUMITOMO MITSUI BANKING CORPORATION  
as Administrative Agent

\$175,000,000

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SUMITOMO MITSUI BANKING CORPORATION  
as Lead Arranger and Book Runner

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REVOLVING CREDIT AGREEMENT, dated as of November 9, 2021 (this "Agreement"), among HERCULES CAPITAL, INC., a Maryland corporation (the "Borrower"), the LENDERS and ISSUING BANKS from time to time party hereto, and SUMITOMO MITSUI BANKING CORPORATION, as Administrative Agent.

## ARTICLE I

### DEFINITIONS

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

"2022 Convertible Notes" means the Borrower's 4.375% convertible notes due in October of 2022.

"2022 Notes" means the Borrower's 4.625% notes due in October of 2022.

"2024 Notes" means the Borrower's 4.77% notes due in July of 2024.

"2025 April Notes" means the Borrower's 5.25% notes due in April of 2025.

"2025 February Notes" means the Borrower's 4.28% notes due in February of 2025.

"2025 June Notes" means the Borrower's 4.31% notes due in June of 2025.

"2026A March Notes" means the Borrower's 4.50% notes due in March of 2026.

"2026B March Notes" means the Borrower's 4.55% notes due in March of 2026.

"2026 September Notes" means the Borrower's 2.625% notes due in September of 2026.

"2033 Notes" means the Borrower's 6.25% notes due in October of 2033.

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans constituting such Borrowing, are denominated in Dollars and bearing interest at a rate determined by reference to the Alternate Base Rate.

"Adjusted Covered Debt Balance" means, on any date, the aggregate Covered Debt Amount on such date minus the aggregate amount of Cash and Cash Equivalents included in the Collateral Pool held by the Obligors (provided that Cash Collateral for outstanding Letters of Credit shall not be treated as a portion of the Portfolio Investments).

"Adjusted Term Benchmark Rate" means (a) for the Interest Period for any Term Benchmark Borrowing denominated in Euros, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the product of (i) the Term Benchmark Rate for such Interest Period for such Currency multiplied by (ii) the Statutory Reserve Rate for such Interest

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Period and (b) for the Interest Period for any Term Benchmark Borrowing denominated in a Currency (other than Euros), an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the Term Benchmark Rate for such Interest Period for such Currency; provided that if the Adjusted Term Benchmark Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Administrative Agent” means SMBC, in its capacity as administrative agent for the Lenders hereunder.

“Administrative Agent Appraisal Testing Period” has the meaning assigned to such term in Section 5.12(b)(ii)(E)(y).

“Administrative Agent’s Account” means, for each Currency, an account in respect of such Currency designated by the Administrative Agent in a notice to the Borrower and the Lenders.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent.

“Advance Rate” has the meaning assigned to such term in Section 5.13.

“Affected Currency” has the meaning assigned to such term in Section 2.12(a).

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

“Affiliate” means, with respect to a specified Person at any time, 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 at such time. Anything herein to the contrary notwithstanding, the term “Affiliate” shall not include any Person that constitutes an Investment held by any Obligor or Financing Subsidiary in the ordinary course of business; provided that the term “Affiliate” shall include any Financing Subsidiary.

“Agreed Foreign Currency” means, at any time, (a) any of Canadian Dollars, Sterling, Euros and Japanese Yen and (b) with the prior consent of each Multicurrency Lender, any other Foreign Currency, so long as, in respect of any such specified Foreign Currency or other Foreign Currency, at such time (x) such Foreign Currency is dealt with in the London interbank deposit market or, if applicable, the relevant local market for obtaining quotations, (y) such Foreign Currency is freely transferable and convertible into Dollars in the London foreign exchange market and (z) no central bank or other governmental authorization in the country of issue of such Foreign Currency (including, in the case of the Euro, any authorization by the European Central Bank) is required to permit use of such Foreign Currency by any Multicurrency Lender for making any Loan hereunder and/or to permit the Borrower to borrow and repay the principal thereof and to pay the interest thereon, unless such authorization has been obtained and is in full force and effect.

“Agreement” has the meaning assigned to such term in the preamble to this Agreement.

“Aggregate Covered Debt Amount” means, on any date, the sum of (x) all of the Revolving Credit Exposures of all Lenders on such date plus (y) the aggregate amount of Aggregate Other Covered Indebtedness, the Existing Notes, SPE Subsidiary Recourse Obligations, Special Unsecured Indebtedness and Unsecured Longer-Term Indebtedness on such date minus (z) the LC Exposures fully Cash Collateralized on such date pursuant to Section 2.04(k) and the last paragraph of Section 2.08(a); provided that the Existing Notes, SPE Subsidiary Recourse Obligations, Special Unsecured Indebtedness and Unsecured Longer-Term Indebtedness shall be excluded from the calculation of the Aggregate Covered Debt Amount, in each case, until the date that is nine (9) months prior to the scheduled maturity date of such Existing Notes, SPE Subsidiary Recourse Obligations, Special Unsecured Indebtedness or such Unsecured Longer-Term Indebtedness, as applicable (provided that, to the extent, but only to the extent, any portion of such Existing Notes, SPE Subsidiary Recourse Obligations, Special Unsecured Indebtedness or Unsecured Longer-Term Indebtedness is subject to a contractually scheduled amortization payment or other principal payment or mandatory redemption (other than in common stock of the Borrower) earlier than six (6) months after the Final Maturity Date (in the case of the 2033 Notes, SPE Subsidiary Recourse Obligations that constitute Unsecured Longer-Term Indebtedness and Unsecured Longer-Term Indebtedness) or earlier than the original final maturity date of such Indebtedness (in the case of the other Existing Notes, other SPE Subsidiary Recourse Obligations and Special Unsecured Indebtedness), such portion of such Indebtedness, to the extent then outstanding, shall be included in the calculation of the Aggregate Covered Debt Amount beginning upon the date that is the later of (i) nine (9) months prior to such scheduled amortization payment or other principal payment or mandatory redemption and (ii) the date the Borrower becomes aware that such Indebtedness is required to be paid or redeemed). For the avoidance of doubt, for purposes of calculating the Aggregate Covered Debt Amount, any convertible securities will be included at the then outstanding principal balance thereof.

“Aggregate Other Covered Indebtedness” means Unsecured Shorter-Term Indebtedness.

“Aggregate Portfolio Deficiency” means, at any date on which the same is determined, the amount, if any, that (a) the Aggregate Covered Debt Amount as of such date exceeds (b) the sum of (x) the Aggregate Portfolio Balance as of such date, plus (y) the value of any Equity Interests owned by the Borrower, directly or indirectly, in an Eligible Subsidiary or any other Person that is not a Portfolio Investment as of such date.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greater of (a) zero and (b) the highest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1.00% and (iii) the rate per annum equal to Term SOFR for an interest period of one (1) month plus 1.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR (or successor therefor) as set forth above shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR (or successor therefor), respectively.

“Anti-Corruption Laws” has the meaning assigned to such term in Section 3.16.

“Applicable Dollar Percentage” means, with respect to any Dollar Lender, the percentage of the total Dollar Commitments represented by such Dollar Lender’s Dollar Commitment. If the Dollar Commitments have terminated or expired, the Applicable Dollar Percentages shall be determined based upon the Dollar Commitments most recently in effect, giving effect to any assignments.

“Applicable Financial Statements” means, as at any date, the most-recent audited financial statements of the Borrower delivered to the Administrative Agent pursuant to Section 5.01(a); provided that if immediately prior to the delivery to the Administrative Agent of new audited financial statements of the Borrower a Material Adverse Effect (the “Pre-existing MAE”) shall exist (regardless of when it occurred), then the “Applicable Financial Statements” as at said date means the Applicable Financial Statements in effect immediately prior to such delivery until such time as the Pre-existing MAE shall no longer exist.

“Applicable Margin” means (a) if the Borrowing Base (as of the most recently delivered Borrowing Base Certificate) is greater than or equal to the product of 1.60 and the Revolving Credit Exposure, (i) with respect to any ABR Loan, 0.875% per annum, and (ii) with respect to any Term Benchmark Loan or RFR Loan, 1.875% per annum; and (b) if the Borrowing Base (as of the most recently delivered Borrowing Base Certificate) is less than the product of 1.60 and the Revolving Credit Exposure, (i) with respect to any ABR Loan, 1.00% per annum and (ii) with respect to any Term Benchmark Loan or RFR Loan, 2.00% per annum.

“Applicable Multicurrency Percentage” means, with respect to any Multicurrency Lender, the percentage of the total Multicurrency Commitments represented by such Multicurrency Lender’s Multicurrency Commitment. If the Multicurrency Commitments have terminated or expired, the Applicable Multicurrency Percentages shall be determined based upon the Multicurrency Commitments most recently in effect, giving effect to any assignments.

“Applicable Percentage” means, with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Applicable Time” means, with respect to any borrowings and payments in any Foreign Currency, the local time in the Principal Financial Center for such Foreign Currency as may be reasonably determined by the Administrative Agent.

“Approved Dealer” means (a) in the case of any Portfolio Investment that is not a U.S. Government Security, a bank or a broker-dealer registered under the Exchange Act, of nationally recognized standing or an Affiliate thereof, (b) in the case of a U.S. Government Security, any primary dealer in U.S. Government Securities, and (c) in the case of any foreign Portfolio Investment, any foreign bank or broker-dealer of internationally recognized standing or an Affiliate thereof, in the case of each of clauses (a), (b) and (c) above, either as set forth on Schedule 1.01(a) hereto or any other bank or broker-dealer or Affiliate thereof acceptable to the Administrative Agent in its reasonable determination.

“Approved Pricing Service” means a pricing or quotation service either: (a) as set forth in Schedule 1.01(a) hereto or (b) any other pricing or quotation service approved by the Board of Directors of the Borrower and designated in writing by the Borrower to the Administrative Agent (which designation shall be accompanied by a copy of a resolution of the Board of Directors of the Borrower that such pricing or quotation service has been approved by the Borrower).

“Approved Third-Party Appraiser” means any Independent nationally recognized third-party appraisal firm (a) designated by the Borrower in writing to the Administrative Agent (which designation shall be accompanied by a copy of a resolution of the Board of Directors of the Borrower that such firm has been approved by the Borrower for purposes of assisting the Board of Directors of the Borrower in making valuations of portfolio assets to determine the Borrower’s compliance with the applicable provisions of the Investment Company Act) and (b) acceptable to the Administrative Agent. It is understood and agreed that Houlihan Lokey Howard & Zukin Capital, Inc., Duff & Phelps LLC, Murray, Devine and Company, Lincoln International LLC (formerly known as Lincoln Partners LLC), Valuation Research Corporation and Alvarez & Marsal are acceptable to the Administrative Agent. As used in Section 5.12 hereof, an “Approved Third-Party Appraiser selected by the Administrative Agent” shall mean any of the firms identified in the preceding sentence and any other Independent nationally recognized third-party appraisal firm identified by the Administrative Agent and consented to by the Borrower (such consent not to be unreasonably withheld or delayed).

“Assignment and Assumption” means an Assignment and Assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, substantially in the form of Exhibit A hereto (with adjustments thereto to reflect the Classes of Commitments and/or Loans being assigned or outstanding at the time of the respective assignment) or any other form approved by the Administrative Agent and, so long as no Event of Default under clause (a), (b), (i), (j) or (k) of Article VII has occurred and is continuing, the Borrower.

“Assuming Lender” has the meaning assigned to such term in Section 2.07(e)(i).

“Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Commitment Termination Date and the date of termination of the Commitments.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark for any Currency, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.19(d).



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

“Base Rate Term SOFR Determination Day” has the meaning assigned to it in the definition of “Term SOFR”.

“Basel III” means the agreements on capital requirements, leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision on December 16, 2010, each as amended, supplemented or restated.

“Benchmark” means, initially, with respect to any Loans denominated in (a) Sterling, the Daily Simple RFR, and (b) each other Agreed Foreign Currency and Dollars, the Adjusted Term Benchmark Rate for such Currency; provided that, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the Daily Simple RFR or the Adjusted Term Benchmark Rate for such Currency or the then-current Benchmark, then “Benchmark” shall mean the applicable Benchmark Replacement for such applicable Currency to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (a) of Section 2.19.

“Benchmark Replacement” means, with respect to any Benchmark Transition Event for any then-current Benchmark, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date; provided that, other than in the case of the replacement of the Term SOFR Reference Rate, such alternative shall be the alternative set forth in clause (2) below:

(1) the sum of: (a) Daily Simple SOFR and (b) the applicable Term SOFR Credit Adjustment Spread; and

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

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

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark for a Currency with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement (excluding, for the avoidance of doubt, Daily Simple SOFR) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Currency giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in the applicable Currency in the U.S. syndicated loan market at such time.

“Benchmark Replacement Date” means, (x) with respect to any Benchmark (other than the Term SOFR Reference Rate), the earliest to occur of the following events with respect to such then-current Benchmark and (y) with respect to the Term SOFR Reference Rate, a date and time reasonably determined by the Administrative Agent in its reasonable discretion, which date shall be no later than the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of

(a) the date of the public statement or publication of information referenced therein; and

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

(2) in the case of clause (3) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

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For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) above with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to any then-current Benchmark, the occurrence of one or more of the following events with respect to such Benchmark:

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

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

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

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

“Benchmark Unavailability Period” means, with respect to any then-current Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any other Loan Document in accordance with Section 2.19 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any other Loan Document in accordance with Section 2.19.

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

“Board” means the Board of Governors of the Federal Reserve System of the United States of America (or any successor thereof).

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person (or the appropriate committee thereof with the necessary delegated authority), (b) in the case of any limited liability company, the board of managers of such Person, or if there is none, the Board of Directors of the managing member of such Person, (c) in the case of any partnership, the general partner and the Board of Directors of the general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

“Borrower” has the meaning assigned to such term in the preamble to this Agreement.

“Borrowing” means (a) all ABR Loans of the same Class made, converted or continued on the same date, (b) all Term Benchmark Loans of the same Class denominated in the same Currency that have the same Interest Period or (c) all RFR Loans.

“Borrowing Base” has the meaning assigned to such term in Section 5.13.

“Borrowing Base Certificate” means a certificate of a Financial Officer of the Borrower, substantially in the form of Exhibit B hereto (or such other form as shall be reasonably satisfactory to the Administrative Agent) and appropriately completed.

“Borrowing Base Deficiency” means, at any date on which the same is determined, the amount, if any, that (a) the aggregate Covered Debt Amount as of such date exceeds (b) the Borrowing Base as of such date.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03, which, if in writing, shall be substantially in the form of Exhibit C hereto (or such other form as shall be reasonably satisfactory to the Administrative Agent).

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, (a) when used in relation to Term Benchmark Loans or any interest rates settings, fundings, disbursements, settlements or payments of any such Term Benchmark Loan or any other dealings in the applicable Currency of such Term Benchmark Loan, the term “Business Day” shall also exclude any day that is not a Term Benchmark Banking Day for such Currency, and (b) when used in relation to RFR Loans or any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings in Sterling, the term “Business Day” shall also exclude any day that is not an RFR Business Day.

“Calculation Amount” means, as of the end of any Testing Period, an amount equal to the greater of: (a) (i) 125% of the Adjusted Covered Debt Balance (as of the end of such Testing Period) minus (ii) the aggregate Value of all Quoted Investments included in the Borrowing Base (as of the end of such Testing Period) and (b) 10% of the aggregate Value of all Unquoted Investments included in the Borrowing Base (as of the end of such Testing Period); provided that in no event shall more than 25% (or, if clause (b) applies, 10%, or as near thereto as reasonably practicable) of the aggregate Value of the Unquoted Investments in the Borrowing Base be tested in respect of any applicable Testing Period.

“CAM Exchange” means the exchange of the Lenders’ interests provided for in Article VII.

“CAM Exchange Date” means the date on which any Event of Default referred to in clause (j) of Article VII shall occur or the date on which the Borrower receives written notice from the Administrative Agent that any Event of Default referred to in clause (i) of Article VII has occurred.

“CAM Percentage” means, as to each Lender, a fraction, expressed as a decimal, of which (a) the numerator shall be the aggregate Dollar Equivalent of the Designated Obligations owed to such Lender (whether or not at the time due and payable) immediately prior to the CAM Exchange Date and (b) the denominator shall be the aggregate Dollar Equivalent amount of the Designated Obligations owed to all the Lenders (whether or not at the time due and payable) immediately prior to the CAM Exchange Date.

“Canadian Dollars” or “CS” means the lawful currency of Canada.

“Canadian Prime Rate” means, on any day, the rate determined by the Administrative Agent to be the higher of (i) the rate equal to the PRIMCAN Index rate that appears on the Bloomberg screen at 10:15 a.m. Toronto time on such day (or, in the event that the PRIMCAN Index is not published by Bloomberg, any other information services that publishes such index from time to time, as selected by the Administrative Agent in its reasonable discretion) and (ii) the average rate for thirty (30) day Canadian Dollar bankers’ acceptances that appears on the Reuters Screen CDOR Page (or, in the event such rate does not appear on such page or screen, on any successor or substitute page or screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time, as selected by the Administrative Agent in its reasonable discretion) at 10:15 a.m. Toronto time on such day, plus 1% per annum; provided, that if any of the above rates shall be less than 0%, such rate shall be deemed to be 0% for purposes of this Agreement. Any change in the Canadian Prime Rate due to a change in the PRIMCAN Index or CDOR shall be effective from and including the effective date of such change in the PRIMCAN Index or CDOR, respectively.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or finance leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Capital Stock” of any Person means any and all shares of corporate stock (however designated) of, and any and all other Equity Interests and participations representing ownership interests (including membership interests and limited liability company interests) in, such Person.

“Cash” means any immediately available funds in Dollars or in any currency other than Dollars (measured in terms of the Dollar Equivalent thereof) which is a freely convertible currency.

“Cash Collateralize” means, in respect of a Letter of Credit or any obligation hereunder, to provide and pledge cash collateral pursuant to Section 2.04(k), at a location and pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and each Issuing Bank. “Cash Collateral” and “Cash Collateralization” shall have meanings correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means investments (other than Cash) that are one or more of the following obligations:

- (a) U.S. Government Securities, in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper or other short term corporate obligations maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, a credit rating of at least A-1 from S&P and at least P-1 from Moody’s (or if only one of S&P or Moody’s provides such rating, such investment shall also have an equivalent credit rating from any other rating agency);
- (c) investments in certificates of deposit, bankers’ acceptances and time deposits maturing within 180 days from the date of acquisition thereof (i) issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof, Canada or any province thereof, the United Kingdom or the jurisdiction or any constituent jurisdiction thereof in which the Principal Financial Center in respect of any Agreed Foreign Currency is located; and (ii) having, at such date of acquisition, a credit rating of at least A-1 from S&P and at least P-1 from Moody’s (or if only one of S&P or Moody’s provides such rating, such investment shall also have an equivalent credit rating from any other rating agency);
- (d) fully collateralized repurchase agreements with a term of not more than 30 days from the date of acquisition thereof for U.S. Government Securities and entered into with (i) a financial institution satisfying the criteria described in clause (c) of this definition or (ii) an Approved Dealer having (or being a member of a consolidated group having) at such date of acquisition, a credit rating of at least A-1 from S&P and at least P-1 from Moody’s (or if only one of S&P or Moody’s provides such rating, such Approved Dealer shall also have an equivalent credit rating from any other rating agency);

(e) certificates of deposit or bankers' acceptances with a maturity of 90 days or less of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than \$1,000,000,000;

(f) investments in money market funds and mutual funds which invest substantially all of their assets in Cash or assets of the types described in clauses (a) through (e) above;

(g) money market funds that have, at all times, credit ratings of "Aaa" and "MR1+" by Moody's and "AAAm" or "Aam-G" by S&P, respectively; and

(h) any of the following offered by SMBC (or any successor custodian or other entity acting in a similar capacity with respect to the Borrower) or any money center bank (I) money market deposit accounts, (II) Eurodollar time deposits, (III) commercial eurodollar sweep services or (IV) open commercial paper services, in each case having, at such date of acquisition, a credit rating at least A-1 from S&P and at least P-1 from Moody's and maturing not later than 270 days from the date of acquisition thereof;

provided that (i) in no event shall Cash Equivalents include any obligation that provides for the payment of interest alone (for example, interest-only securities or "IOs"); (ii) if any of Moody's or S&P changes its rating system, then any ratings included in this definition shall be deemed to be an equivalent rating in a successor rating category of Moody's or S&P, as the case may be; (iii) Cash Equivalents (other than U.S. Government Securities, certificates of deposit or repurchase agreements) shall not include any such investment of more than 10% of total assets of the Borrower and the Subsidiary Guarantors in any single issuer; and (iv) in no event shall Cash Equivalents include any obligation that is not denominated in Dollars or an Agreed Foreign Currency.

"Central Bank Rate" means the greater of (A) the sum of (i) for any Loan denominated in (x) Sterling, the Bank of England (or any successor thereto)'s "Bank Rate" as published by the Bank of England (or any successor thereto) from time to time, (y) Euro, one of the following three rates as may be selected by the Administrative Agent in its reasonable discretion: (1) the fixed rate for the main refinancing operations of the European Central Bank (or any successor thereto), or, if that rate is not published, the minimum bid rate for the main refinancing operations of the European Central Bank (or any successor thereto), each as published by the European Central Bank (or any successor thereto) from time to time, (2) the rate for the marginal lending facility of the European Central Bank (or any successor thereto), as published by the European Central Bank (or any successor thereto) from time to time or (3) the rate for the deposit facility of the central banking system of the Participating Member States, as published by the European Central Bank (or any successor thereto) from time to time or (z) any other Agreed Foreign Currency, a central bank rate as determined by the Administrative Agent in its reasonable discretion; plus (ii) the applicable Central Bank Rate Adjustment and (B) 0%.

"Central Bank Rate Adjustment" means, for any date, for any Loan denominated in (A) Sterling, a rate equal to the difference (which may be a positive or negative value or zero) of (i) the average of the Daily Simple RFR for Sterling for the five most recent RFR Business Days preceding such day for which SONIA was available (excluding, from such averaging, the highest

and the lowest SONIA applicable during such period of five RFR Business Days) minus (ii) the Central Bank Rate in respect of Sterling in effect on the last RFR Business Day in such period, (B) Euro, a rate equal to the difference (which may be a positive or negative value or zero) of (i) the average of the Adjusted Term Benchmark Rate for Euro for the five most recent Term Benchmark Banking Days for Euro preceding such day for which the EURIBOR Screen Rate was available (excluding, from such averaging, the highest and the lowest EURIBOR Screen Rate applicable during such period of five Term Benchmark Banking Days for Euro) minus (ii) the Central Bank Rate in respect of Euro in effect on the last Term Benchmark Banking Day for Euro in such period and (C) any other Agreed Foreign Currency, a Central Bank Rate Adjustment as determined by the Administrative Agent in its reasonable discretion. For the purposes of this definition, (x) the term "Central Bank Rate" shall be determined disregarding clause (A)(ii) of the definition of such term and (y) each of the Adjusted Term Benchmark Rate for Euros on any day shall be based on the EURIBOR Screen Rate, on such day at approximately the time referred to in the definition of such term for deposits in the applicable Foreign Currency for a maturity of one month.

"Change in Law" means the occurrence, after the date of this Agreement (or with respect to a Person becoming a Lender by assignment or joinder after the date of this Agreement, the effective date thereof), of (a) the adoption of any law, treaty or governmental rule or regulation or any change in any law, treaty or governmental rule or regulation or in the interpretation, administration or application thereof (regardless of whether the underlying law, treaty or governmental rule or regulation was issued or enacted prior to the Effective Date (or with respect to a Person becoming a Lender by assignment or joinder after the date of this Agreement, the effective date thereof)), but excluding proposals thereof, or any determination of a court or Governmental Authority, (b) any guideline, request or directive by any Governmental Authority (whether or not having the force of law) or any implementation rules or interpretations of previously issued guidelines, requests or directives, in each case that is issued or made after the Effective Date (or with respect to a Person becoming a Lender by assignment or joinder after the date of this Agreement, the effective date thereof) or (c) compliance by any Lender (or its applicable lending office) or any company controlling such Lender with any guideline, request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such Governmental Authority, in each case adopted after the Effective Date (or with respect to a Person becoming a Lender by assignment or joinder after the date of this Agreement, the effective date thereof). For the avoidance of doubt, all requests, rules, guidelines or directives concerning liquidity and capital adequacy issued (i) by any United States regulatory authority under or in connection with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act and (ii) by any Governmental Authority in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date adopted, issued, promulgated or implemented.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans constituting such Borrowing, are Dollar Loans or Multicurrency Loans; when used in reference to any Lender, refers to whether such Lender is a Dollar Lender or a Multicurrency Lender; and, when used in reference to any Commitment, refers to whether such Commitment is a Dollar Commitment or a Multicurrency Commitment. The "Class" of a Letter of Credit refers to whether such Letter of Credit is a Dollar Letter of Credit or a Multicurrency Letter of Credit.



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

“Collateral” has the meaning assigned to such term in the Guarantee and Security Agreement.

“Collateral Account” means that certain custody account with account number set forth on Schedule 6.10 hereto at State Street Bank and Trust Company and any other securities account designated as the “Collateral Account” on Schedule 4B to the Guarantee and Security Agreement.

“Collateral Agent” means SMBC in its capacity as Collateral Agent under the Guarantee and Security Agreement, and includes any successor Collateral Agent thereunder.

“Collateral Pool” means, at any time, each Investment that has been Delivered (as defined in the Guarantee and Security Agreement) to the Collateral Agent and is subject to the Lien of the Guaranty and Security Agreement, and then only for so long as such Investment continues to be Delivered as contemplated therein and in which the Collateral Agent has a first-priority perfected Lien as security for the Secured Obligations (as defined in the Guarantee and Security Agreement) (subject to any Lien permitted by Section 6.02 hereof); provided that in the case of any Investment that is included in the Collateral Account and in which the Collateral Agent has a first-priority perfected (other than customary rights of setoff, banker’s lien, security interest or other like right upon deposit accounts and securities accounts of such Obligor in which such Investments are held) security interest pursuant to a valid Uniform Commercial Code filing, such Investment may be included in the Borrowing Base so long as all remaining actions to complete “Delivery” are satisfied in full within 7 days of such inclusion (or such longer period up to thirty (30) days as the Administrative Agent and the Collateral Agent may agree in their respective sole discretion); provided, further, that, for the avoidance of doubt, no Investment that constitutes Excluded Collateral shall be included in the Collateral Pool.

“Commitment Increase” has the meaning assigned to such term in Section 2.07(e)(i).

“Commitment Increase Date” has the meaning assigned to such term in Section 2.07(e)(i).

“Commitment Termination Date” means November 7, 2025.

“Commitments” means, collectively, the Dollar Commitments and the Multicurrency Commitments.

“Common Equity” means Capital Stock (other than Preferred Stock) and warrants.

“Competitor” means any Person primarily engaged in the business of private asset management as a business development company, mezzanine fund, private debt fund, hedge fund, distressed asset fund, vulture fund, private equity fund or any venture lender, which is in direct or indirect competition with the Borrower or any Affiliate thereof, (b) any Person Controlled by, or Controlling, or under common Control with, a Person referred to in clause (a) above, or (c) any Person for which a Person referred to in clause (a) above serves as an investment advisor with discretionary investment authority.

“Conforming Changes” means with respect to the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Term Benchmark Rate”, the definition of “Alternate Base Rate”, the definition of “Business Day”, the definition of “Term Benchmark Banking Day”, the definition of “U.S. Government Securities Business Day”, the definition of “Daily Simple RFR”, the definition of “Interest Period”, the definition of “RFR”, the definition of “RFR Business Day”, the definition of “RFR Interest Day”, the definition of “RFR Reference Day”, the definition of or any similar or analogous definition, timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.14 and other technical, administrative or operational matters) that the Administrative Agent (after consultation with the Borrower) decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent (after consultation with the Borrower) decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Consolidated Asset Coverage Ratio” means the ratio, determined on a consolidated basis for the Borrower and its Subsidiaries, without duplication, of (a) the value of total assets of the Borrower and its Subsidiaries, less all liabilities and indebtedness not represented by senior securities, to (b) the aggregate amount of senior securities representing indebtedness of the Borrower and its Subsidiaries (including any Indebtedness outstanding under this Agreement), in each case as determined pursuant to the Investment Company Act and any orders of the SEC issued to or with respect to the Borrower thereunder, including any exemptive relief granted by the SEC with respect to the indebtedness of any SBIC Subsidiary or otherwise (including, for the avoidance of doubt, any exclusion of such indebtedness in the foregoing calculation).

“Consolidated Group” has the meaning assigned to such term in Section 5.13(a).

“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; provided, however, that “Control” shall not include “negative” control or “blocking” rights whereby action cannot be taken without the vote or consent of any Person.

“Controlled Foreign Corporation” means any Subsidiary which is (i) a “controlled foreign corporation” (within the meaning of Section 957 of the Code), (ii) a Subsidiary substantially all the assets of which consist (directly or indirectly through one or more flow-through entities) of Equity Interests and/or indebtedness of one or more Subsidiaries described in

clause (i) of this definition, or (iii) an entity treated as disregarded for U.S. federal income tax purposes and substantially all of the assets of which consist (directly or indirectly through one or more flow-through entities) of the Equity Interests and/or indebtedness of one or more Subsidiaries described in clause (i) or (ii) of this definition.

“Covered Debt Amount” means, on any date, the sum of (x) all of the Revolving Credit Exposures of all Lenders on such date minus (y) the LC Exposures fully Cash Collateralized on such date pursuant to Section 2.04(k) and the last paragraph of Section 2.08(a).

“Currency” means Dollars or any Foreign Currency.

“Daily Simple RFR” means, for any day (an “RFR Interest Day”), an interest rate per annum equal to the greater of (a) SONIA for the day (the “RFR Reference Day”) that is five RFR Business Days prior to (i) if such RFR Interest Day is a RFR Business Day, such RFR Interest Day or (ii) if such RFR Interest Day is not a RFR Business Day, the RFR Business Day immediately preceding such RFR Interest Day, in each case plus the applicable RFR Applicable Credit Adjustment Spread, and (b) 0.00%. If by 5:00 pm, London time, on the second RFR Business Day immediately following any RFR Reference Day, SONIA in respect of such RFR Reference Day has not been published on the SONIA Administrator’s Website and a Benchmark Replacement Date with respect to the Daily Simple RFR has not occurred, then SONIA for such RFR Reference Day will be SONIA as published in respect of the first preceding RFR Business Day for which SONIA was published on the SONIA Administrator’s Website; provided that SONIA as determined pursuant to this sentence shall be utilized for purposes of calculating the Daily Simple RFR for no more than three consecutive RFR Interest Days. Any change in Daily Simple RFR due to a change in SONIA shall be effective from and including the effective date of such change in SONIA without notice to the Borrower. When used in reference to any Loan or Borrowing, “Daily Simple RFR Loan” or “Daily Simple RFR Borrowing”, as applicable, refers to whether such Loan, or the Loans constituting such Borrowing, are bearing interest at a rate determined by reference to the Daily Simple RFR for the applicable Currency.

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

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means, subject to Section 2.18(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans or participations in Letters of Credit 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 reasonable determination that one or more conditions precedent to funding (each of

which conditions precedent, together with the applicable default, if any, shall be specifically identified in detail in such writing) has not been satisfied or has not otherwise been waived in accordance with the terms of this Agreement, or (ii) pay to the Administrative Agent, any Issuing Bank or any Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any Issuing Bank 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 reasonable determination that a condition precedent to funding (which condition precedent, together with the applicable default, if any, shall be specifically identified in detail 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) the Administrative Agent has received notification that such Lender has become, or has a direct or indirect parent company that is, (i) insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, (ii) other than via an Undisclosed Administration, the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its direct or indirect parent company, or such Lender or its direct or indirect parent company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment or (iii) 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 or instrumentality so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.18(b)) upon such determination (and the Administrative Agent shall deliver written notice of such determination to the Borrower, each Issuing Bank and each Lender).

"Designated Obligations" means all obligations of the Borrower with respect to (a) principal of and interest on the Loans and (b) accrued and unpaid fees under the Loan Documents.

"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), 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; provided that the term "Disposition" or "Dispose" shall not include the disposition of Investments originated by the Borrower and immediately transferred to a Financing Subsidiary pursuant to a transaction not prohibited hereunder.

“Dollar Commitment” means, with respect to each Dollar Lender, the commitment of such Dollar Lender to make Loans, and to acquire participations in Letters of Credit, denominated in Dollars hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Dollar Credit Exposure hereunder, as such commitment may be (a) reduced or increased from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The amount of each Lender’s Dollar Commitment is set forth on Schedule 1.01(b) hereto, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Dollar Commitment, as applicable. The aggregate amount of the Lenders’ Dollar Commitments as of the Effective Date is \$75,000,000.

“Dollar Equivalent” means, on any date of determination, with respect to an amount denominated in any Foreign Currency, the amount of Dollars that would be required to purchase such amount of such Foreign Currency on the date two Business Days prior to such date, based upon the spot selling rate at which the Administrative Agent or the applicable Issuing Bank, as applicable, offers to sell such Foreign Currency for Dollars in the Principal Financial Center for such Foreign Currency at approximately 11:00 a.m., Applicable Time, for delivery two Business Days later; provided that the Administrative Agent or such Issuing Bank, as applicable, may obtain such spot rate from another financial institution designated by the Administrative Agent or such Issuing Bank if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; provided further that such Issuing Bank may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letters of Credit denominated in any Agreed Foreign Currency.

“Dollar LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Dollar Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements in respect of such Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower at such time. The Dollar LC Exposure of any Lender at any time shall be its Applicable Dollar Percentage of the total Dollar LC Exposure at such time. For all purposes of this Agreement, if on any date of determination a Dollar 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 International Standby Practices, such Dollar Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Dollar Lender” means the Persons listed on Schedule 1.01(b) hereto as having Dollar Commitments and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption that provides for it to assume a Dollar Commitment or to acquire Revolving Dollar Credit Exposure, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Dollar Letters of Credit” means Letters of Credit that utilize the Dollar Commitments.

“Dollar Loan” means a Loan denominated in Dollars.

“Dollars” or “\$” refers to lawful money of the United States of America.

“EBITDA” means, other than with respect to any Recurring Revenue Loan, the consolidated net income of the applicable Person (excluding extraordinary, unusual or non-recurring gains and extraordinary losses (to the extent excluded in the definition of “EBITDA” (or similar defined term used for the purposes contemplated herein) in the relevant agreement relating to the applicable Portfolio Investment)) for the relevant period plus, without duplication, the following to the extent deducted in calculating such consolidated net income in the relevant agreement relating to the applicable Portfolio Investment for such period: (i) consolidated interest charges for such period, (ii) the provision for federal, state, local and foreign income taxes payable for such period, (iii) depreciation and amortization expense for such period, and (iv) such other adjustments included in the definition of “EBITDA” (or similar defined term used for the purposes contemplated herein) in the relevant agreement relating to the applicable Portfolio Investment, provided that such adjustments are usual and customary and substantially comparable to market terms for substantially similar debt of other similarly situated borrowers at the time such relevant agreements are entered into as reasonably determined in good faith by the Borrower. Notwithstanding the foregoing, EBITDA may be calculated by the Borrower in good faith using information from and calculations consistent with the relevant financial models, pro forma financial statements, compliance statements and financial reporting packages provided by the relevant issuer as per the requirements of the relevant agreement governing a Portfolio Investment.

“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 clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

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

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

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02), which date is November 9, 2021.

“Eligible Subsidiary” means any wholly-owned Subsidiary of the Borrower that is not a Subsidiary Guarantor and for which greater than 80% of the assets owned by such Subsidiary constitute Portfolio Investments that are Performing and not common stock.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests or equivalents (however designated, including any instrument treated as equity for U.S. federal income tax purposes) in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974, and the rules and regulations promulgated thereunder, each as amended or modified from time to time.

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

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) any failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; or (f) the imposition of Withdrawal Liability on the Borrower or any ERISA Affiliate or the receipt of any notice by the Borrower or any ERISA Affiliate of the insolvency, within the meaning of Title IV of ERISA, of any Multiemployer Plan to which the Borrower or any ERISA Affiliate is obligated to contribute.

“Erroneous Payment” has the meaning assigned to it in Section 8.09(a).

“Erroneous Payment Deficiency Assignment” has the meaning assigned to it in Section 8.09(d).

“Erroneous Payment Impacted Class” has the meaning assigned to it in Section 8.09(d).

“Erroneous Payment Return Deficiency” has the meaning assigned to it in Section 8.09(d).

“Erroneous Payment Subrogation Rights” has the meaning assigned to it in Section 8.09(d).

“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.

“EURIBOR Screen Rate” has the meaning assigned to it in clause (b) of the definition of “Term Benchmark Rate”.

“Euro” or “€” means a single currency of the Participating Member States.

“Event of Default” has the meaning assigned to such term in Article VII.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended.

“Excluded Collateral” has the meaning assigned to such term in the Guarantee and Security Agreement.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) Taxes imposed on (or measured by) such recipient’s net income (however denominated), net profits, franchise Taxes and branch profits or any similar Taxes, in each case, (i) imposed by the United States of America (or any state or political subdivision thereof), or by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) Other Connection Taxes, (b) in the case of a Lender, any Taxes that are U.S. withholding taxes imposed on amounts payable to or for the account of such Lender (i) at the time such Lender (other than an assignee pursuant to a request by the Borrower under Section 2.17(b)) becomes a party to this Agreement (or otherwise acquires an interest in a Loan or Commitment) or designates a new lending office, except in each case to the extent that such Lender’s assignor or such Lender was entitled to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.15, at the time of such assignment or designation (other than to the extent such withholding is as a result of a CAM Exchange), or (ii) that is attributable to such Lender’s failure or inability (other than as a result of a Change in Law occurring after the date such Lender becomes a party to this Agreement) to comply with Section 2.15(f), (c) any U.S. federal, state or local backup withholding Taxes imposed on payments made under any Loan Document, and (d) any withholding Taxes that are imposed under FATCA.

“Extraordinary Receipts” means any cash received by or paid to any Obligor on account of any foreign, United States, state or local tax refunds, pension plan reversions, judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, condemnation awards (and payments in lieu thereof), indemnity payments received not in the ordinary course of business and any purchase price adjustment received not in the ordinary course of business in connection with any purchase agreement and proceeds of insurance (excluding, however, for the avoidance of doubt, proceeds of any issuance of Equity Interests and issuances of Indebtedness by any Obligor); provided that Extraordinary Receipts shall not include any (x) amounts that the Borrower receives from the Administrative Agent or any Lender pursuant to Section 2.15(h), or (y) cash receipts to the extent received from proceeds of insurance, condemnation awards (or payments in lieu thereof), indemnity payments or payments in respect of judgments or settlements of claims, litigation or proceedings to the extent that such proceeds, awards or payments are received by any Person in respect of any unaffiliated third party claim against or loss by such Person and promptly applied to pay (or to reimburse such Person for its prior payment of) such claim or loss and the costs and expenses of such Person with respect thereto.

“Existing Notes” means the 2022 Convertible Notes, the 2022 Notes, the 2024 Notes, the 2025 April Notes, the 2025 February Notes, the 2025 June Notes, 2026A March Notes, 2026B March Notes, the 2026 September Notes and the 2033 Notes.



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

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Federal Reserve Bank of New York’s Website” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“Fee Letter” means (i) that certain fee letter, dated the Effective Date, among the Borrower, the Administrative Agent, the Lead Arranger and SMBC, as Lender, and (ii) each other fee letter by and among the Borrower, the Administrative Agent and certain Lenders from time to time in connection with this Agreement.

“Final Maturity Date” means November 9, 2026.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

“Financing Subsidiary” means an SPE Subsidiary or an SBIC Subsidiary.

“Floor” means zero percent (0.00%).

“Foreign Currency” means at any time any currency other than Dollars.

“Foreign Currency Equivalent” means, with respect to any amount denominated in Dollars, the amount of any Foreign Currency that could be purchased with such amount of Dollars using the reciprocal of the foreign exchange rate(s) specified in the definition of “Dollar Equivalent”, as reasonably determined by the Administrative Agent.

“Foreign Lender” means any Lender that is not a United States Person.

“Foreign Subsidiary” means any Subsidiary of the Borrower that is a Controlled Foreign Corporation.

“Fronting Exposure” means, at any time there is a Defaulting Lender, with respect to any Issuing Bank, such Defaulting Lender’s (a) Applicable Dollar Percentage of the outstanding Dollar LC Exposure and (b) Applicable Multicurrency Percentage of the outstanding Multicurrency LC Exposure, in each case with respect to Letters of Credit issued by such Issuing Bank other than Dollar LC Exposure or Multicurrency LC Exposure, as the case may be, as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of the United States of America, or of any other nation, or 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 body exercising such powers or functions (such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided that the term Guarantee shall not include (i) endorsements for collection or deposit in the ordinary course of business or (ii) customary indemnification agreements entered into in the ordinary course of business; provided that such indemnification obligations are unsecured, such Person has determined that any liability thereunder is remote and such indemnification obligations are not the functional equivalent of the guaranty of a payment obligation of the primary obligor. The amount of any Guarantee at any time shall be deemed to be an amount equal to the maximum stated or determinable amount of the primary obligation in respect of which such Guarantee is incurred, unless the terms of such Guarantee expressly provides that the maximum amount for which such Person may be liable thereunder is a lesser amount (in which case the amount of such Guarantee shall be deemed to be an amount equal to such lesser amount).

“Guarantee and Security Agreement” means that certain Guarantee and Security Agreement dated as of the Effective Date among the Borrower, the Administrative Agent, each Subsidiary of the Borrower from time to time party thereto and the Collateral Agent.

“Guarantee Assumption Agreement” means a Guarantee Assumption Agreement substantially in the form of Exhibit B to the Guarantee and Security Agreement (or such other form as shall be reasonably satisfactory to the Collateral Agent) between the Collateral Agent and an entity that pursuant to Section 5.08(a) is required to become a “Subsidiary Guarantor” under the Guarantee and Security Agreement (with such changes as the Administrative Agent shall request consistent with the requirements of Section 5.08).

“Hedging Agreement” means any interest rate protection agreement, foreign currency exchange protection agreement, commodity price protection agreement or other interest, currency exchange rate or commodity price hedging arrangement.

“Immaterial Subsidiaries” means those Subsidiaries of the Borrower that are “designated” as Immaterial Subsidiaries by the Borrower from time to time (it being understood that the Borrower may at any time change any such designation); provided that such designated Immaterial Subsidiaries shall collectively meet all of the following criteria as of the date of the most recent balance sheet required to be delivered pursuant to Section 5.01: (a) the aggregate assets of such Subsidiaries and their respective Subsidiaries (on a consolidated basis) as of such date do not exceed an amount equal to 3% of the consolidated assets of the Borrower and its Subsidiaries as of such date; and (b) the aggregate revenues of such Subsidiaries and their respective Subsidiaries (on a consolidated basis) for the fiscal quarter ending on such date do not exceed an amount equal to 3% of the consolidated revenues of the Borrower and its Subsidiaries for such period.

“Increasing Lender” has the meaning assigned to such term in Section 2.07(e)(i).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments representing extensions of credit, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person (excluding accounts payable and accrued expenses and trade accounts incurred in the ordinary course of business that are not more than 90 days past due), (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable and accrued expenses incurred in the ordinary course of business), (e) all Indebtedness of others secured by any Lien (other than a Lien permitted by Section 6.02(d)) on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed (with the amount of such Indebtedness being the lower of the outstanding amount of such Indebtedness and the fair market value of the property subject to such Lien), (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Notwithstanding the foregoing, “Indebtedness” shall not include (i) any revolving commitments, delayed draw term loans or letters of credit for which any Obligor is acting as a lender or issuing lender, as applicable, as part of or in connection with a Portfolio Investment, (ii) any non-recourse liabilities for participation sold by any Person in any Bank Loans, (iii) indebtedness of such Person on account of the sale by such Person of the first out tranche of any First Lien Bank Loan that arises solely as an accounting matter under ASC 860, (iv) escrows or purchase price holdbacks

arising in the ordinary course of business in respect of a portion of the purchase price of an asset or Investment to satisfy unperformed obligations of the seller of such asset or Investment, (v) a commitment arising in the ordinary course of business to make a future Investment or (vi) uncalled capital or other commitments of an Obligor in Joint Venture Investments, as well as any letter or agreement requiring any Obligor to provide capital to a Joint Venture Investment or a lender to a Joint Venture Investment.

“Indemnified Taxes” means Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under this Agreement.

“Independent” when used with respect to any specified Person means that such Person (a) does not have any direct financial interest or any material indirect financial interest in the Borrower or any of its Subsidiaries or Affiliates (including its investment advisor or any Affiliate thereof) and (b) is not connected with the Borrower or of its Subsidiaries or Affiliates (including its investment advisor or any Affiliate thereof) as an officer, employee, promoter, underwriter, trustee, partner, director or Person performing similar functions.

“Industry Classification Group” means (a) any of the classification groups set forth in Schedule 1.01(c) hereto, together with any such classification groups that may be subsequently established by Moody’s and provided by the Borrower to the Administrative Agent, and (b) up to three additional industry group classifications established by the Borrower pursuant to Section 5.12.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.06.

“Interest Payment Date” means (a) with respect to any ABR Loan or RFR Loan, each Quarterly Date and (b) with respect to any Term Benchmark Loan, the last day of each Interest Period therefor and, in the case of any Term Benchmark Loan with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at three-month intervals after the first day of such Interest Period.

“Interest Period” means, for any Term Benchmark Loan or Borrowing, the period commencing on the date of such Loan or Borrowing and ending on the numerically corresponding day in the calendar month that is one month, three months or, except with respect to Term Benchmark Loans denominated in Canadian Dollars, six months thereafter or, with respect to such portion of any Term Benchmark Loan or Borrowing denominated in a Foreign Currency that is scheduled to be repaid on the Final Maturity Date, a period of less than one month’s duration commencing on the date of such Loan or Borrowing and ending on the Final Maturity Date, as specified in the applicable Borrowing Request or Interest Election Request; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period (other than an Interest Period pertaining to a Term Benchmark Borrowing denominated in a Foreign Currency that ends on the Final Maturity Date that is permitted to be of less than one month’s duration as provided in this definition) that

commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no tenor that has been removed from this definition pursuant to Section 2.19(d) (unless it is reinstated pursuant to Section 2.19(d)) shall be available for specification in such Borrowing Request or notice of conversion or continuation. For purposes hereof, the date of a Loan initially shall be the date on which such Loan is made and thereafter shall be the effective date of the most recent conversion or continuation of such Loan, and the date of a Borrowing comprising Loans that have been converted or continued shall be the effective date of the most recent conversion or continuation of such Loans.

“Investment” means, for any Person: (a) Equity Interests, bonds, notes, debentures or other securities of any other Person or any agreement to acquire any Equity Interests, bonds, notes, debentures or other securities of any other Person (and any rights or proceeds in respect of (x) any “short sale” of securities or (y) any sale of any securities at a time when such securities are not owned by such Person); (b) deposits, advances, loans or other extensions of credit made to any other Person (including purchases of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any advance to employee, officers, directors and consultants of the Borrower or any of its Subsidiaries for expenses in the ordinary course of business); or (c) Hedging Agreements.

“Investment Company Act” means the Investment Company Act of 1940, as amended from time to time.

“Investment Policies” means the written statement of the investment objectives, policies, restrictions and limitations of the Borrower delivered (to the extent not otherwise publicly filed with the SEC) to the Administrative Agent on or prior to the Effective Date and as the same may be changed, altered, expanded, amended, modified, terminated or restated from time to time by a Permitted Policy Amendment.

“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.

“Issuing Bank” means SMBC and any other Issuing Bank designated pursuant to Section 2.04(l), in their capacity as the issuers of Letters of Credit hereunder, and their respective successors in such capacity as provided in Section 2.04(n). In the case of any Letter of Credit to be issued in an Agreed Foreign Currency, each Issuing Bank may designate any of its affiliates as the “Issuing Bank” for purposes of such Letter of Credit.

“IVP Supplemental Cap” has the meaning assigned to such term in Section 9.03(a).

“Japanese Yen” or “¥” means the lawful currency of Japan.

“Joint Venture Investment” means, with respect to any Obligor, any Investment by such Obligor in a joint venture or other investment vehicle in the form of a capital investment, loan or other commitment in or to such joint venture or other investment vehicle pursuant to which such Obligor may be required to provide contributions, investments, or financing to such joint venture or other investment vehicle and which Investment the Borrower has designated as a “Joint Venture Investment”.

“LC Disbursement” means a payment made by any Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of the Dollar LC Exposure and the Multicurrency LC Exposure.

“Lead Arranger” means SMBC.

“Lenders” means, collectively, the Dollar Lenders and the Multicurrency Lenders.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement.

“Letter of Credit Collateral Account” has the meaning assigned to such term in Section 2.04(k).

“Letter of Credit Documents” means, with respect to any Letter of Credit, collectively, any application therefor and any other agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (a) the rights and obligations of the parties concerned or at risk with respect to such Letter of Credit or (b) any collateral security for any of such obligations, each as the same may be modified and supplemented and in effect from time to time.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance in the form of a security interest, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities (other than on market terms so long as in the case of any Portfolio Investment in the Collateral Pool, the Value used in determining the Borrowing Base is not greater than the purchase or call price), except in favor of the issuer thereof (and, for the avoidance of doubt, in the case of Investments that are loans or other debt obligations, customary restrictions on assignments or transfers thereof pursuant to the underlying documentation of such Investments shall not be deemed to be a “Lien” and in the case of Investments that are securities, excluding customary drag-along, tag-along, buyout rights, voting rights, right of first refusal, restrictions on assignments or transfers and other similar rights in favor of one or more equity holders of the same issuer).

“Loan Documents” means, collectively, this Agreement, the Fee Letters, the Letter of Credit Documents and the Security Documents.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement.

“Losses” has the meaning assigned to such term in Section 9.03(b).

“Margin Stock” means “margin stock” within the meaning of Regulations T, U and X of the Board.

“Material Adverse Change” has the meaning assigned to such term in Section 3.04(b).

“Material Adverse Effect” means a material adverse effect on (a) the business, Investments and other assets, liabilities or financial condition of the Borrower or the Borrower and its Subsidiaries (other than Financing Subsidiaries) taken as a whole (excluding in any case a decline in the net asset value of the Borrower or a change in general market conditions or values of the Investments) or (b) the validity or enforceability of any of the Loan Documents or the rights or remedies of the Collateral Agent, the Administrative Agent or the Lenders thereunder.

“Material Indebtedness” means (a) Indebtedness (other than the Loans, Letters of Credit and Hedging Agreements), of any one or more of the Borrower and its Subsidiaries (other than Immaterial Subsidiaries) in an aggregate principal amount outstanding exceeding \$75,000,000 and (b) obligations in respect of one or more Hedging Agreements under which the maximum aggregate amount outstanding (giving effect to any netting agreements) that the Borrower and its Subsidiaries (other than Immaterial Subsidiaries) would be required to pay if such Hedging Agreement(s) were terminated at such time would exceed \$75,000,000.

“Minimum Collateral Amount” means, at any time, with respect to Cash Collateral consisting of Cash or deposit account balances, an amount equal to 100% of the Fronting Exposure of each Issuing Bank with respect to Letters of Credit issued and outstanding at such time.

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

“Multicurrency Commitment” means, with respect to each Multicurrency Lender, the commitment of such Multicurrency Lender to make Loans, and to acquire participations in Letters of Credit, denominated in Dollars and in Agreed Foreign Currencies hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Multicurrency Credit Exposure hereunder, as such commitment may be (a) reduced or increased from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The amount of each Lender’s Multicurrency Commitment is set forth on Schedule 1.01(b) hereto, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Multicurrency Commitment, as applicable. The aggregate amount of the Lenders’ Multicurrency Commitments as of the Effective Date is \$100,000,000.

“Multicurrency LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Multicurrency Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements in respect of such Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower at such time. The Multicurrency LC Exposure of any Lender at any time shall be its Applicable Multicurrency Percentage of the total Multicurrency LC Exposure at such time. For purposes of computing the amount available to be drawn under any Multicurrency Letter of Credit, the amount of such Multicurrency Letter of Credit

shall be determined in accordance with Section 1.05. For all purposes of this Agreement, if on any date of determination a Multicurrency 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 International Standby Practices, such Multicurrency Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Multicurrency Lender” means the Persons listed on Schedule 1.01(b) hereto as having Multicurrency Commitments and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption that provides for it to assume a Multicurrency Commitment or to acquire Revolving Multicurrency Credit Exposure, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Multicurrency Letters of Credit” means Letters of Credit that utilize the Multicurrency Commitments.

“Multicurrency Loan” means a Loan denominated in Dollars or an Agreed Foreign Currency under the Multicurrency Commitments.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA which the Borrower or any ERISA Affiliate has or within the preceding six years had any obligation to make any contributions.

“National Currency” means the currency, other than the Euro, of a Participating Member State.

“Net Cash Proceeds” means:

(a) with respect to any Disposition by the Borrower or any of its Subsidiaries (other than Financing Subsidiaries or Foreign Subsidiaries), or any Extraordinary Receipt received or paid to the account of the Borrower or any of its Subsidiaries (other than Financing Subsidiaries or Foreign Subsidiaries) (in each case, which requires a payment of the Loans under Section 2.09(d)), an amount equal to (a) 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) minus (b) the sum of (i) 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), (ii) the reasonable out-of-pocket fees, costs and expenses incurred by the Borrower or such Subsidiary in connection with such transaction, (iii) the taxes paid or reasonably estimated to be actually payable within two years of the date of the relevant transaction in connection with such transaction; provided that, if the amount of any estimated taxes pursuant to clause (iii) 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 (as of the date the Borrower determines such excess exists), (iv) any reasonable costs, fees, commissions, premiums and expenses incurred by the Borrower or any of its Subsidiaries in connection with such Disposition and (v) reserves for indemnification, purchase price adjustments or analogous arrangements reasonably estimated by the Borrower or the relevant Subsidiary in connection with such Disposition; provided that, if the amount of any estimated reserves pursuant to this clause (v) exceeds the amount actually required to be paid in cash in respect of indemnification, purchase price adjustments or analogous arrangements for such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds (as of the date the Borrower determines such excess exists); and



(b) with respect to the sale or issuance of any Equity Interest by the Borrower or any of its Subsidiaries (other than any Financing Subsidiary or Foreign Subsidiary) (including, for the avoidance of doubt, cash received by the Borrower or any of its Subsidiaries (other than any Financing Subsidiaries or Foreign Subsidiary) for the sale by the Borrower or such Subsidiary of any Equity Interest of a Financing Subsidiary or Foreign Subsidiary, but specifically excluding any sale of any Equity Interest by a Financing Subsidiary or Foreign Subsidiary or cash received by a Financing Subsidiary or Foreign Subsidiary in connection with the sale of any Equity Interest), or the incurrence or issuance of any Indebtedness by the Borrower or any of its Subsidiaries (other than Financing Subsidiaries or Foreign Subsidiaries) (in each case, which requires a payment of the Loans under Section 2.09(d)), an amount equal to (i) the sum of the cash and Cash Equivalents received in connection with such transaction minus (ii) the sum of (1) reasonable out-of-pocket fees, costs and expenses, incurred by the Borrower or such Subsidiary in connection therewith plus (2) any reasonable costs, fees, commissions, premiums, expenses, or underwriting discounts or commissions incurred by the Borrower or any of its Subsidiaries in connection with such sale or issuance.

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(d).

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

“Non-Performing Joint Venture Investment” means a Joint Venture Investment that is not a Performing Joint Venture Investment.

“Non-Public Information” means material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to the Borrower or its Affiliates or their Securities.

“Obligor” means, collectively, the Borrower and the Subsidiary Guarantors.

“Original Currency” has the meaning assigned to such term in Section 2.16.

“Other Connection Taxes” means, with respect to the Administrative Agent, any Lender or any Issuing Bank, Taxes imposed by any jurisdiction by reason of the recipient having any present or former connection with such jurisdiction (other than a connection arising solely from entering into, receiving any payment under or enforcing its rights under this Agreement or any other Loan Document or selling or assigning an interest in any Loan or Loan Document).

“Other Permitted Indebtedness” means (a) accrued expenses and current trade accounts payable incurred in the ordinary course of the Borrower’s business which are not overdue for a period of more than 90 days or which are being contested in good faith by appropriate proceedings, (b) Indebtedness (other than Indebtedness for borrowed money) arising in connection

with transactions in the ordinary course of any Obligor's business in connection with its securities, loans, derivatives transactions, reverse repurchase agreements or dollar rolls to the extent such transactions are permitted under the Investment Company Act and the Borrower's Investment Policies (after giving effect to any Permitted Policy Amendments); provided that, such Indebtedness does not arise in connection with the purchase of Investments other than Cash Equivalents and U.S. Government Securities, (c) Indebtedness in respect of judgments or awards so long as such judgments or awards do not constitute an Event of Default under clause (l) of Article VII, (d) Permitted Purchase Money Indebtedness, (e) Indebtedness which may be deemed to exist pursuant to any performance bonds, surety bonds, statutory bonds, appeal bonds or similar obligations incurred in the ordinary course of business, (f) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts incurred in the ordinary course of business, (g) Indebtedness consisting of the obligations of suppliers, customers, franchisees and licensees of the Obligors and their Subsidiaries in the ordinary course of business, (h) Indebtedness consisting of deferred purchase price or notes issued to partners, members, officers, directors and employees to purchase or redeem the Securities (or option or warrants or similar instruments) held by such partners, members, officers, directors and employees, (i) Indebtedness in respect of taxes, assessments or governmental charges to the extent that payment thereof shall not at the time be required to be made hereunder, (j) real estate lease or mortgage obligations incurred in the ordinary course of business, (k) contingent obligations resulting from the endorsement of instruments for collection in the ordinary course of business and (l) Indebtedness of the Borrower or any other Obligor to any SPE Subsidiary entered into not in violation of this Agreement and to the extent a court determines a transfer of assets (including participations) from such Obligor to such SPE Subsidiary did not constitute a true sale, provided that the holders of such Indebtedness have recourse only to the assets purported to be transferred (or in the case of participations, the portfolio investments that such participation interest relates to) to such SPE Subsidiary or counterparty, as applicable, and to no other assets of the Obligors in connection with such Indebtedness.

"Other Taxes" means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document, excluding any such Taxes that are Other Connection Taxes resulting from an assignment by any Lender in accordance with Section 9.04 hereof (unless such assignment is made pursuant to Section 2.17(b)).

"Participant" has the meaning assigned to such term in Section 9.04(f).

"Participant Register" has the meaning assigned to such term in Section 9.04(f).

"Participating Member State" means any member state of the European Community that adopts or has adopted the Euro as its lawful currency in accordance with the legislation of the European Union relating to the European Monetary Union.

"Payment Recipient" has the meaning assigned to it in Section 8.09(a).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

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“Periodic Term SOFR Determination Day” has the meaning assigned to it in the definition of “Term SOFR”.

“Permitted Equity Interests” means common stock of an Obligor that after its issuance is not subject to any agreement between the holder of such common stock and such Obligor where such Obligor is required to purchase, redeem, retire, acquire, cancel or terminate any such common stock at any time prior to the first anniversary of the Final Maturity Date (as in effect from time to time).

“Permitted Liens” means (a) Liens imposed by any Governmental Authority for Taxes, assessments or charges not yet due or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Borrower or any other Obligor in accordance with GAAP; (b) Liens of clearing agencies, broker-dealers and similar Liens incurred in the ordinary course of business; provided that, such Liens (i) attach only to the securities (or proceeds) being purported to be purchased or sold and (ii) secure only obligations incurred in connection with such purchase or sale, and not any obligation in connection with margin financing; (c) Liens imposed by law, such as materialmen’s, mechanics’, carriers’, workmens’, landlord, storage and repairmen’s Liens and other similar Liens arising in the ordinary course of business and securing obligations (other than Indebtedness for borrowed money) not yet due or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Borrower in accordance with GAAP; (d) Liens incurred or pledges or deposits made to secure obligations incurred in the ordinary course of business under workers’ compensation laws, unemployment insurance or other similar social security legislation (other than Liens imposed by the PBGC in respect of employee benefit plans subject to Title IV of ERISA) or to secure public or statutory obligations; (e) Liens securing the performance of, or payment in respect of, bids, insurance premiums, deductibles or co-insured amounts, tenders, government or utility contracts (other than for the repayment of borrowed money), surety, stay, customs and appeal bonds and other obligations of a similar nature incurred in the ordinary course of business; (f) Liens arising out of judgments or awards so long as such judgments or awards do not constitute an Event of Default under clause (l) of Article VII; (g) customary rights of setoff, banker’s lien, security interest or other like right upon (i) deposits of cash in favor of banks or other depository institutions in which such cash is maintained in the ordinary course of business, (ii) cash and financial assets held in securities accounts in favor of banks and other financial institutions with which such accounts are maintained in the ordinary course of business and (iii) assets held by a custodian in favor of such custodian in the ordinary course of business securing payment of fees, indemnities, charges for returning items and other similar obligations; (h) Liens arising solely from precautionary filings of financing statements under the Uniform Commercial Code of the applicable jurisdictions in respect of operating leases entered into by the Borrower or any of its Subsidiaries in the ordinary course of business or in respect of assets purported to be sold or otherwise contributed or disposed to any Person in a transaction permitted by this Agreement; (i) deposits of money securing leases to which the Borrower is a party as lessee made in the ordinary course of business; (j) easements, rights of way, zoning restrictions and similar encumbrances on real property and minor irregularities in the title thereto that do not (i) secure obligations for the payment of money or (ii) materially impair the value of such property or its use by any Obligor or any of its Subsidiaries in the normal conduct of such Person’s business; (k) Liens in favor of any escrow agent solely on and in respect of any cash earnest money deposits made by any Obligor in connection with any

letter of intent or purchase agreement (to the extent that the acquisition or disposition with respect thereto is otherwise permitted hereunder); (l) any restrictions on the sale or disposition of assets arising from a loan sale agreement; (m) any interest or title of a lessor under any lease entered into by any Obligor or any of its Subsidiaries in the ordinary course of its business and covering only the assets so leased; (n) leases or subleases, licenses or sublicenses granted to other Persons not materially interfering with the conduct of the business of the Obligors or any of their Subsidiaries; (o) Liens on assets not constituting Collateral with respect to obligations contemplated by clause (l) of the definition of "Other Permitted Indebtedness"; (p) Liens of a collection bank arising under Section 4-210 of the UCC on items in the ordinary course of collection; (q) Liens encumbering reasonable and customary initial deposits and margin deposits and similar Liens attaching to brokerage accounts incurred and not as a means to speculate; and (r) Liens on any assets (other than Collateral) securing Indebtedness under clauses (e) and (h) of the definition of "Other Permitted Indebtedness".

"Permitted Policy Amendment" means any change, alteration, expansion, amendment, modification, termination, restatement or replacement of the Investment Policies that is one of the following: (a) approved in writing by the Administrative Agent (with the consent of the Required Lenders), (b) required by applicable law, rule, regulation or Governmental Authority, or (c) not materially adverse to the rights, remedies or interests of the Lenders in the reasonable discretion of the Administrative Agent (for the avoidance of doubt, no change, alteration, expansion, amendment, modification, termination or restatement of the Investment Policies shall be deemed "material" if investment size proportionately increases as the size of the Borrower's capital base changes).

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Purchase Money Indebtedness and Capital Lease Obligations incurred after the Effective Date and any refinancing thereof in an aggregate principal amount outstanding at any one time not in excess of \$10,000,000.

"Permitted SBIC Guarantee" means a guarantee by one or more Obligors of Indebtedness of an SBIC Subsidiary on the SBA's then applicable form (or the applicable form at the time such guarantee was entered into); provided that, the recourse to the Borrower thereunder is expressly limited only to periods after the occurrence of an event or condition that is an impermissible change in the control of such SBIC Subsidiary (it being understood that, as provided in clause (r) of Article VII, it shall be an Event of Default hereunder if any such event or condition giving rise to such recourse occurs).

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

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Platform" has the meaning assigned to it in Section 5.01(i).

“Portfolio Investment” means any Investment held by the Obligors in their asset portfolio (and, solely for purposes of determining the Borrowing Base or Aggregate Portfolio Balance, Cash). Without limiting the generality of the foregoing, the following Investments shall not be considered Portfolio Investments under this Agreement or any other Loan Document: (a) any Investment that was not acquired or originated in accordance with the Investment Policies in effect at the time of such acquisition or origination, as applicable; (b) any Investment by an Obligor in any Subsidiary or joint venture of such Obligor (including, for the avoidance of doubt, any Joint Venture Investment); (c) any Investment that provides in favor of the obligor in respect of such Portfolio Investment an express right of rescission, set-off, counterclaim or any other defenses; (d) any Investment, which is made to a bankrupt entity (other than a debtor-in-possession financing and current pay obligations); and (e) any Investment, Cash or account in which a Financing Subsidiary or Foreign Subsidiary has an interest.

“Prime Rate” means the rate which is quoted as the “prime rate” in the print edition of *The Wall Street Journal*, Money Rates Section.

“Principal Financial Center” means, in the case of any Foreign Currency, the principal financial center where such Currency is cleared and settled, as determined by the Administrative Agent.

“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” means Lenders that do not wish to receive Non-Public Information with respect to the Borrower or any of its Subsidiaries or their Securities.

“Purchase Money Indebtedness” means Indebtedness (other than the obligations hereunder, but including Capital Lease Obligations), incurred at the time of, or within 90 days after, the acquisition of any fixed or capital assets for the purpose of financing all or any part of the acquisition cost thereof.

“Quarterly Dates” means the last Business Day of March, June, September and December in each year, commencing on September 30, 2021.

“Quoted Investments” has the meaning assigned to it in Section 5.12(b)(ii)(A).

“Register” has the meaning assigned to it in Section 9.04(c).

“Regulations D, T, U and X” means, respectively, Regulations D, T, U and X of the Board, as the same may be modified and supplemented and in effect from time to time.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective partners, directors, officers, managers, employees, agents, advisers and other representatives of such Person and such Person’s Affiliates.

“Relevant Governmental Body” means (a) with respect to a Benchmark Replacement in respect of obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to, Dollars, the Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board and/or the Federal Reserve Bank of New York or any successor thereto, (b) with respect to a Benchmark Replacement in respect of obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to, Sterling, the Bank of England, or a committee officially endorsed or convened by the Bank of England or, in each case, any successor thereto, (c) with respect to a Benchmark Replacement in respect of obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to, Euros, the European Central Bank, or a committee officially endorsed or convened by the European Central Bank or, in each case, any successor thereto and (d) with respect to a Benchmark Replacement in respect of obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to, any Currency other than Dollars, Sterling or Euros, (1) the central bank for the Currency in which such obligations, interest, fees, commissions or other amounts are denominated, or calculated with respect to, or any central bank or other supervisor which is responsible for supervising either (A) such Benchmark Replacement or (B) the administrator of such Benchmark Replacement or (2) any working group or committee officially endorsed or convened by (A) the central bank for the Currency in which such obligations, interest, fees, commissions or other amounts are denominated, or calculated with respect to, (B) any central bank or other supervisor that is responsible for supervising either (i) such Benchmark Replacement or (ii) the administrator of such Benchmark Replacement, (C) a group of those central banks or other supervisors or (D) the Financial Stability Board or any part thereof.

“Required Lenders” means, at any time, Lenders having Revolving Credit Exposures and unused Commitments representing more than 50% of the sum of the total Revolving Credit Exposures and unused Commitments at such time. The Required Lenders of a Class (which shall include the terms “Required Dollar Lenders” and “Required Multicurrency Lenders”) means, at such time, Lenders having Revolving Credit Exposures and unused Commitments of such Class representing more than 50% of the sum of the total Revolving Credit Exposures and unused Commitments of such Class at such time. Notwithstanding the foregoing, the Revolving Credit Exposure and unused Commitments of any Defaulting Lender shall be disregarded in the determination of Required Lenders or Required Lenders of a Class.

“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 an Obligor.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any shares of any class of capital stock of the Borrower or any of its 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, acquisition, cancellation or termination of any such shares of capital stock of the Borrower or any option, warrant or other right to acquire any such shares of capital stock (other than any equity awards granted to employees, officers, directors and consultants of the Borrower or any of its Affiliates); it being understood that none of: (w) the conversion features under convertible notes; (x) the triggering and/or settlement thereof; or (y) any cash payment made by the Borrower in respect thereof, shall constitute a Restricted Payment hereunder.

“Retention Holder” means any Person that is the designated retention holder for purposes of satisfying U.S. or EU risk retention rules and that is not entitled to receive any management fees and otherwise has no material assets or liabilities other than in connection with its activities as a retention holder.

“Return of Capital” means (a) any net cash amount received by any Obligor in respect of the outstanding principal of any Investment in the Collateral Account (whether at stated maturity, by acceleration or otherwise), but not including any prepayment of a revolver that does not permanently reduce the related commitments, (b) without duplication of amounts received under clause (a), any net cash proceeds received by any Obligor from the sale of any property or assets pledged as collateral in respect of any Investment in the Collateral Account to the extent such net cash proceeds are less than or equal to the outstanding principal balance of such Investment, (c) any net cash amount received by any Obligor in respect of any Investment in the Collateral Account that is an Equity Interest (x) upon the liquidation or dissolution of the issuer of such Investment, (y) as a distribution of capital made on or in respect of such Investment, or (z) pursuant to the recapitalization or reclassification of the capital of the issuer of such Investment or pursuant to the reorganization of such issuer or (d) any similar return of capital received by any Obligor in cash in respect of any Investment in the Collateral Account; provided that in the case of clauses (a), (b), (c) and (d), net of any fees, costs, expenses and taxes payable with respect thereto.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Dollar Credit Exposure and Revolving Multicurrency Credit Exposure at such time.

“Revolving Dollar Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Loans and its LC Exposure, at such time made or incurred under the Dollar Commitments.

“Revolving Multicurrency Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Loans and its LC Exposure, at such time made or incurred under the Multicurrency Commitments.

“Revolving Percentage” means, as of any date of determination, the result, expressed as a percentage, of the Revolving Credit Exposure on such date divided by the aggregate outstanding Aggregate Covered Debt Amount on such date.

“RFR”, when used in reference to any Loan or Borrowing, refers to whether such Loan is, or the Loans constituting such Borrowing, are, bearing interest at a rate determined by reference to Daily Simple RFR.

“RFR Applicable Credit Adjustment Spread” means 0.1193%.

“RFR Business Day” means, for any Loans, Borrowings, interest, fees, commissions or other amounts denominated in, or calculated with respect to RFR, any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which banks are closed for general business in London.

“RFR Interest Day” has the meaning specified in the definition of “Daily Simple RFR”.

“RFR Reference Day” has the meaning specified in the definition of “Daily Simple RFR”.

“RIC” means a person qualifying for treatment as a “regulated investment company” under the Code.

“S&P” means S&P Global Ratings or any successor thereto.

“Sanctioned Country” means, at any time, a country, territory or region that is the subject or the target of country-wide or territory-wide Sanctions broadly prohibiting dealings with such country, territory or region (currently, Cuba, Crimea, Iran, North Korea and Syria).

“Sanctions” has the meaning assigned to such term in Section 3.15(a).

“SBA” means the United States Small Business Administration or any Governmental Authority succeeding to any or all of the functions thereof.

“SBIC Equity Commitment” means a commitment by the Borrower to make one or more capital contributions to an SBIC Subsidiary.

“SBIC Subsidiary” means any direct or indirect Subsidiary (including such Subsidiary’s general partner or managing entity to the extent that the only material asset of such general partner or managing entity is its equity interest in the SBIC Subsidiary) of the Borrower licensed as a small business investment company under the Small Business Investment Act of 1958, as amended (or that has applied for such a license and is actively pursuing the granting thereof by appropriate proceedings promptly instituted and diligently conducted), and which is designated by the Borrower (as provided below) as an SBIC Subsidiary, so long as (a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of such Subsidiary: (i) is Guaranteed by any Obligor (other than a Permitted SBIC Guarantee or analogous commitment), (ii) is recourse to or obligates any Obligor in any way (other than in respect of any SBIC Equity Commitment, Permitted SBIC Guarantee or analogous commitment), or (iii) subjects any property of any Obligor, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than Equity Interests in any SBIC Subsidiary pledged to secure such Indebtedness, and (b) no Obligor has any obligation to maintain or preserve such Subsidiary’s financial condition or cause such entity to achieve certain levels of operating results (other than in respect of any SBIC Equity Commitment, Permitted SBIC Guarantee or analogous commitment). Any such designation by the Borrower shall be effected pursuant to a certificate of a Responsible Officer delivered to the Administrative Agent, which certificate shall include a statement to the effect that, to the best of such officer’s knowledge, such designation complied with the foregoing conditions.

“SEC” means the Securities Exchange Commission.

“Secured Party” has the meaning assigned to such term in the Guarantee and Security Agreement.



“Security Documents” means, collectively, the Guarantee and Security Agreement and all other assignments, pledge agreements, security agreements, control agreements and other instruments executed and delivered on or after the Effective Date by any of the Obligor pursuant to the Guarantee and Security Agreement or otherwise providing or relating to any collateral security for any of the Secured Obligations under and as defined in the Guarantee and Security Agreement.

“Shareholders’ Equity” means, at any date, the amount determined on a consolidated basis, without duplication, in accordance with GAAP, of shareholders equity for the Borrower and its Subsidiaries at such date.

“SMBC” means Sumitomo Mitsui Banking Corporation.

“SOFR” means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

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

“SONIA” means a rate equal to the Sterling Overnight Index Average as administered by the SONIA Administrator.

“SONIA Administrator” means the Bank of England (or any successor administrator of the Sterling Overnight Index Average).

“SONIA Administrator’s Website” means the Bank of England’s website, currently at <http://www.bankofengland.co.uk>, or any successor source for the Sterling Overnight Index Average identified as such by the SONIA Administrator from time to time.

“SPE Subsidiary” means:

(a) a direct or indirect Subsidiary of the Borrower to which any Obligor sells, conveys or otherwise transfers (whether directly or indirectly) Investments, which engages in no material activities other than in connection with the purchase, holding, disposition or financing of such assets and which is designated by the Borrower (as provided below) as an SPE Subsidiary, so long as:

(i) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is Guaranteed by any Obligor (other than Guarantees in respect of Standard Securitization Undertakings), (ii) is recourse to or obligates any Obligor in any way other than pursuant to Standard Securitization Undertakings or (iii) subjects any property of any Obligor (other than (x) property that has been contributed or sold, purported to be sold or otherwise transferred to such Subsidiary or (y) Equity Interests in such Subsidiary, but solely to the extent that the organization documents of such Subsidiary or any agreement to which such Subsidiary is a party prohibit or restrict the pledge of such Equity Interests), directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings or any Guarantee thereof,

(ii) no Obligor has any material contract, agreement, arrangement or understanding with such Subsidiary (excluding customary sale and contribution agreements) other than on terms, taken as a whole, not materially less favorable to such Obligor than those that might be obtained at the time from Persons that are not Affiliates of any Obligor, other than fees payable in the ordinary course of business in connection with servicing receivables or financial assets and pursuant to Standard Securitization Undertakings, and

(iii) to which no Obligor has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results; and

(b) any passive holding company that is designated by the Borrower (as provided below) as a SPE Subsidiary, so long as:

(i) such passive holding company is the direct parent of a SPE Subsidiary referred to in clause (a);

(ii) such passive holding company engages in no activities and has no assets (other than in connection with the transfer of assets to and from a SPE Subsidiary referred to in clause (a), and its ownership of all of the Equity Interests of a SPE Subsidiary referred to in clause (a)) or liabilities;

(iii) no Obligor has any contract, agreement, arrangement or understanding with such passive holding company; and

(iv) no Obligor has any obligation to maintain or preserve such passive holding company's financial condition or cause such entity to achieve certain levels of operating results.

Any such designation of a SPE Subsidiary by the Borrower shall be effected pursuant to a certificate of a Responsible Officer delivered to the Administrative Agent, which certificate shall include a statement to the effect that, to the best of such Responsible Officer's knowledge, such designation complied with the conditions set forth in clause (a) or (b) above, as applicable. Each Subsidiary of an SPE Subsidiary shall be deemed to be an SPE Subsidiary and shall comply with the foregoing requirements of this definition.

As of the Effective Date, each of (i) Hercules Funding II LLC, (ii) Hercules Funding IV LLC, (iii) Hercules Capital Funding Trust 2018-1 LLC and (iv) Hercules Capital Funding Trust 2019-1 LLC, each a Delaware limited liability company, is an SPE Subsidiary.

"SPE Subsidiary Recourse Obligation" has the meaning assigned to such term in the definition of "Standard Securitization Undertakings".

"Special Equity Interest" means any Equity Interest that is subject to a Lien in favor of creditors of the issuer of such Equity Interest; provided that, such Lien was created to secure Indebtedness owing by such issuer or such issuer's affiliates to such creditors.

**“Special Unsecured Indebtedness”** means Indebtedness of an Obligor issued after the Effective Date (which may be Guaranteed by Subsidiary Guarantors) that (a) has no scheduled amortization (other than for amortization in an amount not greater than 1% of the aggregate initial principal amount of such Indebtedness per annum; provided that, amortization in excess of 1% per annum shall be permitted so long as the amount of such amortization in excess of 1% is permitted to be incurred pursuant to Section 6.01(l) prior to, and a final maturity date not earlier than, the Final Maturity Date (it being understood that (A) none of: (w) the conversion features under convertible notes; (x) the triggering and/or settlement thereof; and (y) any cash payment made in respect thereof, shall constitute “amortization” for purposes of this clause (a); and (B) any mandatory amortization that is contingent upon the happening of an event that is not certain to occur (including a change of control or bankruptcy) shall not in and of itself be deemed to disqualify such Indebtedness under this clause (a)), (b) is incurred pursuant to terms that are substantially comparable to market terms for substantially similar debt of other similarly situated borrowers as reasonably determined in good faith by the Borrower or, if such transaction is not one in which there are market terms for substantially similar debt of other similarly situated borrowers, on terms that are negotiated in good faith on an arm’s length basis (except, in each case, other than financial covenants and events of default (other than events of default customary in indentures, note purchase agreements for private placements or similar instruments that have no analogous provisions in this Agreement or credit agreements generally)), which shall be no more restrictive on the Borrower and its Subsidiaries, while any Loans or the Commitments are outstanding, than those set forth in the Loan Documents; provided that, upon the Borrower’s written request in connection with the incurrence of any Special Unsecured Indebtedness that otherwise would not meet the requirements set forth in this parenthetical of this clause (b), the Borrower and the Administrative Agent (on behalf of the Required Lenders) shall promptly enter into a written amendment to this Agreement making changes necessary such that the financial covenants and events of default, as applicable, in this Agreement shall be as restrictive as such provisions in the Special Unsecured Indebtedness (it being understood that put rights or repurchase or redemption obligations (x) in the case of convertible securities, in connection with the suspension or delisting of the capital stock of the Borrower or the failure of the Borrower to satisfy a continued listing rule with respect to its capital stock or (y) arising out of circumstances that would constitute a “fundamental change” (as such term is customarily defined in convertible note offerings) or an Events of Default under this Agreement shall not be deemed to be more restrictive for purposes of this definition) and (c) is not secured by any assets of any Obligor.

**“Standard Securitization Undertakings”** means, collectively, (a) customary arms-length servicing obligations (together with any related performance guarantees), (b) obligations (together with any related performance guarantees) to refund the purchase price or grant purchase price credits for dilutive events or misrepresentations (in each case unrelated to the collectability of the assets sold or the creditworthiness of the associated account debtors), (c) representations, warranties, covenants and indemnities (together with any related performance guarantees) of a type that are reasonably customary in accounts receivable securitizations, securitizations of financial assets or collateralized loan obligations and (d) obligations (together with any related performance guarantees) under any “bad boy” guarantee, guarantee of any make-whole premium or other guarantee; provided, however, that any such guarantee of any make-whole premium or other guarantee shall not exceed 10% of the aggregate unfunded commitments plus outstandings under the applicable loan (any such guarantee or make-whole premium (other than a performance guarantee or “bad boy” guarantee) described in this clause (d), a “SPE Subsidiary Recourse Obligation”).

“Statutory Reserve Rate” means, for any applicable Interest Period for any Term Benchmark Borrowing in Euros, a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the arithmetic mean, taken over each day in such Interest Period, of the aggregate of the applicable maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D). Such reserve percentages shall include those imposed pursuant to Regulation D. Term Benchmark Loans denominated in Euros shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Sterling” or “£” means the lawful currency of the United Kingdom.

“Subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Anything herein to the contrary notwithstanding, the term “Subsidiary” shall not include any (x) Joint Venture Investment, (y) Person that constitutes an Investment held by any Obligor in the ordinary course of business and that is not, under GAAP, consolidated on the financial statements of the Borrower and its Subsidiaries or (z) any registered investment advisor, seed vehicle, private fund, single managed account or similar Person. Unless otherwise specified, “Subsidiary” means a Subsidiary of the Borrower.

“Subsidiary Guarantor” means any Subsidiary that is a Guarantor under the Guarantee and Security Agreement. It is understood and agreed that no Financing Subsidiary, Immaterial Subsidiary, Foreign Subsidiary or Subsidiary of a Foreign Subsidiary or a Financing Subsidiary shall be a Subsidiary Guarantor.

“TARGET Day” means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer payment system (or, if such payment system ceases to be operative, any successor settlement system as reasonably determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euros.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or 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 Benchmark”, when used in reference to any Loan or Borrowing, refers to whether such Loan is, or the Loans constituting such Borrowing are, bearing interest at a rate determined by reference to the Adjusted Term Benchmark Rate.

“Term Benchmark Banking Day” means for Term Benchmark Loans, Term Benchmark Borrowings, interest, fees, commissions or other amounts denominated in, or calculated with respect to:

- (a) Dollars, a U.S. Government Securities Business Day;
- (b) Euros, a TARGET Day;
- (c) Canadian Dollars, any day (other than a Saturday or Sunday) on which banks are open for business in Toronto, Canada; or
- (f) Japanese Yen, any day (other than a Saturday or Sunday) on which banks are open for business in Tokyo, Japan.

“Term Benchmark Rate” means, for any Interest Period:

- (a) in the case of Term Benchmark Borrowings denominated in Dollars, Term SOFR for such Interest Period;
- (b) in the case of Term Benchmark Borrowings denominated in Euros, the rate per annum equal to the Euro Interbank Offered Rate as administered by the European Money Markets Institute (or any other Person that takes over the administration of such rate) for a period equal in length to such Interest Period, as displayed on the applicable Bloomberg page (or on any successor or substitute page or service providing such quotations as reasonably determined by the Administrative Agent from time to time at approximately 11:00 a.m. (Brussels time) two Term Benchmark Banking Days for Euros prior to the first day of such Interest Period (the “EURIBOR Screen Rate”);
- (c) in the case of Term Benchmark Borrowings denominated in Canadian Dollars, the rate per annum equal to the average of the annual yield rates applicable to Canadian Dollar banker’s acceptances at or about 10:00 a.m. (Toronto, Ontario time) on the first day of such Interest Period (or if such day is not a Term Benchmark Banking Day for Canadian Dollars, then on the immediately preceding Term Benchmark Banking Day for Canadian Dollars) as reported on the “CDOR Page” (or any display substituted therefor) of Reuters Monitor Money Rates Service (or such other page or commercially available source displaying Canadian interbank bid rates for Canadian Dollar bankers’ acceptances as may reasonably be designated by the Administrative Agent from time to time) for a term equivalent to such Interest Period (or if such Interest Period is not equal to a number of months, for a term equivalent to the number of months closest to such Interest Period); and

(d) in the case of Term Benchmark Borrowings denominated in Japanese Yen, the rate per annum equal to the Tokyo Interbank Offered Rate as administered by the Ippan Shadan Hojin JBA TIBOR Administration (or any other Person that takes over the administration of such rate) for a period equal in length to such Interest Period, as displayed on the applicable Bloomberg page (or on any successor or substitute page or service providing such quotations as reasonably determined by the Administrative Agent from time to time) at approximately 11:00 a.m. (Tokyo time) two Term Benchmark Banking Days for Japanese Yen prior to the first day of such Interest Period.

“Term SOFR” means,

(a) for any calculation with respect to any Term Benchmark Loan denominated in Dollars for any Interest Period, the sum of (i) the Term SOFR Applicable Credit Adjustment Spread for such Interest Period and (ii) the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the sum of (i) the Term SOFR Applicable Credit Adjustment Spread for an Interest Period of one month and (ii) the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “Base Rate Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided that if as of 5:00 p.m. on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day.

“Term SOFR Administrator” means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Applicable Credit Adjustment Spread” means, with respect to Term Benchmark Loans denominated in Dollars, (i) with an Interest Period of one month, 0.10%, (ii) with an Interest Period of three months, 0.15% and (iii) with an Interest Period of six months, 0.25%.

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Termination Date” means the earliest to occur of (i) the Final Maturity Date, (ii) the date of the termination of the Commitments in full pursuant to Section 2.07(c), and (iii) the date on which the Commitments are terminated pursuant to Article VII.

“Testing Period” has the meaning assigned to such term in Section 5.12(b)(i)(E)(x).

“Testing Quarter” has the meaning assigned to such term in Section 5.12(b)(i)(B).

“Transactions” means the execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“Transferred Assets” has the meaning assigned to such term in Section 6.03(h).

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans constituting such Borrowing, is determined by reference to the Adjusted Term Benchmark Rate, Daily Simple RFR or the Alternate Base Rate.

“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.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Undisclosed Administration” means, in relation to a Lender, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

“Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of New York.

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

“Unquoted Investments” has the meaning assigned to it in Section 5.12(b)(ii)(B).

“Unsecured Longer-Term Indebtedness” means, as at any date, any Indebtedness of an Obligor (which may be Guaranteed by any other Obligor) that (a) has no scheduled amortization (other than for amortization in an amount not greater than 1% of the aggregate initial principal amount of such Indebtedness per annum; provided that, amortization in excess of 1% per annum shall be permitted so long as the amount of such amortization in excess of 1% is permitted to be incurred pursuant to Section 6.01(l) prior to, and a final maturity date not earlier than, six months after the Final Maturity Date (it being understood that (A) none of: (w) the conversion features under convertible notes; (x) the triggering and/or settlement thereof; and (y) any cash payment made in respect thereof, shall constitute “amortization” for purposes of this clause (a); and (B) any mandatory amortization that is contingent upon the happening of an event that is not certain to occur (including a change of control or bankruptcy) shall not in and of itself be deemed to disqualify such Indebtedness under this clause (a)), (b) is incurred pursuant to terms that are substantially comparable to market terms for substantially similar debt of other similarly situated borrowers as reasonably determined in good faith by the Borrower or, if such transaction is not one in which there are market terms for substantially similar debt of other similarly situated borrowers, on terms that are negotiated in good faith on an arm’s length basis (except, in each case, other than financial covenants and events of default (other than events of default customary in indentures or similar instruments that have no analogous provisions in this Agreement or credit agreements generally)), which shall be not materially more restrictive upon the Borrower and its Subsidiaries, while any Loans or the Commitments are outstanding, than those set forth in the Loan Documents; provided that, upon the Borrower’s written request in connection with the incurrence of any Unsecured Longer-Term Indebtedness that otherwise would not meet the requirements set forth in this parenthetical of this clause (b), the Borrower and the Administrative Agent (on behalf of the Required Lenders) shall promptly enter into a written amendment to this Agreement making changes necessary such that the financial covenants and events of default, as applicable, in this Agreement shall be as restrictive as such provisions in the Unsecured Longer-Term Indebtedness (it being understood that put rights or repurchase or redemption obligations (x) in the case of convertible securities, in connection with the suspension or delisting of the capital stock of the Borrower or the failure of the Borrower to satisfy a continued listing rule with respect to its capital stock or (y) arising out of circumstances that would constitute a “fundamental change” (as such term is customarily defined in convertible note offerings) or be Events of Default under this Agreement shall not be deemed to be more restrictive for purposes of this definition) and (c) is not secured by any assets of any Obligor. For the avoidance of doubt, the conversion of all or any portion of any Permitted Convertible Indebtedness constituting Unsecured Longer-Term Indebtedness into Permitted Equity Interests in accordance with Section 6.12(a), shall not cause such Indebtedness to be designated as Unsecured Shorter-Term Indebtedness hereunder.

“Unsecured Shorter-Term Indebtedness” means, collectively, (a) any Indebtedness of an Obligor that is not secured by any assets of any Obligor and that does not constitute Unsecured Longer-Term Indebtedness and (b) any Indebtedness that is designated as “Unsecured Shorter-Term Indebtedness” pursuant to Section 6.11.



“U.S. Government Securities” means securities that are direct obligations of, and obligations the timely payment of principal and interest on which is fully guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are backed by the full faith and credit of the United States and in the form of conventional bills, bonds, and notes.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“Value” has the meaning assigned to such term in Section 5.13.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

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

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Dollar Loan” or “Multicurrency Loan”), by Type (e.g., an “ABR Loan”) or by Class and Type (e.g., a “Multicurrency Term Benchmark Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Dollar Borrowing” or “Multicurrency Borrowing”), by Type (e.g., an “ABR Borrowing”) or by Class and Type (e.g., a “ABR Borrowing” or “Multicurrency Term Benchmark Borrowing”). Loans and Borrowings may also be identified by Currency.

SECTION 1.03. Terms Generally. 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 (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein), (b) any reference herein to any Person shall be construed

to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) 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. Solely for purposes of this Agreement, any references to "principal amount" or "obligations" owed by any Person under any (x) Hedging Agreement (other than a total return swap) shall refer to the amount that would be required to be paid by such Person if such Hedging Agreement were terminated at such time (after giving effect to any netting agreement) less any collateral posted in support thereof and (y) total return swap shall refer to the notional amount thereof less any collateral posted in support thereof.

SECTION 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, (a) if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then (x) the Borrower, the Administrative Agent and the Lenders agree to enter into negotiations in good faith in order to amend such provisions of this Agreement with respect to the Borrower so as to equitably reflect such change to comply with GAAP with the desired result that the criteria for evaluating the Borrower's financial condition shall be the same after such change to comply with GAAP as if such change had not been made and (y) such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith and (b) all leases that are or would have been treated as operating leases for purposes of GAAP prior to the issuance on February 25, 2016 of the Accounting Standards Update (the "ASU") shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for the purposes of the Loan Documents hereunder (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as capitalized lease obligations in the financial statements to be delivered pursuant to the Loan Documents. Whether or not the Borrower may at any time adopt Financial Accounting Standards Board ("FASB") Accounting Standards Codification Subtopic 825-10 (or successor standard solely as it relates to fair valuing liabilities) or accounts for liabilities acquired in an acquisition on a fair value basis pursuant to FASB Statement of Financial Accounting Standard No. 141(R) (or successor standard solely as it relates to fair valuing liabilities), all determinations of compliance with the terms and conditions of this Agreement shall be made on the basis that the Borrower has not adopted FASB Accounting Standards Codification Subtopic 825-10 (or such successor standard solely as it relates to fair valuing liabilities) or, in the case of liabilities acquired in an acquisition, FASB Statement of Financial Accounting Standard No. 141(R) (or such successor standard solely as it relates to fair valuing liabilities).

SECTION 1.05. Currencies; Currency Equivalents.

(a) Currencies Generally. At any time, any reference in the definition of “Agreed Foreign Currency” or in any other provision of this Agreement to the Currency of any particular nation means the lawful currency of such nation at such time whether or not the name of such Currency is the same as it was on the Effective Date. Except as provided in Section 2.09(b) and the last sentence of Section 2.16(a), for purposes of determining (i) whether the amount of any Borrowing or Letter of Credit under the Multicurrency Commitments, together with all other Borrowings and Letters of Credit under the Multicurrency Commitments then outstanding or to be borrowed at the same time as such Borrowing, would exceed the aggregate amount of the Multicurrency Commitments, (ii) the aggregate unutilized amount of the Multicurrency Commitments, (iii) the Revolving Credit Multicurrency Exposure, (iv) the Multicurrency LC Exposure, (v) the Covered Debt Amount, (vi) the Aggregate Covered Debt Amount and (vii) the Borrowing Base or the Value or the fair market value of any Investment in the Collateral Pool, the outstanding principal amount of any Borrowing or Letter of Credit that is denominated in any Foreign Currency or the Value or the fair market value of any Investment in the Collateral Pool that is denominated in any Foreign Currency shall be deemed to be the Dollar Equivalent of the amount of the Foreign Currency of such Borrowing, Letter of Credit or Investment, as the case may be, determined as of the date of such Borrowing or Letter of Credit (determined in accordance with the last sentence of the definition of “Interest Period”) or the date of the valuation of such Investment, as the case may be. Wherever in this Agreement in connection with a Borrowing or Loan an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing or Loan is denominated in a Foreign Currency, such amount shall be the relevant Foreign Currency Equivalent of such Dollar amount (rounded to the nearest 1,000 units of such Foreign Currency). Without limiting the generality of the foregoing, for purposes of determining compliance with any basket in Section 6.03(g) or 6.04(f), in no event shall the Borrower or any of its Subsidiaries be deemed not to be in compliance with any such basket solely as a result of a change in exchange rates.

(b) Special Provisions Relating to Euro. Each obligation hereunder of any party hereto that is denominated in the National Currency of a state that is not a Participating Member State on the Effective Date shall, effective from the date on which such state becomes a Participating Member State, be redenominated in Euro in accordance with the legislation of the European Union applicable to the European Monetary Union; provided that, if and to the extent that any such legislation provides that any such obligation of any such party payable within such Participating Member State by crediting an account of the creditor can be paid by the debtor either in Euros or such National Currency, such party shall be entitled to pay or repay such amount either in Euros or in such National Currency. If the basis of accrual of interest or fees expressed in this Agreement with respect to an Agreed Foreign Currency of any country that becomes a Participating Member State after the date on which such currency becomes an Agreed Foreign Currency shall be inconsistent with any convention or practice in the interbank market for the basis of accrual of interest or fees in respect of the Euro, such convention or practice shall replace such expressed basis effective as of and from the date on which such state becomes a Participating Member State; provided that, with respect to any Borrowing denominated in such currency that is outstanding immediately prior to such date, such replacement shall take effect at the end of the Interest Period therefor.

Without prejudice to the respective liabilities of the Borrower to the Lenders and the Lenders to the Borrower under or pursuant to this Agreement, each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time, in consultation with the Borrower, reasonably specify to be necessary or appropriate to reflect the introduction or changeover to the Euro in any country that becomes a Participating Member State after the Effective Date; provided that the Administrative Agent shall provide the Borrower and the Lenders with prior notice of the proposed change with an explanation of such change in sufficient time to permit the Borrower and the Lenders an opportunity to respond to such proposed change.

SECTION 1.06. Divisions. For all purposes under the Loan Documents, if, as a result of any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) any new Person comes into existence, such new Person shall be deemed to have been organized or acquired on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.07. Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Alternate Base Rate, the Daily Simple RFR, or the Adjusted Term Benchmark Rate or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Alternate Base Rate, the Daily Simple RFR, the Adjusted Term Benchmark Rate or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Alternate Base Rate, the Daily Simple RFR, the Adjusted Term Benchmark Rate, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant 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 the Alternate Base Rate, the Daily Simple RFR, the Adjusted Term Benchmark Rate or any other Benchmark, 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 calculation of any such rate (or component thereof) provided by any such information source or service other than for direct or actual damages resulting from willful misconduct or gross negligence of the Administrative Agent as determined by a final, non-appealable judgment of a court of competent jurisdiction.

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## ARTICLE II

### THE CREDITS

SECTION 2.01. The Commitments. Subject to the terms and conditions set forth herein:

(a) each Dollar Lender severally agrees to make Loans in Dollars to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result in (i) such Lender's Revolving Dollar Credit Exposure exceeding such Lender's Dollar Commitment, (ii) the aggregate Revolving Dollar Credit Exposure of all of the Dollar Lenders exceeding the aggregate Dollar Commitments at such time, (iii) the Covered Debt Amount exceeding the Borrowing Base then in effect or (iv) the Aggregate Covered Debt Amount exceeding the Aggregate Portfolio Balance then in effect; and

(b) each Multicurrency Lender severally agrees to make Loans in Dollars and in Agreed Foreign Currencies to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result in (i) such Lender's Revolving Multicurrency Credit Exposure exceeding such Lender's Multicurrency Commitment, (ii) the aggregate Revolving Multicurrency Credit Exposure of all of the Multicurrency Lenders exceeding the aggregate Multicurrency Commitments at such time, (iii) the Covered Debt Amount exceeding the Borrowing Base then in effect or (iv) the Aggregate Covered Debt Amount exceeding the Aggregate Portfolio Balance then in effect.

Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

SECTION 2.02. Loans and Borrowings.

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

(b) Type of Loans. Subject to Section 2.12, each Borrowing of a Class shall be constituted entirely of ABR Loans, RFR Loans or of Term Benchmark Loans of such Class denominated in a single Currency as the Borrower may request in accordance herewith. Each ABR Loan shall be denominated in Dollars. Each Term Benchmark Loan shall be denominated in Dollars or an Agreed Foreign Currency (other than Sterling). Each RFR Loan shall be denominated in Sterling. Each Lender at its option may make any Term Benchmark Loan or RFR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that (x) any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and (y) in exercising such option, such Lender shall use reasonable efforts to minimize any increased costs to the Borrower resulting therefrom (which obligation of the Lender shall not require it to take, or refrain from taking, actions that it determines would result in increased costs for which it will not be compensated hereunder or that it determines would be otherwise disadvantageous to it and in the event of such request for costs for which compensation is provided under this Agreement, the provisions of Section 2.13 shall apply).

(c) Minimum Amounts. Each Term Benchmark Borrowing and RFR Borrowings shall be in an aggregate amount of \$1,000,000 or a larger multiple of \$1,000,000, and each ABR Borrowing shall be in an aggregate amount of \$1,000,000 or a larger multiple of \$100,000; provided that an ABR Borrowing of a Class may be in an aggregate amount that is equal to the entire unused balance of the total Commitments of such Class or that is required to finance the reimbursement of an LC Disbursement of such Class as contemplated by Section 2.04(f). Borrowings of more than one Class, Currency and Type may be outstanding at the same time.

(d) Limitations on Interest Periods. Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request (or to elect to convert to or continue as a Term Benchmark Borrowing) any Borrowing if the Interest Period requested therefor would end after the Final Maturity Date.

(e) Treatment of Classes. Notwithstanding anything to the contrary contained herein, with respect to each Loan or Letter of Credit designated in Dollars, the Administrative Agent shall deem the Borrower to have requested that such Loan or Letter of Credit be applied ratably to each of the Dollar Commitments and the Multicurrency Commitments, based upon the percentage of the aggregate Commitments represented by the Dollar Commitments and the Multicurrency Commitments, respectively.

#### SECTION 2.03. Requests for Borrowings.

(a) Notice by the Borrower. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (i) in the case of a Term Benchmark Borrowing denominated in Dollars, not later than 11:00 a.m., New York City time, three Business Days before the date of the proposed Borrowing, (ii) in the case of a Term Benchmark Borrowing denominated in a Foreign Currency, not later than 11:00 a.m., New York City time, four Business Days before the date of the proposed Borrowing, (iii) in the case of a RFR Borrowing, not later than 11:00 a.m., New York City time, four Business Days before the date of the proposed Borrowing or (iv) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, teletype or electronic mail to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower

(b) Content of Borrowing Requests. Each telephonic and written (including by e-mail) Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) whether such Borrowing is to be made under the Dollar Commitments or the Multicurrency Commitments;
- (ii) the aggregate amount and Currency of the requested Borrowing;

- (iii) the date of such Borrowing, which shall be a Business Day;
- (iv) in the case of a Borrowing denominated in Dollars, whether such Borrowing is to be an ABR Borrowing or a Term Benchmark Borrowing;
- (v) in the case of a Borrowing denominated in an Agreed Foreign Currency, whether such Borrowing is to be a Term Benchmark Borrowing or a RFR Borrowing;
- (vi) in the case of a Term Benchmark Borrowing, the Interest Period therefor, which shall be a period contemplated by the definition of "Interest Period" and permitted under Section 2.02(d); and
- (vii) the location and number of the Borrower's account to which funds are to be disbursed.

(c) Notice by the Administrative Agent to the Lenders. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each applicable Lender of the details thereof and of the amounts of such Lender's Loan to be made as part of the requested Borrowing.

(d) Failure to Elect. If no election as to the Currency of a Borrowing is specified in a Borrowing Request, then the requested Borrowing shall be denominated in Dollars. If no election as to the Type of a Borrowing is specified in a Borrowing Request, then the requested Borrowing shall be a Term Benchmark Borrowing denominated in Dollars having an Interest Period of one month and, if an Agreed Foreign Currency has been specified, the requested Borrowing shall be a Term Benchmark Borrowing or RFR Borrowing, as applicable, denominated in such Agreed Foreign Currency (and in the case of such Term Benchmark Borrowing, having an Interest Period of one month). If a Term Benchmark Borrowing is requested but no Interest Period is specified, (i) if the Currency specified for such Borrowing is Dollars (or if no Currency has been so specified), the requested Borrowing shall be a Term Benchmark Borrowing denominated in Dollars having an Interest Period of one month's duration, and (ii) if the Currency specified for such Borrowing is an Agreed Foreign Currency, the Borrower shall be deemed to have selected an Interest Period of one month's duration.

#### SECTION 2.04. Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, in addition to the Loans provided for in Section 2.01, the Borrower may request any Issuing Bank to issue, at any time and from time to time during the Availability Period and under either the Dollar Commitments or Multicurrency Commitments, Letters of Credit denominated in Dollars or (in the case of Letters of Credit under the Multicurrency Commitments) in any Agreed Foreign Currency for its own account or the account of its designee (provided that the Obligors shall remain primarily liable to the Lenders hereunder for payment and reimbursement of all amounts payable in respect of the Letters of Credit hereunder) in such form as is acceptable to such Issuing Bank in its reasonable determination and for the benefit of such named beneficiary or beneficiaries as are specified by the Borrower. Letters of Credit issued hereunder shall constitute utilization of the Commitments up to the aggregate amount available to be drawn thereunder.

(b) Notice of Issuance, Amendment, Renewal or Extension To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by such Issuing Bank) to any Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (d) of this Section 2.04), the amount and Currency of such Letter of Credit, whether such Letter of Credit is to be issued under the Dollar Commitments or the Multicurrency Commitments, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the applicable Issuing Bank, the Borrower also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, any Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(c) Limitations on Amounts. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the aggregate LC Exposure of the applicable Issuing Bank requested to issue such Letter of Credit (determined for these purposes without giving effect to the participations therein of the Lenders pursuant to paragraph (e) of this Section) shall not exceed the amount set forth opposite the name of such Issuing Bank on Schedule 2.05 (or such greater amount as such Issuing Bank may agree in its sole discretion); (ii) the total Revolving Dollar Credit Exposures shall not exceed the aggregate Dollar Commitments at such time; (iii) the total Revolving Multicurrency Credit Exposures shall not exceed the aggregate Multicurrency Commitments at such time; (iv) the Covered Debt Amount shall not exceed the Borrowing Base then in effect; and (v) the Aggregate Covered Debt Amount shall not exceed the Aggregate Portfolio Balance then in effect.

(d) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the date twelve months after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, twelve months after the then-current expiration date of such Letter of Credit, so long as such renewal or extension occurs within three months of such then-current expiration date); provided that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods. No Letter of Credit may be renewed following the earlier to occur of the Commitment Termination Date and the Termination Date, except with the consent of the applicable Issuing Bank and to the extent that the relevant Letter of Credit is Cash Collateralized no later than five Business Days prior to the Commitment Termination Date or Termination Date, as applicable or supported by another letter of credit, in each case pursuant to arrangements reasonably satisfactory to the applicable Issuing Bank and the Administrative Agent.



(e) Participations. By the issuance of a Letter of Credit of a Class (or an amendment to a Letter of Credit increasing the amount thereof) by an Issuing Bank, and without any further action on the part of such Issuing Bank or the Lenders, such Issuing Bank hereby grants to each Dollar Lender and Multicurrency Lender, in the case of a Letter of Credit denominated in Dollars, and each Multicurrency Lender, in the case of a Letter of Credit denominated in an Agreed Foreign Currency, and each Lender of such Class hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Dollar Lender's and Multicurrency Lender's Applicable Percentage, in the case of a Letter of Credit denominated in Dollars, or Applicable Multicurrency Percentage, in the case of a Letter of Credit denominated in an Agreed Foreign Currency, of the aggregate amount available to be drawn under such Letter of Credit. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph (e) in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the applicable Commitments; provided that no Lender shall be required to purchase a participation in a Letter of Credit pursuant to this Section 2.04(e) if (x) the conditions set forth in Section 4.02 would not be satisfied in respect of a Borrowing at the time such Letter of Credit was issued and (y) the Administrative Agent or any Lender shall have so notified such Issuing Bank in writing at least two Business Days prior to the requested date of issuance of such Letter of Credit and shall not have subsequently determined that the circumstances giving rise to such conditions not being satisfied no longer exist. Unless an Issuing Bank has received written notice from any Lender, the Administrative Agent or the Borrower, at least two Business Days prior to the requested date of issuance of the applicable Letter of Credit, that one or more applicable conditions contained in Section 4.02 shall not then be satisfied, then, subject to the terms and conditions hereof, such Issuing Bank shall be entitled to assume all such conditions are satisfied.

In consideration and in furtherance of the foregoing, each Lender of a Class hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of each Issuing Bank, such Lender's Applicable Percentage, in the case of a Letter of Credit denominated in Dollars, or such Multicurrency Lender's Applicable Multicurrency Percentage, in the case of a Letter of Credit denominated in an Agreed Foreign Currency, of each LC Disbursement made by such Issuing Bank in respect of Letters of Credit of such Class promptly upon the request of such Issuing Bank at any time from the time of such LC Disbursement until such LC Disbursement is reimbursed by the Borrower or at any time after any reimbursement payment is required to be refunded to the Borrower for any reason. Such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each such payment shall be made in the same manner as provided in Section 2.05 with respect to Loans made by such Lender (and Section 2.05 shall apply, mutatis, mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to the next following paragraph (f), the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that the Lenders have made payments pursuant to this paragraph (e) to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph (e) to reimburse an Issuing Bank for any LC Disbursement shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Reimbursement. If an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such Issuing Bank in respect of such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement in the Currency in which such Letter of Credit is denominated not later than 11:00 a.m., New York City time, on (i) the Business Day that the Borrower receives notice of such LC Disbursement, if such notice is received prior to 10:00 a.m., New York City time, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time; provided that, if such LC Disbursement is not less than \$1,000,000 and is denominated in Dollars, the Borrower may, subject to the conditions to borrowing set forth herein (other than any minimum amounts, including as set forth in Section 2.02(c)), request in accordance with Section 2.03 that such payment be financed with an ABR Borrowing in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Borrowing, as applicable.

If the Borrower fails to make such payment when due, the Administrative Agent shall notify each affected Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage, in the case of a Letter of Credit denominated in Dollars, or such Multicurrency Lender's Applicable Multicurrency Percentage, in the case of a Letter of Credit denominated in an Agreed Foreign Currency, thereof.

(g) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (f) of this Section 2.04 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by an Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply strictly with the terms of such Letter of Credit, and (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.04, constitute a legal or equitable discharge of the Borrower's obligations hereunder.

None of the Administrative Agent, the Lenders, the Issuing Banks or any of their respective Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by the Issuing Banks or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Banks; provided that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's fraud, gross negligence or willful misconduct when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that:

(i) the Issuing Banks may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit;

(ii) the Issuing Banks shall have the right, in their sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit; and

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

(h) Disbursement Procedures. Each Issuing Bank shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit issued by such Issuing Bank. The applicable Issuing Bank shall promptly after such examination notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the applicable Lenders with respect to any such LC Disbursement.

(i) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Loans; provided that, if the Borrower fails to reimburse such LC Disbursement within two Business Days following the date when due pursuant to paragraph (f) of this Section 2.04, then the provisions of Section 2.11(d) shall apply. Interest accrued pursuant to this paragraph (i) shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section 2.04 to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

(j) Resignation and/or Replacement of an Issuing Bank. Any Issuing Bank may resign and be replaced at any time by written agreement among the Borrower, the Administrative Agent, the resigning Issuing Bank and the successor Issuing Bank. In addition, if any Issuing Bank, in its capacity as a Lender, assigns all of its Loans and Commitments in accordance with the terms of this Agreement, such Issuing Bank may, with the prior written consent of the Borrower (such consent not to be unreasonably withheld or delayed; provided that, no consent of the Borrower shall be required if an Event of Default under clause (a), (b), (i), (j) or (k) of Article VII has occurred and is continuing), resign as an Issuing Bank hereunder upon not less than thirty days prior written notice to the Administrative Agent and the Borrower; provided, further, that in determining whether to give any such consent, the Borrower may consider (in its reasonable discretion), among other factors, the sufficiency of availability of Letters of Credit

hereunder. The Administrative Agent shall notify the Lenders of any such resignation and replacement of an Issuing Bank. Upon the effectiveness of any resignation or replacement of an Issuing Bank, the Borrower shall pay all unpaid fees accrued for the account of the resigning or replaced Issuing Bank pursuant to Section 2.10(b). From and after the effective date of the appointment of a successor Issuing Bank, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" and/or "Issuing Banks" shall be deemed to refer to such successor or successors (and the other current Issuing Banks, if applicable) or to any previous Issuing Bank, or to such successor or successors (and all other current Issuing Banks) and all previous Issuing Banks, as the context shall require. After the effective replacement or resignation of any Issuing Bank hereunder, the resigning or replaced Issuing Bank, as the case may be, shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such resignation or replacement, but shall not be required to issue additional Letters of Credit.

(k) Cash Collateralization. If the Borrower shall be required to provide Cash Collateral for LC Exposure pursuant to Section 2.04(d), Section 2.08(a), Section 2.09(b) or (c) or the penultimate paragraph of Article VII, the Borrower shall promptly, but in any event within five (5) Business Days, deposit into a segregated collateral account or accounts (herein, collectively, the "Letter of Credit Collateral Account") in the name and under the dominion and control of the Administrative Agent, for the benefit of the Lenders, Cash denominated in the Currency of the Letter of Credit under which such LC Exposure arises in an amount equal to the amount required under Section 2.04(d), Section 2.08(a), Section 2.09(b) or (c), or the penultimate paragraph of Article VII, as applicable. Such deposit shall be held by the Administrative Agent as collateral in the first instance for the LC Exposure under this Agreement and thereafter for the payment of the "Secured Obligations" under and as defined in the Guarantee and Security Agreement, and for these purposes the Borrower hereby grants a security interest to the Administrative Agent, for the benefit of the Lenders, in the Letter of Credit Collateral Account and in any financial assets (as defined in the Uniform Commercial Code) or other property held therein. If the Borrower is required to provide Cash Collateral hereunder as a result of the occurrence of an Event of Default, such Cash Collateral (to the extent not applied as set forth in this Section 2.04(k)) shall be returned to the Borrower promptly after all Events of Default have been cured or waived. If the Borrower is required to provide Cash Collateral hereunder pursuant to Section 2.09(b)(ii), such Cash Collateral (to the extent not applied as set forth in this Section 2.04(k)) shall be returned to the Borrower as and to the extent that, after giving effect to such return, the aggregate Revolving Multicurrency Credit Exposures would not exceed the aggregate Multicurrency Commitments.

(l) No Obligation to Issue After Certain Events. No Issuing Bank shall be under any obligation to issue any Letter of Credit if: any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank shall refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which such Issuing Bank in good faith deems material to it, or the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally.

(m) Applicability of ISP and UCP. Unless otherwise expressly agreed by the Issuing Banks and the Borrower when a Letter of Credit is issued, (i) the rules of the International Standby Practices shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

(n) Additional Issuing Banks. From time to time, the Borrower may, by notice to the Administrative Agent, designate one or more additional Lenders as an Issuing Bank, so long as each such Lender agrees (in its sole discretion) to act in such capacity and is reasonably satisfactory to the Administrative Agent; provided that each such notice shall include an updated Schedule 2.05; provided, further, that the Borrower shall not update Schedule 2.05 to increase any Issuing Bank's maximum LC Exposure without such Issuing Bank's consent. Each such additional Issuing Bank shall execute a counterpart of this Agreement upon the approval of the Administrative Agent (which approval shall not be unreasonably withheld, delayed or conditioned) and shall thereafter be an Issuing Bank hereunder for all purposes.

#### SECTION 2.05. Funding of Borrowings.

(a) Funding by Lenders. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by (i) in the case of any Loan (other than an ABR Borrowing), 11:00 a.m. New York City time, and (ii) in the case of any Loan that is an ABR Borrowing, 1:00 p.m. New York City time, in each case, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower designated by the Borrower in the applicable Borrowing Request; provided that ABR Borrowings made to finance the reimbursement of an LC Disbursement as provided in Section 2.04(f) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Presumption by the Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed funding deadline of any Borrowing set forth in paragraph (a) above 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 paragraph (a) of this Section 2.05 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 with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the Federal Funds Effective Rate or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative

Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. Nothing in this paragraph shall relieve any Lender of its obligation to fulfill its commitments hereunder, and this paragraph 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.

SECTION 2.06. Interest Elections.

(a) Elections by the Borrower for Borrowings. Subject to Section 2.03(d), the Loans constituting each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Term Benchmark Borrowing, shall have the Interest Period specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a Borrowing of a different Type or to continue such Borrowing as a Borrowing of the same Type and, in the case of a Term Benchmark Borrowing, may elect the Interest Period therefor, all as provided in this Section 2.06; provided, however, that (i) a Borrowing of a Class may only be continued or converted into a Borrowing of the same Class, (ii) a Borrowing denominated in one Currency may not be continued as, or converted to, a Borrowing in a different Currency, (iii) no Term Benchmark Borrowing denominated in a Foreign Currency may be continued if, after giving effect thereto, the aggregate Revolving Multicurrency Credit Exposures would exceed the aggregate Multicurrency Commitments, and (iv) a Term Benchmark Borrowing denominated in a Foreign Currency and a RFR Borrowing may not be converted to a Borrowing of a different Type. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders of the respective Class holding the Loans constituting such Borrowing, and the Loans constituting each such portion shall be considered a separate Borrowing.

(b) Notice of Elections. To make an election pursuant to this Section 2.06, the Borrower shall notify the Administrative Agent of such election by telephone or e-mail by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly (but no later than the close of business on the date of such request) by hand delivery, telecopy or electronic communication to the Administrative Agent of a written Interest Election Request.

(c) Content of Interest Election Requests. Each telephonic and written (including by e-mail) Interest Election Request shall specify the following information in compliance with Section 2.02:

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

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

(iii) whether, in the case of a Borrowing denominated in Dollars, the resulting Borrowing is to be an ABR Borrowing or a Term Benchmark Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark Borrowing, the Interest Period therefor after giving effect to such election, which shall be a period contemplated by the definition of "Interest Period" and permitted under Section 2.02(d).

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

(e) Failure to Elect; Events of Default. If the Borrower fails to deliver a timely and complete Interest Election Request with respect to a Term Benchmark Borrowing prior to the end of the Interest Period therefor, then, unless such Borrowing is repaid as provided herein, (i) if such Borrowing is denominated in Dollars, at the end of such Interest Period such Borrowing shall be converted to a Term Benchmark Borrowing of the same Class having an Interest Period of one month's duration, and (ii) if such Borrowing is denominated in a Foreign Currency, the Borrower shall be deemed to have selected an Interest Period of one month's duration. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, (i) any Term Benchmark Borrowing denominated in Dollars shall, at the end of the applicable Interest Period for such Term Benchmark Borrowing, be automatically converted to an ABR Borrowing and (ii) any Term Benchmark Borrowing denominated in a Foreign Currency shall not have an Interest Period of more than one month's duration.

#### SECTION 2.07. Termination, Reduction or Increase of the Commitments

(a) Scheduled Termination. Unless previously terminated, the Commitments of each Class shall terminate on the Commitment Termination Date.

(b) Voluntary Termination or Reduction. The Borrower may at any time, without premium or penalty, terminate, or from time to time reduce, the Commitments ratably among each Class of Commitment; provided that, (i) each reduction of the Commitments of a Class shall be in an amount that is \$10,000,000 (or, if less, the entire amount of the Commitments of such Class) or a larger multiple of \$5,000,000 in excess thereof and (ii) the Borrower shall not terminate or reduce the Commitments of either Class if, after giving effect to any concurrent prepayment of the Loans of such Class in accordance with Section 2.09, the total Revolving Credit Exposures of such Class would exceed the total Commitments of such Class. Any such reduction of the Commitments below the amount of the Letters of Credit permitted under Section 2.04(c)(i) shall result in a dollar-for-dollar reduction of such amounts as applicable.

(c) Notice of Voluntary Termination or Reduction. The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section 2.07 at least three Business Days prior to the effective date of such termination or reduction (or such lesser period agreed to by the Administrative Agent), specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each notice delivered by the Borrower

pursuant to this Section 2.07 shall be irrevocable; provided that, a notice of termination of the Commitments of a Class delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or transactions, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(d) Effect of Termination or Reduction. Any termination or reduction of the Commitments of a Class pursuant to clause (b) shall be permanent. Each reduction of the Commitments of a Class pursuant to clause (b) shall be made ratably among the Lenders of such Class in accordance with their respective Commitments.

(e) Increase of the Commitments.

(i) Requests for Increase by Borrower. The Borrower may, at any time, request that the Commitments hereunder of a Class be increased (each such proposed increase being a "Commitment Increase") upon notice to the Administrative Agent (who shall promptly notify the Lenders), which notice shall specify each existing Lender (each an "Increasing Lender") and/or each additional lender (each an "Assuming Lender") that shall have agreed to an additional Commitment and the date on which such increase is to be effective (the "Commitment Increase Date"), which shall be a Business Day at least three Business Days (or such lesser period as the Administrative Agent may reasonably agree) after delivery of such notice and at least 30 days prior to the Commitment Termination Date; provided that:

(A) the minimum amount of the Commitment of any Assuming Lender, and the minimum amount of the increase of the Commitment of any Increasing Lender, as part of such Commitment Increase shall be \$10,000,000 or a larger multiple of \$5,000,000 in excess thereof (or such lesser amount as the Administrative Agent may reasonably agree);

(B) immediately after giving effect to such Commitment Increase, the total Commitments of all of the Lenders hereunder shall not exceed \$500,000,000;

(C) each Assuming Lender shall be consented to by the Administrative Agent and each Issuing Bank (such consent not to be unreasonably withheld, delayed or conditioned);

(D) no Default shall have occurred and be continuing on such Commitment Increase Date or shall result from the proposed Commitment Increase; and

(E) the representations and warranties contained in this Agreement shall be true and correct in all material respects (or, in the case of any portion of the representations and warranties already subject to a materiality qualifier, true and correct in all respects) on and as of the Commitment Increase Date as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date).



(ii) Effectiveness of Commitment Increase by Borrower. An Assuming Lender, if any, shall become a Lender hereunder as of such Commitment Increase Date and the Commitment of the respective Class of any Increasing Lender and such Assuming Lender shall be increased as of such Commitment Increase Date; provided that:

(x) the Administrative Agent shall have received on or prior to 11:00 a.m., New York City time, on such Commitment Increase Date (or on or prior to a time on an earlier date specified by the Administrative Agent) a certificate of a duly authorized officer of the Borrower stating that each of the applicable conditions to such Commitment Increase set forth in the foregoing paragraph (i) has been satisfied; and

(y) each Assuming Lender or Increasing Lender shall have delivered to the Administrative Agent, on or prior to 11:00 a.m., New York City time on such Commitment Increase Date (or on or prior to a time on an earlier date specified by the Administrative Agent), an agreement substantially in the form of Exhibit D hereto (or such other form as shall be reasonably satisfactory to the Administrative Agent) appropriately completed, and otherwise in form and substance reasonably satisfactory to the Borrower and the Administrative Agent, pursuant to which such Lender shall, effective as of such Commitment Increase Date, undertake a Commitment or an increase of Commitment in each case of the respective Class, duly executed by such Assuming Lender or Increasing Lender, as applicable, and the Borrower and acknowledged by the Administrative Agent.

Promptly following satisfaction of such conditions, the Administrative Agent shall notify the Lenders of such Class (including any Assuming Lenders) thereof and of the occurrence of the Commitment Increase Date by facsimile transmission or electronic messaging system.

(iii) Recordation into Register. Upon its receipt of an agreement referred to in clause (ii)(y) above executed by an Assuming Lender or any Increasing Lender, together with the certificate referred to in clause (ii)(x) above, the Administrative Agent shall, if such agreement has been completed, (x) accept such agreement, (y) record the information contained therein in the Register and (z) give prompt notice thereof to the Borrower.

(iv) Adjustments of Borrowings upon Effectiveness of Increase. On the Commitment Increase Date, the Borrower shall (A) prepay the outstanding Loans (if any) of the affected Class in full, (B) simultaneously borrow new Loans of such Class hereunder in an amount equal to such prepayment (which may also include the amount of any fees, expenses or amounts due by the Borrower on or prior to the Commitment Increase Date assuming that the Borrower has submitted a request for Borrowing for such amounts in accordance with Section 2.03); provided that, with respect to subclauses (A) and (B), (x) the prepayment to, and borrowing from, any existing Lender shall be effected by book entry to the extent that any portion of the amount prepaid to such Lender will be subsequently borrowed from such Lender and (y) the existing Lenders, the Increasing Lenders and the Assuming Lenders shall make and receive payments among themselves, in a manner acceptable to the Administrative Agent, so that, after giving effect thereto, the

Loans of such Class are held ratably by the Lenders of such Class in accordance with the respective Commitments of such Class of such Lenders (after giving effect to such Commitment Increase) and (C) pay to the Lenders of such Class the amounts, if any, payable under Section 2.14 as a result of any such prepayment. Concurrently therewith, the Lenders of such Class shall be deemed to have adjusted their participation interests in any outstanding Letters of Credit of such Class so that such interests are held ratably in accordance with their Commitments of such Class as so increased.

SECTION 2.08. Repayment of Loans; Evidence of Debt

(a) Repayment. The Borrower hereby unconditionally promises to pay the Loans of each Class to the Administrative Agent for the account of the Lenders of such Class the outstanding principal amount of the Loans of such Class and all other amounts due and owing hereunder and under the other Loan Documents on the Final Maturity Date.

In addition, on the Commitment Termination Date, the Borrower shall deposit Cash into the Letter of Credit Collateral Account (denominated in the Currency of the Letter of Credit under which such LC Exposure arises) in an amount equal to 100% of the undrawn face amount of all Letters of Credit outstanding on the close of business on the Commitment Termination Date, such deposit to be held by the Administrative Agent as collateral security for the LC Exposure under this Agreement in respect of the undrawn portion of such Letters of Credit.

(b) Manner of Payment. Prior to any repayment or prepayment of any Borrowings to any Lenders of any Class of Commitment hereunder, the Borrower shall select the Borrowing or Borrowings of such Class to be paid and shall notify the Administrative Agent by telephone (confirmed by telecopy or e-mail) of such selection not later than the time set forth in Section 2.09(e) prior to the scheduled date of such repayment; provided that each repayment of Borrowings in Dollars to any Lenders of a Class shall be applied to repay any outstanding ABR Borrowings of such Class before any other Borrowings of such Class. If the Borrower fails to make a timely selection of the Borrowing or Borrowings to be repaid or prepaid, such payment shall be applied to repay Borrowings in the same Currency and, solely in the case of any such payment in Dollars, first, to pay any outstanding ABR Borrowings of the applicable Class and, second, to other Borrowings of such Class in the order of the remaining duration of their respective Interest Periods (the Borrowing with the shortest remaining Interest Period to be repaid first). Each payment of a Borrowing shall be applied ratably to the Loans included in such Borrowing.

(c) Maintenance of Records by Lenders. Each Lender shall maintain in accordance with its usual practice records evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts and Currency of principal and interest payable and paid to such Lender from time to time hereunder.

(d) Maintenance of Records by the Administrative Agent. The Administrative Agent shall maintain records in which it shall record (i) the amount and Currency of each Loan made hereunder, the Class and Type thereof and each Interest Period therefor, (ii) the amount and Currency of any principal or interest due and payable or to become due and payable from the Borrower to each Lender of such Class of Commitment hereunder and (iii) the amount and Currency of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) Effect of Entries. The entries made in the records maintained pursuant to paragraph (c) or (d) of this Section 2.08 shall be prima facie evidence, absent obvious error, of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such records or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(f) Promissory Notes. Any Lender may request that Loans of any Class made by it be evidenced by a promissory note; in such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.09. Prepayment of Loans.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty except for payments under Section 2.14, subject to the requirements of this Section 2.09.

(b) Mandatory Prepayments due to Changes in Exchange Rates

(i) Determination of Amount Outstanding. On each Quarterly Date and, in addition, promptly upon the receipt by the Administrative Agent of a Currency Valuation Notice (as defined below), the Administrative Agent shall determine the aggregate Revolving Multicurrency Credit Exposure. For the purpose of this determination, the outstanding principal amount of any Loan that is denominated in any Foreign Currency shall be deemed to be the Dollar Equivalent of the amount in the Foreign Currency of such Loan, determined as of such Quarterly Date or, in the case of a Currency Valuation Notice received by the Administrative Agent prior to 11:00 a.m., New York City time, on a Business Day, on such Business Day or, in the case of a Currency Valuation Notice otherwise received, on the first Business Day after such Currency Valuation Notice is received. Upon making such determination, the Administrative Agent shall promptly notify the Multicurrency Lenders and the Borrower thereof.

(ii) Prepayment. If on the date of such determination the aggregate Revolving Multicurrency Credit Exposure minus the Multicurrency LC Exposure fully Cash Collateralized on such date exceeds 105% of the aggregate amount of the Multicurrency Commitments as then in effect, the Borrower shall prepay the Multicurrency Loans (and/or provide Cash Collateral for Multicurrency LC Exposure as specified in Section 2.04(k)) within 15 Business Days following the Borrower's receipt of notice from the Administrative Agent pursuant to clause (b)(i) above in such amounts as shall be necessary so that after giving effect thereto the aggregate Revolving Multicurrency Credit Exposure does not exceed the Multicurrency Commitments.

For purposes hereof “Currency Valuation Notice” means a notice given by the Required Multicurrency Lenders to the Administrative Agent stating that such notice is a “Currency Valuation Notice” and requesting that the Administrative Agent determine the aggregate Revolving Multicurrency Credit Exposure. The Administrative Agent shall not be required to make more than one valuation determination pursuant to Currency Valuation Notices within any rolling three month period.

Any prepayment pursuant to this paragraph (b) shall be applied, first, to Multicurrency Loans outstanding and second, as cover for Multicurrency LC Exposure.

(c) Mandatory Prepayments due to Borrowing Base Deficiency or Aggregate Portfolio Deficiency

(i) In the event that at any time any Borrowing Base Deficiency shall exist, the Borrower shall, within five Business Days after delivery of the applicable Borrowing Base Certificate, prepay the Loans (or provide Cash Collateral for Letters of Credit as contemplated by Section 2.04(k)) in such amounts as shall be necessary so that such Borrowing Base Deficiency is cured; provided that if, within five Business Days after delivery of a Borrowing Base Certificate demonstrating such Borrowing Base Deficiency, the Borrower shall present the Administrative Agent with a reasonably feasible plan to enable such Borrowing Base Deficiency to be cured within 30 Business Days (which 30-Business Day period shall include the five Business Days permitted for delivery of such plan), then such prepayment or reduction shall not be required to be effected immediately but may be effected in accordance with such plan (with such modifications as the Borrower may reasonably determine), so long as such Borrowing Base Deficiency is cured within such 30-Business Day period.

(ii) In the event that at any time any Aggregate Portfolio Deficiency shall exist, the Borrower shall, within five Business Days after delivery of the applicable Borrowing Base Certificate, prepay the Loans (or provide Cash Collateral for Letters of Credit as contemplated by Section 2.04(k)) or reduce Aggregate Other Covered Indebtedness or any other Indebtedness that is included in the Aggregate Covered Debt Amount at such time in such amounts as shall be necessary so that such Aggregate Portfolio Deficiency is cured; provided that (i) the aggregate amount of such prepayment of Loans (and Cash Collateral for Letters of Credit) shall be at least equal to the Revolving Percentage times the aggregate prepayment of the Aggregate Covered Debt Amount, and (ii) if, within five Business Days after delivery of a Borrowing Base Certificate demonstrating such Aggregate Portfolio Deficiency, the Borrower shall present the Administrative Agent with a reasonably feasible plan to enable such Aggregate Portfolio Deficiency to be cured within 30 Business Days (which 30-Business Day period shall include the five Business Days permitted for delivery of such plan), then such prepayment or reduction shall not be required to be effected immediately but may be effected in accordance with such plan (with such modifications as the Borrower may reasonably determine), so long as such Aggregate Portfolio Deficiency is cured within such 30-Business Day period.

(d) Mandatory Prepayments During Amortization Period. During the period commencing on the date immediately following the Commitment Termination Date and ending on the Final Maturity Date:

(i) Asset Disposition. If the Borrower or any of its Subsidiaries (other than a Financing Subsidiary or Foreign Subsidiary) Disposes of any property which results in the receipt by such Person of Net Cash Proceeds in excess of \$2,000,000 in the aggregate since the Commitment Termination Date, the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of such Net Cash Proceeds no later than the fifth Business Day following the receipt of such Net Cash Proceeds (such prepayments to be applied as set forth in Section 2.08(b)).

(ii) Equity Issuance. Upon the sale or issuance by the Borrower or any of its Subsidiaries (other than a Financing Subsidiary or Foreign Subsidiary) of any of its Equity Interests (other than (x) any sales or issuances of Equity Interests to the Borrower or any Subsidiary Guarantor, (y) pursuant to any distribution or dividend reinvestment plan or (z) pursuant to any "ATM" or similar program), the Borrower shall prepay an aggregate principal amount of Loans equal to 75% of all Net Cash Proceeds received therefrom no later than the fifth Business Day following the receipt of such Net Cash Proceeds (such prepayments to be applied as set forth in Section 2.08(b)).

(iii) Indebtedness. Upon the incurrence or issuance by the Borrower or any of its Subsidiaries (other than a Financing Subsidiary or Foreign Subsidiary) of any Indebtedness, the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom no later than the fifth Business Day following the receipt of such Net Cash Proceeds (such prepayments to be applied as set forth in Section 2.08(b)).

(iv) Extraordinary Receipt. Upon any Extraordinary Receipt (which, when taken with all other Extraordinary Receipts received after the Commitment Termination Date, exceeds \$5,000,000 in the aggregate) received by or paid to or for the account of the Borrower or any of its Subsidiaries (other than a Financing Subsidiary or Foreign Subsidiary), and not otherwise included in clause (i), (ii) or (iii) of this Section 2.09(d), the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom no later than the fifth Business Day following the receipt of such Net Cash Proceeds (such prepayments to be applied as set forth in Section 2.08(b)).

(v) Return of Capital. If any Obligor shall receive any Return of Capital (other than from any Financing Subsidiary or Foreign Subsidiary), and is not otherwise included in clauses (i), (ii), (iii) or (iv) of this Section 2.09(d), the Borrower shall prepay an aggregate principal amount of Loans equal to 90% of such Return of Capital (excluding amounts payable by the Borrower pursuant to Section 2.14) no later than the fifth Business Day following the receipt of such Return of Capital (such prepayments to be applied as set forth in Section 2.08(b)).

Notwithstanding the foregoing, (I) Net Cash Proceeds and Return of Capital required to be applied to the prepayment of the Loans pursuant to this Section 2.09(d) shall (A) be applied in accordance with the Guarantee and Security Agreement and (B) exclude the amount necessary for the Borrower to make all required dividends and distributions (which shall be no less than the amount estimated in good faith by Borrower under Section 6.05(b) herein) to maintain the status of a RIC under the Code and its election to be treated as a “business development company” under the Investment Company Act for so long as the Borrower retains such status and to avoid payment by the Borrower of federal excise Taxes imposed by Section 4982 of the Code for so long as the Borrower retains the status of a RIC under the Code, and (II) if the Loans to be prepaid pursuant to this Section 2.09(d) are Term Benchmark Loans, the Borrower may defer such prepayment until the last day of the Interest Period applicable to such Loans, so long as the Borrower deposits an amount equal to such Net Cash Proceeds, no later than the fifth Business Day following the receipt of such Net Cash Proceeds, into a segregated collateral account in the name and under the dominion and control of the Administrative Agent, pending application of such amount to the prepayment of the Loans on the last day of such Interest Period; provided, further, that the Administrative Agent may direct the application of such deposits as set forth in Section 2.08(b) at any time and if the Administrative Agent does so, no amounts will be payable by the Borrower pursuant to Section 2.14.

(e) Notices, Etc. The Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy or electronic communication) of any prepayment hereunder (i) in the case of prepayment of a Term Benchmark Borrowing denominated in Dollars (other than in the case of a prepayment pursuant to Section 2.09(d)), not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, (ii) in the case of prepayment of a Term Benchmark Borrowing denominated in a Foreign Currency (other than in the case of a prepayment pursuant to Section 2.09(d)), not later than 11:00 a.m., Applicable Time, four Business Days before the date of prepayment, (iii) in the case of prepayment of a RFR Borrowing (other than in the case of a prepayment pursuant to Section 2.09(d)), not later than 11:00 a.m., London time, four Business Days before the date of prepayment, (iv) in the case of prepayment of an ABR Borrowing (other than in the case of a prepayment pursuant to Section 2.09(d)), not later than 11:00 a.m., New York City time, on the date of prepayment or (v) in the case of any prepayment pursuant to Section 2.09(d), not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment, or, in each case of the notice periods described in this paragraph (e), such lesser period as the Administrative Agent may reasonably agree. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; provided that, if (i) a notice of prepayment is given in connection with a conditional notice of termination of the Commitments of a Class as contemplated by Section 2.07, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.07 and (ii) any notice given in connection with Section 2.09(d) may be conditioned on the consummation of the applicable transaction contemplated by such Section and the receipt by the Borrower or any such Subsidiary (other than a Financing Subsidiary or Foreign Subsidiary) of Net Cash Proceeds. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the affected Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing of a Class of Commitments shall be applied ratably to the Loans held by the Lenders of such Class included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.11 and shall be made in the manner specified in Section 2.08(b).

SECTION 2.10. Fees.

(a) Commitment Fee. The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at a rate per annum equal to 0.375% on the average daily unused amount of the Dollar Commitment and Multicurrency Commitment, as applicable, of such Lender during the period from and including the Effective Date to but excluding the earlier of the date such Commitment terminates and the Commitment Termination Date. Commitment fees accrued through and including such Quarterly Date shall be payable within five Business Days after each Quarterly Date commencing on the first such date to occur after the Effective Date and on the earlier of the date the Commitments of the respective Class terminate and the Commitment Termination Date. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing commitment fees, (i) the daily unused amount of the applicable Commitment shall be determined as of the end of each day and (ii) the Commitment of any Class of a Lender shall be deemed to be used to the extent of the outstanding Loans and LC Exposure of such Class of such Lender.

(b) Letter of Credit Fees. The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit of each Class of Commitments, which shall accrue at a rate per annum equal to the Applicable Margin applicable to interest on Term Benchmark Loans on the average daily amount of such Lender's LC Exposure of such Class (excluding any portion thereof attributable to unreimbursed LC Disbursements), following receipt of an invoice from the Administrative Agent, during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment of such Class terminates and the date on which such Lender ceases to have any LC Exposure of such Class, and (ii) to each Issuing Bank a fronting fee, which shall accrue at the rate equal to 0.25% per annum on the average daily amount of such Issuing Bank's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure (which fee shall be waived by SMBC if it is the sole Lender), as well as each Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including each Quarterly Date shall be payable on the third Business Day following such Quarterly Date, commencing on the first such date to occur after the Effective Date; provided that, all such fees with respect to the Letters of Credit shall be payable on the Termination Date and the Borrower shall pay any such fees that have accrued and that are unpaid on the Termination Date and, in the event any Letters of Credit shall be outstanding that have expiration dates after the Termination Date, the Borrower shall prepay on the Termination Date the full amount of the participation and fronting fees that will accrue on such Letters of Credit subsequent to the Termination Date through but not including the date such outstanding Letters of Credit are scheduled to expire (and, in that connection, the Lenders agree not later than the date five (5) Business Days after the date upon which the last such Letter of Credit shall expire or be terminated to rebate to the Borrower the excess, if any, of the aggregate participation and fronting fees that

have been prepaid by the Borrower over the sum of the amount of such fees that ultimately accrue through the date of such expiration or termination and the aggregate amount of all other unpaid obligations hereunder at such time). Any other fees payable to an Issuing Bank pursuant to this paragraph (b) shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) Administrative Agent Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) Payment of Fees. All fees payable hereunder shall be paid on the dates due, in Dollars (or, at the election of the Borrower with respect to any fees payable to an Issuing Bank on account of Letters of Credit issued by such Issuing Bank in any Foreign Currency, in such Foreign Currency) and immediately available funds, to the Administrative Agent (or to the applicable Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders entitled thereto. Fees paid shall not be refundable under any circumstances absent obvious error.

#### SECTION 2.11. Interest.

(a) ABR Loans. The Loans constituting each ABR Borrowing shall bear interest at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin.

(b) Term Benchmark Loans. The Loans constituting each Term Benchmark Borrowing shall bear interest at a rate per annum equal to the Adjusted Term Benchmark Rate for the related Interest Period for such Borrowing plus the Applicable Margin.

(c) RFR Loans. The Loans constituting each RFR Borrowing shall bear interest at a rate per annum equal to the Daily Simple RFR plus the Applicable Margin.

(d) Default Interest. Notwithstanding the foregoing, if any amount of principal of any Loan, interest or fee is accrued and not paid when due (after giving effect to any grace periods), whether at stated maturity, by acceleration or otherwise, and the Required Lenders have elected to increase pricing, such overdue amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to (A) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided above, (B) in the case of any Letter of Credit, 2% plus the fee otherwise applicable to such Letter of Credit as provided in Section 2.10(b)(i), or (C) in the case of any fee or other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section 2.11.

(e) Payment of Interest. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan in the Currency in which such Loan is denominated and, in the case of Loans, upon the Termination Date; provided that, (i) interest accrued pursuant to paragraph (d) of this Section 2.11 shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan prior to the Final Maturity Date), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Term Benchmark Borrowing denominated in Dollars prior to the end of the Interest Period thereof, accrued interest on such Borrowing shall be payable on the effective date of such conversion.



(f) Computation. All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed (i) by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate and (ii) on Multicurrency Loans denominated in Sterling shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Daily Simple RFR or Adjusted Term Benchmark Rate shall be determined by the Administrative Agent in accordance with this Agreement and such determination shall be conclusive absent manifest error.

SECTION 2.12. Inability to Determine Interest Rates. Subject to Section 2.19, if (i) prior to the commencement of any Interest Period for any Term Benchmark Borrowing of a Class or (ii) at any time for a RFR Borrowing (the Currency of such Borrowing herein called the "Affected Currency"):

(i) (A) in the case of a Term Benchmark Borrowing, the Administrative Agent shall have determined (which determination shall be in good faith and shall be conclusive and binding upon the Borrower absent manifest error) that the Adjusted Term Benchmark Rate for the Affected Currency cannot be determined pursuant to the definition thereof or (B) in the case of a RFR Borrowing, the Administrative Agent shall have determined (which determination shall be in good faith and shall be conclusive and binding upon the Borrower absent manifest error) that the Daily Simple RFR for the Affected Currency cannot be determined pursuant to the definition thereof; or

(ii) (A) in the case of a Term Benchmark Borrowing, prior to the commencement of any Interest Period for such Term Benchmark Borrowing in any applicable Currency, the Administrative Agent shall have received notice from the Required Lenders of such Class of Commitments that the Adjusted Term Benchmark Rate for the Affected Currency for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making, funding or maintaining their respective Loans included in such Borrowing for such Interest Period or (B) in the case of a RFR Borrowing, at any time, the Administrative Agent shall have received notice from the Required Multicurrency Lenders that the Daily Simple RFR for the Affected Currency will not adequately and fairly reflect the cost to such Lenders of making, funding or maintaining the Loans included in such RFR Borrowing;

then the Administrative Agent shall give written notice thereof (or telephonic notice, promptly confirmed in writing) to the Borrower and the affected Lenders as promptly as practicable thereafter identifying the relevant provision above. Until the Administrative Agent shall notify the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or the continuation of any Borrowing as, a Term Benchmark Borrowing denominated in the Affected Currency shall be ineffective and, if the Affected Currency is Dollars, such Borrowing (unless prepaid) shall be continued as, or converted to, an ABR Borrowing at the end of the applicable

Interest Period, (ii) if the Affected Currency is Dollars and any Borrowing Request requests a Term Benchmark Borrowing denominated in Dollars, such Borrowing shall be made as an ABR Borrowing, (iii) if the Affected Currency is a Foreign Currency other than Canadian Dollars, (A) any Borrowing Request that requests a Term Benchmark Borrowing or RFR Borrowing denominated in the Affected Currency shall be made as a Borrowing bearing interest at the Central Bank Rate for the applicable Agreed Foreign Currency; provided, that if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Foreign Currency cannot be determined, such Borrowing Request shall be ineffective, and (B) any outstanding Term Benchmark Borrowing or RFR Borrowing in the Affected Currency, at the Borrower's election shall either (1) be converted to a Borrowing bearing interest at the Central Bank Rate for the applicable Agreed Foreign Currency; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Foreign Currency cannot be determined, such Borrowing shall be converted into an ABR Borrowing denominated in Dollars (in an amount equal to the Dollar Equivalent of such Affected Currency) immediately in the case of an RFR Borrowing or, in the case of a Term Benchmark Borrowing, at the end of the applicable Interest Period, (2) be converted into an ABR Borrowing denominated in Dollars (in an amount equal to the Dollar Equivalent of such Affected Currency) immediately in the case of an RFR Borrowing or, in the case of a Term Benchmark Borrowing, at the end of the applicable Interest Period, or (3) be prepaid in full immediately in the case of an RFR Borrowing or, in the case of a Term Benchmark Borrowing, at the end of the applicable Interest Period, and (iv) if the Affected Currency is Canadian Dollars, (A) any Borrowing Request that requests a Term Benchmark Borrowing denominated in Canadian Dollars shall be made as a Term Benchmark Borrowing with a Term Benchmark Rate equal to the Canadian Prime Rate; provided, that if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Canadian Prime Rate cannot be determined, such Borrowing Request shall be ineffective, and (B) any outstanding Term Benchmark Borrowing in Canadian Dollars, at the Borrower's election, shall either (1) be converted to a Term Benchmark Borrowing denominated in Canadian Dollars with a Term Benchmark Rate equal to the Canadian Prime Rate at the end of applicable Interest Period, (2) be converted into an ABR Borrowing denominated in Dollars (in an amount equal to the Dollar Equivalent of such Affected Currency) at the end of the applicable Interest Period, or (3) be prepaid in full at the end of the applicable Interest Period; provided that if no election is made by the Borrower by the date that is three Business Days after receipt by the Borrower of such notice or, in the case of a Term Benchmark Borrowing, the last day of the current Interest Period for the applicable Term Benchmark Loan, if earlier, the Borrower shall be deemed to have elected clause (iii)(B)(1) or (iv)(B)(1) above, as applicable.

SECTION 2.13. 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 by, any Lender (except any such reserve requirement reflected in the Adjusted Term Benchmark Rate) or any Issuing Bank; or

(ii) impose on the Administrative Agent, any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense (other than (A) Indemnified Taxes, (B) Other Taxes, (C) Taxes described in clauses (b) through (d) of the definition of "Excluded Taxes" and (D) Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes) affecting this Agreement or Term Benchmark 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 Term Benchmark Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or such Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or otherwise), then, upon the request of such Borrower or such Issuing Bank, the Borrower will pay to such Lender or such Issuing Bank, as the case may be, in Dollars, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered (provided that, such amounts shall be consistent with amounts that such Lender or Issuing Bank, as applicable, is generally charging other borrowers similarly situated).

(b) Capital and Liquidity Requirements. If any Lender or any Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or on the capital of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy and liquidity requirements), by an amount deemed to be material by such Lender or such Issuing Bank, then, upon the request of such Lender or such Issuing Bank, the Borrower will pay to such Lender or such Issuing Bank, as the case may be, in Dollars, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered (provided that, such amounts shall be consistent with amounts that such Lender or Issuing Bank, as applicable, is generally charging other borrowers similarly situated).

(c) Certificates from Lenders. A certificate of a Lender or an Issuing Bank setting forth in reasonable detail the basis for and the calculation of the amount or amounts, in Dollars, necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.13 shall be promptly delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section 2.13 shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to this Section 2.13 for any increased costs or reductions incurred more than six months prior to the date that such Lender or such Issuing Bank, 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 Issuing Bank's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.14. Break Funding Payments. In the event of (a) the payment of any principal of any Term Benchmark Loan other than on the last day of an Interest Period therefor (including as a result of the occurrence of any Commitment Increase Date or an Event of Default), (b) the conversion of any Term Benchmark Loan other than on the last day of an Interest Period therefor, (c) the failure to borrow, convert, continue or prepay any Loan on the date specified in any notice delivered pursuant hereto (including, in connection with any Commitment Increase Date, and regardless of whether such notice is permitted to be revocable under Section 2.09(c) and is revoked in accordance herewith), or (d) the assignment as a result of a request by the Borrower pursuant to Section 2.17(b) of any Term Benchmark Loan other than on the last day of an Interest Period therefor, then, in any such event, the Borrower shall compensate each affected Lender for such Lender's loss, cost and reasonable expense attributable to such event (excluding loss of anticipated profits). In the case of a Term Benchmark Loan, the loss to any Lender attributable to any such event shall be deemed to include an amount determined by such Lender to be equal to the excess, if any, of:

(i) the amount of interest that such Lender would pay for a deposit equal to the principal amount of such Loan denominated in the Currency of such Loan for the period from the date of such payment, conversion, failure or assignment to the last day of the then current Interest Period for such Loan (or, in the case of a failure to borrow, convert or continue, the duration of the Interest Period that would have resulted from such borrowing, conversion or continuation) if the interest rate payable on such deposit were equal to the Adjusted Term Benchmark Rate for such Currency for such Interest Period, over

(ii) the amount of interest that such Lender would earn on such principal amount for such period if such Lender were to invest such principal amount for such period at the interest rate that would be bid by such Lender (or an affiliate of such Lender) for deposits denominated in such Currency from other banks in market for the applicable Term Benchmark Rate at the commencement of such period.

Payment under this Section 2.14 shall be made upon written request of a Lender delivered not later than 10 Business Days following the payment, conversion, or failure to borrow, convert, continue or prepay that gives rise to a claim under this Section 2.14 accompanied by a certificate of such Lender setting forth in reasonable detail the basis for and the calculation of the amount or amounts that such Lender is entitled to receive pursuant to this Section 2.14, which certificate shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

SECTION 2.15. Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Taxes, except as required by applicable law (as determined in the good faith discretion of an applicable withholding agent); provided that if the Borrower shall be required to deduct any Taxes from such payments, then (i) if such Taxes are Indemnified Taxes or Other Taxes, the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.15) the Administrative Agent, applicable Lender or applicable Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrower. In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent, each Lender and each Issuing Bank for and, within 10 Business Days after written demand therefor, pay the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15) paid by the Administrative Agent, such Lender or such Issuing Bank, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority, except to the extent that any such Indemnified Taxes or Other Taxes arise as the result of the fraud, gross negligence or willful misconduct of the Administrative Agent, such Lender or such Issuing Bank. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or an Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 Business Days after written demand therefor, for (i) any Indemnified Taxes or Other Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(f) relating to the maintenance of a Participant Register, and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Tax Documentation. (i) Any Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Loan Documents shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.15(f)(ii), 2.15(f)(iii) and 2.15(g) 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:

(A) any Lender that is a United States Person shall deliver to the Borrower and the Administrative Agent (and such additional copies as shall be reasonably requested by the recipient) 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), duly completed and executed copies of Internal Revenue Service Form W-9 or any successor form certifying that such Lender is exempt from U.S. federal backup withholding tax; and

(B) each Foreign Lender shall 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, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(w) duly completed and executed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E or any successor form claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(x) duly completed copies of Internal Revenue Service Form W-8ECI or any successor form certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States,

(y) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (1) a certificate to the effect that such Foreign Lender is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (2) duly completed and executed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor form) certifying that the Foreign Lender is not a United States Person, or

(z) any other form including Internal Revenue Service Form W-8IMY as applicable 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 to determine the withholding or deduction required to be made.

(iii) In addition, each Lender shall deliver such forms promptly upon the obsolescence, expiration or invalidity of any form previously delivered by such Lender; provided it is legally able to do so at the time. Each Lender shall promptly notify the Borrower and the Administrative Agent at any time the chief tax officer of such Lender (or such other person so responsible) becomes aware that it no longer satisfies the legal requirements to provide any previously delivered form or certificate to the Borrower (or any other form of certification adopted by the U.S. or other taxing authorities for such purpose).

(g) Documentation Required by FATCA. If a payment made to a Lender under this Agreement would be subject to 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 respective obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.15(g), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(h) Treatment of Certain Refunds. If the Administrative Agent, any Lender or any Issuing Bank determines, in its sole discretion exercised in good faith, that it has received a refund or credit (in lieu of such refund) of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.15, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.15 with respect to the Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses of the Administrative Agent, any Lender or any Issuing Bank, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that, the Borrower, upon the request of the Administrative Agent, any Lender or any Issuing Bank, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, any Lender or any Issuing Bank in the event the Administrative Agent, any Lender or any Issuing Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (h), in no event will the Administrative Agent, any Lender or any Issuing Bank be required to pay any amount to the Borrower pursuant to this clause (h), the payment of which would place such Person in a less favorable netafter-Tax position than such Person would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This subsection shall not be construed to require the Administrative Agent, any Lender or any Issuing Bank to make available its tax returns or its books or records (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

SECTION 2.16. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Payments by the Borrower. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or under Section 2.13, 2.14 or 2.15, or otherwise) or under any other Loan Document (except to the extent otherwise provided therein) prior to 2:00 p.m., New York City time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at the Administrative Agent's Account, except as otherwise expressly provided in the relevant Loan Document and except payments to be made directly to any Issuing Bank as expressly provided herein and payments pursuant to Sections 2.13, 2.14, 2.15 and 9.03, which shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

All amounts owing under this Agreement (including commitment fees, payments required under Section 2.13, and payments required under Section 2.14 relating to any Loan denominated in Dollars, but not including principal of, and interest on, any Loan denominated in any Foreign Currency or payments relating to any such Loan required under Section 2.14 or any reimbursement or Cash Collateralization of any LC Exposure denominated in any Foreign Currency, which are payable in such Foreign Currency) or under any other Loan Document (except to the extent otherwise provided therein) are payable in Dollars. Notwithstanding the foregoing,



if the Borrower shall fail to pay any principal of any Loan or LC Disbursement when due (whether at stated maturity, by acceleration, by mandatory prepayment or otherwise), the unpaid portion of such Loan or LC Disbursement shall, if such Loan or LC Disbursement is not denominated in Dollars, automatically be redenominated in Dollars on the due date thereof (or, if such due date is a day other than the last day of the Interest Period therefor, on the last day of such Interest Period) in an amount equal to the Dollar Equivalent thereof on the date of such redenomination and such principal shall be payable on demand; and if the Borrower shall fail to pay any interest on any Loan or LC Disbursement that is not denominated in Dollars, such interest shall automatically be redenominated in Dollars on the due date therefor (or, if such due date is a day other than the last day of the Interest Period therefor, on the last day of such Interest Period) in an amount equal to the Dollar Equivalent thereof on the date of such redenomination and such interest shall be payable on demand.

Notwithstanding the foregoing provisions of this Section 2.16, if, after the making of any Borrowing in any Foreign Currency, currency control or exchange regulations are imposed in the country which issues such currency with the result that the type of Currency in which the Borrowing was made (the "Original Currency") no longer exists or the Borrower is not able to make payment to the Administrative Agent for the account of the Lenders in such Original Currency, then all payments to be made by the Borrower hereunder in such currency shall instead be made when due in Dollars in an amount equal to the Dollar Equivalent (as of the date of repayment) of such payment due, it being the intention of the parties hereto that the Borrower takes all risks of the imposition of any such currency control or exchange regulations.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees of a Class of Commitments then due hereunder, such funds shall be applied (i) first, to pay interest and fees of such Class then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees of such Class then due to such parties, and (ii) second, to pay principal and unreimbursed LC Disbursements of such Class then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements of such Class then due to such parties.

(c) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each Borrowing of a Class shall be made from the Lenders of such Class of Commitments, each payment of commitment fee under Section 2.10 shall be made for the account of the Lenders pro rata according to the average daily unutilized amounts of the respective Class of Commitments, and each termination or reduction of the amount of the Commitments of a Class of Commitments under Section 2.07 shall be applied to the respective Commitments of the Lenders of such Class of Commitments, pro rata according to the amounts of their respective Commitments of such Class of Commitments; (ii) each Borrowing of a Class of Commitments shall be allocated pro rata among the Lenders of such Class of Commitment according to the amounts of their respective Commitments of such Class (in the case of the making of Loans) or their respective Loans of such Class that are to be included in such Borrowing (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of principal of Loans of a Class of Commitments by the Borrower shall be made for the account of the Lenders of such Class of Commitments pro rata in accordance with the respective unpaid principal amounts of the Loans of such Class of Commitments held by them; and (iv) each payment of interest on Loans of a Class of Commitments by the Borrower shall be made for the account of the Lenders of such Class of Commitments pro rata in accordance with the amounts of interest on such Loans of such Class of Commitments then due and payable to the respective Lenders.

(d) Sharing of Payments by Lenders. If any Lender of any Class of Commitment shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans, or participations in LC Disbursements, of such Class resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans, and participations in LC Disbursements, and accrued interest thereon of such Class than the proportion received by any other Lender of such Class, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans, and participations in LC Disbursements, of other Lenders of such Class to the extent necessary so that the benefit of all such payments shall be shared by the Lenders of such Class ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans, and participations in LC Disbursements, of such Class; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph (d) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (d) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation. For the avoidance of doubt, the Borrower may make a Borrowing under the Dollar Commitments or Multicurrency Commitments (if otherwise permitted hereunder) and may use the proceeds of such Borrowing (x) with Dollar Commitments to prepay the Multicurrency Loans (without making a ratable prepayment of the Dollar Loans) or (y) with Multicurrency Commitments to prepay the Dollar Loans (without making a ratable payment to the Multicurrency Loans).

(e) Presumptions of Payment. 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 the Issuing Banks 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 Issuing Banks, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank 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 Federal Funds Effective Rate.

(f) Certain Deductions by the Administrative Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(e), 2.05(a) or (b) or 2.16(e), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.17. Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.13, 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 2.15, then, at the request of the Borrower, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.13 or 2.15, as the case may be, in the future and (ii) would not subject such Lender to any cost or expense not actually reimbursed or required to be reimbursed, by the Borrower and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.13, or if the Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15 and, in each case, such Lender has not designated a different lending office in accordance with clause (a) above, or if any Lender becomes a Defaulting Lender or is a Non-Consenting Lender (as provided in Section 9.02(d)), 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 Section 9.04), all its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that, (i) the Borrower shall have received the prior written consent of the Administrative Agent (and, if a Commitment is being assigned, each Issuing Bank), which consent shall not unreasonably be withheld, conditioned or delayed, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, 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 then owed to such Lender) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.13 or payments required to be made pursuant to Section 2.15, such assignment is reasonably expected at the time of such assignment request to result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 2.18. Defaulting Lenders.

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

(i) 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 VII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 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 any Issuing Bank hereunder; *third*, to Cash Collateralize each Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in the manner described in Section 2.08(a); *fourth*, as the Borrower may request (so long as no 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 Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in the manner described in Section 2.08(a); *sixth*, to the payment of any amounts owing to the Lenders or Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no 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 reimbursement obligations in respect of any LC Disbursement for 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 reimbursement obligations in respect of any LC Disbursement that is owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or reimbursement obligations in respect of any LC Disbursement that is owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letters of Credit are held by the Lenders pro rata in accordance with the applicable Commitments without giving effect to Section 2.18(a)(iii). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.18(a)(i) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(ii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee pursuant to Sections 2.10(a) and (b) 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); provided that such Defaulting Lender shall be entitled to receive fees pursuant to Section 2.10(b) for any period during which that Lender is a Defaulting Lender only to extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which such Defaulting Lender (but not the Borrower) has provided Cash Collateral pursuant to Section 2.18(d).

(B) With respect to any fees pursuant to Section 2.10(b) not required to be paid to any Defaulting Lender pursuant to clause (A) 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 Letters of Credit that has been reallocated to such Non-Defaulting Lender pursuant to clause (iii) below, (y) pay to each Issuing Bank the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iii) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letters of Credit shall be reallocated (effective no later than one Business Day after the Administrative Agent has actual knowledge that such Lender has become a Defaulting Lender) among the Non-Defaulting Lenders in accordance with their respective Applicable Dollar Percentages, Applicable Multicurrency Percentages and Applicable Percentages, as the case may be (in each case calculated without regard to such Defaulting Lender's Commitment), but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to Section 9.15, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(iv) Cash Collateral. If the reallocation described in clause (iii) above cannot, or can only partially, be effected, the Borrower shall not later than two Business Days after demand by the Administrative Agent (at the direction of any Issuing Bank), without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize each Issuing Bank's Fronting Exposure in accordance with the procedures set forth in Section 2.18(d) or (z) make other arrangements reasonably satisfactory to the Administrative Agent and such Issuing Banks in their sole discretion to protect them against the risk of non-payment by such Defaulting Lender.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and the Issuing Banks 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 such former Defaulting Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held pro rata by the Lenders in accordance with the applicable Commitments (without giving effect to Section 2.18(a)(iii)), and if any Cash Collateral has been posted with respect to such Defaulting Lender, the Administrative Agent will promptly return or release such Cash Collateral to the Borrower, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of 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 having been a Defaulting Lender.

(c) New Letters of Credit. So long as any Lender is a Defaulting Lender, no Issuing Bank shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that the participations in any existing Letters of Credit as well as the new, extended, renewed or increased Letter of Credit has been or will be fully allocated among the Non-Defaulting Lenders in a manner consistent with clause (a)(iii) above and such Defaulting Lender shall not participate therein except to the extent such Defaulting Lender's participation has been or will be fully Cash Collateralized in accordance with Section 2.18(d).

(d) Cash Collateral. At any time that there shall exist a Defaulting Lender, promptly following the written request of the Administrative Agent or any Issuing Bank (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize each Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.18(a)(iii)) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(i) Grant of Security Interest. 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 Issuing Banks, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letters of Credit, to be applied pursuant to clause (ii) below. If at any time the Administrative Agent determines that such Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Banks 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 (after giving effect to any Cash Collateral provided by the Defaulting Lender). All Cash Collateral

(other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at SMBC. The Borrower shall pay on demand therefor from time to time all reasonable and customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(ii) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.18 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iii) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.18 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender or giving effect to Section 2.18(a)(iii)) or (ii) the determination by the Administrative Agent and the Issuing Banks that there exists excess Cash Collateral; provided that, subject to the other provisions of this Section 2.18, the Person providing Cash Collateral and each Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure; provided, further, that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

#### SECTION 2.19. Effect of Benchmark Transition Event

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark for a Currency, then (x) if a Benchmark Replacement for the Term SOFR Reference Rate is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for such Currency for all purposes hereunder and under any other Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to other parties hereto without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising (x) in the case of a Benchmark Replacement for Dollars, the Required Lenders, and, (y) in the case of a Benchmark Replacement for any Foreign Currency, the Required Multicurrency Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly or quarterly basis as determined by the Administrative Agent and the Borrower.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent (after consulting with the Borrower) 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.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement and (iii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.19, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.19.

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



(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a Term Benchmark Borrowing or RFR Borrowing of, conversion to or continuation of Term Benchmark Loans or RFR Loans in each affected Currency to be made, converted or continued during any Benchmark Unavailability Period and, failing that, (i) in the case of a request for a Borrowing, continuation or conversion in Dollars, the Borrower will be deemed to have converted such request into a request for a Borrowing of, or conversion to, an ABR Loan immediately in the case of an RFR Borrowing or, in the case of a Term Benchmark Borrowing, at the end of the applicable Interest Period, (ii) in the case of a request for, or continuation of, a Term Benchmark Borrowing other than in Dollars or Canadian Dollars or an RFR Borrowing, at the Borrower's election, such request shall (A) be converted to a Borrowing bearing interest at the Central Bank Rate for the applicable Agreed Foreign Currency; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Foreign Currency cannot be determined, such Borrowing shall be converted into an ABR Borrowing denominated in Dollars (in an amount equal to the Dollar Equivalent of such affected Currency) immediately in the case of an RFR Borrowing or, in the case of a Term Benchmark Borrowing, at the end of the applicable Interest Period, (B) be converted into an ABR Borrowing denominated in Dollars (in an amount equal to the Dollar Equivalent of such affected Currency) immediately in the case of an RFR Borrowing or, in the case of a Term Benchmark Borrowing, at the end of the applicable Interest Period, or (C) be prepaid in full immediately in the case of an RFR Borrowing or, in the case of a Term Benchmark Borrowing, at the end of the applicable Interest Period, and (iii) in the case of a request for, or continuation of, a Term Benchmark Borrowing in Canadian Dollars, at the Borrower's election, such request shall (A) be converted to a Term Benchmark Borrowing denominated in Canadian Dollars with a Term Benchmark Rate equal to the Canadian Prime Rate at the end of applicable Interest Period, (B) be converted into an ABR Borrowing denominated in Dollars (in an amount equal to the Dollar Equivalent of such affected Currency) at the end of the applicable Interest Period, or (C) be prepaid in full at the end of the applicable Interest Period; provided that if no election is made by the Borrower by the date that is three Business Days after receipt by the Borrower of such notice or, in the case of a Term Benchmark Borrowing, the last day of the current Interest Period for the applicable Term Benchmark Loan, if earlier, the Borrower shall be deemed to have elected clause (ii)(A) or (iii)(A) above, as applicable. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers. Each of the Borrower and its Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required of the Borrower or such Subsidiary, as applicable.

SECTION 3.02. Authorization; Enforceability. The Transactions are within the Borrower's corporate powers and have been duly authorized by all necessary corporate and, if required, by all necessary shareholder action. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each of the other Loan Documents when executed and delivered by each Obligor party thereto will constitute, a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any applicable Governmental Authority, except for (i) such as have been or will be obtained or made and are in full force and effect and (ii) filings and recordings in respect of the Liens created pursuant to this Agreement or the Security Documents, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any other Obligor or any order of any Governmental Authority applicable to the Borrower or any other Obligor, or their respective property, (c) will not violate or result in a default in any material respect under any indenture, agreement or other instrument binding upon the Borrower or any of its Subsidiaries or assets, or give rise to a right thereunder to require any payment to be made by any such Person, and (d) except for the Liens created pursuant to this Agreement or the Security Documents, will not result in the creation or imposition of any Lien (other than Liens permitted by Section 6.02) on any asset of the Borrower or any other Obligor.

SECTION 3.04. Financial Condition; No Material Adverse Effect.

(a) Financial Statements. The Borrower has heretofore delivered to the Administrative Agent audited consolidated balance sheet, statement of operations, changes in net assets, cash flows and schedule of investments of the Borrower and its consolidated Subsidiaries as of and for the year ended December 31, 2020. Such financial statements present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such date and for such period in accordance with GAAP.

(b) No Material Adverse Change. Since the date of the most recent Applicable Financial Statements, there has not been any event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

SECTION 3.05. Litigation. There are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority now pending against or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement or the Transactions (other than any action brought by the Borrower against a Defaulting Lender).

SECTION 3.06. Compliance with Laws and Agreements. Each of the Borrower and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. None of the Obligors is subject to any contract or other arrangement, the performance of which by them could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.07. Taxes. Each of the Borrower and its Subsidiaries has timely filed or caused to be filed all material Tax returns and reports required to have been filed and has paid or caused to be paid all material Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Person has set aside on its books adequate reserves maintained in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.09. Disclosure. As of the Effective Date, the Borrower has disclosed in its public filings or to the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, that if terminated prior to its term, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the written reports, financial statements, certificates or other written information (other than projected financial information, other forward looking information and information of a general economic or general industry nature or information relating to third parties that, for the avoidance of doubt, are not Affiliates) furnished by or on behalf of the Borrower to the Administrative Agent in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) when taken together with the Borrower's public filings and as a whole (and after giving effect to all updates, modifications and supplements) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading at the time made; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed in good faith to be reasonable at the time of the preparation thereof (it being understood that projections are subject to significant and inherent uncertainties and contingencies which may be outside of the Borrower's control and that no assurance can be given that projections will be realized, and are therefore not to be viewed as fact, and that actual results for the periods covered by projections may differ from the projected results set forth in such projections and that such differences may be material).

SECTION 3.10. Investment Company Act; Margin Regulations.

(a) Status as Business Development Company. The Borrower has elected to be regulated as a "business development company" within the meaning of the Investment Company Act and qualifies as a RIC.

(b) Compliance with Investment Company Act. The business and other activities of the Borrower and its Subsidiaries, including the making of the Loans hereunder, the application of the proceeds and repayment thereof by the Borrower and the consummation of the Transactions contemplated by the Loan Documents do not result in a violation or breach in any material respect of the provisions of the Investment Company Act or any rules, regulations or orders issued by the SEC thereunder, in each case that are applicable to the Borrower and its Subsidiaries.

(c) Investment Policies. The Borrower is in compliance in all respects with the Investment Policies (after giving effect to any Permitted Policy Amendments), except to the extent that the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(d) Use of Credit. Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of any extension of credit hereunder will be used to buy or carry any Margin Stock in violation of law; provided that in no event shall any Margin Stock be included in the Collateral Pool.

#### SECTION 3.11. Material Agreements and Liens.

(a) Material Agreements. Part A of Schedule 3.11 hereto is a complete and correct list, as of the Effective Date, of each credit agreement, loan agreement, indenture, note purchase agreement, guarantee, letter of credit or other arrangement providing for or otherwise relating to any Indebtedness for borrowed money or any extension of credit (or commitment for any extension of credit) to, or guarantee for borrowed money by, the Borrower or any other Obligor outstanding on the date hereof and not otherwise publicly disclosed in an aggregate principal amount in excess of \$5,000,000 (in each case, other than (x) Indebtedness hereunder and (y) any such agreement or arrangement that is between or among an Obligor and any other Obligor), and the aggregate principal or face amount outstanding or that is, or may become, outstanding under each such arrangement, in each case, as of the Effective Date, is correctly described in Part A of Schedule 3.11 hereto.

(b) Liens. Part B of Schedule 3.11 hereto is a complete and correct list, as of the Effective Date, of each Lien securing Indebtedness of any Person outstanding on the Effective Date (other than Indebtedness hereunder or under any other Loan Document) covering any property of the Borrower or any of the Subsidiary Guarantors, and the aggregate principal amount of such Indebtedness secured (or that may be secured) by each such Lien and the property covered by each such Lien as of the Effective Date is correctly described in Part B of Schedule 3.11 hereto.

#### SECTION 3.12. Subsidiaries and Investments.

(a) Subsidiaries. Set forth on Schedule 3.12(a) hereto is a list of the Borrower's Subsidiaries as of the Effective Date.

(b) Investments. Set forth on Schedule 3.12(b) hereto is a complete and correct list, as of the Effective Date, of all Investments (other than Investments of the types referred to in clauses (b), (c), (d) and (g) of Section 6.04) held by the Borrower or any of the Subsidiary Guarantors in any Person on the Effective Date and, for each such Investment, (x) the identity of the Person or Persons holding such Investment and (y) the nature of such Investment. Except as disclosed in Schedule 3.12 hereto as of the Effective Date, each of the Borrower and any of the Subsidiary Guarantors owns, free and clear of all Liens (other than Liens created pursuant to this Agreement or the Security Documents and other Permitted Liens), all such Investments as of such date.

SECTION 3.13. Properties.

(a) Title Generally. Each of the Borrower and the Subsidiary Guarantors has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Intellectual Property. Each of the Borrower and its Subsidiaries (other than any Financing Subsidiary) owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and its Subsidiaries (other than any Financing Subsidiary) does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.14. [Reserved].

SECTION 3.15. Sanctions.

(a) None of the Borrower or any of its Subsidiaries nor, to the knowledge of the Borrower, any of their respective directors, officers or authorized signors, (i) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to, or the subject or target of, the limitations or prohibitions (collectively "Sanctions") under (A) any U.S. Department of Treasury's Office of Foreign Assets Control or U.S. Department of State regulation or executive order or (B) any international economic sanction administered or enforced by the United Nations Security Council, Her Majesty's Treasury or the European Union or (ii) is located, organized or resident in a Sanctioned Country.

(b) The Borrower has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and investment advisors with Anti-Corruption Laws and applicable Sanctions in all material respects. The Borrower, its Subsidiaries and to the knowledge of the Borrower, their respective employees, officers, directors and agents (acting on their behalf), are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

SECTION 3.16. Patriot Act. Each of the Borrower and its Subsidiaries is in compliance, to the extent applicable with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001). No part of the proceeds of the Loans will be used, directly or, to the knowledge of a Responsible Officer of the Borrower,

indirectly, for any payments to (i) any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation by the Borrower or its Subsidiaries of the United States Foreign Corrupt Practices Act of 1977, as amended, or in material violation of US or UK regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (collectively, the “Anti-Corruption Laws”) or (ii) any Person for the purpose of financing the activities of any Person, at the time of such financing (A) subject to, or the subject of, any Sanctions or (B) located, organized or resident in a Sanctioned Country, in each case as would result in a violation of Sanctions.

SECTION 3.17. Collateral Documents. The provisions of the Security Documents are effective to create in favor of the Collateral Agent a legal, valid and enforceable first priority Lien (subject to Liens permitted by Section 6.02) on all right, title and interest of the Borrower and each Subsidiary Guarantor in the Collateral described therein, except for any failure that would not constitute an Event of Default under clause (o) of Article VII. Except for filings completed on or prior to the Effective Date or as contemplated hereby and by the Security Documents, no filing or other action will be necessary to perfect such Liens to the extent required thereunder, except for the failure to make any filing or take any other action that would not constitute an Event of Default under clause (o) of Article VII.

SECTION 3.18. EEA Financial Institutions. Neither the Borrower nor any Subsidiary is an EEA Financial Institution.

## ARTICLE IV

### CONDITIONS

SECTION 4.01. Effective Date. The effectiveness of this Agreement and of the obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective until completion of each of the following conditions precedent (unless a condition shall have been waived in accordance with Section 9.02):

(a) Documents. The Administrative Agent shall have received each of the following documents, each of which shall be satisfactory to the Administrative Agent (and to the extent specified below to each Lender) in form and substance:

(i) Executed Counterparts. From each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy or electronic (e.g. pdf) transmission of a signed signature page to this Agreement) that such party has signed a counterpart of this Agreement.

(ii) Opinion of Counsel to the Obligors. A favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Dechert LLP, New York counsel for the Borrower, in form and substance reasonably acceptable to the Administrative Agent (and the Borrower hereby instructs such counsel to deliver such opinion to the Lenders and the Administrative Agent).

(iii) Corporate Documents. Such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Obligor, the authorization of the Transactions and any other legal matters relating to the Obligor, this Agreement or the Transactions.

(iv) Officer's Certificate. A certificate, dated the Effective Date and signed by the President, the Chief Executive Officer, a Vice President or a Responsible Officer of the Borrower, confirming compliance with the conditions set forth in Section 4.02.

(v) Guarantee and Security Agreement. The Guarantee and Security Agreement, duly executed and delivered by each of the parties to the Guarantee and Security Agreement.

(vi) Control Agreement. An account control agreement, duly executed and delivered by the Borrower, the Administrative Agent and State Street Bank and Trust Company.

(vii) Borrowing Base Certificate. A Borrowing Base Certificate showing a calculation of the Borrowing Base and the Aggregate Portfolio Balance as of the Effective Date with the Value of each Portfolio Investment determined as of October 31, 2021.

(b) Liens. The Administrative Agent shall have received results of a recent lien search in each relevant jurisdiction with respect to the Borrower and the Subsidiary Guarantors, confirming that each financing statement in respect of the Liens in favor of the Collateral Agent created pursuant to the Security Documents is otherwise prior to all other financing statements or other interests reflected therein (other than any financing statement or interest in respect of liens permitted under Section 6.02 or Liens to be discharged on or prior to the Effective Date pursuant to documentation satisfactory to the Administrative Agent). All UCC financing statements and similar documents required to be filed in order to create in favor of the Collateral Agent, for the benefit of the Secured Parties (as such term is defined in the Guarantee and Security Agreement), a first priority perfected security interest in the Collateral (to the extent that such a security interest may be perfected by a filing under the Uniform Commercial Code) shall have been properly filed in each jurisdiction required (or arrangements for such filings acceptable to the Collateral Agent shall have been made).

(c) Consents. The Borrower shall have obtained and delivered to the Administrative Agent certified copies of all consents, approvals, authorizations, registrations, or filings required to be made or obtained by the Borrower and the Subsidiary Guarantors in connection with the Transactions and any transaction being financed with the proceeds of the Loans, and such consents, approvals, authorizations, registrations, filings and orders shall be in full force and effect and all applicable waiting periods shall have expired and no investigation or inquiry by any Governmental Authority regarding the Transactions or any transaction being financed with the proceeds of the Loans shall be ongoing.

(d) Fees and Expenses. Subject to Section 9.03(a) hereof, the Borrower shall have paid in full to the Administrative Agent and the Lenders all fees and expenses related to the Loan Documents (including the fees set forth in the Fee Letter) owing on the Effective Date.

(e) Patriot Act. The Administrative Agent and the Lenders shall have received, sufficiently in advance of the Effective Date, all documentation and other information required by bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

(f) Other Documents. The Administrative Agent shall have received such other documents as the Administrative Agent or any Lender may reasonably request in form and substance reasonably satisfactory to the Administrative Agent.

SECTION 4.02. Each Credit Event. The obligation of each Lender to make any Loan, and of each Issuing Bank to issue, amend, renew or extend any Letter of Credit, is additionally subject to the satisfaction of the following conditions:

(a) the representations and warranties of the Borrower set forth in this Agreement and in the other Loan Documents shall be true and correct in all material respects (or, in the case of any portion of any representations and warranties already subject to a materiality qualifier, true and correct in all respects) on and as of the date of such Loan or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, or, as to any such representation or warranty that refers to a specific date, as of such specific date;

(b) at the time of and immediately after giving effect to such Loan or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing;

(c) either (i) the aggregate Covered Debt Amount (after giving effect to such extension of credit) shall not exceed the Borrowing Base reflected on the Borrowing Base Certificate most recently delivered to the Administrative Agent or (ii) the Borrower shall have delivered an updated Borrowing Base Certificate demonstrating that the Covered Debt Amount (after giving effect to such extension of credit) shall not exceed the Borrowing Base after giving effect to such extension of credit as well as any concurrent acquisitions of Investments or payment of outstanding Loans at such time; and

(d) either (i) the Aggregate Covered Debt Amount (after giving effect to such extension of credit) shall not exceed the Aggregate Portfolio Balance reflected on the Borrowing Base Certificate most recently delivered to the Administrative Agent or (ii) the Borrower shall have delivered an updated Borrowing Base Certificate demonstrating that the Aggregate Covered Debt Amount (after giving effect to such extension of credit) shall not exceed the Aggregate Portfolio Balance after giving effect to such extension of credit as well as any concurrent acquisitions of Investments or payment of outstanding Loans or Aggregate Other Covered Indebtedness or any other Indebtedness that is included in the Aggregate Covered Debt Amount at such time.



Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in the preceding sentence.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired, been terminated, Cash Collateralized or backstopped and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent (for distribution to each Lender):

(a) within 90 days after the end of each fiscal year of the Borrower, the audited consolidated balance sheet, statement of operations, changes in net assets, cash flows and schedule of investments of the Borrower and its consolidated Subsidiaries as of the end of and for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP (except as disclosed therein); provided that the requirements set forth in this clause (a) may be fulfilled by providing to the Administrative Agent the report of the Borrower to the SEC on Form 10-K for the applicable fiscal year;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, the consolidated balance sheet, statement of operations, changes in net assets and cash flows and schedule of investments of the Borrower and its consolidated Subsidiaries as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for (or, in the case of the balance sheet, statement of operations, changes in net assets and cash flows and schedule of investments, as of the end of) the corresponding period or periods of the previous fiscal year, all certified by a Financial Officer of the Borrower as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently (except as disclosed therein) applied, subject to year-end audit adjustments and the absence of footnotes; provided that the requirements set forth in this clause (b) may be fulfilled by providing to the Administrative Agent the report of the Borrower to the SEC on Form 10-Q for the applicable quarterly period;

(c) concurrently with any delivery of financial statements under clause (a) or (b) of this Section 5.01, a certificate of a Financial Officer of the Borrower (i) certifying as to whether the Borrower has knowledge that a Default has occurred during the applicable period and, if a Default has occurred (or has occurred and is continuing from a prior period), specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth

reasonably detailed calculations demonstrating compliance with Sections 6.01, 6.02, 6.04 and 6.07 and (iii) stating whether any change in GAAP as applied by (or in the application of GAAP by) the Borrower has occurred since the Effective Date (but only if the Borrower has not previously reported such change to the Administrative Agent and if such change has had a material effect on the financial statements) and, if any such change has occurred, specifying the effect (unless such effect has been previously reported) as determined by the Borrower of such change on the financial statements accompanying such certificate; provided that the requirements set forth in this clause (c)(iii) may be fulfilled by providing to the Administrative Agent the report of the Borrower to the SEC on Form 10-Q for the applicable quarterly period;

(d) as soon as available and in any event not later than 20 days after the end of each monthly accounting period (ending on the last day of each calendar month) of the Borrower and its Subsidiaries, a Borrowing Base Certificate as at the last day of such accounting period;

(e) promptly but no later than five Business Days after any Responsible Officer of the Borrower shall at any time have knowledge that there is a Borrowing Base Deficiency, a Borrowing Base Certificate as at the date such Responsible Officer of the Borrower has knowledge of such Borrowing Base Deficiency indicating the amount of the Borrowing Base Deficiency as at the date such Responsible Officer of the Borrower obtained knowledge of such deficiency and the amount of the Borrowing Base Deficiency as of the date not earlier than one Business Day prior to the date the Borrowing Base Certificate is delivered pursuant to this paragraph (e);

(f) promptly upon receipt thereof copies of all significant reports submitted by the Borrower's independent public accountants in connection with each annual, interim or special audit or review of any type of the financial statements or related internal control systems of the Borrower or any of its Subsidiaries delivered by such accountants to the management or Board of Directors of the Borrower;

(g) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials sent to all stockholders filed by the Borrower or any of the Subsidiary Guarantors with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, as the case may be; and

(h) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any of its Subsidiaries, or compliance with the terms of this Agreement and the other Loan Documents, as the Administrative Agent or any Lender may reasonably request, including such documents and information requested by the Administrative Agent or any Lender that are reasonably required in order to comply with "know-your-customer" and other anti-terrorism, anti-money laundering and similar rules and regulations and related policies and procedures.

(i) the Borrower and each Lender acknowledge that certain of the Lenders may be Public Lenders and, if documents or notices required to be delivered pursuant to this Section 5.01 or otherwise are being distributed through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform (the "Platform"), any document or notice that Borrower has indicated contains Non-Public Information shall not be posted by the Administrative

Agent on that portion of the Platform designated for such Public Lenders. The Borrower agrees to clearly designate all information provided to the Administrative Agent by or on behalf of the Borrower or any of its Subsidiaries which is suitable to make available to Public Lenders. If the Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.01 contains Non-Public Information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material Non-Public Information with respect to the Borrower, its Subsidiaries and their Securities (as such term is defined in Section 5.13 of this Agreement).

(j) Notwithstanding anything to the contrary herein, the requirements to deliver documents set forth in Sections 5.01(a), (b) and (g) will be fulfilled by filing by the Borrower of the applicable documents for public availability on the SEC's Electronic Data Gathering and Retrieval system; provided that, the Borrower shall notify the Administrative Agent (by telecopier or electronic mail) of the posting of any such documents.

SECTION 5.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent (for distribution to each Lender) prompt written notice upon any Responsible Officer obtaining actual knowledge of the following:

(a) the occurrence of any Default (unless the Borrower first became aware of such Default from a notice delivered by the Administrative Agent);

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any of its Affiliates that could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred after the Effective Date, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$50,000,000; and

(d) any other development (excluding matters of a general economic, financial or political nature to the extent that they could not reasonably be expected to have a disproportionate effect on the Borrower or any of its Subsidiaries) that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 5.02 shall be accompanied by a statement of a Responsible Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Existence: Conduct of Business. The Borrower will, and will cause each of its Subsidiaries (other than Immaterial Subsidiaries) to, do or cause to be done all things necessary to (i) preserve, renew and keep in full force and effect its legal existence and (ii) the rights, licenses, permits, privileges and franchises material to the conduct of the business of the Borrower and its Subsidiaries, taken as a whole; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.04. Payment of Obligations. The Borrower will, and will cause each of its Subsidiaries to, pay its obligations, including income tax and other material tax liabilities and material contractual obligations, that, if not paid, could reasonably be expected to result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, and (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

SECTION 5.05. Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Subsidiaries (other than Immaterial Subsidiaries) to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted unless the failure to so keep and maintain could not reasonably be expected to result in a Material Adverse Effect, and (b) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 5.06. Books and Records; Inspection and Audit Rights. The Borrower will, and will cause each of its Subsidiaries to, keep books of record and account in accordance with GAAP in all material respects. The Borrower will, and will cause each other Obligor to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice to the Borrower, to visit and inspect its properties during normal business hours, to examine and make extracts from its books and records (but only to the extent the applicable Obligor is not prohibited from disclosing such information or providing access to such information pursuant to applicable law or an agreement such Obligor entered into with a third party (other than an Affiliate) in the ordinary course of its business), and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested, in each case, solely related to the Obligors and to the extent such inspection or requests for such information are reasonable and such information can be provided or discussed without violation of law, rule, regulation or contract; provided that, (i) the Borrower or such other Obligor shall be entitled to have its representatives and advisors present during any inspection of its books and records and during any discussion with its independent accountants and independent auditors and (ii) unless an Event of Default shall have occurred and be continuing, the Borrower's obligation to reimburse any costs and expenses incurred by the Administrative Agent and the Lenders in connection with any such inspections shall be limited to one inspection per calendar year.

SECTION 5.07. Compliance with Laws. The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations, including the Investment Company Act, and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Without limiting the generality of the foregoing, the Borrower will, and will cause its Subsidiaries to, conduct its business and other activities in compliance in all material respects with the provisions of the Investment Company Act and any applicable rules, regulations or orders issued by the SEC thereunder. The Borrower shall maintain in effect policies and procedures reasonably designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and investment advisors with Anti-Corruption Laws and applicable Sanctions in all material respects.

SECTION 5.08. Certain Obligations Respecting Subsidiaries: Further Assurances

(a) Subsidiary Guarantors. The Borrower may elect for any Subsidiary (other than a Financing Subsidiary, a Foreign Subsidiary or a Subsidiary of a Foreign Subsidiary) to become a Subsidiary Guarantor at any time and, in the event that any Subsidiary (other than a Financing Subsidiary, a Foreign Subsidiary, an Immaterial Subsidiary or a Subsidiary of a Foreign Subsidiary) guarantees or otherwise becomes liable at any time, whether as a borrower or an additional or co-borrower or otherwise, for or in respect of any Material Indebtedness for which an Obligor is a borrower or guarantor, the Borrower will within thirty (30) days thereof (or such longer period as shall be reasonably agreed by the Administrative Agent) cause such Subsidiary to become a "Subsidiary Guarantor" (and, thereby, an "Obligor") under the Guarantee and Security Agreement pursuant to a Guarantee Assumption Agreement and to deliver such proof of corporate or other action, incumbency of officers, opinions of counsel (unless waived by the Administrative Agent) and other documents as is consistent with those delivered by the Borrower pursuant to Section 4.01 upon the Effective Date or as the Administrative Agent shall have reasonably requested.

(b) Ownership of Subsidiaries. The Borrower will, and will cause each of its Subsidiaries that is an Obligor to, take such action from time to time as shall be necessary to ensure that such Subsidiary is a wholly owned Subsidiary; provided that the foregoing shall not prohibit any transaction permitted under Section 6.03 or 6.04, so long as after giving effect to such permitted transaction each of the remaining Subsidiaries of the Borrower is a wholly-owned Subsidiary.

(c) Further Assurances. The Borrower will, and will cause each of the Subsidiary Guarantors to, take such action from time to time as shall reasonably be requested by the Administrative Agent to effectuate the purposes and objectives of this Agreement. Without limiting the generality of the foregoing, the Borrower will, and will cause each of the Subsidiary Guarantors to, take such action from time to time (including filing appropriate Uniform Commercial Code financing statements and executing and delivering such assignments, security agreements and other instruments) as shall be reasonably requested by the Administrative Agent: (i) to create, in favor of the Collateral Agent for the benefit of the Secured Parties (as such term is defined in the Guarantee and Security Agreement) (and any affiliate thereof that is a party to any Hedging Agreement entered into with such Obligor), perfected security interests and Liens in the Collateral; provided that, any such security interest or Lien shall be subject to the relevant requirements of the Security Documents, (ii) in the case of any Investment consisting of a Bank Loan (as defined in Section 5.13) that is part of the Collateral that does not constitute all of the credit extended to the underlying borrower under the relevant underlying loan documents and a Financing Subsidiary holds any interest in the loans or other extensions of credit under such loan documents, (x) to cause such Financing Subsidiary to be party to such underlying loan documents as a "lender" having a direct interest (or a participation not acquired from an Obligor) in such underlying loan documents and the extensions of credit thereunder and (y) to ensure that all amounts owing to such Obligor or Financing Subsidiary by the underlying borrower or other obligated party are remitted by such borrower or obligated party directly to the administrative

agent under such underlying loan documents or separate accounts of such Obligor and such Financing Subsidiary, (iii) in the event that any Obligor is acting as an agent or administrative agent under any loan documents with respect to any Bank Loan that is part of the Collateral but does not constitute all of the credit extended to the underlying borrower under the relevant underlying loan documents, to ensure that all funds held by such Obligor in such capacity as agent or administrative agent is segregated from all other funds of such Obligor and clearly identified as being held in an agency capacity and (iv) to cause the closing sets and all executed amendments, consents, forbearances and other modifications and assignment agreements relating to any Investment in the Collateral Account and any other documents relating to any Investment in the Collateral Account requested by the Collateral Agent, in each case, to be held by the Collateral Agent or a custodian pursuant to the terms of a custodian agreement reasonably satisfactory to the Collateral Agent; provided that, for the avoidance of doubt, this clause (iv) shall not apply to any item of Collateral that is required to be Delivered (as such term is used in and to the extent required under Section 7.01(a) of the Guarantee and Security Agreement).

SECTION 5.09. Use of Proceeds. The Borrower will use the proceeds of the Loans and the issuances of Letters of Credit only for general corporate purposes of the Borrower, including, without limitation, the acquisition and funding (either directly or through one or more wholly-owned Subsidiaries) of venture loans, leveraged loans, mezzanine loans, high-yield securities, convertible securities, preferred stock, common stock, warrants and other Investments; provided that, neither the Administrative Agent nor any Lender shall have any responsibility as to the use of any of such proceeds. No part of the proceeds of any Loan or Letter of Credit will be used in violation of (a) applicable law or, directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of buying or carrying any Margin Stock in violation of applicable law or (b) Section 3.16. No Margin Stock shall be included in the Collateral Pool.

SECTION 5.10. Status of RIC and BDC. As of the Effective Date, the Borrower is treated as a RIC under the Code, the Borrower shall at all times thereafter, subject to applicable grace periods set forth in the Code, maintain its status as a RIC under the Code. The Borrower shall at all times maintain its status as a "business development company" under the Investment Company Act.

SECTION 5.11. Investment Policies. The Borrower shall at all times be in compliance in all material respects with its Investment Policies (after giving effect to any Permitted Policy Amendments).

SECTION 5.12. Portfolio Valuation and Diversification Etc.

(a) Industry Classification Groups. For purposes of this Agreement, the Borrower shall assign each Portfolio Investment to an Industry Classification Group. To the extent that the Borrower determined that any Portfolio Investment is not adequately correlated with the risks of other Portfolio Investments in an Industry Classification Group, such Portfolio Investment may be assigned by the Borrower to an Industry Classification Group that is more closely correlated to such Portfolio Investment. In the absence of any adequate correlation, the Borrower shall be permitted, upon prior notice to the Administrative Agent (for the distribution to each Lender), to create up to three additional industry classification groups for purposes of this Agreement.

(b) Portfolio Valuation Etc.

(i) Settlement Date Basis. For purposes of this Agreement, all determinations of whether an investment is to be included as a Portfolio Investment shall be determined on a settlement-date basis (meaning that any investment that has been purchased will not be treated as a Portfolio Investment until such purchase has settled, and any Portfolio Investment which has been sold will not be excluded as a Portfolio Investment until such sale has settled); provided that no such investment shall be included as a Portfolio Investment to the extent it has not been paid for in full.

(ii) Determination of Values. For the purposes of this Agreement and not to be required to be utilized for any other purpose (including, for the avoidance of doubt, the Borrower's financial statements, valuations required under the Financial Accounting Standards Board Accounting Standards Codification Topic 820, Fair Value Measurement (ASC 820) or valuations required under the Investment Company Act), the Borrower will conduct reviews of the value to be assigned to each of its Portfolio Investments as follows:

(A) Quoted Investments—External Review. With respect to Portfolio Investments (including Cash Equivalents) for which market quotations are readily available (each, a "Quoted Investment"), the Borrower shall, not less frequently than once each calendar week, determine the market value of such Quoted Investments which shall, in each case, be determined in accordance with one of the following methodologies (as selected by the Borrower):

(w) in the case of public and 144A securities, the average of the bid prices as determined by two Approved Dealers selected by the Borrower,

(x) in the case of bank loans, the bid price as determined by one Approved Dealer selected by the Borrower,

(y) in the case of any Quoted Investment traded on an exchange, the closing price for such Quoted Investment most recently posted on such exchange, and

(z) in the case of any other Quoted Investment, the fair market value thereof as determined by an Approved Pricing Service selected by the Borrower; and

(B) Unquoted Investments- External Review. With respect to Portfolio Investment for which market quotations are not readily available (each, an "Unquoted Investment"), the Board of Directors of the Borrower shall determine the fair market value of such Unquoted Investment; provided, however, that, as of the last day of the third fiscal quarter following the Effective Date and each fiscal quarter end thereafter (each, a "Testing Quarter"), the Borrower shall have caused Approved Third-Party Appraisers, during the twelve month period ending on such day, to have assisted the Board of Directors of the Borrower in determining the fair market value of (x) Unquoted Investments that (I) are included in the Collateral

Pool and (II) have an aggregate Value equal to 50% or more of the Collateral Pool, in each case, as of such day and (y) each Unquoted Investment with a Value that is equal to or greater than 5% of the Collateral Pool as of such day; provided that the Value of any such Unquoted Investment acquired during a Testing Quarter shall be deemed to be equal to the cost of such Unquoted Investment until such time as the fair market value of such Unquoted Investment is determined in accordance with the foregoing provisions of this sub-clause (B) as at the last day of such Testing Quarter with respect to such Portfolio Investment.

(C) Internal Review. The Borrower shall conduct internal reviews of all Portfolio Investments at least once each calendar week which shall take into account any events of which any Responsible Officer of the Borrower has knowledge that materially adversely affect the aggregate value of the Portfolio Investments. If the value of any Portfolio Investment as most recently determined by the Borrower pursuant to this Section 5.12(b)(ii)(C) is lower than the value of such Portfolio Investment as most recently determined pursuant to Sections 5.12(b)(ii)(A) and (B), such lower value shall be deemed to be the "Value" of such Portfolio Investment for purposes hereof; provided that, the Value of any Portfolio Investment of the Borrower and its Subsidiaries shall be increased by the net unrealized gain as at the date such Value is determined of any Hedging Agreement entered into to hedge risks associated with such Portfolio Investment and reduced by the net unrealized loss as at such date of any such Hedging Agreement (such net unrealized gain or net unrealized loss, on any date, to be equal to the aggregate amount receivable or payable under the related Hedging Agreement if the same were terminated on such date).

(D) Failure to Determine Values. If the Borrower shall fail to determine the value of any Portfolio Investment as at any date pursuant to the requirements of the foregoing sub-clause (A), (B) or (C), then the "Value" of such Portfolio Investment as at such date shall be deemed to be zero for purposes of the Borrowing Base and Aggregate Portfolio Balance until such time as the value of such Portfolio Investment is otherwise determined or reviewed, as applicable, in accordance herewith.

(E) Testing of Values.

(x) For the second calendar month immediately following the end of each fiscal quarter (the last such fiscal quarter is referred to herein as, the "Testing Period"), the Administrative Agent shall cause an Approved Third-Party Appraiser selected by the Administrative Agent to value such number of Unquoted Investments (selected by the Administrative Agent) that collectively have an aggregate Value approximately equal to the Calculation Amount. The Administrative Agent agrees to notify the Borrower of the Unquoted Investments selected by the Administrative Agent to be tested in each Testing Period. If there is a difference between the Borrower's valuation and the Approved Third-Party Appraiser's valuation of any Unquoted Investment, the Value of such Unquoted Investment for Borrowing Base purposes shall be established as set forth in sub-clause (F) below.



(y) For the avoidance of doubt, the valuation of any Approved Third-Party Appraiser selected by the Administrative Agent would not be as of, or delivered at, the end of any fiscal quarter. Any such valuation would be as of the end of the second month immediately following any fiscal quarter (the “Administrative Agent Appraisal Testing Period”) and would be reflected in the Borrowing Base Certificate for such month (provided that, such Approved Third-Party Appraiser delivers such valuation at least seven Business Days before the 20<sup>th</sup> day after the end of the applicable monthly accounting period and, if such valuation is delivered after such time, it shall, subject to clause (F) below, be included in the Borrowing Base Certificate for the following monthly period and applied to the then applicable balance of the related Portfolio Investment). For illustrative purposes, if the given fiscal quarter is the fourth quarter ending on December 31, 2021, then (A) the Administrative Agent would initiate the testing of Values (using the December 31, 2021 Values) for purposes of determining the scope of the testing under clause (E)(x) during the month of February with the anticipation of receiving the valuations from the applicable Approved Third-Party Appraiser(s) on or after February 28, 2022 and (B)(xx) if such valuations were received before the seventh Business Day before March 20, 2022, such valuations would be included in the March 20, 2022 Borrowing Base Certificate covering the month of February, or (yy) if such valuations were received after such time, they would, subject to clause (F) below, be included in the April 20, 2022 Borrowing Base Certificate for the month of March.

For the avoidance of doubt, all calculations of value pursuant to this Section 5.12(b)(i)(E) shall be determined without application of the Advance Rates.

(F) Valuation Dispute Resolution. Notwithstanding the foregoing, the Administrative Agent shall at any time have the right to request, in its reasonable discretion, any Unquoted Investment with a value determined pursuant to Section 5.12(b)(ii) to be independently valued by an Approved Third-Party Appraiser selected by the Administrative Agent. There shall be no limit on the number of such appraisals requested by the Administrative Agent in its reasonable discretion; provided that, (i) any appraisal shall be conducted in a manner that is not disruptive to the Borrower’s business and (ii) the values determined by any appraisal shall be treated as confidential information by the Administrative Agent and the Lenders and shall be deemed to be “Information” hereunder and subject to Section 9.13 hereof. The reasonable and documented out-of-pocket costs of any such valuation shall be at the expense of the Borrower. The Administrative Agent shall notify the Borrower of its receipt of results from an Approved Third-Party Appraiser of any appraisal and provide a copy of the results and any related reports to the Borrower. If the difference between the Borrower’s valuation pursuant to Section

5.12(b)(ii)(B) and the valuation of any Approved Third-Party Appraiser selected by the Administrative Agent pursuant to Section 5.12(b)(ii)(E) or (F) is (1) less than 5% of the Borrower's value thereof, then the Borrower's valuation shall be used, (2) between 5% and 20% of the Borrower's value thereof, then the valuation of such Portfolio Investment shall be the average of the value determined by the Borrower and the value determined by the Approved Third-Party Appraiser retained by the Administrative Agent and (3) greater than 20% of the Borrower's value thereof, then the Borrower and the Administrative Agent shall select an additional Approved Third-Party Appraiser and the valuation of such Portfolio Investment shall be the average of the three valuations (with the Administrative Agent's Approved Third-Party Appraiser's valuation to be used until the third valuation is obtained).

(iii) Generally Applicable Valuation Provisions.

(A) Each Approved Third-Party Appraiser (whether selected by the Borrower or the Administrative Agent) shall apply a recognized valuation methodology that is commonly accepted in the Borrower's industry for valuing Portfolio Investments of the type being valued and held by the Obligors. Other procedures relating to the valuation will be reasonably agreed upon by the Administrative Agent and the Borrower.

(B) For the avoidance of doubt, subject to Section 5.12(b)(ii)(B) the value of any Portfolio Investments determined in accordance with any provision of this Section 5.12 shall be the Value of such Portfolio Investment for purposes of this Agreement until a new Value for such Portfolio Investment is subsequently required to be determined in good faith in accordance with this Section 5.12.

(C) The foregoing valuation procedures shall only be required to be used for purposes of calculating the Borrowing Base and shall not be required to be utilized by the Borrower for any other purposes, including, without limitation, the delivery of financial statements or valuations required under ASC820 or the Investment Company Act or otherwise.

(D) The Administrative Agent shall notify the Borrower of its receipt of the final results of any such test promptly upon its receipt thereof and shall provide a copy of such results and the related report to the Borrower promptly upon the Borrower's request.

(E) The Administrative Agent and each Lender acknowledges that it may be required to enter into a non-reliance letter, confidentiality agreement or similar agreement requested or required by a proposed appraiser to allow the Administrative Agent or such Lender to review any written valuation report. Notwithstanding anything to the contrary contained herein, there shall be no requirement to disclose any portion of any report submitted by an Approved Third-Party Appraiser without such a non-reliance letter if such non-reliance letter is required by such Approved Third-Party Appraiser as a condition to such disclosure.

(c) RIC Diversification Requirements. The Borrower will, on a consolidated basis and at all times, subject to applicable grace periods set forth in the Code, comply with the portfolio diversification requirements set forth in the Code applicable to RICs, to the extent applicable.

SECTION 5.13. Calculation of Borrowing Base. For purposes of this Agreement, the “Borrowing Base” shall be determined, as at any date of determination, as the sum of the Advance Rates of the Value of each Portfolio Investment in the Collateral Pool (excluding any Cash Collateral held by the Administrative Agent pursuant to Section 2.04(k) or the last paragraph of Section 2.08(a)) and “Aggregate Portfolio Balance” shall be determined, as at any date of determination, as the sum of the Advance Rates of the Value of each Portfolio Investment of the Obligor (excluding any Cash Collateral held by the Administrative Agent pursuant to Section 2.04(k) or the last paragraph of Section 2.08(a)); provided that:

(a) the Advance Rate applicable to that portion of the aggregate Value of such Portfolio Investments in a consolidated group of corporations or other entities (collectively, a “Consolidated Group”), in accordance with GAAP, that exceeds 7.5% of the Borrowing Base or Aggregate Portfolio Balance, as applicable, shall be 50% of the Advance Rate otherwise applicable;

(b) the Advance Rate applicable to that portion of the aggregate Value of such Portfolio Investments of all issuers in a Consolidated Group exceeding 15% of the Borrowing Base or Aggregate Portfolio Balance, as applicable, shall be 0%;

(c) the Advance Rate applicable to that portion of the aggregate Value of such Portfolio Investments in any single Industry Classification Group that exceeds 25% of Shareholders’ Equity of the Borrower (which for purposes of this calculation shall exclude the aggregate amount of investments in, and advances to, Financing Subsidiaries) shall be 0%;

(d) solely in the case of the calculation of the “Borrowing Base”, no Portfolio Investment may be included in the Borrowing Base unless the Collateral Agent maintains a first priority, perfected Lien (subject to Permitted Liens) on such Portfolio Investment and such Portfolio Investment has been Delivered (as defined in the Guarantee and Security Agreement) to the Collateral Agent, and then only for so long as such Portfolio Investment continues to be Delivered as contemplated therein;

(e) the portion of the Aggregate Portfolio Balance attributable to Performing Non-Cash Pay High Yield Securities, Performing Non-Cash Pay Mezzanine Investments, Equity Interests and Non-Performing Portfolio Investments shall not exceed 15%;

(f) the portion of the Aggregate Portfolio Balance attributable to Equity Interests shall not exceed 10% (it being understood that in no event shall Equity Interests of Financing Subsidiaries be included in the Aggregate Portfolio Balance);

(g) the portion of the Aggregate Portfolio Balance attributable to Non-Performing Portfolio Investments shall not exceed 10% and the portion of the Aggregate Portfolio Balance attributable to Portfolio Investments that were Non-Performing Portfolio Investments at the time such Portfolio Investments were acquired shall not exceed 5%; and

(h) the portion of the Borrowing Base and Aggregate Portfolio Balance attributable to Portfolio Investments invested outside the United States, Canada, the United Kingdom, Ireland, Australia, Germany, France, Belgium, the Netherlands, Luxembourg, Switzerland, Denmark, Finland, Norway, Sweden and Israel shall not exceed 5% without the consent of the Administrative Agent.

To the extent any Portfolio Investment is required to be removed from the Borrowing Base or Aggregate Portfolio Balance, as applicable, to comply with any of the portfolio limitations set forth in this [Section 5.13](#), the Borrower shall be permitted to choose the Portfolio Investments, or portions of such Portfolio Investments, to be so removed to effect such compliance.

Notwithstanding anything to the contrary contained herein, (i) for purposes of [clauses \(a\), \(b\), \(c\), \(f\), \(g\) and \(h\)](#) above, when determining specified baskets or thresholds not to exceed a percentage of the Borrowing Base and/or Aggregate Portfolio Balance, the Borrowing Base and/or Aggregate Portfolio Balance (as applicable) shall be determined without taking into account Advance Rates and (ii) with respect to [clauses \(a\), \(b\) and \(c\)](#) above, (A) each Portfolio Investment with an Advance Rate of 0% under the Borrowing Base shall be excluded from such clause solely for purposes of calculating the Borrowing Base and (B) each Portfolio Investment with an Advance Rate of 0% under the Aggregate Portfolio Balance shall be excluded from such clause solely for purposes of calculating the Aggregate Portfolio Balance.

As used herein, the following terms have the following meanings:

“[Advance Rate](#)” means, (a) solely for the purpose of calculating the Borrowing Base, as to any Portfolio Investment and subject to adjustment as provided in this [Section 5.13](#), the following percentages with respect to such Portfolio Investment:

<u>Portfolio Investment</u>	<u>Quoted</u>	<u>Unquoted</u>
Cash, Cash Equivalents and		
Short-Term U.S. Government Securities	100%	N/A
Long-Term U.S. Government Securities	95%	N/A
Performing First Lien Bank Loans (other than Performing Unitranche Loans)	85%	75%
Performing Unitranche Loans	80%	70%
Performing Second Lien Bank Loans	75%	65%
Non-Performing First Lien Bank Loans	0%	0%
Non-Performing Unitranche Loans	0%	0%
Non-Performing Second Lien Bank Loans	0%	0%
High Yield Securities	0%	0%
Mezzanine Investments	0%	0%
Common Equity (and zero cost or penny warrants with performing debt)	0%	0%
Structured Finance Obligations and Finance Leases	0%	0%

and (b) solely for the purpose of calculating the Aggregate Portfolio Balance, as to any Portfolio Investment and subject to adjustment as provided in this [Section 5.13](#), the following percentages with respect to such Portfolio Investment:

<u>Portfolio Investment</u>	<u>Quoted</u>	<u>Unquoted</u>
Cash, Cash Equivalents and		
Short-Term U.S. Government Securities	100%	N/A
Long-Term U.S. Government Securities	95%	N/A
Performing First Lien Bank Loans (other than Performing Unitranche Loans)	85%	75%
Performing Unitranche Loans	80%	70%
Performing Second Lien Bank Loans	75%	65%
Performing Cash Pay High Yield Securities	70%	60%
Performing Cash Pay Mezzanine Investments	65%	55%
Performing Non-Cash Pay High Yield Securities	60%	50%
Performing Non-Cash Pay Mezzanine Investments	55%	45%
Non-Performing First Lien Bank Loans	45%	45%
Non-Performing Unitranche Loans	40%	40%
Non-Performing Second Lien Bank Loans	40%	30%
Non-Performing High Yield Securities	30%	30%
Non-Performing Mezzanine Investments	30%	25%
Performing Common Equity (and zero cost or penny warrants with performing debt)	30%	20%
Non-Performing Common Equity	0%	0%
Structured Finance Obligations and Finance Leases	0%	0%

“Bank Loans” means debt obligations (including term loans, notes, revolving loans, debtor-in-possession financings, the funded and unfunded portion of revolving credit lines and letter of credit facilities and other similar loans and investments including interim loans and senior subordinated loans) which are generally under a loan or credit facility (whether or not syndicated) or note purchase agreement or other similar financing arrangement facility for venture or other deals.

“Capital Stock” has the meaning assigned to such term in Section 1.01.

“Cash” has the meaning assigned to such term in Section 1.01.

“Cash Equivalents” has the meaning assigned to such term in Section 1.01.

“Finance Lease” means any transaction representing the obligation of a lessee to pay rent or other amounts under a lease which is required to be classified and accounted for as a capital lease on the balance sheet of such lessee under GAAP.

“First Lien Bank Loan” means a Bank Loan that is entitled to the benefit of a first lien and first priority perfected security interest (subject to Liens for “ABL” revolvers and customary encumbrances) on a substantial portion of the assets of the respective borrower and guarantors obligated in respect thereof; provided that any First Lien Bank Loan that is also a First Lien First Out Bank Loan shall be treated for purposes of determining the applicable Advance Rate as a Unitranche Loan; provided, further, that the Advance Rate of any First Lien Bank Loan that is also a Unitranche Loan shall be determined in accordance with the definition of Unitranche Loan.

“First Lien First Out Bank Loan” means a First Lien Bank Loan with a ratio of first lien debt to EBITDA (other than if such loan is a Recurring Revenue Loan) that exceeds 5.25 to 1.00, and where the underlying borrower does not also have a Second Lien Bank Loan outstanding.

“High Yield Securities” means debt Securities and Preferred Stock, in each case (a) issued by public or private issuers, (b) issued pursuant to an effective registration statement or pursuant to Rule 144A under the Securities Act (or any successor provision thereunder) or other exemption to the Securities Act and (c) that are not Cash Equivalents, Mezzanine Investments or Bank Loans.

“Long-Term U.S. Government Securities” means U.S. Government Securities maturing more than one year from the applicable date of determination.

“Mezzanine Investments” means debt Securities (including convertible debt Securities (other than the “in-the-money” equity component thereof)) and Preferred Stock, in each case (a) issued by public or private issuers, (b) issued without registration under the Securities Act, (c) not issued pursuant to Rule 144A under the Securities Act (or any successor provision thereunder), (d) that are not Cash Equivalents and (e) contractually subordinated in right of payment to other debt of the same issuer.

“Non-Performing Common Equity” means Common Equity of an issuer having any debt outstanding that is non-Performing.

“Non-Performing First Lien Bank Loans” means First Lien Bank Loans other than Performing First Lien Bank Loans.

“Non-Performing High Yield Securities” means High Yield Securities other than Performing High Yield Securities.

“Non-Performing Mezzanine Investments” means Mezzanine Investments other than Performing Mezzanine Investments.

“Non-Performing Portfolio Investment” means Portfolio Investments for which the issuer is, at the time of determination, in default of any payment obligations of principal or interest in respect thereof after the expiration of any applicable grace period.

“Non-Performing Second Lien Bank Loans” means Second Lien Bank Loans other than Performing Second Lien Bank Loans.

“Non-Performing Unitranche Loans” means Unitranche Loans other than Performing Unitranche Loans.

“Performing” means (a) with respect to any Portfolio Investment that is debt, the issuer of such Portfolio Investment is, at the time of determination, not in default of any payment obligations outstanding with respect to accrued and unpaid interest or principal in respect thereof after the receipt of any notice and/or expiration of any applicable grace period and (b) with respect to any Portfolio Investment that is Preferred Stock, the issuer of such Portfolio Investment has not failed to meet any scheduled redemption obligations or to pay its latest declared cash dividend, after the expiration of any applicable grace period.

“Performing Cash Pay High Yield Securities” means High Yield Securities (a) as to which, at the time of determination, not less than 2/3rds of the interest (including accretions and “pay-in-kind” interest) for the current monthly, quarterly, semiannual or annual period (as applicable) is payable in cash and (b) which are Performing.

“Performing Cash Pay Mezzanine Investments” means Mezzanine Investments (a) as to which, at the time of determination, not less than 2/3rds of the interest (including accretions and “pay-in-kind” interest) for the current monthly, quarterly, semi-annual or annual period (as applicable) is payable in cash and (b) which are Performing.

“Performing Common Equity” means Common Equity of an issuer all of whose outstanding debt is Performing.

“Performing First Lien Bank Loans” means First Lien Bank Loans which are Performing.

“Performing Non-Cash Pay High Yield Securities” means Performing High Yield Securities other than Performing Cash Pay High Yield Securities.

“Performing Non-Cash Pay Mezzanine Investments” means Performing Mezzanine Investments other than Performing Cash Pay Mezzanine Investments.

“Performing Second Lien Bank Loans” means Second Lien Bank Loans which are Performing.

“Performing Unitranche Loans” means Unitranche Loans which are Performing.

“Preferred Stock,” as applied to the Capital Stock of any Person, means Capital Stock of such Person of any class or classes (however designated) that ranks prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to any shares (or other interests) of other Capital Stock of such Person, and shall include, without limitation, cumulative preferred, non-cumulative preferred, participating preferred and convertible preferred Capital Stock.

“Recurring Revenue Loan” means, any transaction structured as a recurring revenue loan that is in a growth industry or industry that customarily has businesses with revenues from licenses, maintenance, service, support, hosting, subscription or other revenues identified by the Borrower (including, without limitation, software as a service subscription revenue), of the related issuer and any of its parents or subsidiaries that are obligated with respect to such Portfolio Investment pursuant to the relevant agreement (determined on a consolidated basis without duplication in accordance with GAAP) and does not include and would not customarily be expected to include (at the time of origination) a financial covenant based on EBITDA.

“Second Lien Bank Loan” means a Bank Loan (other than a First Lien Bank Loan) that is entitled to the benefit of a first and/or second lien and first and/or second priority perfected security interest (subject to customary encumbrances) on specified assets of the respective borrower and guarantors obligated in respect thereof.

“Securities” means common and preferred stock, units and participations, member interests in limited liability companies, partnership interests in partnerships, notes, bonds, debentures, trust receipts and other obligations, instruments or evidences of indebtedness, including debt instruments of public and private issuers and tax-exempt securities (including warrants, rights, put and call options and other options relating thereto, representing rights, or any combination thereof) and other property or interests commonly regarded as securities or any form of interest or participation therein, but not including Bank Loans.

“Securities Act” means the United States Securities Act of 1933, as amended.

“Short-Term U.S. Government Securities” means U.S. Government Securities maturing within one year of the applicable date of determination.

“Structured Finance Obligation” means any obligation issued by a special purpose vehicle and secured directly by, referenced to, or representing ownership of, a pool of receivables or other financial assets of any obligor, including collateralized debt obligations and mortgaged-backed securities. For the avoidance of doubt, if an obligation satisfies the definition of “Structured Finance Obligation”, such obligation shall not (a) qualify as any other category of Portfolio Investment and (b) be included in the Borrowing Base.

“U.S. Government Securities” has the meaning assigned to such term in Section 1.01.

“Unitranche Loan” means a Bank Loan that is a First Lien Bank Loan, a portion of which is, in effect, subject to debt subordination and superpriority rights of other lenders following an event of default (such portion, a “last out” portion); provided that, the aggregate principal amount of the “last out” portion of such Bank Loan is at least 50% of the aggregate principal amount of any “first out” portion of such Bank Loan; provided, further, that the underlying obligor with respect to such Bank Loan shall have (except if such loan is a Recurring Revenue Loan) a ratio of first lien debt (including the “first out” portion of such Bank Loan, but excluding the “last out” portion of such Bank Loan) to EBITDA that does not exceed 3.25 to 1.00 and (except if such loan is Recurring Revenue Loan) a ratio of aggregate first lien debt (including both the “first out” portion and the “last out” portion of such Bank Loan) to EBITDA that does not exceed 5.25 to 1.00. An Obligor’s investment in (i) the “last out” portion of a Unitranche Loan shall be treated as a Unitranche Loan; (ii) the “first out” portion of a Unitranche Loan shall be treated as a First Lien Bank Loan; and (iii) any “last out” portion of a Unitranche Loan (except if such loan is a Recurring Revenue Loan) that does not meet the foregoing first lien debt to EBITDA criteria set forth in this definition shall be treated as a Second Lien Bank Loan, in each case, for purposes of determining the applicable Advance Rate for such Portfolio Investment under this Agreement.



“Value” means, with respect to any Portfolio Investment, the lower of:

- (i) the most recent internal market value as determined pursuant to Section 5.12(b)(i)(C) and
- (ii) the most recent external market value as determined pursuant to Sections 5.12(b)(i)(A) and (B).

## ARTICLE VI

### NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired, been terminated, Cash Collateralized or backstopped and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 6.01. Indebtedness. The Borrower will not, nor will it permit any of the Subsidiary Guarantors to, create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness created hereunder or under any other Loan Document;

(b) Unsecured Longer-Term Indebtedness so long as (i) no Default exists at the time of the incurrence thereof, (ii) the aggregate amount of such Unsecured Longer-Term Indebtedness (determined at the time of the incurrence thereof), taken together with other then-outstanding Indebtedness that constitutes senior securities, does not exceed the amount required to comply with the provisions of Section 6.07(b) and (iii) prior to and immediately after giving effect to the incurrence of any Unsecured Longer-Term Indebtedness, the Covered Debt Amount does not or would not exceed the Borrowing Base then in effect and the Aggregate Covered Debt Amount does not or would not exceed the Aggregate Portfolio Balance then in effect;

(c) Other Permitted Indebtedness;

(d) Guarantees of Indebtedness otherwise permitted hereunder;

(e) Indebtedness of any Obligor owing to any other Obligor or, if such Indebtedness is subject to subordination terms and conditions that are satisfactory to the Administrative Agent, any other Subsidiary of the Borrower;

(f) repurchase obligations arising in the ordinary course of business with respect to U.S. Government Securities;

(g) obligations payable or payments of margin or posting of margin collateral to clearing agencies, brokers, dealers or others in connection with the purchase or sale of securities or other Investments, credit default swaps or other derivative transactions, in each case, in the ordinary course of business;

(h) [reserved];

(i) (x) obligations (including Guarantees) in respect of Standard Securitization Undertakings (other than SPE Subsidiary Recourse Obligations) and (y) SPE Subsidiary Recourse Obligations solely to the extent such debt is permitted under this Section 6.01;

(j) Permitted SBIC Guarantees;

(k) any SBIC Equity Commitment or analogous commitment;

(l) Unsecured Shorter-Term Indebtedness (other than Special Unsecured Indebtedness that would otherwise constitute Unsecured Shorter-Term Indebtedness) so long as (i) no Default exists at the time of the incurrence thereof, (ii) the aggregate amount (determined at the time of the incurrence of such Indebtedness) of such Indebtedness does not exceed \$500,000,000, (iii) the aggregate amount (determined at the time of the incurrence of such Indebtedness) of such Indebtedness, taken together with then-outstanding Special Unsecured Indebtedness incurred pursuant to Section 6.01(m), does not exceed \$1,000,000,000, (iv) the aggregate amount of such Indebtedness, taken together with other then-outstanding Indebtedness, does not exceed the amount required to comply with the provisions of Section 6.07(b), and (v) prior to and immediately after giving effect to the incurrence of any such Indebtedness, the Covered Debt Amount does not or would not exceed the Borrowing Base then in effect and the Aggregate Covered Debt Amount does not or would not exceed the Aggregate Portfolio Balance then in effect;

(m) Special Unsecured Indebtedness so long as (i) no Default exists at the time of the incurrence thereof, (ii) the aggregate amount (determined at the time of the incurrence of such Indebtedness) of such Indebtedness does not exceed \$1,000,000,000, (iii) the aggregate amount (determined at the time of the incurrence of such Indebtedness) of such Indebtedness, taken together with then-outstanding Unsecured Shorter-Term Indebtedness incurred pursuant to Section 6.01(l), does not exceed \$1,000,000,000, (iv) the aggregate amount of such Indebtedness, taken together with other then-outstanding Indebtedness, does not exceed the amount required to comply with the provisions of Section 6.07(b), and (v) prior to and immediately after giving effect to the incurrence of any such Indebtedness, the Covered Debt Amount does not or would not exceed the Borrowing Base then in effect;

(n) the Existing Notes and the other Indebtedness set forth Schedule 6.01 hereto;

(o) Indebtedness of any Obligor or any of its Subsidiaries under any Hedging Agreement so long as such Hedging Agreements are used solely as a part of its normal business operations as a risk management strategy or hedge against changes resulting from market operations and not as a means to speculate for investment purposes on trends and shifts in financial or commodities markets;

(p) Indebtedness incurred in the ordinary course of business under incentive, non-compete, consulting, deferred compensation, or other similar arrangements incurred by any Obligor or any of its Subsidiaries;

(q) Indebtedness incurred in the ordinary course of business with respect to the financing of insurance premiums;

(r) Indebtedness incurred by any Obligor or any of its Subsidiaries arising from agreements providing for customary indemnities, adjustment of purchase price or similar obligations in connection with acquisitions or dispositions of any business or assets permitted pursuant to Section 6.03 hereof; and

(s) other Indebtedness not to exceed \$125,000,000 at any time outstanding.

SECTION 6.02. Liens. The Borrower will not, nor will it permit any of the Subsidiary Guarantors to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof (which, for the avoidance of doubt, shall not include participations in Investments to the extent that the portion of such Investment represented by such participation is not treated as a Portfolio Investment), except:

(a) any Lien on any property or asset of the Borrower or any Subsidiary Guarantor existing on the Effective Date and set forth in Part B of Schedule 3.11 hereto; provided that, (i) no such Lien shall extend to any other property or asset of the Borrower or any of the Subsidiary Guarantors, and (ii) any such Lien shall secure only those obligations which it secures on the Effective Date and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(b) Liens created pursuant to this Agreement (including Section 2.18) or any of the Security Documents (including Liens in favor of the Designated Indebtedness Holders (as defined in the Guarantee and Security Agreement));

(c) Liens on Special Equity Interests included in the Investments of the Borrower but only to the extent securing obligations in the manner provided in the definition of "Special Equity Interests" in Section 1.01;

(d) Liens securing Indebtedness or other obligations in an aggregate principal amount not exceeding \$50,000,000 at any one time outstanding (which may cover Investments, but only to the extent released from, or otherwise not covered by, the Lien in favor of the Collateral Agent pursuant to Section 10.03 of the Guarantee and Security Agreement), so long as at the time of incurrence of such Indebtedness or other obligations, the aggregate amount of Indebtedness permitted under clauses (a), (b), (l) and (m) of Section 6.01, does not exceed the lesser of (i) the Aggregate Portfolio Balance and (ii) the amount required to comply with the provisions of Section 6.07(b);

(e) Permitted Liens;

(f) (x) Liens on Equity Interests in any SBIC Subsidiary created in favor of the SBA or its designee and (y) Liens or Equity Interests in any SPE Subsidiary in favor of and required by any lender providing third party financing to such SPE Subsidiary;

(g) (x) Liens securing Hedging Agreements permitted under Section 6.04(c) and not otherwise permitted under clause (b) above in an aggregate amount not to exceed \$125,000,000 at any time and (y) Liens incurred in connection with any Hedging Agreement either entered into with a Lender (or an Affiliate of a Lender) on an uncleared basis or cleared through a Lender (or Affiliate of a Lender) as futures commission merchant in the ordinary course of business and not for speculative purposes (it being understood that such Lien shall continue to be permitted pursuant to this sub-clause (y) even if such Lender has assigned all of its Loans and other interests in this Agreement and thus has ceased to be a Lender hereunder); provided that, in no event shall any Obligor be permitted to create, incur or assume any Lien pursuant to this clause (g) or increase the aggregate amount of collateral securing any Liens previously permitted under this clause (g) unless both before and after giving effect to the creation, incurrence or assumption of such Lien or such increase in the aggregate amount of collateral the Borrower is in compliance with Section 6.07(b);

(h) Liens securing repurchase obligations arising in the ordinary course of business with respect to U.S. Government Securities; and

(i) Liens securing Permitted Purchase Money Indebtedness.

SECTION 6.03. Fundamental Changes. The Borrower will not, nor will it permit any of the Subsidiary Guarantors to, enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve or divide itself (or suffer any liquidation, dissolution or division). The Borrower will not, nor will it permit any of the Subsidiary Guarantors to, acquire any business or property from, or Capital Stock of, or be a party to any acquisition of, any Person, except for purchases or acquisitions of Investments and other assets in the normal course of the day-to-day business activities of the Borrower and its Subsidiaries and not in violation of the terms and conditions of this Agreement or any other Loan Document. The Borrower will not, nor will it permit any of the Subsidiary Guarantors to, convey, sell, lease, transfer or otherwise dispose of, in one transaction or a series of transactions, any part of its assets, whether now owned or hereafter acquired, but excluding (w) any transaction permitted under Section 6.05 or 6.12, (x) assets (other than Investments) sold or disposed of in the ordinary course of business (including to make expenditures of cash and Cash Equivalents in the normal course of the day-to-day business activities of the Borrower and its Subsidiaries) and (y) subject to the provisions of clauses (d) and (e) below, Investments.

Notwithstanding the foregoing provisions of this Section 6.03:

(a) any Subsidiary Guarantor may be merged or consolidated with or into the Borrower or any other Subsidiary Guarantor; provided that if any such transaction shall be between a Subsidiary Guarantor and a wholly owned Subsidiary Guarantor, the wholly owned Subsidiary Guarantor shall be the continuing or surviving entity;

(b) any Subsidiary Guarantor of the Borrower may sell, lease, transfer (including a deemed transfer resulting from a division or plan of division) or otherwise dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Borrower or any wholly owned Subsidiary Guarantor of the Borrower;

(c) the Capital Stock of any Subsidiary of the Borrower may be sold, transferred (including a deemed transfer resulting from a division or plan of division) or otherwise disposed of (including by way of consolidating or merger) (i) to the Borrower or any wholly owned Subsidiary Guarantor of the Borrower or (ii) so long as such transaction results in an Obligor receiving the proceeds of such disposition, to any other Person provided that in the case of this clause (ii) if such Subsidiary is a Subsidiary Guarantor or holds any Portfolio Investments, the Borrower would not have been prohibited from disposing of any such Portfolio Investments to such other Person under any other term of this Agreement;

(d) the Obligors may sell, transfer (including a deemed transfer resulting from a division or plan of division) or otherwise Dispose of Investments (other than to a Financing Subsidiary) so long as after giving effect to such sale, transfer or other disposition (and any concurrent acquisitions of Investments or payment of outstanding Loans, Aggregate Other Covered Indebtedness or any other Indebtedness that is included in the Covered Debt Amount or Aggregate Covered Debt Amount at such time) (I) in the case of any Investment (other than any Investment not held in the Collateral Account) (x) the Covered Debt Amount does not exceed the Borrowing Base or (y) if such sale, transfer or other disposition is made pursuant to, and in accordance with, a plan submitted and accepted in accordance with clause (c) of Article VII or, if the Administrative Agent otherwise consents in writing, the amount by which the Covered Debt Amount exceeds the Borrowing Base is reduced thereby and (II) in the case of any Investment (x) the Aggregate Covered Debt Amount does not exceed the Aggregate Portfolio Balance or (y) if such sale, transfer or other disposition is made pursuant to, and in accordance with, a plan submitted and accepted in accordance with clause (c) of Article VII or, if the Administrative Agent otherwise consents in writing, the amount by which the Aggregate Covered Debt Amount exceeds the Aggregate Portfolio Balance is reduced thereby;

(e) the Obligors may sell, transfer (including a deemed transfer resulting from a division or plan of division) or otherwise Dispose of Investments to a Financing Subsidiary so long as (i) after giving effect to such sale, transfer or other disposition (and any concurrent acquisitions of Investments or payment of outstanding Loans, Aggregate Other Covered Indebtedness or any other Indebtedness that is included in the Covered Debt Amount or Aggregate Covered Debt Amount at such time) (I) in the case of any Investment (other than any Investment held in the Collateral Account), the Covered Debt Amount does not exceed the Borrowing Base and (II) in the case of any Investment, the Aggregate Covered Debt does not exceed the Aggregate Portfolio Balance and, in each case, the Borrower delivers to the Administrative Agent a certificate of a Financial Officer to such effect, (ii) in the case of any Investment (other than any Investment not held in the Collateral Account) either (x) the amount by which the Borrowing Base exceeds the Covered Debt Amount immediately prior to such sale, transfer or other disposition is not diminished as a result of such sale, transfer or other disposition or (y) the Borrowing Base immediately after giving effect to such sale, transfer or other disposition is at least 110% of the Covered Debt Amount and (iii) in the case of any Investment, the Aggregate Portfolio Balance immediately after giving effect to such sale, transfer or other disposition exceeds the Aggregate Covered Debt Amount;

(f) the Borrower may merge or consolidate with, or acquire all or substantially all of the assets of, any other Person (including any Subsidiary Guarantor) so long as (i) the Borrower is the continuing or surviving entity in such transaction and (ii) at the time thereof and after giving effect thereto, no Default shall have occurred or be continuing; provided that, in no event shall the Borrower enter in any transaction of merger or consolidation or amalgamation, or effect any internal reorganization, if the surviving entity would be organized under any jurisdiction other than a jurisdiction of the United States;

(g) the Borrower and each of the Subsidiary Guarantors may sell, lease, transfer (including a deemed transfer resulting from a division or plan of division) or otherwise dispose of equipment or other property or assets that do not consist of Investments so long as the aggregate amount of all such sales, leases, transfer and dispositions does not exceed \$10,000,000 in any fiscal year;

(h) the Obligors may transfer assets to a Financing Subsidiary for the sole purpose of facilitating the transfer of assets from one Financing Subsidiary (or a Subsidiary that was a Financing Subsidiary immediately prior to such disposition) to another Financing Subsidiary, directly or indirectly through such Obligor (such assets, the "Transferred Assets"); and

(i) the Borrower may dissolve or liquidate any Subsidiary Guarantor so long as in connection with such dissolution or liquidation, any and all of the assets of such Subsidiary Guarantor shall be distributed or otherwise transferred to an Obligor.

SECTION 6.04. Investments. The Borrower will not, nor will it permit any of the Subsidiary Guarantors to, acquire, make or enter into, or hold, any Investments except:

(a) operating deposit accounts with banks;

(b) Investments by the Borrower and the Subsidiary Guarantors in the Borrower and the Subsidiary Guarantors;

(c) Hedging Agreements entered into in the ordinary course of any Obligor's financial planning and not for speculative purposes;

(d) Investments by the Obligors to the extent such Investments are permitted under the Investment Company Act (if applicable) and in compliance in all material respects with the Borrower's Investment Policies, in each case as in effect as of the date such Investments are acquired;

(e) Investments in Financing Subsidiaries or any other Subsidiary that is not a Subsidiary Guarantor so long as after giving effect to such Investments, (i) either (A) the amount by which the Borrowing Base exceeds the Covered Debt Amount immediately prior to such Investment is not diminished as a result of such Investment or (B) the Borrowing Base immediately after giving effect to such Investment is at least 110% of the Covered Debt Amount, (ii) the Aggregate Portfolio Balance immediately after giving effect to such Investment exceeds the Aggregate Covered Debt Amount and (iii) the Borrower is in compliance with Section 6.07(b);

(f) additional Investments up to \$50,000,000 so long as after giving effect to such Investments, the Borrower is in compliance with Section 6.07(b);

(g) Investments in Cash and Cash Equivalents;

(h) Investments described on Schedule 3.12(b) hereto;

(i) Investments in the form of Guarantees permitted pursuant to Section 6.01;

(j) Joint Venture Investments to the extent that such Joint Venture Investments are permitted under the Investment Company Act and the Borrower's Investment Policies as in effect as of the date such Joint Venture Investments are acquired; provided that, no Obligor shall be permitted to make an Investment in a Joint Venture Investment that is a Non-Performing Joint Venture Investment under this Section 6.04 unless, after giving effect to such Investment (and any concurrent acquisition of Portfolio Investments or payment of outstanding Indebtedness), the Covered Debt Amount does not exceed the Borrowing Base and the Aggregate Covered Debt Amount does not exceed the Aggregate Portfolio Balance;

(k) for the avoidance of a doubt, Investments by a Financing Subsidiary;

(l) Investments in any Retention Holder to the extent reasonably required to comply with U.S. risk retention rules, Subsidiaries (other than Subsidiary Guarantors and Financing Subsidiaries), registered investment advisors, private funds, seed vehicles or single managed accounts; provided that no Investment shall be made under this clause (l) unless (i) no Event of Default exists and (ii) both before and after giving effect to such Investment, the Covered Debt Amount does not exceed the Borrowing Base and the Aggregate Covered Debt Amount does not exceed the Aggregate Portfolio Balance;

(m) Investments permitted under Section 6.03; and

(n) (i) Investments in negotiable instruments for collection, (ii) advances made in connection with purchases of goods or services in the ordinary course of business, (iii) advances to officers, directors and employees of the Borrower and its Subsidiaries in an aggregate amount not to exceed \$5,000,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes, (iv) repurchases of Securities of the Borrower and its Subsidiaries from current and former directors, employees or limited partners of the Borrower and its Subsidiaries (including current and former directors and employees who are limited partners), (v) Investments in the form of loans or advances to officers, directors and employees of the Borrower or its Subsidiaries to acquire Securities of the Borrower or its Subsidiaries not to exceed \$5,000,000 at any time outstanding, (vi) acquisitions; provided that, both before and after giving pro forma effect to such acquisition, (x) the Borrower is in compliance with Section 6.07, (y) no Default has occurred and is continuing at the time such Investment is made or would result therefrom and (z) the Covered Debt Amount does not exceed the Borrowing Base and the Aggregate Covered Debt Amount does not exceed the Aggregate Portfolio Balance, (vii) Investments of any Person existing at the time such Person becomes a Subsidiary of the Borrower or consolidates or merges, in one transaction or a series of transactions, with the Borrower or any of the Subsidiaries (including in connection with an acquisition) so long as such Investments are not made in contemplation of such Person becoming a Subsidiary or of such consolidation or merger, (viii) Investments in the form of the issuance of Securities of the Borrower and (ix) advances to employees and other officers in respect of future compensation in an amount not to exceed \$5,000,000 at any time outstanding.

For purposes of clauses (c) and (f) of this Section 6.04, the aggregate amount of an Investment at any time shall be deemed to be equal to (A) the aggregate amount of cash, together with the aggregate fair market value of property, loaned, advanced, contributed, transferred or otherwise invested that gives rise to such Investment minus (B) the aggregate amount of the Return of Capital and dividends, distributions or other payments received in cash in respect of such Investment and the values (valued in accordance with Section 5.12(b)) of other Investments received in respect of such Investment; provided that, in no event shall the aggregate amount of such Investment be deemed to be less than zero; the amount of an Investment shall not in any event be reduced by reason of any write-off of such Investment nor increased by any increase in the amount of earnings retained in the Person in which such Investment is made that have not been dividended, distributed or otherwise paid out.

SECTION 6.05. Restricted Payments. The Borrower will not, nor will it permit any of the Subsidiary Guarantors to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except that the Borrower may declare and pay:

(a) dividends with respect to the Capital Stock of the Borrower payable solely in additional shares of the Borrower's stock, which may include a combination of cash and stock; provided that, such cash dividend would otherwise be permitted pursuant to another clause of this Section 6.05:

(b) dividends and distributions with respect to any taxable year (or calendar year, as relevant) that do not exceed 115% of the amount that the Borrower would have been required to distribute to: (a) allow the Borrower to satisfy the minimum distribution requirements that would be imposed by Section 852(a) of the Code to maintain its eligibility to be taxed as a RIC for any such taxable year, (b) reduce to zero for any such taxable year the Borrower's liability for federal income taxes imposed on (i) its investment company taxable income pursuant to Section 852(b)(1) of the Code and (ii) its net capital gain pursuant to Section 852(b)(3) of the Code, and (c) reduce to zero the Borrower's liability for federal excise taxes for any such calendar year imposed pursuant to Section 4982 of the Code;

(c) dividends and distributions in each case in cash or other property (excluding for this purpose the Borrower's common stock) in addition to the dividends and distributions permitted under the foregoing clauses (a) and (b), so long as on the date of such Restricted Payment and after giving effect thereto:

(i) no Default shall have occurred and be continuing or would result therefrom; and

(ii) the aggregate amount of Restricted Payments made (after the Effective Date) during any taxable year (or for such year under Section 855 of the Code) of the Borrower ending after the Effective Date under this clause (c) shall not exceed the amount (not less than zero) equal to (x) an amount equal to 15% of the taxable income of the Borrower for such taxable year determined under section 852(b)(2) of the Code, but without regard to subparagraph (A), (B) or (D) thereof, minus (y) the amount, if any, by which dividends and distributions made during such taxable year (or for such year under Section 855 of the Code) pursuant to the foregoing clause (b) (whether in respect of such taxable year or the previous taxable year) based upon the Borrower's estimate of taxable income exceeded the actual amounts specified in subclauses (i) and (ii) of such foregoing clause (b) for such taxable year; and



(d) other Restricted Payments so long as (i) on the date of such other Restricted Payment and after giving effect thereto (x) the Covered Debt Amount does not exceed 90% of the Borrowing Base, (y) the Aggregate Covered Debt Amount does not exceed 90% of the Aggregate Portfolio Balance and (z) no Default shall have occurred and be continuing or would result therefrom and (ii) on the date of such other Restricted Payment (or such later date that the Administrative Agent may agree in its sole discretion) the Borrower delivers to the Administrative Agent a Borrowing Base Certificate as at such date demonstrating compliance with subclause (x) after giving effect to such Restricted Payment. For purposes of preparing such Borrowing Base Certificate, (A) the fair market value of Quoted Investments shall be the most recent quotation available for such Quoted Investment and (B) the fair market value of Unquoted Investments shall be the Value set forth in the Borrowing Base Certificate most recently delivered by the Borrower to the Administrative Agent pursuant to Section 5.01(d); provided that, the Borrower shall reduce or increase, as applicable, the Value of any Unquoted Investment, in a manner consistent with the valuation methodology set forth in Section 5.12, to the extent necessary to take into account any events of which the Borrower has knowledge that adversely or positively, as applicable, affect the value of such Investment.

Nothing herein shall be deemed to prohibit the payment of Restricted Payments by any Subsidiary of the Borrower to the Borrower or to any other Subsidiary Guarantor.

SECTION 6.06. Certain Restrictions on Subsidiaries. The Borrower will not permit any of its Subsidiaries (other than Financing Subsidiaries or Foreign Subsidiaries) to enter into or suffer to exist any indenture, agreement, instrument or other arrangement (other than the Loan Documents) that prohibits or restrains, in each case in any material respect, or imposes materially adverse conditions upon, the incurrence or payment of Indebtedness, the declaration or payment of dividends, the making of loans, advances, guarantees or Investments or the sale, assignment, transfer or other disposition of property to the Borrower by any Subsidiary Guarantor (other than a Financing Subsidiary or Foreign Subsidiary); provided that, the foregoing shall not apply to (i) indentures, agreements, instruments or other arrangements pertaining to other Indebtedness permitted hereby (provided that, such restrictions would not adversely affect the exercise of rights or remedies of the Administrative Agent or the Lenders hereunder with respect to the Collateral or under the Security Documents or restrict any Subsidiary Guarantor with respect to the Collateral in any manner from performing its obligations under the Loan Documents) and (ii) indentures, agreements, instruments or other arrangements pertaining to any lease, sale or other disposition of any asset not prohibited by this Agreement or any Lien not prohibited by this Agreement on such asset so long as the applicable restrictions only apply to the assets subject to such lease, sale, other disposition or Lien.

SECTION 6.07. Certain Financial Covenants.

(a) Minimum Shareholders' Equity. The Borrower will not permit Shareholders' Equity at the last day of any fiscal quarter of the Borrower to be less than 65% of Shareholders' Equity as of the Effective Date, plus 50% of the net proceeds of the sale of Equity Interests by the Borrower and its Subsidiaries after the Effective Date (other than proceeds of (x) sales of Equity Interests by and among the Borrower and its Subsidiaries or (y) any distribution or dividend reinvestment plan).

(b) Consolidated Asset Coverage Ratio. The Borrower will not permit the Consolidated Asset Coverage Ratio at the last day of any fiscal quarter of the Borrower to be less than 150% at any time.

SECTION 6.08. Transactions with Affiliates. The Borrower will not, and will not permit any of its Subsidiaries (other than Financing Subsidiaries) to enter into any transactions with any of its Affiliates, even if otherwise permitted under this Agreement, except (a) transactions at prices and on terms and conditions, taken as a whole, not materially less favorable to the Borrower or such Subsidiary other than in good faith is believed to be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and its Subsidiaries not involving any other Affiliate, (c) Restricted Payments permitted by Section 6.05, (d) [reserved], (e) transactions described on Schedule 6.08 hereto (as amended, supplemented, restated or otherwise modified by notice from the Borrower to the Administrative Agent so long as (x) in the aggregate, payments by the Borrower and its Subsidiaries are not materially increased, or (y) such amendment, supplement, restatement or other modification is not materially adverse to the Lenders), (f) any Investment that results in the creation of an Affiliate, (g) transactions between or among the Obligors and any SBIC Subsidiary or any "downstream affiliate" (as such term is used under the rules promulgated under the Investment Company Act) company of an Obligor at prices and on terms and conditions, taken as a whole, not materially less favorable to the Obligors than in good faith is believed could be obtained at the time on an arm's-length basis from unrelated third parties, (h) the Borrower may issue and sell Equity Interests to its Affiliates, (i) transactions with one or more Affiliates (including co-investments) permitted by an exemptive order granted by the SEC (as may be amended from time to time), any no action letter or as otherwise permitted by applicable law, rule or regulation and SEC staff interpretations thereof, (j) transactions between a Subsidiary that is not an Obligor and an Affiliate thereof that is not an Obligor, (k) transactions and documents governing transactions permitted under Section 6.03, (l) transactions approved by a majority of the independent members of the Board of Directors of the Borrower, (m) transactions with or among any Portfolio Investment, registered investment advisor, seed vehicle, separate managed account or private fund, (n) employment, severance, indemnification or compensation plan, agreement or arrangement and the payment of compensation (including bonuses) and any similar plans, agreements, arrangements or payments and (o) provision of benefits (including retirement, health, equity and other benefits plans) and indemnification to officers, directors, employees and consultants and all like and similar arrangements.

SECTION 6.09. Lines of Business. The Borrower will not, nor will it permit any of its Subsidiaries (other than Immaterial Subsidiaries) to, engage to any material extent in any business other than in accordance with its Investment Policies. The Borrower will not, nor will it permit any of its Subsidiaries to amend or modify the Investment Policies (other than a Permitted Policy Amendment).

SECTION 6.10. No Further Negative Pledge. The Borrower will not, and will not permit any of the Subsidiary Guarantors to, enter into any agreement, instrument, deed or lease which prohibits or limits in any material respect the ability of any Obligor to create, incur, assume or suffer to exist any Lien upon any of its properties, assets or revenues in the Collateral Account, whether now owned or hereafter acquired, or which requires the grant of any security for an obligation if security is granted for another obligation, except the following: (a) this Agreement, the other Loan Documents and documents with respect to Indebtedness permitted under Section

6.01(b), (l) or (m) or the Existing Notes; (b) covenants in documents creating Liens permitted by Section 6.02 (including covenants with respect to the Designated Obligations or Designated Indebtedness Holders under (and, in each case, as defined in) the Security Documents) prohibiting further Liens on the assets encumbered thereby; (c) (i) customary restrictions contained in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate solely to the assets subject thereto, (ii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any of its Subsidiaries, (iii) customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (iv) customary provisions restricting the creation of Liens on assets subject to any asset sale permitted under Section 6.03 or (v) customary provisions for the transfer of an asset pending the close of the sale of such asset; (d) any such agreement that imposes restrictions on investments or other interests in Financing Subsidiaries or Foreign Subsidiaries (but no other assets of any Obligor); (e) any such agreement that imposes restrictions on Liens in Joint Venture Investments (solely to the extent such restrictions relate to Joint Venture Investments); (f) any other agreement that does not restrict in any manner (directly or indirectly) Liens created pursuant to the Loan Documents on any Collateral securing the "Secured Obligations" under and as defined in the Guarantee and Security Agreement and does not require (other than pursuant to a grant of a Lien under the Loan Documents) the direct or indirect granting of any Lien securing any Indebtedness or other obligation (other than such "Secured Obligations") by virtue of the granting of Liens on or pledge of property of any Obligor to secure the Loans or any Hedging Agreement; (g) for the avoidance of doubt, any such document, agreement or instrument that imposes customary restrictions on any Equity Interests or Portfolio Investments; and (h) the underlying governing agreements of any minority equity interest that impose such restrictions only on such equity interests.

SECTION 6.11. Modifications of Longer-Term Indebtedness Documents. The Borrower will not, and will not permit any other Obligor to, consent to any modification, supplement or waiver of any of the provisions of any agreement, instrument or other document evidencing or relating to any Unsecured Longer-Term Indebtedness that would result in such Indebtedness not meeting the requirements of the definition of "Unsecured Longer-Term Indebtedness", as applicable, set forth in Section 1.01 of this Agreement, unless such Indebtedness would have been permitted to be incurred as Unsecured Shorter-Term Indebtedness or otherwise at the time of such modification, supplement or waiver and, if applicable, the Borrower so designates such Indebtedness as "Unsecured Shorter-Term Indebtedness" (whereupon such Indebtedness shall be deemed to constitute "Unsecured Shorter-Term Indebtedness" for all purposes of this Agreement).

SECTION 6.12. Payments of Longer-Term Indebtedness. The Borrower will not, nor will it permit any of the Subsidiary Guarantors to, purchase, redeem, retire or otherwise acquire for value, or set apart any money for a sinking, defeasance or other analogous fund for the purchase, redemption, retirement or other acquisition of or make any voluntary payment or prepayment of the principal of or interest on, or any other amount owing in respect of, any Unsecured Longer-Term Indebtedness or Special Unsecured Indebtedness (other than the refinancing of Unsecured Longer-Term Indebtedness or Special Unsecured Indebtedness with Indebtedness permitted under Section 6.01), except for:

(a) regularly scheduled payments, prepayments or redemptions of principal and interest in respect thereof required pursuant to the instruments evidencing such Indebtedness and the payment when due of the types of fees and expenses that are customarily paid in connection with such Indebtedness (it being understood that: (w) the conversion features into Permitted Equity Interests under convertible notes; (x) the triggering of such conversion and/or settlement thereof solely with Permitted Equity Interests; and (y) any cash payment on account of interest or expenses on such convertible notes (or any cash payment on account of fractional shares issued upon conversion provisions of such convertible notes) made by the Borrower or any of its Subsidiaries in respect of such triggering and/or settlement thereof shall be permitted under this clause (a));

(b) so long as no Default shall exist or be continuing, any payment that, if treated as a Restricted Payment for purposes of Section 6.05(d), would be permitted to be made pursuant to the provisions set forth in Section 6.05(d);

(c) mandatory or voluntary payments, required prepayments or mandatory redemptions of Unsecured Longer-Term Indebtedness or Special Unsecured Indebtedness in Cash (including in connection with any convertible notes, any cash payment elected to be paid in connection with the settlement by the Borrower of any conversion at the option of any holder of such convertible notes pursuant to the conversion features thereunder), so long as both before and after giving effect to such payment (i) no Default shall exist or be continuing at the time of notice of payment or redemption and (ii) the Covered Debt Amount does not exceed 90% of the Borrowing Base and the Aggregate Covered Debt Amount does not exceed 90% of the Aggregate Portfolio Balance; and

(d) payments or prepayments of Unsecured Longer-Term Indebtedness or Special Unsecured Indebtedness prior to the Commitment Termination Date solely from the proceeds of any issuance of Equity Interests, so long as both before and after giving effect to such payment (i) no Event of Default shall exist or be continuing and (ii) the Covered Debt Amount does not exceed the Borrowing Base.

SECTION 6.13. Accounting Changes. The Borrower will not, nor will it permit any of its Subsidiaries to, make any change in (a) accounting policies or reporting practices, except as permitted under GAAP or required by law or rule or regulation of any Governmental Authority, or (b) its fiscal year.

SECTION 6.14. SBIC Guarantee. The Borrower will not, nor will it permit any of its Subsidiaries to, cause or permit the occurrence of any event or condition that would result in any recourse to any Obligor under any Permitted SBIC Guarantee.

## ARTICLE VII

### EVENTS OF DEFAULT

If any of the following events (each, an "Event of Default") shall occur and be continuing:

(a) the Borrower shall (i) fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise (including, for the avoidance of doubt, any failure to pay all principal on the Loans in full on the Final Maturity Date) or (ii) fail to deposit any amount into the Letter of Credit Collateral Account as required by Section 2.08(a) on the Commitment Termination Date;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article VII) payable under this Agreement or under any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) or more Business Days;

(c) any representation, warranty or certification made or deemed made by or on behalf of the Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall prove to have been incorrect when made or deemed made in any material respect as of the date on which such representation or warranty is made or deemed made, or when furnished, and if susceptible to cure, the failure of such representation or warranty to be true and accurate in any material respects, or the adverse effect of the failure of such representation or warranty shall not have been cured within 30 days after the earlier of (i) written notice thereof given by the Administrative Agent (given at the request of any Lender) to the Borrower and (ii) knowledge thereof by a Responsible Officer of the Borrower;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in (i) Section 5.03 (with respect to the Borrower's existence) or Sections 5.08(a) and (b), Section 5.09 or in Article VI or any Obligor shall default in the performance of any of its obligations contained in Sections 3 and 7 of the Guarantee and Security Agreement or (ii) Sections 5.01(e), (f) or (g) or Section 5.02 and such failure, in the case of this clause (ii), shall continue unremedied for a period of five or more Business Days after notice thereof by the Administrative Agent (given at the request of any Lender) to the Borrower; it being acknowledged and agreed that a failure of an Obligor to "Deliver" (as defined in the Guarantee and Security Agreement) any particular Portfolio Investment to the extent required by Section 7.01 of the Guarantee and Security Agreement shall result in such Portfolio Investment not being included in the Borrowing Base but shall not (in and of itself) be, or result in, a Default or an Event of Default;

(e) a Borrowing Base Deficiency or Aggregate Portfolio Deficiency shall occur and continue unremedied for a period of five or more Business Days after delivery of a Borrowing Base Certificate demonstrating such Borrowing Base Deficiency or Aggregate Portfolio Deficiency pursuant to Section 5.01(e); provided that, it shall not be an Event of Default hereunder if the Borrower shall present the Administrative Agent with a reasonably feasible plan to enable such Borrowing Base Deficiency to be cured within 30 Business Days (which 30-Business Day period shall include the five Business Days permitted for delivery of such plan), so long as such Borrowing Base Deficiency or Aggregate Portfolio Deficiency is cured within such 30-Business Day period;

(f) the Borrower or any other Obligor, as applicable, shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b), (d), (e) or (g) of this Article VII) or any other Loan Document and such failure shall continue unremedied for a period of 30 or more days after notice thereof from the Administrative Agent (given at the request of any Lender) to the Borrower;

(g) the Borrower or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable, taking into account any applicable grace period;

(h) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity (for the avoidance of doubt, other than as permitted under Section 6.12 and that is not a result of a breach, default or other violation or failure in respect of such Material Indebtedness by the Borrower or any of its Subsidiaries after giving effect to any applicable grace period); provided that this clause (h) shall not apply to (1) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; or (2) convertible debt that becomes due as a result of a conversion or redemption event, other than as a result of an "event of default" (as defined in the documents governing such convertible Material Indebtedness);

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed and unstayed for a period of 60 or more days or an order or decree approving or ordering any of the foregoing shall be entered;

(j) the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) of this Article VII, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(k) the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(l) one or more judgments for the payment of money in an aggregate amount in excess of \$40,000,000 shall be rendered against the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days following the entry of such judgment during which 30 day period such judgment shall not have been vacated, stayed, discharged or bonded pending appeal, or liability for such judgment amount shall not have been admitted by an insurer or reputable standing or execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) to enforce any such judgment;

(m) an ERISA Event shall have occurred that when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(n) [Reserved];

(o) the Liens created by the Security Documents shall, at any time with respect to Portfolio Investments in the Collateral Pool having an aggregate Value in excess of 5% of the aggregate Value of all Portfolio Investments in the Collateral Pool, not be valid and perfected (to the extent perfection by filing, registration, recordation, possession or control is required herein or therein) in favor of the Collateral Agent, free and clear of all other Liens (other than Liens permitted under Section 6.02 or under the respective Security Documents) except to the extent that any such loss of perfection results from the failure of the Collateral Agent to maintain possession of the certificates representing the securities pledged under the Loan Documents; provided that, if such default is as a result of any action of the Administrative Agent or the Collateral Agent or a failure of the Administrative Agent or Collateral Agent to take any action within their control, then there shall be no Default or Event of Default hereunder unless such default shall continue unremedied for a period of 10 consecutive Business Days after such Borrower receives written notice of such default thereof from the Administrative Agent unless the continuance thereof is a result of a failure of the Administrative Agent or the Collateral Agent to take an action within their control;

(p) except for expiration or termination in accordance with its terms, any of the Loan Documents shall for whatever reason be terminated or cease to be in full force and effect in any material respect, or the enforceability thereof shall be contested by the Borrower or any other Obligor;

(q) the Obligors shall at any time, without the consent of the Required Lenders, fail to comply with the covenant contained in Section 5.11, and such failure shall continue unremedied for a period of 30 or more days after the earlier of (i) written notice thereof given by the Administrative Agent (given at the request of any Lender) to the Borrower and (ii) knowledge thereof by a Responsible Officer of the Borrower; or

(r) the Borrower or any of its Subsidiaries shall cause or permit the occurrence of any condition or event that would result in any recourse to any Obligor under any Permitted SBIC Guarantee; then, and in every such event (other than an event with respect to the Borrower described in clause (i) or (j) of this Article VII), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder and under the other Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (i) or (j) of this Article VII, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder and under the other Loan Documents, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

In the event that the Loans shall be declared, or shall become, due and payable pursuant to the immediately preceding paragraph then, upon notice from the Administrative Agent or Lenders with LC Exposure representing more than 50% of the total LC Exposure demanding the deposit of Cash Collateral pursuant to this paragraph, the Borrower shall immediately deposit into the Letter of Credit Collateral Account cash in an amount equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (i) or (j) of this Article VII.

Notwithstanding anything to the contrary contained herein, on the CAM Exchange Date, to the extent not otherwise prohibited by law, (a) the Lenders shall automatically and without further act be deemed to have exchanged interests in the Designated Obligations such that, in lieu of the interests of each Lender in the Designated Obligations under each Loan in which it shall participate as of such date, such Lender shall own an interest equal to such Lender's CAM Percentage in the Designated Obligations under each of the Loans and (b) simultaneously with the deemed exchange of interests pursuant to clause (a) above, the interests in the Designated Obligations to be received in such deemed exchange shall, automatically and with no further action required, be converted into the Dollar Equivalent of such amount (as of the Business Day immediately prior to the CAM Exchange Date) and on and after such date all amounts accruing and owed to the Lenders in respect of such Designated Obligations shall accrue and be payable in Dollars at the rate otherwise applicable hereunder. Each Lender, each Person acquiring a participation from any Lender as contemplated by Section 9.04 and the Borrower hereby consents and agrees to the CAM Exchange. The Borrower and the Lenders agree from time to time to execute and deliver to the Administrative Agent all such promissory notes and other instruments and documents as the Administrative Agent shall reasonably request to evidence and confirm the respective interests and obligations of the Lenders after giving effect to the CAM Exchange, and each Lender agrees to surrender any promissory notes originally received by it in connection with its Loans hereunder to the Administrative Agent against delivery of any promissory notes so



executed and delivered; provided that the failure of the Borrower to execute or deliver or of any Lender to accept any such promissory note, instrument or document shall not affect the validity or effectiveness of the CAM Exchange. As a result of the CAM Exchange, on and after the CAM Exchange Date, each payment received by the Administrative Agent pursuant to any Loan Document in respect of the Designated Obligations shall (except as otherwise expressly stated in this Agreement with respect to fees or Defaulting Lenders) be distributed to the Lenders pro rata in accordance with their respective CAM Percentages (to be redetermined as of each such date of payment).

## ARTICLE VIII

### THE ADMINISTRATIVE AGENT

SECTION 8.01. Appointment of the Administrative Agent. Each of the Lenders and the Issuing Banks hereby irrevocably appoints the Administrative Agent as its 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. Each of the Lenders and the Issuing Banks hereby irrevocably appoints the Collateral Agent as its agent hereunder and under the other Loan Documents and authorizes the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

SECTION 8.02. Capacity as 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 such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

SECTION 8.03. Limitation of Duties; Exculpation. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent 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 in writing by the Required Lenders, and (c) except as expressly set forth herein and in the other Loan Documents, the Administrative Agent shall not 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 Subsidiaries that is communicated to or obtained by the bank serving as the Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable to any Lender or the Issuing Bank for any action taken or not taken by it with the consent or at the request of 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) or in the absence of its own fraud, gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative

Agent by the Borrower or a Lender, and 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, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein or therein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 8.04. Reliance. 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 or sent 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 be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05. Sub-Agents. The Administrative Agent may perform any and all of its duties and exercise its rights and powers 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 through their respective Related Parties. The exculpatory provisions of the preceding paragraphs 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 facility provided for herein as well as activities as the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with fraud, gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 8.06. Resignation; Successor Administrative Agent. The Administrative Agent may resign by providing not less than 30 days advance written notice to the Lenders, the Issuing Banks and the Borrower. Upon any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower not to be unreasonably withheld or delayed (or, if an Event of Default has occurred and is continuing in consultation with the Borrower), to appoint a successor. If no 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, then the retiring Administrative Agent's resignation shall nonetheless become effective at the end of such 30 days period (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Banks under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and (2) the Required Lenders shall perform the duties of the Administrative Agent (and all

payments and communications provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly) until such time as the Required Lenders appoint a successor agent as provided for above in this paragraph. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder (if not already discharged therefrom as provided above in this paragraph). 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 Administrative Agent's resignation hereunder, the provisions of this Article VIII and Section 9.03 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent.

Any resignation by SMBC as Administrative Agent pursuant to this Section 8.06 shall also constitute its resignation as an Issuing Bank. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank, (b) the retiring Issuing Bank shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents, and (c) the successor Issuing Bank 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 the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

SECTION 8.07. Reliance by Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender 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 also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender 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. The Administrative Agent shall have no duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and the Administrative Agent shall have no responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

Each Lender, by delivering its signature page to this Agreement or any Assignment and Assumption and funding any Loan shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by the Administrative Agent, Required Lenders or Lenders.

SECTION 8.08. Modifications to Loan Documents. Except as otherwise provided in Section 2.19 or Section 9.02(b) or (c) of this Agreement or the Security Documents with respect to this Agreement, the Administrative Agent may, with the prior consent of the Required Lenders (but not otherwise), consent to any modification, supplement or waiver under any of the Loan Documents; provided that, without the prior consent of each Lender, the Administrative Agent shall not (except as provided herein or in the Security Documents) release all or substantially all of the Collateral or otherwise terminate all or substantially all of the Liens under any Security Document providing for collateral security, agree to additional obligations being secured by all or substantially all of such collateral security (except in connection with securing additional obligations equally and ratably with the Loans and other obligations hereunder in accordance with the Guarantee and Security Agreement), or alter the relative priorities of the obligations entitled to the benefits of the Liens created under the Security Documents with respect to all or substantially all of the Collateral, except that no such consent shall be required, and the Administrative Agent is hereby authorized, (x) to release any Subsidiary Guarantor (and any property of such Subsidiary Guarantor) from its guarantee obligations to the extent it may be released in accordance with Section 10.03 of the Guarantee and Security Agreement and (y) to release any Lien covering property that is the subject of either a disposition of property permitted hereunder or a disposition to which the Required Lenders have consented following the (i) cancellation, expiration or termination of any commitment to extend credit or issue Letters of Credit under this Agreement or any other Loan Document, (ii) final payment in full of all principal of and interest on each Loan, any LC Disbursement, any fees and any other amounts then due and owing under this Agreement or any other Loan Document and (iii) termination of this Agreement, to release all Liens and guarantees by Obligors.

SECTION 8.09. Erroneous Payments.

(a) If the Administrative Agent notifies a Lender, an Issuing Bank or a Secured Party, or any Person who has received funds on behalf of a Lender, an Issuing Bank or a Secured Party (any such Lender, Issuing Bank, Secured Party or other recipient, a "Payment Recipient"), that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Bank or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Bank or Indemnitee, or any Person who has received funds on behalf of a Lender, Issuing Bank or Indemnitee, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Bank or Indemnitee, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) in the case of immediately preceding clause (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Bank or Indemnitee shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 8.09(b).

(c) Each Lender, Issuing Bank and Indemnitee hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Bank or Indemnitee under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, Issuing Bank or Indemnitee from any source, against any amount due to the Administrative Agent under clause (a) above or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with clause (a) above, from any Lender or Issuing Bank that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “Erroneous Payment Return Deficiency”), upon the Administrative Agent’s notice to such Lender or Issuing Bank at any time, (i) such Lender or Issuing Bank shall be deemed to have assigned its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the “Erroneous Payment Impacted Class”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “Erroneous Payment Deficiency Assignment”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such

Lender or Issuing Bank shall deliver any notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender or assigning Issuing Bank shall cease to be a Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender or assigning Issuing Bank and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. So long as any sale of Loans complies with the terms of Section 9.04(b), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender or Issuing Bank shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender or Issuing Bank (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender or Issuing Bank and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender, Issuing Bank or Indemnitee under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the "Erroneous Payment Subrogation Rights").

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Revolving Credit Exposure or other obligations owed by the Borrower or any other Obligor, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Obligor for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 8.09 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all obligations (or any portion thereof) under any Loan Document.

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ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Notices; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone, 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 telecopy, as follows:

- (i) if to the Borrower, to it at:

Hercules Capital, Inc.  
400 Hamilton Avenue, Suite 310  
Palo Alto, California 94301  
Attention: Seth Meyer, Chief Financial Officer  
Telephone: (857) 206-8966  
Email: smeyer@htgc.com

with a copy to (which shall not constitute a notice hereunder):

Dechert LLP  
1095 Avenue of the Americas  
New York, New York 10036  
Attention: Jay R. Alicandri, Esq.  
Telephone: (212) 698-3800  
Email: jay.alicandri@dechert.com

- (ii) if to the Administrative Agent, to it at:

Sumitomo Mitsui Banking Corporation  
277 Park Avenue  
New York, NY 10172  
Attention: Agency Services  
Fax: 212-224-4433  
Email: agencyervices@smbcgroup.com

- (iii) if to SMBC, in its capacity as Issuing Bank, to it at:

Sumitomo Mitsui Banking Corporation  
277 Park Avenue  
New York, NY 10172  
Attention: Trade Credit Services  
Fax: 212-224-4310  
Email: trade\_credit\_svc@smbcgroup.com

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(iv) if to any other Lender, to it at its address (or teletcopy number) set forth in its Administrative Questionnaire.

Any party hereto may change its address or teletcopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt. Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or any Issuing Bank pursuant to Section 2.05 if such Lender or such Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(i) Notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

Each party hereto understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct, fraud or gross negligence of the Administrative Agent, any Lender or their respective Related Parties, as determined by a final, non-appealable judgment of a court of competent jurisdiction. The Platform and any electronic communications media approved by the Administrative Agent as provided herein are provided "as is" and "as available". Neither the Administrative Agent nor its Related Parties warrant the accuracy, adequacy, or completeness of such media or the Platform and each expressly disclaims liability for errors or omissions in the Platform and such media. 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 the Administrative Agent and any of its Related Parties in connection with the Platform or the electronic communications media approved by the Administrative Agent as provided for herein.



(c) Private Side Information Contacts. 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 information that is not made available through the "Public Side Information" portion of the Platform and that may contain Non-Public Information with respect to the Borrower, its Subsidiaries or their Securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor the Administrative Agent has any responsibility for such Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Loan Documents.

(d) Documents to be Delivered under Sections 5.01 and 5.12. For so long as an Intralinks™ or equivalent website is available to each of the Lenders hereunder, the Borrower may satisfy its obligation to deliver documents to the Administrative Agent or the Lenders under Sections 5.01 and 5.12 by delivering either an electronic copy or a notice identifying the website where such information is located for posting by the Administrative Agent on Intralinks™ or such equivalent website; provided that the Administrative Agent shall have no responsibility to maintain access to Intralinks™ or an equivalent website.

SECTION 9.02. Waivers; Amendments.

(a) No Deemed Waivers Remedies Cumulative. No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Banks and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Amendments to this Agreement. Except as provided in Section 2.19, neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall:

- (i) increase the Commitment of any Lender without the written consent of such Lender,

(ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon (other than with respect to the election of or the failure to elect the default rate in accordance with Section 2.11(d)), or reduce any fees payable hereunder, without the written consent of each Lender directly and adversely affected thereby,

(iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly and adversely affected thereby,

(iv) change Section 2.16(b), (c) or (d) in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby,

(v) change any of the provisions of this Section 9.02 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender directly affected thereby; or

(vi) subject to clause (d) below, change any of the provisions of the definition of "Agreed Foreign Currencies" or any other provision specifying the Foreign Currencies in which Multicurrency Loans may be made hereunder, or make any determination or grant any consent hereunder with respect to the definition of "Agreed Foreign Currencies", in each case, without the consent of each Multicurrency Lender directly and adversely affected thereby;

provided further that (x) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Issuing Banks hereunder without the prior written consent of the Administrative Agent or the Issuing Banks, as the case may be, and (y) the consent of Lenders (other than Defaulting Lenders) holding not less than two-thirds of the Revolving Credit Exposure and unused Commitments (other than of Defaulting Lenders) will be required (A) for any adverse change (from the Lenders' perspective) affecting the provisions of this Agreement relating to the determination of the Borrowing Base (excluding changes to the provisions of Sections 5.12(b)(i)(E) and (F), but including changes to the provisions of Section 5.12(c) and the definitions set forth in Section 5.13), and (B) for any release of any material portion of the Collateral other than for fair value or as otherwise permitted hereunder or under the other Loan Documents.

In addition, whenever a waiver, amendment or modification requires the consent of a Lender "affected" thereby, such waiver, amendment or modification shall, upon consent of such Lender, become effective as to such Lender whether or not it becomes effective as to any other Lender, so long as the Required Lenders consent to such waiver, amendment or modification as provided above.

Anything in this Agreement to the contrary notwithstanding, no waiver or modification of any provision of this Agreement or any other Loan Document that could reasonably be expected to adversely affect the Lenders of any Class in a manner that does not affect all Classes equally shall be effective against the Lenders of such Class unless the Required Lenders of such Class shall have concurred with such waiver or modification; provided, however, that for the avoidance of doubt, except as expressly required herein, in no other circumstances shall the concurrence of the Required Lenders of a particular Class be required for any waiver, amendment or modification of any provision of this Agreement or any other Loan Document.

(c) Amendments to Security Documents. Except to the extent otherwise expressly set forth in the Guarantee and Security Agreement or the other Loan Documents, no Security Document nor any provision thereof may be waived, amended or modified, nor may the Liens thereof be spread to secure any additional obligations (including any increase in Loans hereunder, but excluding (x) any such increase pursuant to a Commitment Increase under Section 2.07(c)) or (y) the spreading of such Liens to any Designated Indebtedness Obligations; provided that, except as permitted by the Loan Documents, (i) without the written consent of each Lender, no such agreement shall release all or substantially all of the Obligors from their respective obligations under the Security Documents and (ii) without the written consent of each Lender, no such agreement shall release all or substantially all of the collateral security or otherwise terminate all or substantially all of the Liens under the Security Documents, alter the relative priorities of the obligations entitled to the Liens created under the Security Documents with respect to all or substantially all of the collateral security provided thereby, or release all or substantially all of the guarantors under the Guarantee and Security Agreement from their guarantee obligations thereunder, except that no such consent shall be required, and the Administrative Agent is hereby authorized (and so agrees with the Borrower) to direct the Collateral Agent under the Guarantee and Security Agreement, (w) to release from the Guarantee and Security Agreement any "Subsidiary Guarantor" (and any property of such Subsidiary Guarantor) that is designated as a "Financing Subsidiary", a "Foreign Subsidiary", an "Immaterial Subsidiary" or a "Subsidiary of a Foreign Subsidiary" or which is otherwise no longer required to be a "Subsidiary Guarantor" in accordance with this Agreement and the Guarantee and Security Agreement, (x) to release any Lien covering property (and to release any such guarantor) that is the subject of either a disposition of property permitted hereunder or a disposition to which the Required Lenders have consented, (y) to release any Lien and/or guarantee obligation in accordance with the Guarantee and Security Agreement and (z) to release (and to acknowledge the release of) all Liens and guarantees of Obligors upon the termination of this Agreement (including in connection with a complete refinancing).

(d) Replacement of Non-Consenting Lender. If, in connection with any proposed change, waiver, amendment, consent, discharge or termination to any of the provisions of this Agreement as contemplated by this Section 9.02, the consent of the Required Lenders shall have been obtained but the consent of one or more Lenders (each a "Non-Consenting Lender") whose consent is required for such proposed change, waiver, amendment, consent, discharge or termination is not obtained, then (so long as no Event of Default under clause (a), (b), (i), (j) or (k) of Article VII has occurred and is continuing) the Borrower shall have the right, at its sole cost and expense, to replace each such Non-Consenting Lender or Lenders with one or more replacement Lenders pursuant to Section 2.17(b) so long as at the time of such replacement, each such replacement Lender consents to the proposed change, waiver, discharge or termination.

SECTION 9.03. Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket costs and expenses incurred by the Administrative Agent, the Collateral Agent and their Affiliates, including the reasonable and documented out-of-pocket fees, charges and disbursements of one outside counsel for the Administrative Agent and the Collateral Agent (but only one counsel for all such Persons together), in connection with the syndication of the credit facility provided for herein, the preparation and administration of this Agreement and the other Loan Documents and 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 any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit by such Issuing Bank or any demand for payment thereunder, (iii) all reasonable documented out-of-pocket costs and expenses incurred by the Administrative Agent, any Issuing Bank or any Lender, including the reasonable and documented fees, charges and disbursements of one outside counsel for the Administrative Agent and each Issuing Bank as well as one outside counsel for the Lenders and additional counsel should any conflict of interest arise, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section 9.03, or in connection with the Loans made or Letters of Credit issued hereunder, including all such documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect thereof and (iv) all reasonable and documented out-of-pocket costs, expenses, taxes, assessments and other charges reasonably incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by any Security Document or any other document referred to therein; provided that, notwithstanding the foregoing and anything to the contrary in any Loan Document, the Borrower shall not be responsible for the reimbursement of any fees, costs and expenses of the Administrative Agent, the Collateral Agent, any Lender and any of their respective Affiliates (including, but not limited to, their legal fees) in excess of \$100,000 in the aggregate on the Effective Date. Unless an Event of Default has occurred and is continuing the Borrower shall not be responsible for the reimbursement for any fees, costs and expenses of the Approved Third-Party Appraiser incurred pursuant to Section 5.12(b)(ii)(E) in excess of the greater of (x) \$100,000 and (y) 0.05% of the Commitments in the aggregate incurred for all such fees, costs and expenses in any 12-month period (the "TVP Supplemental Cap").

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent, the Lead Arranger, each Issuing Bank and each Lender, 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, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable and documented out-of-pocket fees and disbursements of one outside counsel for all Indemnitees (and, if reasonably necessary, of one local counsel in any relevant jurisdiction for all Indemnitees) unless, in the reasonable opinion of an Indemnitee, representation of all Indemnitees by such counsel would be inappropriate due to the existence of an actual or potential conflict of interest) (collectively, "Losses") in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity, whether based on any federal, state or foreign

laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and laws, statutes, rules or regulations relating to environmental, occupational safety and health or land use matters), on common law or equitable cause or on contract or otherwise and related expenses or disbursements of any kind (other than Taxes or Other Taxes which shall only be indemnified by the Borrower to the extent provided in Section 2.15, other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim), including the fees, charges and disbursements of outside counsel for any such affected Indemnitee for the Indemnitees collectively as specified above, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by an Issuing Bank 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) or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and whether brought by the Borrower or a third party 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 are (A) determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from (i) the fraud, willful misconduct or gross negligence of such Indemnitee or its Related Parties or (ii) a claim brought by the Borrower or any other Obligor against such Indemnitee for breach in bad faith of such Indemnitee's obligations under this Agreement or the other Loan Documents, if the Borrower or such other Obligor has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction, (B) result from the settlement of any such claim, investigation, litigation or other proceedings described in clause (iii) above unless the Borrower has consented to such settlement (which consent shall not be unreasonably withheld, delayed or conditioned (provided that, nothing in this clause (B) shall restrict the right of any person to settle any claim for which it has waived its right of indemnity by the Borrower)) or (C) result from disputes solely among Indemnitees and not involving any act or omission of an Obligor or any of its Affiliates (other than any dispute against the Administrative Agent in its capacity as such). Notwithstanding the foregoing, it is understood and agreed that indemnification for Taxes is subject to the provisions of Section 2.15, other than any Taxes that represent losses, claims, damages, liabilities and related expenses arising from any non-Tax claim.

The Borrower shall not be liable to any Indemnitee for any special, indirect, consequential or punitive damages (as opposed to direct or actual damages (which may include special, indirect, consequential or punitive damages asserted against any such party hereto by a third party)) arising out of, in connection with, or as a result of this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of proceeds thereof, asserted by an Indemnitee against the Borrower or any other Obligor; provided that, the foregoing limitation shall not be deemed to impair or affect the obligations of the Borrower under the preceding provisions of this subsection with respect to damages not expressly described in the foregoing limitation.

(c) Reimbursement by Lenders. To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent or any Issuing Bank under paragraph (a) or (b) of this Section 9.03 or the extent that the fees, costs and expenses of the Approved Third-Party Appraiser incurred pursuant to Section 5.12(b)(ii)(E) hereof exceeds the IVP Supplemental Cap for any 12 month period at any time no Event of Default shall exist (provided that prior to incurring expenses in excess of the IVP Supplemental Cap, the Administrative Agent shall have afforded the Lenders an opportunity to consult with the Administrative Agent regarding such expenses), each Lender severally agrees to pay to the Administrative Agent or the applicable Issuing Bank, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided 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 the applicable Issuing Bank in its capacity as such.

(d) Waiver of Consequential Damages, Etc. To the extent permitted by applicable law, no party hereto shall assert, and each party hereto hereby waives, any claim against any other party (or any Related Party to such party), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof. Provided that such Indemnitee has complied with its obligations under Section 9.13, no Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent caused by the fraud, willful misconduct or gross negligence of such Indemnitee or its Related Parties, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section 9.03 shall be payable promptly after written demand therefor.

#### SECTION 9.04. Successors and Assigns.

(a) Assignments 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 (including any Affiliate of an Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04 (and any attempted assignment or transfer by any Lender which is not in accordance with this Section 9.04 shall be treated as provided in the second sentence of Section 9.04(b)(iii)). 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 (including any Affiliate of an Issuing Bank that issues any Letter of Credit) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders.

(i) Assignments Generally. Subject to the conditions set forth in clause (ii) below, any Lender may assign to one or more assignees (other than any natural persons (or a holding company, investments vehicle, investment vehicle or trust for, or owned and operated by or for the primary benefit of a natural Person) or any Defaulting Lender or Competitor) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans and LC Exposure at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower; provided that, no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender with credit ratings at least as good as the assigning Lender, or, if an Event of Default under clause (a), (b), (i), (j) or (k) of Article VII has occurred and is continuing, any other assignee; provided, further, that the Borrower shall be deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the Administrative Agent within ten Business Days after having received notice thereof; and

(B) the Administrative Agent and each Issuing Bank; provided that no consent of the Administrative Agent or the Issuing Banks shall be required for an assignment by a Lender to an Affiliate of such Lender.

(ii) Certain Conditions to Assignments. Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans and LC Exposure of a Class, the amount of the Commitment or Loans and LC Exposure of such Class 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) shall not be less than U.S. \$5,000,000 unless each of the Borrower and the Administrative Agent otherwise consents; provided that, no such consent of the Borrower shall be required if an Event of Default under clause (a), (b), (i), (j) or (k) of Article VII has occurred and is continuing;

(B) each partial assignment of any Class of Commitments or Loans and LC Exposure shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement in respect of such Class of Commitments, Loans and LC Exposure;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption (or any other form approved by the Administrative Agent and the Borrower), together with a processing and recordation fee of U.S. \$3,500 (which fee shall not be payable in connection with an assignment to a Lender or to an Affiliate of a Lender), for which the Borrower and the Subsidiary Guarantors shall not be obligated;

(D) the assignee, if it shall not already be a Lender of the applicable Class, shall deliver to (x) the Administrative Agent an Administrative Questionnaire, and (y) to the Administrative Agent and the Borrower, any tax forms or certifications required by Section 2.15(f); and

(E) any assignment by a Multicurrency Lender shall (unless the Borrower otherwise consents in writing) be made only to an assignee that has agreed to make Loans pursuant to its Multicurrency Commitment and is able to fund and receive payments in the Agreed Foreign Currencies for which Loans may be made at the time of such proposed assignments without the need to obtain any authorization referred to in clause (b)(z) of the definition of “Agreed Foreign Currency”.

(iii) Effectiveness of Assignments. Subject to acceptance and recording thereof pursuant to paragraph (c) of this Section 9.04, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto 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 2.13, 2.14, 2.15 and 9.03 with respect to facts and circumstances occurring prior to the effective date of such assignment). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (f) of this Section 9.04 (but only to the extent such assignment or other transfer otherwise complies with the provisions of such paragraph). Notwithstanding anything to the contrary herein, 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 set forth in Section 9.04(b)(ii) or otherwise, 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 Percentage 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, each Issuing Bank and each Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Applicable Percentage of all Loans and participations in Letters of Credit. 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 (iii), then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs. The Administrative Agent agrees to provide the Borrower with official copies of the Register upon reasonable request.



(c) Maintenance of Registers by Administrative Agent. The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices in New York City a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Registers" and each individually, a "Register"). The entries in the Registers shall be conclusive absent manifest error, and the Borrower, the Administrative Agent, the Issuing Banks and the Lenders may treat each Person whose name is recorded in the Registers pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Registers shall be available for inspection by the Borrower, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Acceptance of Assignments by Administrative Agent. Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 9.04 and any written consent to such assignment required by paragraph (b) of this Section 9.04, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (d).

(e) Special Purposes Vehicles. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC") owned or administered by such Granting Lender, identified as such in writing from time to time by such Granting Lender to the Administrative Agent and the Borrower, the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make; provided that, (i) nothing herein shall constitute a commitment to make any Loan by any SPC, (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, such Granting Lender shall, subject to the terms of this Agreement, make such Loan pursuant to the terms hereof, (iii) the rights of any such SPC shall be derivative of the rights of such Granting Lender, and such SPC shall be subject to all of the restrictions upon such Granting Lender herein contained, and (iv) no SPC shall be entitled to the benefits of Section 2.13 (or any other increased costs protection provision), 2.14 or 2.15. Each SPC shall be conclusively presumed to have made arrangements with its Granting Lender for the exercise of voting and other rights hereunder in a manner which is acceptable to the SPC, the Administrative Agent, the Lenders and the Borrower, and each of the Administrative Agent, the Lenders and the Obligor shall be entitled to rely upon and deal solely with the Granting Lender with respect to Loans made by or through its SPC. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by the Granting Lender.

Each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or similar proceedings under the laws of the United States or any State thereof, in respect of claims arising out of this Agreement; provided that, the Granting Lender for each SPC hereby agrees to indemnify, save and hold harmless each other party hereto for any Loss arising out of their inability to institute any such proceeding against its SPC. In addition, notwithstanding anything to the contrary contained in this Section 9.04, any SPC may (i) without the prior written consent of the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to its Granting Lender or to any financial institutions providing liquidity and/or credit facility to or for the account of such SPC to fund the Loans made by such SPC or to support the securities (if any) issued by such SPC to fund such Loans (but nothing contained herein shall be construed in derogation of the obligation of the Granting Lender to make Loans hereunder); provided that, neither the consent of the SPC nor of any such assignee shall be required for amendments or waivers hereunder except for those amendments or waivers for which the consent of participants is required under paragraph (f) below, and (ii) disclose on a confidential basis (in the same manner described in Section 9.13(b)) any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of a surety, guarantee or credit or liquidity enhancement to such SPC.

(f) Participations. Any Lender may, with the consent of the Borrower (such consent not to be unreasonably withheld or delayed), sell participations to one or more banks or other entities (other than any Competitor or any natural persons (or a holding company, investments vehicle, investment vehicle or trust for, or owned and operated by or for the primary benefit of a natural Person)) (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitments and the Loans and LC Disbursements owing to it); provided that, (i) the consent of the Borrower shall not be required so long as an Event of Default under clause (a), (b), (i), (j) or (k) of Article VII has occurred and is continuing, (ii) such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged, (iii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iv) the Borrower, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. 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 the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; provided that, such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (g) of this Section 9.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.13, 2.14 and 2.15, subject to the requirements and limitations therein, to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.04; provided that, such Participant agrees that it (i) shall be subject to the provisions of Section 2.17 as if it were an assignee and (ii) shall not be entitled to receive any greater payment under Section 2.13, 2.14 or 2.15, with respect to any participation, than its participating Lender 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; provided, further,

that no Participant shall be entitled to the benefits of Section 2.15 unless the Borrower is notified of the participation granted to such Participant and such Participant shall have complied with the requirements of Section 2.15 as if such Participant is a Lender. 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 2.17 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that, such Participant agrees to be subject to Section 2.16(d) as though it were a Lender hereunder. 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 Commitments, Loans, Letters of Credit 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 other 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 disclosures are necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 163 of the Code and any related 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.

(g) Limitations on Rights of Participants. A Participant shall not be entitled to receive any greater payment under Section 2.13, 2.14 or 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.15 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with paragraphs (e) and (f) of Section 2.15 as though it were a Lender and in the case of a Participant claiming exemption for portfolio interest under Section 871(h) or 881(c) of the Code, the applicable Lender shall provide the Borrower with satisfactory evidence that the participation is in registered form and shall permit the Borrower to review such register as reasonably needed for the Borrower to comply with its obligations under applicable laws and regulations.

(h) 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 to secure obligations of such Lender, including any such pledge or assignment to a Federal Reserve Bank or any other central bank having jurisdiction over such Lender, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(i) No Assignments to the Borrower or Affiliates. Anything in this Section 9.04 to the contrary notwithstanding, no Lender may assign or participate any interest in any Loan or LC Exposure held by it hereunder to the Borrower or any of its Affiliates or Subsidiaries without the prior consent of each Lender.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.13, 2.14, 2.15 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination, Cash Collateralization or backstop of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract between and 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 which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or electronically (e.g., pdf) shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Loan Documents. The words “execution,” “signed,” “signature,” and words of like import in this Agreement and the other Loan Documents including any Assignment and Assumption shall be deemed to include electronic signatures or electronic records, 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.

SECTION 9.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time (with the prior consent of the Administrative Agent or the Required Lenders), to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured; 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 Sections 2.16(d) and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the amounts owing to such Defaulting Lender hereunder as to which it exercised such right of setoff. The rights of each Lender under this Section 9.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 9.09. Governing Law; Jurisdiction; Etc.

(a) Governing Law. This Agreement and, unless otherwise specified therein, each other Loan Document shall be construed in accordance with and governed by the law of the State of New York.

(b) Submission to Jurisdiction. Each party to this Agreement hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court 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, in any action or proceeding arising out of or relating to this Agreement and any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section 9.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party to this Agreement (i) irrevocably consents to service of process in the manner provided for notices in Section 9.01 and (ii) agrees that service as provided in the manner provided for notices in Section 9.01 is sufficient to confer personal jurisdiction over such party in any proceeding in any court and otherwise constitutes effective and binding service in every respect. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

SECTION 9.11. Judgment Currency. This is an international loan transaction in which the specification of Dollars or any Foreign Currency, as the case may be (the "Specified Currency"), and payment in New York City or the country of the Specified Currency, as the case may be (the "Specified Place"), is of the essence, and the Specified Currency shall be the currency of account in all events relating to Loans denominated in the Specified Currency. The payment obligations of the Borrower under this Agreement shall not be discharged or satisfied by an amount paid in another currency or in another place, whether pursuant to a judgment or otherwise, to the extent that the amount so paid on conversion to the Specified Currency and transfer to the Specified Place under normal banking procedures does not yield the amount of the Specified Currency at the Specified Place due hereunder. If for the purpose of obtaining judgment in any court it is necessary to convert a sum due hereunder in the Specified Currency into another currency (the "Second Currency"), the rate of exchange that shall be applied shall be the rate at which in accordance with normal banking procedures the Administrative Agent could purchase the Specified Currency with the Second Currency on the Business Day next preceding the day on which such judgment is rendered. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under any other Loan Document (in this Section 9.11 called an "Entitled Person") shall, notwithstanding the rate of exchange actually applied in rendering such judgment be discharged only to the extent that on the Business Day following receipt by such Entitled Person of any sum adjudged to be due hereunder in the Second Currency such Entitled Person may in accordance with normal banking procedures purchase and transfer to the Specified Place the Specified Currency with the amount of the Second Currency so

adjudged to be due; and the Borrower hereby, as a separate obligation and notwithstanding any such judgment, agrees to indemnify such Entitled Person against, and to pay such Entitled Person on demand, in the Specified Currency, the amount (if any) by which the sum originally due to such Entitled Person in the Specified Currency hereunder exceeds the amount of the Specified Currency so purchased and transferred.

SECTION 9.12. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.13. Treatment of Certain Information; No Fiduciary Duty; Confidentiality.

(a) Treatment of Certain Information; No Fiduciary Duty; No Conflicts. The Borrower acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to the Borrower or one or more of its Subsidiaries (in connection with this Agreement or otherwise) by any Lender or by one or more subsidiaries or affiliates of such Lender and the Borrower hereby authorizes each Lender to share any information delivered to such Lender by the Borrower and its Subsidiaries pursuant to this Agreement, or in connection with the decision of such Lender to enter into this Agreement, to any such subsidiary or affiliate, it being understood that any such subsidiary or affiliate receiving such information shall be bound by the provisions of paragraph (b) of this Section 9.13 as if it were a Lender hereunder. Such authorization shall survive the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. Each Lender shall use all information delivered to such Lender by the Borrower and its Subsidiaries pursuant to this Agreement, or in connection with the decision of such Lender to enter into this Agreement, in connection with providing services to the Borrower. The Administrative Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph (a), the "Lenders"), may have economic interests that conflict with those of the Borrower or any of its Subsidiaries, their stockholders and/or their affiliates. The Borrower, on behalf of itself and each of its Subsidiaries, agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and the Borrower or any of its Subsidiaries, its stockholders or its affiliates, on the other. The Borrower and each of its Subsidiaries each acknowledges and agrees that (i) the transactions contemplated by this Agreement and the other Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and the Borrower and its Subsidiaries, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of the Borrower or any of its Subsidiaries, any of their stockholders or affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise the Borrower or any of its Subsidiaries, their stockholders or their affiliates on other matters) or any other obligation to the Borrower or any of its Subsidiaries except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of the Borrower or any of its Subsidiaries, their management, stockholders, creditors or any other Person. The Borrower and each of its Subsidiaries each acknowledges and agrees

that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. The Borrower and each of its Subsidiaries each agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower or any of its Subsidiaries, in connection with such transaction or the process leading thereto.

(b) Confidentiality. Each of the Administrative Agent, the Lenders and the Issuing Banks agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential on terms consistent with this clause (b)), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (provided that, except in the case of any ordinary course examination by a regulatory, self-regulatory or governmental agency, it will use commercially reasonable efforts to notify the Borrower of any such disclosure prior to making such disclosure to the extent legally permitted and timely practicable), (iv) to any other party hereto, (v) 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, (vi) other than to any Competitor, subject to an agreement containing provisions substantially the same as those of this Section 9.13(b), to (x) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (y) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (vii) with the written consent of the Borrower, (viii) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 9.13(b) or (y) becomes available to the Administrative Agent, any Lender, any Issuing Bank or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or (ix) on a confidential basis to (x) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facility provided hereunder or (y) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the credit facility provided hereunder.

For purposes of this Section 9.13(b), "Information" means all information received from or on behalf of the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses or any Portfolio Investment, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Bank on a nonconfidential basis prior to disclosure by the Borrower or any of its Subsidiaries; provided that, in the case of Information received from the Borrower or any of its Subsidiaries after the Effective Date, such Information shall be deemed confidential at the time unless clearly identified as nonconfidential. Any Person required to maintain the confidentiality of Information as provided in this Section 9.13(b) 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.



SECTION 9.14. USA PATRIOT Act. Each 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)), it is required to obtain, verify and record information that identifies the Borrower, each other Obligor and each beneficiary of a Letter of Credit, which information includes the name and address of the Borrower, each other Obligor and each beneficiary of a Letter of Credit and other information that will allow such Lender to identify the Borrower, each other Obligor and each beneficiary of a Letter of Credit in accordance with said Act.

SECTION 9.15. Lender Information Reporting. The Administrative Agent shall use commercially reasonable efforts to deliver to the Borrower not later than one Business Day after the last day of each calendar month, a notice summarizing in reasonable detail the amount of interest, fees and (if any) other expenses under this Agreement or the other Loan Documents accrued for the month then ended (and noting amounts paid/unpaid); provided that, the failure of the Administrative Agent to deliver this report shall not excuse the Borrower from paying interest, fees and (if any) other expenses in accordance with the terms of this Agreement or the other Loan Documents.

SECTION 9.16. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Solely to the extent any Lender 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 Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

SECTION 9.17. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the later of the date such Person became a Lender party hereto and the Effective Date, to, and (y) covenants, from such date to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Lead Arranger, and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Obligor, 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 or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE84-14 (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), PTE91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of 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 PTE84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender with respect to the Loan Documents.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the later of the date such Person became a Lender party hereto and the Effective Date, to, and (y) covenants, from such date to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Lead Arranger, and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Obligor, that:

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(i) none of the Administrative Agent, the Lead Arranger, or any of their respective Affiliates is 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 Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any other Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Secured Obligations (as defined in the Guarantee and Security Agreement)),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent, the Lead Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

(c) The Administrative Agent and the Lead Arranger hereby inform 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 Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit 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 other 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.

SECTION 9.18. Acknowledgement Regarding Any Supported QFCs To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedging Agreements or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties hereto 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 hereto 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 9.18, the following terms have the following meanings:

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

(ii) “Covered Entity” means any of the following:

(A) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(B) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(C) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

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

(iv) "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).

SECTION 9.19. Termination. Promptly following the later of the termination of the Commitments and the date on which all Obligations (other than unasserted contingent indemnities and similar obligations that survive the termination thereof) have been paid in full in cash and the Termination Date, the Administrative Agent shall direct the Collateral Agent to, on behalf of the Administrative Agent, the Collateral Agent and the Lenders, deliver to the Borrower such termination statements and releases and other documents necessary or appropriate to evidence the release of the Borrower from this Agreement, the other Loan Documents to which the Borrower is a party and each of the documents securing the Obligations as the Borrower may reasonably request, all at the sole cost and expense of the Borrower.

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

HERCULES CAPITAL, INC.

By:

Name: Seth H. Meyer  
Title: Chief Financial Officer

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SUMITOMO MITSUI BANKING  
CORPORATION, as Administrative Agent, an  
Issuing Bank and a Lender

By:

Name: Shane Klein

Title: Managing Director

**SECOND AMENDMENT**  
**TO**  
**LOAN AND SECURITY AGREEMENT**

This **SECOND AMENDMENT TO LOAN AND SECURITY AGREEMENT** (this "Amendment") is entered into as of June 10, 2022, by and among **HERCULES FUNDING IV LLC**, a Delaware limited liability company ("Borrower"), the lenders identified on the signature page hereof (such lenders, together with their respective successors and assigns, are referred to hereinafter each individually as a "Lender" and collectively as the "Lenders"), **GOLDMAN SACHS BANK USA**, as a Lender and a Joint Lead Arranger, **CITY NATIONAL BANK**, as a Lender and a Joint Lead Arranger, **UMPQUA BANK**, as a Lender and a Joint Lead Arranger, and **MUFG BANK, LTD.** (as successor to MUFG UNION BANK, N.A., in accordance with the Agency Assignment Agreement (as defined herein), "MUFG"), as the administrative agent for the Lenders, as a Lender, the Swingline Lender, a Joint Lead Arranger and the Sole Bookrunner, with reference to the following facts, which shall be construed as part of this Amendment:

**RECITALS**

A. Borrower, Lenders and MUFG Union Bank, N.A. ("MUFG Union"), as administrative agent for the Lenders, have entered into that certain Loan and Security Agreement, dated as of February 20, 2020 (as amended by that certain First Amendment to Loan and Security Agreement, dated as of June 18, 2021, among the Borrower, MUFG Union Bank, N.A. and the Lenders party thereto, and as further amended, restated, supplemented, replaced, renewed or otherwise modified from time to time, the "Existing Loan Agreement", as amended by this Amendment, the "Loan Agreement"), pursuant to which Lenders and Agent are providing financial accommodations to or for the benefit of Borrower upon the terms and conditions contained therein.

B. Pursuant to that certain Agency Resignation, Appointment, Assumption and Waiver Agreement, dated as of the date hereof (the "Agency Assignment Agreement"), among MUFG Union, in its capacity as Agent under the Existing Loan Agreement (in such capacity, "Resigning Agent"), and MUFG, in its capacity as Successor Agent (in such capacity, "Successor Agent"), Borrower and Lenders, the Resigning Agent has resigned as Agent under the Loan Agreement and the Successor Agent has been appointed by the Required Lenders as Agent under the Loan Agreement (in such capacity, "Agent").

C. Borrower has requested that Lenders and Agent agree to amend certain provisions of the Loan Agreement, subject to the terms and conditions set forth herein.

D. Lenders and Agent are willing to amend certain provisions of the Loan Agreement, subject to the terms and conditions set forth herein.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the continued performance by Borrower of its promises and obligations under the Loan Agreement and the other Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Lenders and Agent hereby agree as follows:



**SECTION 1. Defined Terms.** Unless otherwise defined herein, capitalized terms or matters of construction defined or established in the Loan Agreement shall be applied herein as defined or established therein.

**SECTION 2. Amendments to Loan Agreement.** As of the date hereof, the Existing Loan Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in Annex A attached hereto.

**SECTION 3. Conditions Precedent.** Notwithstanding any other provision of this Amendment, this Amendment shall be of no force or effect, and Lenders and Agent shall not have any obligations hereunder, unless and until each of the following conditions have been satisfied:

(a) Each of Borrower, Lenders, and Agent shall have executed and delivered to Agent this Amendment and such other documents (including legal opinions) as Agent may reasonably request; and

(b) All legal matters incidental to the transactions contemplated hereby shall be completed in a manner reasonably satisfactory to counsel for Agent.

**SECTION 4. Representations and Warranties Regarding Loan Agreement.** Borrower hereby represents and warrants to the Lenders and Agent as of the date hereof that:

(a) the representations and warranties contained in the Loan Agreement and the other outstanding Loan Documents are true and correct in all material respects at and as of the date hereof as though made on and as of the date hereof, except (i) to the extent that any representations and warranties are qualified by materiality, in which case, such representations or warranties shall be true and correct in all respects, (ii) to the extent specifically made with regard to a particular date, and (iii) for such changes as are a result of any act or omission specifically permitted under the Loan Agreement (or under any Loan Document), or as otherwise specifically permitted by the Lender Group;

(b) as of the date hereof and after giving effect to this Amendment, no Default or Event of Default will have occurred and be continuing;

(c) the execution, delivery and performance of this Amendment have been duly authorized by all necessary action on the part of, and duly executed and delivered by Borrower, and this Amendment is a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as the enforcement thereof may be subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and general principles of equity (regardless of whether such enforcement is sought in a proceeding in equity or at law); and

(d) the execution, delivery and performance of this Amendment do not conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material contractual obligation of Borrower.

**SECTION 5. Execution in Counterparts.** This Amendment may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

**SECTION 6. Costs and Expenses.** Borrower hereby affirms its obligation under the Loan Agreement to reimburse Agent for all Lender Group Expenses paid or incurred by Agent in connection with the preparation, negotiation, execution and delivery of this Amendment, including but not limited to the attorneys' fees and expenses of attorneys for Agent with respect thereto, in each case in accordance with Section 17.8 of the Loan Agreement.

**SECTION 7. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUCTED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE INTERNAL CONFLICTS OF LAWS PROVISIONS THEREOF.**

**SECTION 8. Effect of Amendment; Reaffirmation of Loan Documents.**

(a) The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Loan Agreement and the other Loan Documents, and, except as expressly modified and superseded by this Amendment, the terms and provisions of the Loan Agreement and the other Loan Documents are ratified and confirmed and shall continue in full force and effect. Borrower, Agent, and Lenders agree that the Loan Agreement and the other Loan Documents, as amended hereby, shall continue to be legal, valid, binding and enforceable in accordance with their respective terms. Upon the effectiveness of this Amendment, each reference in the Loan Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of similar import shall mean and be a reference to the Loan Agreement as amended hereby.

(b) Borrower confirms that all of its obligations under the Loan Documents (as amended by this Amendment) are in full force and effect and are performable in accordance with their respective terms without setoff, defense, counter-claim or claims in recoupment. Borrower further confirms that the term "Obligations", as used in the Loan Agreement, shall include all Obligations of Borrower under the Loan Agreement, and each other Loan Document.

(c) Execution of this Amendment by the Lenders and Agent (i) shall not constitute a waiver of any Default or Event of Default that may currently exist or hereafter arise under the Loan Agreement, (ii) shall not impair, restrict or limit any right or remedy of the Lenders or Agent with respect to any Default or Event of Default that may now exist or hereafter arise under the Loan Agreement or any of the other Loan Documents, and (iii) shall not constitute any course of dealing or other basis for altering any obligation of the Borrower or any right, privilege or remedy of the Lenders and Agent under the Loan Agreement or any of the other Loan Documents.

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**SECTION 9. Headings.** Section headings in this Amendment are included herein for convenience of any reference only and shall not constitute a part of this Amendment for any other purposes.

*[Remainder of page intentionally left blank with signature pages immediately to follow]*

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Loan Agreement as of the day and year first above written.

**BORROWER:**

**HERCULES FUNDING IV LLC,**  
a Delaware limited liability company, as Borrower

By /s/ Seth H. Meyer

Name: Seth H. Meyer

Title: Chief Financial Officer

*[Hercules Funding IV LLC - Signature Page to  
Second Amendment to Loan and Security Agreement]*

---

**MUFG BANK, LTD.,**  
as Agent, Lender, Swingline Lender,  
Joint Lead Arranger and Sole Bookrunner

By /s/ Jeffrey Knowles  
Name: Jeffrey Knowles  
Title: Managing Director

*[Hercules Funding IV LLC - Signature Page to  
Second Amendment to Loan and Security Agreement]*

---

**MUFG UNION BANK, N.A.,**  
as the Resigning Agent

By /s/ Jeffrey Knowles  
Name: Jeffrey Knowles  
Title: Managing Director

*[Hercules Funding IV LLC - Signature Page to  
Second Amendment to Loan and Security Agreement]*

---

**GOLDMAN SACHS BANK USA,**  
as a Lender and a Joint Lead Arranger

By /s/ Ananda DeRoche  
Name: Ananda DeRoche  
Title: Authorized Signatory

*[Hercules Funding IV LLC - Signature Page to  
Second Amendment to Loan and Security Agreement]*

---

**UMPQUA BANK,**  
as a Lender and a Joint Lead Arranger

By /s/ Michael McCutchin  
Name: Michael McCutchin  
Title: Senior Vice President

*[Hercules Funding IV LLC - Signature Page to  
Second Amendment to Loan and Security Agreement]*



---

**CITY NATIONAL BANK, A NATIONAL BANKING  
ASSOCIATION,**

as a Lender and a Joint Lead Arranger

By /s/ Alan Jepsen

Name: Alan Jepsen

Title: Senior Vice President

*[Hercules Funding IV LLC - Signature Page to  
Second Amendment to Loan and Security Agreement]*

---

**ROYAL BANK OF CANADA,**  
as a Lender

By /s/ Alex Figueroa  
Name: Alex Figueroa  
Title: Authorized Signatory

*[Hercules Funding IV LLC - Signature Page to  
Second Amendment to Loan and Security Agreement]*

---

**TIAA, FSB,**  
as a Lender

By /s/ Ed McGugan

Name: Ed McGugan

Title: Managing Director

*[Hercules Funding IV LLC - Signature Page to  
Second Amendment to Loan and Security Agreement]*

---

**HSBC BANK USA, N.A.,**  
as a Lender

By /s/ Yi-Chien Leng  
Name: Yi-Chien Leng  
Title: Vice President

*[Hercules Funding IV LLC - Signature Page to  
Second Amendment to Loan and Security Agreement]*

---

**ZIONS BANCORPORATION, N.A.,**  
**dba California Bank Trust,**  
as a Lender

By /s/ Melissa Chang  
Name: Melissa Chang  
Title: Senior Vice President

*[Hercules Funding IV LLC - Signature Page to  
Second Amendment to Loan and Security Agreement]*

---

**MITSUBISHI HC CAPITAL AMERICA, INC.,**  
as a Lender

By /s/ James M. Giaimo

Name: James M. Giaimo

Title: Chief Credit Officer - Commercial Finance

*[Hercules Funding IV LLC - Signature Page to  
Second Amendment to Loan and Security Agreement]*

---

**FIRST-CITIZENS BANK & TRUST COMPANY**  
**(successor by merger to CIT Bank, N.A.),**  
as a Lender

By /s/ Robert L. Klein  
Name: Robert L. Klein  
Title: Managing Director

*[Hercules Funding IV LLC - Signature Page to  
Second Amendment to Loan and Security Agreement]*

---

ANNEX A

LOAN AND SECURITY AGREEMENT



---

**LOAN AND SECURITY AGREEMENT**

by and among

**HERCULES FUNDING IV LLC**

as Borrower,

**THE LENDERS THAT ARE SIGNATORIES HERETO**

as Lenders,

and

**MUFG ~~UNION~~BANK, N.A.LTD.**

as the Administrative Agent, a Lender, Swingline Lender, Joint Lead Arranger and Sole Bookrunner

and

**The Joint Lead Arrangers Party Hereto**

**Dated as of February 20, 2020**

[As amended by that certain First Amendment to Loan and Security Agreement, dated as of June 18, 2021 and that certain Second Amendment to Loan and Security Agreement, dated June 10, 2022.](#)

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Exhibit C-1	Form of Compliance Certificate
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## LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this “Agreement”), is entered into as of February 20, 2020, between and among, on the one hand, the lenders identified on the signature pages hereof (such lenders, together with their respective successors and assigns, and such other lenders as may become a party hereto in accordance with the terms hereof, are referred to hereinafter each individually as a “Lender” and collectively as the “Lenders”), ~~MUFG UNION BANK, N.A. LTD.~~, as the administrative agent for Lenders (as successor to MUFG UNION BANK, N.A., in accordance with the Agency Assignment Agreement (as defined herein)), in such capacity, together with its successors and assigns in such capacity, “Agent”), as Swingline Lender (as defined below), as Joint Lead Arranger and as Sole Bookrunner, and, on the other hand, **HERCULES FUNDING IV LLC**, a Delaware limited liability company (“Borrower”). CNB, Goldman and Umpqua (each as defined below) have each been given the titles of Joint Lead Arranger.

### RECITALS

Borrower has requested that Lenders and Swingline Lender extend to it credit on the terms and subject to the conditions set forth herein, and Lenders and Swingline Lender are prepared to extend such credit on the terms and conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower, Lenders, Swingline Lender and Agent hereby agree as follows:

#### 1. DEFINITIONS AND CONSTRUCTION.

**1.1 Definitions.** As used in this Agreement, the following terms shall have the following definitions:

“ABR” means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus one-half of one percent (0.50%), and (c) Term SOFR for a three-month tenor in effect on such day plus one percent (1.00%) (and, if such highest rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero). Any change in the ABR due to a change in the Prime Rate, the Federal Funds Rate, or Term SOFR, as applicable, shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or Term SOFR, respectively.

“ABR Loan” means each portion of an Advance that bears interest at a rate determined by reference to the ABR.

“ABR Margin” means one and one-half of one percent (1.50%), provided that the ABR Margin shall be increased by one-half of one percent (0.5%) during the Amortization Period.

“ABR Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR”.

“Accession Agreement” means an agreement in substantially the form set forth hereto as Exhibit D-1.

“Account” means an account (as that term is defined in the Code).

“Account Debtor” means any Person who is obligated under, with respect to, or on account of, an Account, chattel paper or a General Intangible, or is a debtor under, or a maker of, a Note Receivable.

“Additional Documents” has the meaning set forth in Section 4.4(c).

~~“Adjusted Daily Reset LIBOR Rate” means, for any date, the rate per annum determined by Agent by dividing (a) the Daily Reset LIBOR Rate for such date, by (b) 100% minus the Reserve Percentage. In no case shall the Adjusted Daily Reset LIBOR Rate be less than 0%.~~

“Advances” means loans by Lenders to Borrower under Article II in the form of Revolving Advances or Swingline Loans.

“Affiliate” means, as applied to any Person, any other Person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person; provided that a Person shall not be deemed to be an “Affiliate” of an Account Debtor solely because it is under the common ownership or control of the same financial sponsor or affiliate thereof as such Account Debtor or Persons under common control in different industries and whose assets do not cross-collateralize different Notes Receivable. For purposes of this definition, “control” means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, in any event: (a) any Person which owns directly or indirectly 20% or more of the Stock having ordinary voting power for the election of directors or other members of the governing body of a Person or 20% or more of the partnership, membership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed to control such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership or joint venture in which a Person is a partner or joint venturer shall be deemed to be an Affiliate of such Person. Notwithstanding anything herein to the contrary, (i) an obligor will not be considered an “Affiliate” of any other obligor solely due to the fact that each such obligor is under the control of the same financial or venture capital sponsor; and (ii) the term “Affiliate” shall not include any Person that is an Account Debtor in respect of a Note Receivable.

“Affiliated Account Debtors” means, as of any date of determination, all Account Debtors as of such date that are Affiliates of one another.

“Affiliated Notes Receivable” means, as of any date of determination with respect to any particular group of Affiliated Account Debtors, all Notes Receivable owed by such Affiliated Account Debtors as of such date.

“Agency Assignment Agreement” means that certain Agency Resignation, Appointment, Assumption and Waiver Agreement, dated as of the Second Amendment Effective Date, among MUFG Union Bank, N.A., in its capacity as Resigning Agent (as defined therein) and MUFG, in its capacity as Successor Agent (as defined therein) pursuant to which the Resigning Agent resigned as agent under this Agreement and MUFG has been appointed as its successor.

“Agent” means MUFG, solely in its capacity as agent for Lenders hereunder, and any successor thereto.

“Agent Advances” has the meaning set forth in Section 2.3(c)(i).

“Agent-Related Persons” means Agent together with its Affiliates, officers, directors, employees, and agents.

“Agent’s Account” means an account at a bank designated by Agent from time to time as the account into which Borrower shall make all payments to Agent for the benefit of the Lender Group and into which the Lender Group shall make all payments to Agent under this Agreement and the other Loan Documents; unless and until Agent notifies Borrower and the Lender Group to the contrary, Agent’s Account shall be that certain deposit account bearing account number 770701964319777-0191 and maintained by Agent with MUFG ~~Union Bank, N.A., 1980 Saturn Street, Monterey Park, CA 91754-7417, ABA No. 122000496~~ Ltd., 1221 Avenue of the Americas, 6th Floor, New York, NY 10020, ABA No. 026-009-632, SWIFT ID: BOTKUS33, Account Name: Loan Operations Department, Reference: Hercules Capital, Inc.

“Agent’s Liens” means the Liens granted by Borrower to Agent for the benefit of the Lender Group under this Agreement or the other Loan Documents.

“Agreement” has the meaning set forth in the preamble hereto.

“Amortization Commencement Date” means the day immediately following the end of the Revolving Credit Availability Period.

“Amortization Commencement Date Principal Balance” means the aggregate outstanding principal balance of Advances as of the Amortization Commencement Date.

“Amortization Period” means the period commencing on the Amortization Commencement Date and ending on the earlier of (a) payment in full of the Obligations, and (b) the Maturity Date.

“Approved Foreign Jurisdiction” means any of the following jurisdictions: Israel, Canada, Mexico, Cayman Islands, China (including, for the avoidance of doubt, Hong Kong), Japan, Singapore, Republic of Ireland, the United Kingdom, member states of the European Union (excluding Greece and Cypress), New Zealand, Australia, Sweden, India, British Virgin Islands, Bahamas, Bermuda, Mauritius and such other jurisdictions as the Required Lenders may agree to from time to time in their sole discretion.

“Approved Third-Party Appraiser” means any independent nationally recognized third-party appraisal firm (a) designated by the Borrower in writing to the Agent and (b) reasonably acceptable to the Agent. It is understood and agreed that Houlihan Lokey, Duff & Phelps LLC, Lincoln Partners Advisors, LLC and Valuation Research Corporation are acceptable to the Agent.

“Assignee” has the meaning set forth in Section 14.1(a).

“Assignment and Acceptance” means an Assignment and Acceptance substantially in the form of Exhibit A-1.

“Assignment of Note” means an Assignment of Note in the form attached to the Collateral Custodian Agreement.

“Authorized Person” means any individual then serving as the Chief Executive Officer, Chief Financial Officer, Controller, General Counsel, Secretary, Treasurer and/or Assistant Controller of Borrower or HCI, as applicable; provided, that for purposes of this Agreement, no individual who is not then an Authorized Person shall become an Authorized Person, unless and until Agent has received written notice of such change from Borrower or HCI, as applicable.

“Availability” means, as of any date of determination, the amount that Borrower is entitled to borrow as Advances under Section 2.1 (after giving effect to all then outstanding Obligations (other than Bank Product Obligations) and all sublimits and reserves then applicable hereunder).

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.20(d).

“Average Unused Line Amount” has the meaning set forth in Section 2.13(a)(i).

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

“Bail-In Legislation” means, 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 for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bank Product” means (i) any one or more Cash Management Services and (ii) Hedge Agreements, in each case extended to Borrower by a Bank Product Provider.

“Bank Product Agreements” means those agreements entered into from time to time by Borrower with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

“Bank Product Collateralization” means providing cash collateral (pursuant to documentation reasonably satisfactory to Agent) to be held by Agent for the benefit of the Bank Product Providers in an amount determined by Agent as sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Product Obligations.

“Bank Product Obligations” means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by Borrower to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising and (b) all amounts that Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to Borrower.

“Bank Product Provider” means MUFG, any other Lender or any of their respective Affiliates that has agreed to provide Bank Products to Borrower.

“Bank Product Reserve Amount” means, as of any date of determination, the Dollar amount of reserves that Agent has reasonably determined it is necessary or appropriate to establish (based upon the Bank Product Providers’ reasonable determination of their credit exposure to Borrower in respect of Bank Product Obligations) in respect of Bank Products then provided or outstanding.

“Bankruptcy Code” means title 11 of the United States Code, as in effect from time to time.

~~“Base LIBOR Rate” means, for any Interest Period, the rate determined by Agent to be the per annum rate (rounded upward to the nearest one-hundredth of one percent (1/100%)) at which Dollar deposits in immediately available funds and in lawful money of the United States would be offered to Agent, on behalf of Lenders, outside of the United States at approximately 11:00 a.m. (LIBOR time) three (3) Business Days before the first day of such Interest Period, in an amount approximately equal to the principal amount of, and for a length of time approximately equal to the Interest Period for, the LIBOR Rate Loan sought by Borrower.~~

~~“Base Rate” means, for any day, the variable per annum rate of interest equal to the greatest of (a) the Federal Funds Rate for such day plus one-half of one percent (0.50%), (b) the Daily Reset LIBOR Rate plus one percent (1.00%), and (c) the rate of interest announced, from time to time, by Agent as its “prime rate”, with the understanding that the “prime rate” is one of Agent’s base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Agent may designate (and if any such announced rate is below zero, then the rate determined pursuant to this clause (c) shall be deemed to be zero).~~

~~“Base Rate Loan” means each portion of an Advance that bears interest at a rate determined by reference to the Base Rate.~~

~~“Base Rate Margin” means one and one-half of one percent (1.50%), provided that the Base Rate Margin shall be increased by one-half of one percent (0.5%) during the Amortization Period.~~

“Benchmark” means, initially, Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.20(a).

“Benchmark Replacement” means with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by the Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement

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

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative or non-compliant with or non-aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; provided that such non-representativeness, non-compliance or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to the then-current Benchmark, the occurrence of one or more of the following events with respect to such Benchmark:

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

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

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

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

“Benchmark Transition Start Date” means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.20 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.20.

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“**Benefit Plan**” means a “defined benefit plan” (as defined in Section 3(35) of ERISA) that is subject to Title IV of ERISA for which Borrower or any ERISA Affiliate of Borrower has been an “employer” (as defined in Section 3(5) of ERISA) within the past six years.

“**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.

“**Board of Directors**” means the board of directors (or comparable managers or managing members) of a Person or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers or managing members).

“**Books**” means all of Borrower’s now owned or hereafter acquired books and records (including all of their Records indicating, summarizing, or evidencing their assets (including the Collateral) or liabilities, all of Borrower’s Records relating to their business operations or financial condition, and all of their goods or General Intangibles related to such information).

“**Borrower**” has the meaning set forth in the preamble to this Agreement.

“**Borrower Accounts**” means, collectively, the Collection Account and the Custodial Account.

“**Borrower Collateral**” means all of Borrower’s now owned or hereafter acquired right, title, and interest in and to all property, including, without limitation, each of the following (in each case excluding the Retained Interest and Excluded Amounts):

- (a) all of its Accounts,
- (b) all of its Books and Documents,
- (c) all of its commercial tort claims,
- (d) all of its Deposit Accounts,
- (e) all of its Equipment,
- (f) all of its General Intangibles,
- (g) all of its Inventory,
- (h) all of its Investment Property (including all of its securities, Securities Accounts and if applicable, Permitted Investments),
- (i) all of its Negotiable Collateral, including all of its Notes Receivable,
- (j) all of its Supporting Obligations,



(k) money of Borrower,

(l) other personal property assets of Borrower,

(m) any other Goods not listed in the foregoing, and

(n) the proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any or all of the foregoing, and any and all Accounts, Books and Documents, commercial tort claims, Deposit Accounts, Equipment, General Intangibles, Inventory, Investment Property, Negotiable Collateral, Real Property, Supporting Obligations, money, other Goods or other tangible or intangible property resulting from the sale, exchange, collection, or other disposition of any of the foregoing, or any portion thereof or interest therein, and the proceeds thereof.

“Borrower’s Required Procedures” means the “Credit and Collection Policy” as defined in the Sale and Servicing Agreement, specifically including underwriting, valuation, auditing and documentation guidelines, and portfolio management policies and procedures, in the form delivered to Agent and Required Lenders and approved by Required Lenders on or prior to the Closing Date, as amended from time to time in accordance with the Sale and Servicing Agreement subject to Required Lenders’ consent.

“Borrowing” means a borrowing hereunder consisting of Revolving Advances or Swingline Loans (as the context may require) made on the same day by Lenders (or Agent on behalf thereof), or by Agent in the case of an Agent Advance.

“Borrowing Base” means, as of any date of determination:

(a) if, as of such date, the number of Eligible Account Debtors with respect to Notes Receivable comprising the Net Eligible Balance is greater than or equal to twenty-five (25), sixty-five percent (65%) of the Net Eligible Balance as of such date;

(b) if, as of such date, the number of Eligible Account Debtors with respect to Notes Receivable comprising the Net Eligible Balance is greater than or equal to (13), but less than twenty-five (25), sixty percent (60%) of the Net Eligible Balance as of such date; or

(c) on any other date, fifty-five percent (55%) of the Net Eligible Balance as of such date,

in each case, *minus* the sum of, without duplication, (i) the Bank Product Reserve at such date and (ii) the aggregate amount of any Permitted Refunds as of such date.

“Borrowing Base Certificate” means a certificate in the form of Exhibit B-1, duly executed and certified by the treasurer or chief financial officer of Borrower (and, if the treasurer or chief financial officer of Borrower, as applicable, is not the same Person as the treasurer or chief financial officer, as applicable, of HCI, the treasurer or chief financial officer, as applicable, of HCI) and delivered by Borrower to Agent.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the State of California or the State in which the principal office of Agent is located except that if a determination of a Business Day shall relate to a ~~LIBOR-Rate~~SOFR Loan, the term “Business Day” also shall exclude any day on which banks are closed for dealings in Dollar deposits in the London interbank market.

“Capital Lease” means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

“Cash Equivalents” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 1 year from the date of acquisition thereof, (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor’s Rating Group (“S&P”) or Moody’s Investors Service, Inc. (“Moody’s”), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody’s, (d) certificates of deposit or bankers’ acceptances maturing within 1 year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof having at the date of acquisition thereof combined capital and surplus of not less than \$250,000,000, (e) demand Deposit Accounts maintained with any bank organized under the laws of the United States or any state thereof so long as the amount maintained with any individual bank is less than or equal to \$250,000 and is insured by the Federal Deposit Insurance Corporation, and (f) Investments in money market funds or mutual funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (e) above.

“Cash Management Services” means any cash management or related services, including treasury, depository, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

“Change in Law” means the occurrence after the Closing Date of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, or (c) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Change of Control” means any of the following: (a) HCI ceases to directly or indirectly (through a wholly owned limited purpose holding company) own and control 100% of the outstanding capital Stock of Borrower; (b) HCI or parties designated or appointed by HCI cease to be the only Manager(s) of Borrower; (c) any Person or two or more Persons acting in concert shall have acquired beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under the Exchange Act) of twenty percent (20%) or more of the issued and outstanding shares of capital Stock of HCI having the right to vote for the election of directors of HCI under ordinary circumstances; or (d) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the board of directors of HCI (together with any new directors whose election to the board of directors of HCI or whose nomination for election by the stockholders of HCI was approved by a vote of at least a majority of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office.

“CNB” means City National Bank, a National Banking Association.

“Closing Certificates” means certificates from an Authorized Person of Borrower and an Authorized Person of HCI, in each case (i) attesting to the resolutions of such Person’s Board of Directors authorizing its execution, delivery, and performance of this Agreement and the other Loan Documents to which such Person is a party, (ii) authorizing specific officers of such Person to execute the same, (iii) attesting to the incumbency and signatures of such specific officers of such Person, and (iv) addressing such other factual matters in connection with the Agreement and the other Loan Documents as may reasonably be required by Agent.

“Closing Date” means the date of this Agreement.

“Code” means the New York Uniform Commercial Code, as in effect from time to time; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, priority, or remedies with respect to Agent’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies.

“Collateral” means the Borrower Collateral and all other assets and interests in assets and proceeds thereof now owned or hereafter acquired by Borrower in or upon which a Lien is granted under any of the Loan Documents.

“Collateral Custodian” means the “Pledgeholder” as defined in the Collateral Custodian Agreement, or any other collateral custodian as approved by Agent and that is qualified to serve as collateral custodian for purposes of the Investment Advisers Act of 1940.

“Collateral Custodian Agreement” means (i) that certain Possessory Collateral Agreement, dated as of the Closing Date, by and among Borrower, Agent and the “Pledgeholder” (as defined therein), as amended, modified, supplemented or restated from time to time or (ii) any other replacement “custody agreement” as reasonably approved by Agent from time to time.

“Collateral Custodian Fees” means any fees payable to Collateral Custodian in accordance with the Collateral Custodian Agreement.

“Collateral Loan Checklist” has the meaning set forth in the Collateral Custodian Agreement.

“Collection Account” means the Deposit Account of Borrower maintained with either MUFG Union Bank, N.A. or MUFG that MUFG and Borrower have designated as the “Collection Account” for purposes of this Agreement.

“Collections” means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds) of Borrower.

“Commercial Tort Claim Assignment” has the meaning set forth in Section 4.4(b).

“Commitment” means, with respect to each Lender, the aggregate commitment of such Lender to make Revolving Advances and, with respect to all Lenders, the aggregate commitments of all Lenders to make Revolving Advances, in each case as such Dollar amounts are set forth beside such Lender’s name under the applicable heading on Schedule C-1 (as amended from time to time in accordance with the terms hereof) or on the signature page of the Assignment and Acceptance pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 14.1.

“Competitor” means (i) any Person that has been identified by HCI or the Borrower in writing to the Agent on or prior to the Closing Date; (ii) any Person that is identified by HCI or the Borrower in writing to the Agent with the consent of the Agent (not to be unreasonably withheld, conditioned or delayed) after the Closing Date; and (iii) Affiliates of any Person identified in clauses (i) or (ii) above that are either identified by HCI or the Borrower in writing to the Agent from time to time or readily identifiable solely based on similarity of such Affiliate’s name.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C-1, duly executed and delivered by the chief financial officer or the treasurer of HCI and delivered by Borrower to Agent.

“Conforming Changes” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR” (if applicable), the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.8(b) and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Control Agreement” means a control agreement, in form and substance satisfactory to Agent, executed and delivered by Borrower, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

“Control Position Loan” means any Note Receivable with respect to which HCI and/or one or more of its Affiliates either (i) individually or collectively hold greater than 50% of the voting interests with regard to such Note Receivable and related loan documents, (ii) hold a minority blocking interest such that decisions with regard to such Note Receivable under the related loan documents regarding material consents, amendments, waivers or approvals require HCI’s and/or its Affiliates’ vote, or (iii) hold rights to determine, direct and/or implement enforcement action in respect thereof.

“Cure Amount” has the meaning set forth in [Section 8.2\(a\)](#).

“Cure Right” has the meaning set forth in [Section 8.2\(a\)](#).

“Custodial Account” means the Deposit Account of Borrower that MUFG and Borrower have designated as the “Custodial Account” for purposes of this Agreement, which account shall be subject to a Control Agreement.

“Custody Agreement” means (i) the Safekeeping Custody Agreement, dated as of June 18, 2021, by and between CNB, as custodian, and Borrower, as amended, modified, supplemented, or restated from time to time, or (ii) any other replacement “custody agreement” as approved by Agent from time to time.

“Covered Entity” means any of the following:

[\(a\) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82\(b\)](#)

[\(b\) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3\(b\); or](#)

[\(c\) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2\(b\).](#)

“Daily Balance” means, with respect to each day during the term of this Agreement, the aggregate outstanding amount of all Advances or Obligations, as the context requires, at the end of such day.

~~“Daily Reset LIBOR Rate” means, for any date, the rate determined by Agent to be the per annum rate (rounded upward to the nearest one-hundredth of one percent (1/100%)) at which Dollar deposits in immediately available funds and in lawful money of the United States would be offered to Agent, on behalf of Lenders, outside of the United States at approximately 11:00 a.m. (LIBOR time) on such date, for a one-month period.~~

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

“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.

“Default” means an event or condition that, but for the giving of notice or the passage of time, or both, would constitute an Event of Default.

“Defaulted Note Receivable” means any Note Receivable with respect to which (a) any payment owing thereunder remains outstanding and unpaid, in whole or in part, for more than ninety (90) days past the date it became due and payable according to the original face and tenor of such Note Receivable, (b) with respect to which foreclosure proceedings have been initiated against any property securing such Note Receivable, or (c) that Borrower deems to be non-collectible.

“Defaulting Lender” means any Lender that (a) has failed to (i) fund any amounts required to be funded by it under this Agreement within one (1) Business Day of the date that it is required to do so under this Agreement unless such Lender notifies Agent and Borrower in writing that such failure to fund any Advance is the result of such Lender’s good faith determination that one or more conditions precedent to such 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 Agent, Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Swingline Loans) within two Business Days of the date when due, (b) notified Borrower, Agent, Swingline Lender or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under this Agreement (unless such writing relates to such Lender’s obligation to fund an Advance hereunder and states that such position is based on such Lender’s good faith 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 made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements generally (as reasonably determined by Agent) under which it has committed to extend credit (unless such public statement relates to such Lender’s obligation to fund an Advance hereunder and states that such position is based on such Lender’s good faith 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), (d) failed, within three (3) Business Days after written request by Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund any amounts required to be funded by it under this Agreement, (e) otherwise failed to pay over to Agent or any other Lender any other amount required to be paid by it under this Agreement within one (1) Business Day of the date that it is required to do so under this Agreement, (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent or (ii) becomes

the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian or appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment, or (g) such Lender (or any Affiliate thereof) becomes subject to 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.

“Defaulting Lender Rate” means the interest rate applicable to Advances that are Base Rate ABR Loans (inclusive of the Base Rate ABR Margin applicable thereto).

“Delinquent Note Receivable” means any Note Receivable with respect to which any payment owing thereunder remains outstanding and unpaid, in whole or in part, for more than seven (7) days past the date it first became due and payable according to the original face and tenor of such Note Receivable at a time when no default or event of default exists under such Note Receivable.

“Deposit Account” means any deposit account (as that term is defined in the Code).

“Disbursement Letter” means an instructional letter executed and delivered by Borrower to Agent regarding the extensions of credit to be made on the Closing Date, the form and substance of which is satisfactory to Agent.

“Document” means a Document (as that term is defined in the Code).

“Dollars” or “\$” means United States dollars.

“EBIT” means, with respect to any Person for any fiscal period, such Person’s consolidated net income, minus to the extent included in determining net earnings, extraordinary gains, minus to the extent included in determining net earnings, interest income, plus Interest Expense, plus income taxes, in each case as determined for such Person for such period and in each case not otherwise defined herein as determined in accordance with GAAP.

“EEA Financial Institution” means (a) any institution 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 institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

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

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

“Eligible Note Receivable” means those Notes Receivable that comply with each of the representations and warranties respecting Eligible Notes Receivable made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below. Eligible Notes Receivable shall not include a Note Receivable (unless specifically determined to be an Eligible Note Receivable by Agent following a review thereof on a case-by-case basis) if:

- (a) any portion of such Note Receivable is not owned exclusively by Borrower, free and clear of all Liens other than Permitted Liens;
- (b) such Note Receivable covers unfunded commitments to the applicable Account Debtor (with such Note Receivable being ineligible only to the extent of such unfunded commitments being a contractual obligation of the Borrower);
- (c) such Note Receivable does not represent a valid and binding obligation enforceable in accordance with its terms for the amount outstanding thereof;
- (d) [reserved];
- (e) at the time of its transfer to the Borrower, any default or event of default (however styled, but in any event giving effect to any applicable grace period) is in existence under such Note Receivable or existed under such Note Receivable within the nine (9) month period immediately prior to the time of its transfer to the Borrower;
- (f) any payment under such Note Receivable is more than seven (7) days past due according to its terms;
- (g) if such Note Receivable (i) is a Defaulted Note Receivable or (ii) unless waived by Agent on a case by case basis in its sole discretion, has been at any time in the most recent nine (9) months a Defaulted Note Receivable;
- (h) such Note Receivable is not approved, managed, documented in conformance with (or other documentation reasonably acceptable to Agent) and otherwise in conformance with, or, in each case, not inconsistent with, the investment objectives, policies, restrictions and limitations set forth in Item 1 (“Business”) of HCI’s most recent Form 10-K;
- (i) such Note Receivable has been modified or had its maturity extended in a manner, in each case, that is not in compliance with, or not inconsistent with, the investment objectives, policies, restrictions and limitations set forth in Item 1 (“Business”) of HCI’s most recent Form 10-K;



(j) such Note Receivable has been placed in “non-accrual” status in Borrower’s books;

(k) such Note Receivable is owed by an Account Debtor that has a Credit Rating of 4 or 5 in accordance with Borrower’s Required Procedures then in effect;

(l) Borrower’s Liens to secure payment of such Note Receivable are not perfected first priority (or, solely with respect to a second lien loan, perfected second priority) Liens on substantially all property of the Account Debtor, except for such Permitted Liens or exclusions as are consistent with Borrower’s Required Procedures; provided, that such Note Receivable shall not be ineligible solely by reason of this clause (l) by reason of the existence of a permitted lien (as defined in the applicable underlying document) so long as the maximum committed principal amount of such first lien loan or first out Unitranche Loan senior to the Borrower’s loan does not exceed one hundred one percent (101%) of the maximum committed principal amount of Borrower’s loan to such Account Debtor;

(m) [reserved];

(n) as of the applicable measurement date, such Note Receivable has a remaining term of more than sixty (60) months;

(o) the Account Debtor with respect to such Note Receivable is either (i) the United States federal government or any department, agency or instrumentality of the United States federal government, or (ii) any state of the United States or any department, agency, or instrumentality thereof;

(p) the Account Debtor with respect to such Note Receivable is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which an Authorized Person of Borrower has received notice of an imminent Insolvency Proceeding or a material judgment reasonably expected to adversely impact the financial condition or liabilities of such Account Debtor;

(q) the documentation associated with such Note Receivable does not require the Account Debtor to provide ongoing financial information to Borrower, including financial statements on not less than a quarterly basis (other than the fourth quarter of any fiscal year), annual audited financial statements with an opinion from an independent third-party auditor, annual budgets and ongoing loan monitoring and covenant compliance certificates, in each case, consistent with Borrower’s Required Procedures;

(r) such Note Receivable was originated by a lender other than HCI or any of its Affiliates or a bank, commercial finance company or other institutional lender approved by Agent in its Permitted Discretion, if such Note Receivable is in excess of the concentration limit percentage set forth in clause (j) of the definition of “Excess Concentration Amount”;

(s) such Note Receivable has not been originated in accordance with, or does not comply in all respects with, all applicable federal, state and local laws and regulations, including applicable usury and credit disclosure laws and regulations, in each case, unless such failure to comply would not reasonably be expected to result in a material adverse effect with respect to such Note Receivable;

(t) such Note Receivable does not require current payments of the full amount of cash interest accruing on the full unpaid principal amount thereof on at least a quarterly basis; provided, that notwithstanding this clause (t), Notes Receivable that provide for payment-in-kind or accrual of a portion of such interest may be eligible so long as such payment-in-kind or accruing portion of such interest does not exceed twenty-five percent (25%) of the total interest then due on such Note Receivable;

(u) [reserved];

(v) any of the proceeds of such Note Receivable were or are to be used for personal, family or household purposes;

(w) if (i) Borrower's interest in such Note Receivable represents only a participating interest or (ii) such Note Receivable is otherwise payable to another Person for its own account;

(x) the Account Debtor with respect to such Note Receivable is an Affiliate of Borrower or employee or agent of Borrower or a member, employee or agent of any Affiliate of Borrower, or a member of the family of any of the foregoing (it being understood that no portfolio investment will be deemed an Affiliate);

(y) such Note Receivable is payable other than in Dollars;

(z) the Account Debtor with respect to such Note Receivable is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof;

(aa) the Account Debtor with respect to such Note Receivable is a creditor of Borrower or is otherwise asserting any right to offset, discount (other than in connection with a Permitted Refund), litigation, counterclaim, contra-account, right of rescission or right of cancellation;

(bb) Agent or Collateral Custodian is not then in possession of each of the Required Asset Documents related to such Note Receivable (which, other than with respect to notes or instruments, may be authoritative copies thereof); provided, that, as a result of the syndication, sale, transfer, assignment or exchange of a portion of a Note Receivable, Borrower shall have up to twenty (20) Business Days to return, transfer assign or exchange any promissory note or Required Asset Document with respect to such Note Receivable and deliver new or additional promissory notes or Required Asset Documents to Agent or Collateral Custodian (it being understood that during the time period set forth in this proviso, only the portion of such Note Receivable that has not been syndicated, sold, transferred, assigned or exchanged shall satisfy the criteria specified in this clause (bb));

(cc) such Note Receivable is not subject to a valid and perfected first priority Lien of Agent;

(dd) Agent in its Permitted Discretion deems such Note Receivable or any part thereof uncollectible;

(ee) [reserved];

(ff) such Note Receivable was originated with fraud or material error, omission, misrepresentation, negligence or similar occurrence on the part of any Person;

(gg) other than with respect to an Eligible Split-Funded Note Receivable, such Note Receivable (or any rights thereunder) was sold, transferred or assigned by HCI to any Person other than the Borrower, or any pledge of such Note Receivable (or rights thereunder) to any Person other than the Borrower is in existence;

(hh) such Note Receivable was selected by HCI to be sold to Borrower in accordance with selection procedures designed to be adverse to Agent, Lenders or their interests;

(ii) such Note Receivable is a Split-Funded Note Receivable that is not subject to an intercreditor agreement approved by Agent; or

(jj) any Split-Funded Note Receivable that is not an Eligible Split-Funded Note Receivable.

“Eligible Notes Receivable Balance” means, as of any date of determination, the aggregate outstanding principal amount of all Eligible Notes Receivable as of such date.

“Eligible Split-Funded Note Receivable” means those Split-Funded Notes Receivable that comply with each of the representations and warranties respecting Eligible Notes Receivable made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below or in the definition of “Eligible Notes Receivable”. Eligible Split-Funded Notes Receivable shall not include a Split-Funded Note Receivable (unless specifically determined to be an Eligible Split-Funded Note Receivable by the Agent following a review thereof on a case-by-case basis) if:

(a) (i) such Split-Funded Note Receivable was not originated by a Split-Funded Note Receivable Party or (ii) HCI or Borrower does not serve as the sole administrative agent and collateral agent for such Split-Funded Note Receivable, with sole rights of enforcement thereof;

(b) HCI or the Special Servicer does not serve as the sole “servicer” for such Split-Funded Note Receivable;

(c) the applicable Split-Funded Note Receivable Documents do not prohibit, restrict, or condition the replacement of (i) HCI, as servicer thereof other than (A) by requiring the prior, written consent, or the prior, written direction, of Agent, or (B) pursuant to the applicable Intercreditor Agreement, or (ii) HCI or Borrower as administrative agent and collateral agent thereof, in each case, other than (A) by requiring the prior, written consent, or the prior, written

direction, of Agent and/or the applicable Account Debtor, or (B) pursuant to the applicable Intercreditor Agreement;

(d) (1) the Account Debtor with respect to such Split-Funded Note Receivable is not contractually obligated thereunder to remit all payments on account of such Split-Funded Note Receivable either to the Collection Account or to Servicer for prompt remission to the Collection Account in accordance with Section 2.9 of this Agreement, or (2) any portion of the collections (including, without limitation, the Collections) with respect to such Split-Funded Note Receivable are not paid in accordance with the proceeding clause (1);

(e) any portion of such Split-Funded Note Receivable has been sold to any Person other than a Split-Funded Note Receivable Party;

(f) such Split-Funded Note Receivable is not subject to an Intercreditor Agreement that is in full force and effect as of the applicable date of determination;

(g) such Split-Funded Note Receivable permits or requires the issuance of letters of credit under the underlying loan documents evidencing same;

(h) [reserved];

(i) Agent has not received the notice required pursuant to Section 6.3(j) with respect to such Split-Funded Note Receivable; or

(j) Agent or Collateral Custodian is not then in possession of each of the Split-Funded Note Receivable Documents (as defined in the Intercreditor Agreement) owned by the Borrower, including any related assignment and assumption and loan agreements;

provided, that subject to the limitations set forth in paragraph (n) in the definition of "Excess Concentration Amount," there shall be no more than seven (7) Eligible Split-Funded Note Receivables.

"Eligible Transferee" means (a) a commercial bank organized under the laws of the United States, or any state thereof, and having total assets in excess of \$250,000,000, (b) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development or a political subdivision of any such country and which has total assets in excess of \$250,000,000, provided that such bank is acting through a branch or agency located in the United States, (c) a finance company, insurance company, or other financial institution or fund that is engaged in making, purchasing, or otherwise investing in commercial loans in the ordinary course of its business and having (together with its Affiliates) total assets in excess of \$250,000,000, (d) any Affiliate (other than individuals) of a Lender that was party hereto as of the Closing Date, (e) so long as no Event of Default has occurred and is continuing, any other Person approved by Agent and Borrower (which approval of Borrower shall not be unreasonably withheld, delayed, or conditioned), and (f) during the continuation of an Event of Default, any other Person approved by Agent; provided that (i) in no case shall an Affiliate of Borrower or HCI be an Eligible Transferee hereunder, and (ii) a Competitor shall not be an Eligible Transferee hereunder unless an Event of Default under Sections 8.1(a), (c), (d), (e) or (p) has occurred and is continuing.

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“Environmental Actions” means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials from (a) any assets, properties, or businesses of Borrower or any of its predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by Borrower or any of its predecessors in interest.

“Environmental Law” means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on Borrower, relating to the environment, the effect of the environment on employee health or safety, or Hazardous Materials, including the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 3803 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq. (to the extent it regulates occupational exposure to Hazardous Materials); any state and local or foreign counterparts or equivalents, in each case as amended from time to time.

“Environmental Liabilities and Costs” means all liabilities, monetary obligations, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Actions required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

“Equipment” means all equipment (as that term is defined in the Code), including machinery, machine tools, motors, furniture, furnishings, fixtures, vehicles (including motor vehicles), computer hardware, tools, parts and goods (other than consumer goods, farm products, or Inventory), wherever located, including all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

“ERISA Affiliate” means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of Borrower under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of Borrower under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which Borrower is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any Person subject to ERISA that is a party to an arrangement with Borrower and whose employees are aggregated with the employees of Borrower under IRC Section 414(o).

“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 set forth in Section 8.1.

“Excess Concentration Amount” means, as of any date of determination, the sum of, without duplication:

(a) the aggregate amount by which the outstanding principal balance of all Eligible Notes Receivable of the five (5) largest Affiliated Account Debtors as of such date exceeds fifty percent (50%) of the Eligible Notes Receivable Balance as of such date;

(b) the aggregate amount by which the outstanding principal balance of all Eligible Notes Receivable that are Technology Industry Notes Receivable exceeds sixty percent (60%) of the Eligible Notes Receivable Balance at such time;

(c) the aggregate amount by which the outstanding principal balance of all Eligible Notes Receivable that are Life Sciences Industry Notes Receivable exceeds sixty percent (60%) of the Eligible Notes Receivable Balance at such time;

(d) the aggregate amount by which the outstanding principal balance of all Eligible Notes Receivable that are Healthcare Industry Notes Receivable exceeds sixty percent (60%) of the Eligible Notes Receivable Balance at such time;

(e) the aggregate amount by which the outstanding principal balance of all Eligible Notes Receivable that are Sustainable and Renewable Energy Notes Receivable exceeds fifteen percent (15%) of the Eligible Notes Receivable Balance at such time;

(f) the aggregate amount by which the outstanding principal balance of all Eligible Notes Receivable (other than Technology Industry Notes Receivable, Life Sciences Industry Notes Receivable, Healthcare Industry Notes Receivable or Sustainable and Renewable Energy Notes Receivable) that are owed by Account Debtors whose business activities fall within any single industry, as defined by the Standard Industrial Classification/NAIC classification (six-digit NAIC codes) then in effect, exceeds thirty-five percent (35%) of the Eligible Notes Receivable Balance at such time;

(g) the aggregate amount by which the outstanding principal balance of all Eligible Notes Receivable that are owed by Account Debtors that as of such date of determination have a Credit Rating of 3 in accordance with Borrower’s Required Procedures exceeds forty percent (40%) of the Eligible Notes Receivable Balance at such time;

(h) with respect to each Eligible Note Receivable that is a second lien loan or last out loan, the aggregate amount by which the outstanding principal balance of all such Eligible Notes Receivable exceeds thirty percent (30%) of the Eligible Notes Receivable Balance at such time;

(i) the aggregate amount by which the outstanding principal balance of all Eligible Notes Receivable that have a remaining term of more than forty-eight (48) months exceeds fifty percent (50%) of the Eligible Notes Receivable Balance at such time;

(j) the aggregate amount by which the outstanding principal balance of all Eligible Notes Receivable that were originated by a lender other than HCI or any of its Affiliates exceeds twenty-five percent (25%) of the Eligible Notes Receivable Balance at such time;

(k) with respect to each Eligible Notes Receivable with an outstanding principal balance in excess of the greater of (i) \$30,000,000 or (ii) twelve and one-half of one percent (12.5%) of the Eligible Notes Receivable Balance, the aggregate amount by which such outstanding principal balance exceeds the greater of (i) or (ii);

(l) with respect to each Eligible Notes Receivable as to which the Account Debtor has made a refundable deposit (not held in a separate escrow account) in connection with such Note Receivable, the amount of such deposit (but, for the avoidance of doubt, excluding any Permitted Refund);

(m) the aggregate amount by which the outstanding principal balance of all Eligible Notes Receivables whereby the related obligor's chief executive office is in an Approved Foreign Jurisdiction, exceeds twenty percent (20%) of the Eligible Notes Receivable Balance at such time;

(n) the portion of the Preliminary Eligible Notes Receivable Balance consisting of the aggregate outstanding principal amount of all Eligible Notes Receivable that are Eligible Split-Funded Notes Receivable, that exceeds thirty (30%) of the Preliminary Eligible Notes Receivable Balance at such time; and

(o) the aggregate amount by which the outstanding principal balance of all Eligible Notes Receivable that are not Control Position Loans exceeds twenty percent (20%) of the Eligible Notes Receivable Balance at such time.

“Exchange Act” means the Securities Exchange Act of 1934, as in effect from time to time.

“Excluded Amounts” means (a) any amount received in the Collection Account with respect to any Note Receivable included as part of the Borrower Collateral, which amount is attributable to the payment of any Taxes, fee or other charge imposed by any Governmental Authority on such Note Receivable or on any underlying collateral and (b) any amount received in the Collection Account or other Borrower Account representing (i) any amount representing a reimbursement of insurance premiums (except to the extent such reimbursement relates to insurance premiums paid by Borrower), (ii) any escrows relating to Taxes, insurance and other amounts in connection with Notes Receivable which are held in an escrow account for the benefit of the Account Debtor and the secured party pursuant to escrow arrangements under the underlying instruments and (iii) any Collections received in the Collection Account with respect to any Note Receivable that is sold or transferred by Borrower pursuant to a Permitted Disposition, to the extent such amount is attributable to a time after the effective date of such replacement or sale.

“Existing Loan Agreement” means that certain Loan and Security Agreement entered into by and among Borrower, MUFG, as administrative agent, and certain lenders party thereto from time to time, dated as of February 20, 2019, as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the Closing Date.

“Existing Loan Agreement Debt” means all obligations (other than contingent indemnification or expense reimbursement obligations for which no claim has yet been made) under the Existing Loan Agreement.

“FATCA” means Sections 1471 through 1474 of the IRC as of the date of this Agreement (or any amended or successor version that is substantively comparable), any current or future regulations or official interpretations thereof, similar or related non-U.S. law that correspond to Sections 1471 to 1474 of the IRC, any agreements entered into pursuant to Section 1471(b)(1) of the IRC, any intergovernmental agreement entered into in connection with the implementation of such sections of the IRC and any U.S. or non-U.S. fiscal or regulatory law, legislation, rules, guidance, notes or practices adopted pursuant to such intergovernmental agreement.

“Federal Funds Rate” means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds 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 upwards, if necessary, to the nearest 1/100 of 1%) charged to Agent on such day on such transactions as determined by Agent (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

“Fee Letter” means that certain Fee Letter, dated as of January 24, 2020, as amended and restated on May 20, 2022, between Borrower and Agent, as the same may be amended, restated, supplemented, or modified from time to time.

“First Amendment” means that certain First Amendment to Loan and Security Agreement, dated as of the First Amendment Effective Date, by and among the Borrower, MUFG Union Bank, N.A. and the Lenders party thereto.

“First Amendment Effective Date” means June 18, 2021.

“Floor” means a rate of interest equal to 0.00%.



“Fronting Exposure” means, at any time there is a Defaulting Lender, with respect to any Swingline Loan, such Defaulting Lender’s Pro Rata Share of outstanding Swingline Loans made by Swingline Lender other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

“Foreign Lender” means a Lender that is not a United States person within the meaning of Section 7701(a)(30) of the IRC.

“Funded Indebtedness” means any secured Indebtedness incurred by a Subsidiary of HCI from time to time to finance (in whole or in part) a portfolio of Notes Receivable.

“Funding Date” means any date on or after the Closing Date on which a Borrowing occurs.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

“General Intangibles” means all general intangibles (as that term is defined in the Code), including payment intangibles, contract rights, rights to payment, rights arising under common law, statutes, or regulations, choses or things in action, goodwill, patents, trade names, trade secrets, trademarks, servicemarks, copyrights, blueprints, drawings, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, infringement claims, computer programs, information contained on computer disks or tapes, software, literature, reports, catalogs, insurance premium rebates, tax refunds, and tax refund claims, and any other personal property other than Accounts, commercial tort claims, Deposit Accounts, Goods, Investment Property, and Negotiable Collateral.

“Goldman” means Goldman Sachs Bank USA.

“Goods” means goods (as that term is defined in the Code).

“Governing Documents” means, with respect to any Person, the certificate or articles of incorporation, formation or organization, bylaws, partnership agreement, operating or limited liability company agreement, or other organizational documents of such Person.

“Governmental Authority” means any federal, state, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

“Hazardous Materials” means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or “EP toxicity”, (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

“HCI” means Hercules Capital, Inc., a Maryland corporation.

“Healthcare Industry Note Receivable” means a Note Receivable due from an Account Debtor that is a company that procures, provides and/or distributes medical equipment, medical supplies, and health care services to providers such as hospitals, home health care providers, and nursing homes or directly to consumers.

“Hedge Agreement” means any transaction, agreement or document now existing or hereafter entered into that provide for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging Borrower’s exposure to fluctuations in interest or exchange rates, loan, credit exchange, security or currency valuations or commodity prices.

“Hercules Funding II” means Hercules Funding II, LLC, a Delaware limited liability company, or any successor thereto.

“Holdout Lender” has the meaning set forth in Section 15.2(a).

“Indebtedness” means (a) all obligations for borrowed money, (b) all obligations evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, interest rate swaps, Hedge Agreements or other financial products, (c) all obligations as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of a Person or its Subsidiaries, irrespective of whether such obligation or liability is assumed, (e) all obligations to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices) and (f) any obligation of guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (f) above.

“Indemnified Liabilities” has the meaning set forth in Section 11.3.

“Indemnified Person” has the meaning set forth in Section 11.3.

“Independent Manager” has the meaning set forth in Section 7.20.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

“Intangible Assets” means, with respect to any Person, that portion of the book value of all of such Person’s assets that would be treated as intangibles under GAAP.

“Intercreditor Agreement” means any intercreditor agreement or similar agreement between or among, as the case may be, Agent, Borrower, HCI, and any lender or agent acting for a group of lenders to HCI or a Subsidiary thereof, providing for the relative rights and priorities on account of any Split-Funded Note Receivable and any collections or other collateral in respect thereof, in form and substance reasonably satisfactory to Agent, and “Intercreditor Agreements” means all of them, collectively.

“Interest Coverage Ratio” means, with respect to any Person for any period, the ratio of (i) EBIT for such period, to (ii) total Interest Expense to the extent paid or required to be paid during such period, in each case determined for such Person.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.7(g) and in the form of Exhibit L-1.

“Interest Expense” means, with respect to any Person for any fiscal period, total consolidated interest expense (whether cash or non-cash) of such Person paid or deemed paid in respect of any Indebtedness during such period plus all unused line fees and other fees paid in respect of Indebtedness during such period and are categorized as interest, in each case determined in accordance with GAAP, and shall in any event exclude, the amortization of debt discounts.

“Interest Period” means, as to ~~each LIBOR Rate Loan (other than any LIBOR Rate Loan bearing interest at the Adjusted Daily Reset LIBOR Rate) any Advance~~, the period commencing on the date such ~~LIBOR Rate Loan Advance~~ is disbursed or converted to or continued as a LIBOR Rate Term SOFR Loan and ending on the date ~~one, or three or six months (or such other period, if available, as approved by Lenders in each case, subject to availability thereof)~~ thereafter, as selected by Borrower in a written notice to Agent; provided that: (i) 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 such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day; (ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; ~~and~~ (iii) no Interest Period shall extend beyond the Maturity Date; and (iv) no tenor that has been removed from this definition pursuant to Section 2.20(d) shall be available for specification in such request for a Borrowing.

“Interpolated Rate” means, at any time, the rate per annum determined by Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the rate as displayed on the applicable Bloomberg page (or on any successor or substitute page or service providing quotations of interest rates applicable to Dollar deposits in the London interbank market comparable to those currently provided on such page, as determined by Agent from time to time; in each case the “Screen Rate”) for the longest period (for which that Screen Rate is available) that is shorter than the Interest Period and (b) the Screen Rate for the shortest period (for which that Screen Rate is available) that exceeds the Interest Period, in each case, at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

“Inventory” means inventory (as that term is defined in the Code).

“Investment” means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, or capital contributions (excluding bona fide Accounts arising in the ordinary course of business consistent with past practice), purchases or other acquisitions of Indebtedness, Stock or all or substantially all of the assets of such Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

“Investment Property” means investment property (as that term is defined in the Code).

“IRC” means the Internal Revenue Code of 1986, as in effect from time to time.

“Joint Lead Arrangers” means, MUFG, CNB, Goldman and Umpqua, in their capacities as joint lead arrangers with respect to this Agreement.

“Lender” and “Lenders” have the respective meanings set forth in the preamble to this Agreement, and shall include any other Person made a party to this Agreement in accordance with the provisions of Section 14.1. Unless the context otherwise requires, the terms “Lender” and “Lenders” include Swingline Lender.

“Lender Group” means, individually and collectively, each of Lenders and Agent (including Swingline Lender).

“Lender Group Expenses” means all reasonable and documented (a) costs or expenses (including taxes, and insurance premiums) required to be paid by Borrower under any of the Loan Documents that are paid, advanced or incurred by the Lender Group, (b) fees or charges paid or incurred by Agent in connection with the Lender Group’s transactions with Borrower, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, litigation, and Code searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles), filing, recording, publication, appraisal (including initial and subsequent periodic Collateral appraisals or valuations or business valuations to the extent of the fees and charges therefor (and up to the amount of any limitation contained in this Agreement)), real estate surveys, real estate title policies and endorsements, and environmental audits, (c) Agent’s customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrower (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, (by wire transfer or otherwise), (d) charges paid or incurred by Agent resulting from the dishonor of checks, (e) costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (f) out of pocket audit fees and expenses (including travel, meals, and lodging) of Agent related to any inspections or audits to the extent of the fees and charges (and up to the amount of any limitation) contained in this Agreement or the Fee Letter, (g) to the extent subject to indemnification by Borrower under Section 11.3, costs and expenses of third party claims or any other suit paid or incurred by the Lender Group in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents

or the Lender Group's relationship with Borrower, (h) Agent's costs and expenses (including attorneys' fees) incurred in advising, structuring, drafting, reviewing, administering, or amending the Loan Documents, and (i) Agent's and each Lender's costs and expenses (including attorneys', accountants', consultants', and other advisors' fees and expenses) incurred in terminating, enforcing (including attorneys', accountants', consultants', and other advisors' fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning Borrower, HCI or any of its Affiliates or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning the Collateral. All such amounts representing a mere pass-through by a member of the Lender Group of out-of-pocket costs and expenses set by a third-party shall be deemed to be reasonable for purposes of this Agreement and other Loan Documents.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, and the officers, directors, partners, employees, and agents of such Lender.

~~"LIBOR Deadline" has the meaning specified therefor in Section 2.15(a).~~

~~"LIBOR Notice" means a written notice in the form of Exhibit L-1.~~

~~"LIBOR Option" has the meaning specified therefor in Section 2.15(a).~~

~~"LIBOR Rate" means, for each Interest Period for each LIBOR Rate Loan, the rate per annum determined by Agent by dividing (a) the Base LIBOR Rate for such Interest Period, by (b) 100% minus the Reserve Percentage. The LIBOR Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage, and in no case shall the LIBOR Rate be less than 0%; provided that (i) if such rate is not available at such time for any reason, then the "LIBOR Rate" with respect to such LIBOR Rate Loan for such Interest Period shall be the Interpolated Rate, and (ii) if the Interpolated Rate is not available, the "LIBOR Rate" with respect to such LIBOR Rate Loan for such Interest Period shall be the offered quotation rate to first class banks in the London interbank market by the Person that is Agent for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Advance of such Person, in its capacity as a Lender (or, if it is not a Lender of such Advance, in such amount determined by Agent) for which the LIBOR Rate is then being determined with maturities comparable to such Interest Period at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.~~

~~"LIBOR Rate Loan" means each portion of an Advance that bears interest at (i) a rate determined by reference to the LIBOR Rate pursuant to Borrower's exercise of the LIBOR Option in accordance with Section 2.15, or (ii) the Adjusted Daily Reset LIBOR Rate.~~

~~"LIBOR Rate Margin" means two and one-half of one percent (2.50%), provided that the LIBOR Rate Margin shall be increased by one-half of one percent (0.5%) during the Amortization Period.~~

"Life Sciences Industry Note Receivable" means a Note Receivable due from an Account Debtor that is a company that researches and produces pharmaceuticals, biotechnology, and medical devices for use in humans. The industry sub-sectors of the life sciences industry, include, but are not limited to medical devices, bio-pharmaceutical, drug discovery and drug delivery.

“Lien” means any interest in an asset securing an obligation owed to, or a claim by, any Person other than the owner of the asset, irrespective of whether (a) such interest is based on the common law, statute, or contract, (b) such interest is recorded or perfected, and (c) such interest is contingent upon the occurrence of some future event or events or the existence of some future circumstance or circumstances. Without limiting the generality of the foregoing, the term “Lien” includes the lien or security interest arising from a mortgage, deed of trust, deed to secure debt, encumbrance, pledge, hypothecation, assignment, deposit arrangement, security agreement, conditional sale or trust receipt, or from a lease, consignment, or bailment for security purposes and also includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases, and other title exceptions and encumbrances affecting Real Property.

“Loan Account” has the meaning set forth in Section 2.12.

“Loan Documents” means this Agreement, the Closing Certificates, the Custody Agreement, the Collateral Custodian Agreement, the Control Agreements, the Sale and Servicing Agreement, the Notes (if any), the Disbursement Letter, the Fee Letter, the First Amendment, the Second Amendment, the Agency Assignment Agreement, any other fee letter entered into from time to time between Borrower and any member of the Lender Group relating to the transactions contemplated hereby, the Officers’ Certificates, any note or notes executed by Borrower in connection with this Agreement and payable to a member of the Lender Group, the Intercreditor Agreement and any other agreement entered into previously, now or in the future, by Borrower and the Lender Group in connection with this Agreement.

“Loan Party” means, as the case may be, Borrower or any guarantor of Obligations, and “Loan Parties” means all of them, collectively.

“Material Adverse Change” means (a) a material adverse change in the business, operations, results of operations, assets, liabilities or condition (financial or otherwise) of Borrower, taken as a whole, or HCI and its Subsidiaries, taken as a whole, (b) a material impairment of the ability of HCI or Borrower to perform their obligations under the Loan Documents to which they are parties or of the Lender Group’s ability to enforce the Obligations or realize upon the Collateral, or (c) a material impairment of the enforceability or priority of the Agent’s Liens with respect to the Collateral as a result of an action or failure to act on the part of HCI or Borrower.

“Maturity Date” has the meaning set forth in Section 3.3.

“Maximum Revolver Amount” means ~~\$400,000,000~~\$45,000,000, or such other amount of the aggregate Commitments at such time as reflected on Schedule C-1 as then in effect pursuant to this Agreement or any amendment to this Agreement. Notwithstanding any provision in Section 2.17 or Section 15.1, any amendment to this Agreement that only adds one or more additional lenders as a Lender under this Agreement or adds or increases the amount of a Lender’s Commitment shall be effective if signed by the additional or existing Lender whose Commitment is added or increased thereby, Borrower and Agent, and shall not require the consent of Required Lenders or any other Lender.

“Moody’s” has the meaning set forth in the definition of “Cash Equivalents”.

“MUFG” means MUFG ~~Union~~ Bank, ~~NA~~ Ltd ., and its successors and assigns.

“Negotiable Collateral” means letters of credit, letter of credit rights, instruments, promissory notes, drafts, documents, and chattel paper (including electronic chattel paper and tangible chattel paper).

“Net Eligible Balance” means, as of any date of determination, an amount equal to (a) the lower of (i) the aggregate outstanding principal balance of all Eligible Notes Receivable, (ii) the value of such assets as determined under GAAP as reflected in the most recently delivered quarterly financial statements of Borrower, or (iii) to the extent applicable, the value of such asset as determined by an Approved Third-Party Appraiser pursuant to Section 2.1, less (b) the Excess Concentration Amount as of such date.

“Net Purchased Notes Receivable Balance” means, as of any date of determination, an amount equal to (a) the aggregate outstanding principal balance of all Notes Receivable acquired by the Borrower prior to such date minus (b) the aggregate outstanding principal balance of all Notes Receivable sold or otherwise disposed of by the Borrower (other than Notes Receivable sold pursuant to clause (a) of the definition of Permitted Dispositions).

“New Facility” shall have the meaning assigned thereto in Section 6.21 of this Agreement.

“Non-Defaulting Lender” means each Lender other than a Defaulting Lender.

“Non-Excluded Taxes” has the meaning set forth in Section 16.11(a).

“Note” means a Revolving Note and/or a Swingline Note, as applicable.

“Note Receivable” means a negotiable promissory note evidencing a fully funded commercial loan purchased by Borrower in accordance with Borrower’s Required Procedures and secured by a Lien on property owned by the maker of such note; provided, that if Borrower’s Required Procedures as in effect at the time that such loan is made or purchased by Borrower do not require the execution of a promissory note and no promissory note is executed to evidence such loan, then the term “Note Receivable” means the obligation of the Account Debtor to repay such loan as evidenced by the agreements and documents evidencing such loan.

“Obligations” means (a) all loans, Advances, debts, principal, interest (including any interest that, but for the commencement of an Insolvency Proceeding, would have accrued), premiums, liabilities (including all amounts charged to Borrower’s Loan Account pursuant hereto), obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter), charges, costs, Lender Group Expenses (including any fees or expenses that, but for the commencement of an Insolvency Proceeding, would have accrued), lease payments, guaranties, covenants, and duties of any kind and description owing by Borrower to the Lender Group pursuant to or evidenced by the Loan Documents and irrespective of whether for the

payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all Lender Group Expenses that Borrower is required to pay or reimburse by the Loan Documents, by law, or otherwise, and (b) all Bank Product Obligations. Without limiting the generality of the foregoing, the Obligations of Borrower under the Loan Documents include the obligation to pay (i) the principal of the Advances, (ii) interest accrued on the Advances, (iii) Lender Group Expenses, (iv) fees payable under this Agreement or any of the other Loan Documents, and (v) indemnities and other amounts payable by Borrower under any Loan Document. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all extensions, modifications, renewals, supplements, restatements or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

“OFAC” means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Officer’s Certificates” means the forms of Representations and Warranties of Officers provided by Agent to Borrower and HCI, together with each of Borrower’s and HCI’s completed responses to the inquiries set forth therein, the form and substance of such responses to be satisfactory to Agent.

“Originating Lender” has the meaning set forth in [Section 14.1\(e\)](#).

“Originator” has the meaning set forth in the Sale and Servicing Agreement.

“Overadvance” has the meaning set forth in [Section 2.5](#).

“Payment Date” means the first (1<sup>st</sup>) day of each calendar month, or such other day as may be agreed to by Borrower and Agent (with the consent of Required Lenders) from time to time.

“Participant” has the meaning set forth in [Section 14.1\(e\)](#).

“Periodic Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR”.

“Permitted Discretion” means a determination made in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

“Permitted Dispositions” means, so long as all proceeds thereof are contemporaneously remitted to the Collection Account:

(a) the sale by Borrower of Notes Receivable to the Originator pursuant to any repurchase obligations of the Originator under the Sale and Servicing Agreement;

(b) so long as no Default or Event of Default has occurred and is continuing, the sale by Borrower of Notes Receivable (including any Warrant Assets issued in connection with such Note Receivable) if: (i) such sale shall be made in cash, (ii) such sale shall be made on an arms’ length basis, (iii) both before and after giving effect to any such sale, Borrower (or HCI, if applicable) shall be in pro forma compliance with each covenant set forth in [Section 7.17](#), (iv) such



sale is made without representation, warranty or recourse of any kind by Borrower (other than customary representations), (v) the manner in which such Note Receivable was selected by Borrower does not adversely affect the Lenders, and (vi) such Agent shall have received a current Borrowing Base Certificate which includes a detailed calculation showing that the Borrowing Base (after giving effect to such Permitted Disposition) is equal to or greater than the aggregate amount of outstanding Advances, or if after giving effect to such Permitted Disposition there is an Overadvance, then Borrower shall immediately deposit cash into the Collection Account in the amount of such excess, which amount shall be used by Agent to reduce the Obligations in accordance with the priorities set forth in [Section 2.3\(b\)](#); and

(c) the sale by Borrower of Notes Receivable from time to time with the prior written consent of Agent.

Notwithstanding anything to the contrary herein, other than pursuant to clause (a) above, sales by Borrower of Notes Receivables to the Originator or any of its Affiliates during the term of this Agreement shall not exceed, at the time of any such sale, an aggregate amount equal to 20% of the Net Purchased Notes Receivable Balance (measured as of each applicable date upon which a Permitted Disposition is proposed to be made hereunder) or 10% in the case of sales of any Delinquent Note Receivable or Defaulted Note Receivable.

“[Permitted Financing](#)” means (i) any financing designated as a “Permitted Financing” in writing by Agent in its sole discretion, or (ii) (A) a term securitization transaction rated by a nationally recognized statistical rating organization whereby debt securities are initially sold by any HCI Affiliate (other than Borrower) to a broker-dealer, (B) an investment grade bond offering, (C) an offering of convertible bonds, (D) an offering of notes to insurance companies or other institutional investors, (E) an unsecured credit facility, (F) a letter of credit facility at HCI or any Affiliate of HCI (other than Borrower), (G) a capital lease, (H) purchase money indebtedness, (I) SBIC debt, (J) any derivative or hedging arrangement, (K) debt to clearing agencies or broker dealers, or (L) a public offering of debt investments; provided, that any financing that is a Permitted Financing pursuant to clause (ii) of this definition shall not include any customary asset based financing to a special purpose vehicle that is and is required by the creditor under such financing to be a single purpose bankruptcy remote entity, including, but not limited to, any “warehousing facility” (that is not a “collateralized loan obligation” or intended to become a “collateralized loan obligation”).

“[Permitted Investments](#)” means (a) Investments in cash and Cash Equivalents, (b) Investments in negotiable instruments for collection, (c) advances made in connection with purchases of goods or services in the ordinary course of business, (d) commercial loans evidenced by a Note Receivable made in the ordinary course of business, ~~and~~ (e) [to the extent constituting an Investment, Hedge Agreements, and \(f\)](#) Investments received in settlement of amounts due to Borrower effected in the ordinary course of business or owing to Borrower as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of Borrower.

“Permitted Liens” means (a) Liens held by Agent, for the benefit of the Lender Group or any Bank Product Provider, (b) Liens for unpaid taxes, assessments or governmental charges that either (i) are not yet delinquent, or (ii) do not constitute an Event of Default hereunder and are the subject of Permitted Protests, (c) rights of setoff imposed by law upon deposit of cash and cash equivalents in favor of banks or other depository institutions incurred in the ordinary course of business in deposit accounts maintained with such bank or depository institution to the extent permitted under this Agreement, and (d) Liens imposed against property of an Account Debtor that secures such Account Debtor’s obligations under a Note Receivable owned by Borrower, provided such Lien does not result from any obligation of Borrower and is not imposed by the applicable lienholder against Borrower directly.

“Permitted Protest” means the right of Borrower to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) a reserve with respect to such obligation is established on the Books in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by Borrower in good faith, and (c) Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of the Agent’s Liens.

“Permitted Refund” means, in connection with any Note Receivable, any promise to refund or return to the Account Debtor on such Note Receivable any upfront, facility or similar fee if such Note Receivable is fully funded and outstanding until its maturity date, provided (i) the amount of any such Permitted Refund shall not in any case exceed 2% of the aggregate commitment amount of such Note Receivable, and (ii) provided further that, as to any Note Receivable as of any date of determination, the amount of any Permitted Refund shall be deemed to be the aggregate facility fee amount that would have to be refunded or returned to the applicable Account Debtor assuming the maturity date of such Note Receivable were such date of determination.

“Permitted Restricted Payments” means:

(a) prior to the Amortization Period, distributions to the holders of Borrower’s Stock (including Permitted Tax Distributions) to the extent permitted by applicable law, so long as (i) no Default or Event of Default (or, in the case of Permitted Tax Distributions, no Event of Default under Sections 8.1(a), (b), (c), (d), (e) or (p)) shall have occurred and be continuing or would occur as a result thereof, (ii) Agent and Lenders shall have received the financial statements required by Section 6.3(a) for the most recently completed fiscal month, (iii) both before and after giving effect to any such distribution, Borrower shall be in pro forma compliance with each covenant set forth in Section 7.17 and (iv) Borrower shall have delivered to Agent a current Borrowing Base Certificate which includes a detailed calculation showing that the Borrowing Base (after giving effect to the Permitted Restricted Payment) is equal to or greater than the aggregate amount of outstanding Advances;

(b) during the Amortization Period, distributions to the holders of Borrower’s Stock (including Permitted Tax Distributions) to the extent permitted by applicable law, so long as (i) no Default or Event of Default (or, in the case of Permitted Tax Distributions, no Event of Default under Sections 8.1(a), (b), (c), (d), (e) or (p)) shall have occurred and be continuing or would occur as a result thereof, (ii) Agent and Lenders shall have received the financial statements required by Section 6.3(a) for the most recently completed fiscal month, (iii) both before and after giving effect to any such distribution, Borrower shall be in pro forma compliance with each covenant set forth in Section 7.17; and (iv) Borrower shall have delivered to Agent a pro forma

forecast of contractually expected Collections (including the source, amount and expected timing of all such Collections) for the remainder of the Amortization Period, which pro forma estimate shall reflect in a manner reasonably satisfactory to Agent Borrower's ability to satisfy its obligations to make Required Amortization Amounts during the remainder of the Amortization Period as and when required under Section 2.5(b), in each case assuming a drop in contractually scheduled Collections of 10% during the Amortization Period.

"Permitted Tax Distributions" means, with respect to each taxable year of HCI, distributions to HCI (including Permitted Tax Distributions) in an amount that does not exceed 110% of the amount equal (in the aggregate) to the sum of (i) HCI's "investment company taxable income" (within the meaning of Section 852(b)(2) of the IRC), determined without regard to Section 852(b)(2)(D) of the IRC, and (ii) the excess of HCI's interest income excludable from gross income under Section 103(a) of the IRC over its deductions disallowed under Sections 265 or 171(a)(2) of the IRC, in each case recognized by HCI in respect of its ownership of Borrower for U.S. federal income tax purposes, as certified by HCI and Borrower to Agent in a written notice setting forth the calculation thereof.

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Preliminary Eligible Notes Receivable Balance" means preliminary aggregate outstanding balance of Eligible Notes Receivable determined by applying the exclusions set forth in the definition of "Excess Concentration Amount" and aggregating the outstanding balance of the eligible portions thereof.

"Prime Rate" means the rate of interest per annum publicly announced, from time to time, by Agent as its "prime rate", with the understanding that the "prime rate" is one of Agent's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Agent may designate.

"Projections" means, with respect to HCI, HCI's forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, in the form provided to HCI's Board of Directors, together with reasonable supporting details and a statement of underlying assumptions, in the form provided to HCI's Board of Directors.

"Pro Rata Share" means, as of any date of determination, with respect to all matters as to a particular Lender (including the indemnification obligations arising under Section 16.7), (a) prior to the Commitments being terminated or reduced to zero, the percentage obtained by dividing (i) such Lender's Commitment, by (ii) the aggregate Commitments of all Lenders, and (b) from and after the time that the Commitments have been terminated or reduced to zero, the percentage obtained by dividing (i) the aggregate outstanding principal amount of such Lender's Advances, by (ii) the aggregate outstanding principal amount of all Advances.

“OFC” 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).

“Real Property” means any estates or interests in real property.

“Record” means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

“Reference Time” with respect to any setting of the then-current Benchmark means, the time determined by the Agent in its reasonable discretion.

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

“Remedial Action” means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials authorized by Environmental Laws.

“Replacement Lender” has the meaning set forth in Section 15.2(a).

“Report” has the meaning set forth in Section 16.17(a).

“Required Amortization Amount” means, as of any date of determination, an amount equal to the product of (x) 1/12 multiplied by (y) the Amortization Commencement Date Principal Balance multiplied by (z) the number of Payment Dates that have occurred since the Amortization Commencement Date.

“Required Asset Documents” means the documents set forth on Schedule R-1 hereto.

“Required Lenders” means, at any time, Lenders whose aggregate Pro Rata Shares constitute more than fifty percent (50%) of the Commitments, or if the Commitments have been terminated irrevocably, more than fifty percent (50%) of the Obligations then outstanding; provided, however, that at any time when there are two or more unaffiliated Lenders, “Required Lenders” shall mean two or more unaffiliated Lenders whose aggregate Pro Rata Shares constitute more than fifty percent (50%) of the Commitments, or if the Commitments have been terminated irrevocably, more than fifty percent (50%) of the Obligations then outstanding; provided further, that the Pro Rata Share or existence of any Defaulting Lender shall be disregarded in any determination of what constitutes Required Lenders.

“Reserve Notice” has the meaning specified therefor in Section 2.1(b)(i).

“Reserve Objection” has the meaning specified therefor in Section 2.1(b)(ii).

“Reserve Percentage” means, on any day, for any Lender, the maximum percentage prescribed by the Board of Governors of the Federal Reserve System (or any successor Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as “eurocurrency liabilities”) of that Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

“Restricted Payments” means (a) any dividend or other distribution, in cash or other property, direct or indirect, on account of any class of Stock in Borrower, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any class of Stock in Borrower, now or hereafter outstanding, (c) any payment made to retire, or obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Stock in Borrower, now or hereafter outstanding, (d) any payment or prepayment of principal, or redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Indebtedness owing to a holder of Stock in Borrower or an Affiliate of a holder of Stock in Borrower, or (e) any payment (including any compensation to an officer or director of Borrower, as such), loan, contribution or other transfer of funds to a holder of Stock in Borrower or to an Affiliate of Borrower or an Affiliate of any holder of Stock in Borrower not expressly authorized in the Loan Documents.

“Retained Interest” means, with respect to any Note Receivable that is transferred to Borrower, (i) all of the rights and obligations, if any, of the agent(s) under the documentation evidencing such Loan arising under the related loan documents, (ii) the applicable portion of the interests, rights and obligations under the documentation evidencing any agented or syndicated transaction including such Loan that relate to such portion(s) of the indebtedness that is owned by another lender (which may be the Originator or an Affiliate thereof) and (iii) the unfunded portion(s) of such Note Receivable.

“Revolver Usage” means, as of any date of determination, the aggregate principal amount of outstanding Advances.

“Revolving Advances” has the meaning set forth in Section 2.1(a).

“Revolving Credit Availability Period” means the period commencing on the first date upon which each condition set forth in Section 3.1 has been satisfied and ending on the earlier of (a) February 21, 2023, and (b) termination pursuant to Section 9.1.

“Revolving Credit Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Advances and such Lender’s participation in Swingline Loans at such time.

“Revolving Note” has the meaning specified therefor in Section 2.18(a)

“RIC” means a regulated investment company under the IRC.

“S&P” has the meaning set forth in the definition of “Cash Equivalents”.

“Sale and Servicing Agreement” means the Sale and Servicing Agreement, dated as of the Closing Date, among Borrower, HCI (as Originator and initial Servicer), and Agent, in form and substance satisfactory to Agent.

“Screen Rate” has the meaning specified in the definition of the term “Interpolated Rate”.

“SEC” means the United States Securities and Exchange Commission and any successor thereto.

“Second Amendment” means that certain Second Amendment to Loan and Security Agreement, dated as of the Second Amendment Effective Date, by and among the Borrower, MUFG Union Bank, N.A., MUFG Bank, Ltd. and the Lenders party thereto.

“Second Amendment Effective Date” means June 10, 2022.

“Securities Account” means a “securities account” (as that term is defined in the Code).

“Servicer” means HCI, or any other Person that assumes the functions of servicing the Notes Receivable with the prior written consent of Agent or is otherwise appointed pursuant to the terms of the Sale and Servicing Agreement.

“Servicing Fees” means the “Servicing Fee” payable to Servicer in accordance with the Sale and Servicing Agreement, which shall in no case exceed for each Collection Period (as defined in the Sale and Servicing Agreement) one percent (1.0%) per annum on the average of the Aggregate Outstanding Loan Balances (as defined in the Sale and Servicing Agreement) as of the first and last day of such Collection Period.

“Settlement” has the meaning set forth in Section 2.3(f)(i).

“Settlement Date” has the meaning set forth in Section 2.3(f)(i).

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

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

“SOFR Loan” means a Loan that bears interest at a rate based on Term SOFR, other than pursuant to clause (c) of the definition of “ABR”.

“SOFR Margin” means (i) for any SOFR Loan with an Interest Period of one month, two and three-fifths percent (2.60%) and (ii) for any SOFR Loan with an Interest Period of three months, two and sixty-five hundredths percent (2.65%); provided that the SOFR Margin shall be increased by one-half of one percent (0.5%) during the Amortization Period.

“Solvent” means, with respect to any Person on a particular date, that, at fair valuations, the sum of such Person’s assets is greater than all of such Person’s debts.

“Special Servicer” means (a) U.S. Bank, National Association, and its successors and assigns permitted pursuant to and in accordance with the applicable Intercreditor Agreement, or (b) any other special servicer acceptable to Agent in its sole discretion.

“Special Servicer Fees and Expenses” has the meaning specified therefor in the Intercreditor Agreement.

“Split-Funded Note Receivable” means any Note Receivable originated by HCI with respect to which HCI is the administrative agent (and the lienholder pursuant to the Note Receivable) and with respect to which any Split-Funded Note Receivable Party (other than Borrower) has purchased commitments.

“Split-Funded Note Receivable Documents” collectively means, at any time, any loan agreements, Intercreditor Agreements, or other agreements and documents between or among, as applicable, an Account Debtor, Borrower, HCI, and/or any other Person, as a co-lender, Agent, and/or any lender or agent acting for a group of lenders to HCI or a Subsidiary thereof, providing for or otherwise governing Split-Funded Notes Receivable and each co-lender’s (including Borrower’s) rights and remedies with respect thereto.

“Split-Funded Note Receivable Party” means any of (i) Borrower, (ii) Hercules Funding II, (iii) a wholly-owned Subsidiary of HCI or other Affiliate of Borrower approved by Agent in its Permitted Discretion, or (iv) a securitization vehicle of HCI.

“Stock” means all shares, options, warrants, membership interests, units of membership interests, other interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

“Subsidiary” of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the shares of Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity. Notwithstanding anything herein to the contrary, the term “Subsidiary” shall not include any Person that is an Account Debtor in respect of a Note Receivable.

“Supporting Obligation” means any supporting obligation (as that term is defined in the Code), including any a letter-of-credit right or secondary obligation that supports the payment or performance of an Account, chattel paper, document, General Intangible, Note Receivable, instrument, or Investment Property.

“Sustainable and Renewable Energy Notes Receivable” means investments in companies involved in clean vehicle technology, energy generation and storage, and agricultural and advanced material technology related to sustainable and renewable energy.

“Swingline Borrowing” means a borrowing of a Swingline Loan.

“Swingline Lender” means MUFG, in its capacity as lender of Swingline Loans hereunder. Any consent required of Agent shall be deemed to be required of Swingline Lender and any consent given by MUFG in its capacity as Agent shall be deemed given by MUFG in its capacity as Swingline Lender as well.

“Swingline Loan” means a loan made by Swingline Lender to Borrower pursuant to Section 2.2.

“Swingline Note” has the meaning specified therefor in Section 2.18(b).

“Swingline Sublimit” means an amount equal to the lesser of (a) ~~\$25,000,000~~ 0.00 and (b) the total amount of the Commitment. The Swingline Sublimit is part of, and not in addition to, the Commitments.

“Tangible Net Worth” means, with respect to any Person as of any date of determination, determined on a consolidated basis and in accordance with GAAP, the result of (a) such Person’s total members’ or shareholder’s equity, minus (b) all Intangible Assets of such Person, minus (c) all of such Person’s prepaid expenses, minus (d) all amounts due to such Person from Affiliates of such Person.

“Tax Blocker Subsidiary” means any wholly-owned subsidiary of the Borrower from time to time designated in writing by the Borrower, and consented to by Agent (not to be unreasonably withheld, conditioned or delayed; provided, that no such consent shall be required in connection with the formation of a Tax Blocker Subsidiary if the inability to transfer any applicable asset to such Tax Blocker Subsidiary would reasonably be expected to result in material adverse tax consequences to the Borrower or the Servicer), as a “Tax Blocker Subsidiary” (which notice of designation will contain a description of the assets to be transferred to such subsidiary); provided, further, that no Tax Blocker Subsidiary shall hold any assets other than in connection with the receipt of equity securities with respect to a Note Receivable.

“Taxes” has the meaning set forth in Section 16.11(a).

“Technology Industry Loan” means a loans to an Account Debtor that is a company that provides products or services that require advanced innovative technologies. The industry sub-sectors, include, but are not limited to, computer software and hardware, networking systems, semiconductors, semiconductor capital equipment, information technology infrastructure or services, internet consumer and business services, telecommunications, telecommunications equipment, media, sustainable and renewable energy technologies and energy efficiency and monitoring technologies.

“Technology Industry Note Receivable” means a Note Receivable due from an Account Debtor that is a company that provides products or services that require advanced innovative technologies. The industry sub-sectors, include, but are not limited to, computer software and hardware, networking systems, semiconductors, semiconductor capital equipment, information technology infrastructure or services, internet consumer and business services, telecommunications, telecommunications equipment, media, sustainable and renewable energy technologies and energy efficiency and monitoring technologies.



“Term SOFR” means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of three months on the day (such day, the “ABR Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR

“Type” when used in reference to any Advance or Borrowing, refers to whether the rate of interest on such Advance, or on the Advances comprising such Borrowing, is determined by reference to Term SOFR or ABR.

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“U.S. Tax Compliance Certificate” has the meaning set forth in Section 16.11(b)(i).

“Umpqua” means Umpqua Bank.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unitranche Loan” means any Note Receivable that is comprised of a first-out tranche and a last-out tranche governed by an agreement among lenders; provided that (i) such Note Receivable is secured by a valid and perfected first priority Lien on substantially all of the Account Debtor’s assets, subject to any customary “permitted liens” or equivalent concept as defined in the applicable loan documents, (ii) the payment obligation of the Account Debtor on such Note Receivable is either senior to, or *pari passu* with, all other Indebtedness for borrowed money of such Account Debtor or the first-out tranche of such Unitranche Loan (except that the last-out tranche may be subordinated to the first-out tranche); (iii) no other Indebtedness of the Account Debtor secured by a Lien (other than permitted liens) on the assets of the Account Debtor exists or is outstanding and (iv) such Note Receivable monitors the Account Debtor’s financial performance through customary financial and performance covenants.

“United States” means the United States of America.

“Voidable Transfer” has the meaning set forth in Section 17.6.

“Volcker Rule” means the common rule entitled “Proprietary Trading and Certain Interests and Relationships with Covered Funds” published at 79 Fed. Reg. 5779 et seq.

“Warrant Asset” has the meaning set forth in the Sale and Servicing Agreement.

“Wells Fargo Agreement” means that certain Amended and Restated Loan and Security Agreement, dated as of June 29, 2015, by and among Hercules Funding II, the lenders party thereto from time to time, and Wells Fargo Capital Finance, as Arranger and Administrative Agent as amended, modified in supplemented from time to time, as any Indebtedness that refinances such credit facility after the date hereof.

“Wells Fargo Facility” means the credit facility evidenced by Wells Fargo Credit Agreement.

“Write-Down and Conversion Powers” means, 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.

**1.2 Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP. When used herein, the term “financial statements” shall include the notes and schedules thereto. Whenever the term “Borrower” is used in respect of a financial covenant or a related definition, it shall be understood to mean Borrower and its Subsidiaries on a consolidated basis unless the context clearly requires otherwise.

**1.3 Code.** Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided however, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

**1.4 Construction.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in the other Loan Documents to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). 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. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in full in cash or immediately available funds (or, in the case of obligations with respect to Bank Products, providing Bank Product Collateralization) of all of the Obligations other than (i) unasserted contingent indemnification Obligations and (ii) any Bank Product Obligations that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized. Any reference herein to any Person shall be construed to include such Person’s successors and assigns. Any requirement of a writing contained herein or in the other Loan Documents shall be satisfied by the transmission of a Record and any Record transmitted shall constitute a representation and warranty as to the accuracy and completeness of the information contained therein.

**1.5 Schedules and Exhibits.** All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference. Any reference herein to a particular Schedule shall be deemed to be a reference to such Schedule as it may be amended, supplemented, updated or otherwise modified as permitted under this Agreement or the other Loan Documents.

**1.1 +6 Divisions.** For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

1.2 Rates. The Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to ABR, the Term SOFR Reference Rate or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, ABR, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Agent and its affiliates or other related entities may engage in transactions that affect the calculation of ABR, the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Agent may select information sources or services in its reasonable discretion to ascertain ABR, the Term SOFR Reference Rate, Term SOFR or any other Benchmark, 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 calculation of any such rate (or component thereof) provided by any such information source or service.

## 2. LOAN AND TERMS OF PAYMENT.

### 2.1 Revolver Advances.

(a) Subject to the terms and conditions of this Agreement (including, without limitation, the satisfaction of each applicable condition set forth in Sections 3.1 and/or 3.2), during the Revolving Credit Availability Period, each Lender agrees (severally, not jointly or jointly and severally) to make advances (“Revolving Advances”) to Borrower in an amount at any one time outstanding not to exceed such Lender’s Pro Rata Share of an amount equal to the lesser of (i) the Maximum Revolver Amount or (ii) the Borrowing Base.

(b) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right to establish reserves in accordance with clauses (i) and (ii) below.

(i) Such reserves shall be in such amounts as Agent in its Permitted Discretion shall deem necessary or appropriate against the Borrowing Base, solely with respect to (A) sums that Borrower is required to pay (such as taxes) and has failed to pay under any Section of this Agreement or any other Loan Document, (B) amounts owing by Borrower or any of its Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than any existing Permitted Lien set forth on Schedule P-1 which is specifically identified thereon as entitled to have priority over the Agent’s Liens), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to the Agent’s Liens in and to such item of the Collateral, (C) with respect to any Note Receivable, the valuation of such Note Receivable or the Collateral securing any Note Receivable, and (D) the aggregate amount of unfunded commitments of Borrower to the makers of Notes Receivable; provided that such unfunded commitments

are not subject to any conditions or milestone requirements that have not been met or are reasonably likely to be met within thirty (30) days. Prior to the establishment of any such reserve, Agent shall first notify in writing and discuss with Borrower any such reserve that Agent proposes to establish, which written notice (each, a "Reserve Notice") shall in any event set forth: (x) the amount of any such proposed reserve; and (y) the rationale for such reserve.

(ii) Notwithstanding the foregoing, no reserve shall be established pursuant to clause (i)(C) above unless the Borrower has failed to provide written notice of its objection to such reserve (each, a "Reserve Objection") within five (5) Business Days after its receipt of the applicable Reserve Notice. If, during such five (5) Business Day period, the Borrower delivers a Reserve Objection to the Agent, then the Borrower shall have the right to request that the applicable Note Receivable be independently valued by an Approved Third-Party Appraiser retained by the Borrower and no reserve shall be taken with respect to such Note Receivable pursuant to clause (i)(C) above and instead: (x) until such Third-Party Appraiser valuation is obtained, the Net Eligible Balance of such Note Receivable shall be the lower of: (i) the aggregate outstanding principal balance of such Note Receivable or (ii) the value of such Note Receivable as determined under GAAP as reflected in the most recently delivered quarterly financial statements of Borrower, and (y) once such Third-Party Appraiser valuation is obtained, then the Net Eligible Balance of such Note Receivable shall be the value as determined by such Approved Third-Party Appraiser, provided that any such valuation by such Approved Third-Party Appraiser shall be delivered to the Agent within thirty (30) days after delivery of the applicable Reserve Objection. Any such valuation may be updated from time to time by further valuations of such Approved Third-Party Appraiser, in which case the Net Eligible Balance of such Note Receivable shall be such updated valuation.

(iii) If the rationale set forth in the Reserve Notice for any reserve shall no longer exist, then such reserve shall automatically be extinguished.

(c) Lenders shall have no obligation to make additional Advances hereunder to the extent such additional Advances would cause the Revolver Usage to exceed the Maximum Revolver Amount.

(d) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Advances, together with interest accrued and unpaid thereon, shall constitute Obligations and shall be due and payable on the Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

## **2.2 Swingline Loans.**

(a) **Swingline Loans.** Subject to the terms and conditions set forth herein, Swingline Lender, in reliance on the agreements of Lenders set forth in this Section 2.2, may in its sole discretion make Swingline Loans to Borrower from time to time on any Business Day during the Revolving Credit Availability Period, in an aggregate principal amount that will not result in

(i) the Revolving Credit Exposure of Swingline Lender exceeding its Commitment, (ii) the total Revolving Credit Exposures exceeding the total Commitments or (iii) the aggregate principal amount of outstanding Swingline Loans exceeding the Swingline Sublimit; provided, that Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan and Swingline Lender shall not be under any obligation to make any Swingline Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Swingline Loan may have, Fronting Exposure; and provided further, that in making any such Swingline Loan, the Swingline Lender shall not waive any of the terms or conditions set forth herein without first obtaining the prior written consent of the Lender or Lenders acquiring a participation of such Swingline Loan pursuant to Section 2.2(b) below. Within the foregoing limits and subject to the terms and conditions set forth herein, Borrower may borrow, prepay and reborrow Swingline Loans. Promptly after receipt of a request for a Borrowing, Agent shall elect, in its discretion, (i) to have the terms of Section 2.3(a) apply to such requested Borrowing, or (ii) to request Swingline Lender to make a Swingline Loan pursuant to the terms of Section 2.3(b) in the amount of the requested Borrowing; provided, however, that if Swing Lender declines in its sole discretion to make a Swing Loan pursuant to Section 2.3(b), Agent shall elect to have the terms of Section 2.3(a) apply to such requested Borrowing.

**(b) Participations by Lenders in Swingline Loans.**

(i) Immediately upon the making of a Swingline Loan by Swingline Lender, and without any further action on the part of Swingline Lender or Lenders, Swingline Lender hereby grants to each Lender, and each Lender hereby acquires from Swingline Lender, a participation in such Swingline Loan equal to such Lender's Pro Rata Share of the amount of such Swingline Loan. Swingline Lender may, by written notice given to Agent not later than 10:00 a.m., New York time, on any Business Day, require Lenders to fund participations on such Business Day in all or a portion of its Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Lenders will fund such participations. Promptly upon receipt of such notice, Agent will give notice thereof to each Lender, specifying in such notice such Lender's Pro Rata Share of such Swingline Loan or Loans. Each Lender hereby absolutely, unconditionally and irrevocably agrees, upon receipt of notice as provided above in this paragraph, to pay to Agent, for account of Swingline Lender, such Lender's Pro Rata Share of such Swingline Loan or Loans. Each Lender acknowledges and agrees that its obligation to acquire and fund participations in Swingline Loans pursuant to this paragraph is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including the occurrence and continuation of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.3 with respect to Advances made by such Lender (and Section 2.3 shall apply, *mutatis mutandis*, to the payment obligations of Lenders), and Agent shall promptly pay to Swingline Lender the amounts so received by it from Lenders.

(ii) Agent shall notify Borrower of any participations in any Swingline Loan funded pursuant to the preceding paragraph, and thereafter payments in respect of such Swingline Loan shall be made to Agent and not to Swingline Lender. Any amounts received by Swingline Lender from Borrower (or other party on behalf of Borrower) in respect of a Swingline Loan made by Swingline Lender after receipt by Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to Agent. Any such amounts received by Agent shall be promptly remitted by Agent to Lenders that shall have made their payments pursuant to the preceding paragraph and to Swingline Lender, as their interests may appear, provided that any such payment so remitted shall be repaid to Swingline Lender or to Agent, as applicable, if and to the extent such payment is required to be refunded to Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve Borrower of any default in the payment thereof.

(c) **Resignation of Swingline Lender.** Swingline Lender may resign at any time by giving 30 days' prior notice to Agent, Lenders and Borrower. After the resignation of Swingline Lender hereunder, the retiring Swingline Lender shall remain a party hereto and shall continue to have all the rights and obligations of Swingline Lender under this Agreement and the other Loan Documents with respect to Swingline Loans made by it prior to such resignation, but shall not be required to make any additional Swingline Loans.

### **2.3 Borrowing Procedures and Settlements.**

(a) **Borrowing Procedures of Revolving Advances.** Each Borrowing shall be made by an irrevocable written request in the form of Exhibit F-1 hereof by an Authorized Person delivered to Agent (which notice must be received by Agent no later than 1:00 p.m. (New York time) no later than (i) in the case of a SOFR Loan, three (3) U.S. Government Securities Business Days prior to the date that is the requested Funding Date, or (ii) in the case of an ABR Loan, the Business Day prior to the date that is the requested Funding Date) specifying ~~(A)~~ the amount of such Borrowing, and ~~(B)~~ the requested Funding Date, which shall be a Business Day; provided that Swingline Borrowings shall be made as provided in Section 2.3(b). ~~Each Borrowing hereunder shall initially bear interest at the Adjusted Daily Reset LIBOR Rate.~~

(b) **Borrowing Procedures for Swingline Loans.** Each Swingline Borrowing shall be made upon Borrower's notice to Swingline Lender and Agent. Each such notice shall be in the form of a written request in the form of Exhibit F-2 hereof, appropriately completed and signed by an Authorized Person and must be received by Swingline Lender and Agent not later than 10:00 a.m. (New York time) on the date of the requested Swingline Borrowing, and such notice shall specify (i) the amount to be borrowed, which shall be in a minimum of \$100,000 or a larger multiple of \$50,000, and (ii) the date of such Swingline Borrowing (which shall be a Business Day). Subject to the terms and conditions set forth herein, Swingline Lender shall make each Swingline Loan available to Borrower by credit to Borrower's account with Swingline Lender or by wire transfer in accordance with instructions provided to (and reasonably acceptable to) Swingline Lender, not later than 3:00 p.m. (New York time) on the requested date of such Swingline Loan. Each Swingline Loan hereunder shall bear interest at the ABR.

(c) **Making of Advances.**

(i) Promptly after receipt of a request for a Borrowing pursuant to [Section 2.3\(a\)](#), Agent shall notify Lenders, not later than 4:00 p.m. (New York time) on the Business Day immediately preceding the Funding Date applicable thereto, by telecopy, telephone, or other similar form of transmission, of the requested Borrowing. Each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 1:00 p.m. (New York time) on the Funding Date applicable thereto. After Agent's receipt of the proceeds of such Revolving Advances, upon satisfaction of the applicable conditions precedent set forth in [Section 3](#) hereof, Agent shall make the proceeds thereof available to Borrower not later than 3:00 p.m. (New York time) on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Custodial Account or to such other account as shall be designated by Borrower to Agent.

(ii) Unless Agent receives notice from a Lender on or prior to the Closing Date or, with respect to any Borrowing after the Closing Date, prior to 12:00 noon (New York time) on the date of such Borrowing, that such Lender will not make available as and when required hereunder to Agent for the account of Borrower the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrower on such date a corresponding amount. If and to the extent any Lender shall not have made its full amount available to Agent in immediately available funds and Agent in such circumstances has made available to Borrower such amount, that Lender shall on the Business Day following such Funding Date make such amount available to Agent, together with interest at the Defaulting Lender Rate for each day during such period. A notice submitted by Agent to any Lender with respect to amounts owing under this subsection shall be conclusive, absent manifest error. If such amount is so made available, such payment to Agent shall constitute such Lender's Revolving Advance on the date of Borrowing for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify Borrower of such failure to fund and, upon demand by Agent, Borrower shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Revolving Advances composing such Borrowing. The failure of any Lender to make any Revolving Advance on any Funding Date shall not relieve any other Lender of any obligation hereunder to make ~~any~~ Revolving Advance on such Funding Date, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Advance to be made by such other Lender on any Funding Date.

(iii) Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrower to Agent for the Defaulting Lender's benefit, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments (A) first, to Swingline Lender on a pro rata basis of any amounts owing by such Defaulting Lender to Swingline Lender hereunder, (B) second, to each Non-Defaulting Lender ratably in accordance with their Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of a Revolving Advance (or other funding obligation) was funded by such other Non-Defaulting Lender), (C) third, to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be re-advanced to or for the benefit of Borrower (upon the request of Borrower and subject



to the conditions set forth in Section 3.3) as if such Defaulting Lender had made its portion of Advances (or other funding obligations) hereunder, and (D) fourth, from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender in accordance with tier (J) of Section 2.4(b)(i). Subject to the foregoing, Agent may hold and, in its Permitted Discretion, re-lend to Borrower for the account of such Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Pro Rata Share in connection therewith) and for the purpose of calculating the fee payable under Section 2.13(a), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero (and Borrower shall not be required to pay any fee payable under Section 2.13(a) that otherwise would have been required to have been paid to such Defaulting Lender); provided, that (x) any Commitment of any Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender, and (y) any waiver, amendment or modification to this Agreement 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. The provisions of this Section 2.3(c)(iii) shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the Non-Defaulting Lenders, Agent, and Borrower shall have waived, in writing, the application of this Section 2.3(c)(iii) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated to fund hereunder, pays to Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by Agent, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by Agent); provided, that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; provided further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Non-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. The operation of this Section 2.3(c)(iii) shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by Borrower of its duties and obligations hereunder to Agent or to Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrower, at its option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being paid its share of the outstanding Obligations (other than Bank Product Obligations), but including all interest, fees (other

than any fee payable under Section 2.13(a) relating to any period in which Lender was a Defaulting Lender), and other amounts that may be due and payable in respect thereof; provided, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or Borrower's rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(c)(iii) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(c)(iii) shall control and govern.

(d) **[Reserved]**.

(e) **Agent Revolving Advances.**

(i) Agent hereby is authorized by Borrower and Lenders, from time to time in Agent's sole discretion, (1) after the occurrence and during the continuance of a Default or an Event of Default, or (2) at any time that any of the other applicable conditions precedent set forth in Section 3 have not been satisfied, to make Revolving Advances to Borrower on behalf of Lenders that Agent, in its Permitted Discretion deems necessary or desirable (A) to preserve or protect the Collateral, or any portion thereof, (B) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations), or (C) to pay any other amount chargeable to Borrower pursuant to the terms of this Agreement, including Lender Group Expenses and the costs, fees, and expenses described in Section 10 (any of the Revolving Advances described in this Section 2.3(e) shall be referred to as "Agent Advances"); provided, however, that Agent shall not knowingly make additional Agent Advances that would cause the aggregate amount of outstanding Agent Advances at such time to exceed ten percent (10%) of the Borrowing Base at such time without the consent of all Lenders. Each Agent Advance shall be deemed to be a Revolving Advance hereunder, except that all payments thereon shall be payable to Agent solely for its own account.

(ii) The Agent Advances shall be repayable on demand and secured by the Agent's Liens granted to Agent under the Loan Documents, shall constitute Revolving Advances and Obligations hereunder, and shall bear interest at the rate applicable from time to time to Revolving Advances that are ~~Base Rate~~ABR Loans.

(f) **Settlement.** It is agreed that each Lender's funded portion of the Advances is intended by Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Advances. Such agreement notwithstanding, Agent and the other Lenders agree (which agreement shall not be for the benefit of or enforceable by Borrower) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among them as to the Advances and the Agent Advances shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Settlement") with Lenders on a weekly basis, or on a more frequent basis if so determined by Agent, (1) for itself, with respect to each Agent Advance, and (2) with respect to Collections received, as to each by notifying Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 5:00 p.m. (New York time) on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Advances and Agent Advances for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(c)(iii)): (y) if a Lender's balance of the Advances and Agent Advances exceeds such Lender's Pro Rata Share of the Advances and Agent Advances as of a Settlement Date, then Agent shall, by no later than 2:00 p.m. (New York time) on the Settlement Date, transfer in immediately available funds to the account of such Lender as such Lender may designate, an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Advances and Agent Advances, and (z) if a Lender's balance of the Advances and Agent Advances is less than such Lender's Pro Rata Share of the Advances and Agent Advances as of a Settlement Date, such Lender shall no later than 2:00 p.m. (New York time) on the Settlement Date transfer in immediately available funds to the Agent's Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Advances and Agent Advances. Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Agent Advance and shall constitute Advances of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender's balance of the Advances and Agent Advances is less than, equal to, or greater than such Lender's Pro Rata Share of the Advances and Agent Advances as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrower and allocable to Lenders hereunder, and proceeds of Collateral. To the extent that a net amount is owed to any such Lender after such application, such net amount shall be distributed by Agent to that Lender as part of such next Settlement.

(iii) During the period between Settlement Dates, Agent with respect to Agent Advances and each Lender with respect to the Advances other than Agent Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Agent or Lenders, as applicable.

(g) **Notation.** Agent, as a non-fiduciary agent for Borrower, shall record on its books the principal amount of the Advances and stated interest owing to each Lender, including Swingline Loans owing to Swingline Lender, and Agent Advances owing to Agent, and the interests therein of each Lender, from time to time and such records shall, absent manifest error, conclusively be presumed to be correct and accurate. In addition, each Lender is authorized, at such Lender's option, to note the date and amount of each payment or prepayment of principal of such Lender's Advances in its books and records, including computer records.

(h) **Lenders' Failure to Perform.** All Advances (other than Swingline Loans and Agent Advances) shall be made by Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Advance (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

## **2.4 Payments.**

### **(a) Payments by Borrower.**

(i) Except as otherwise expressly provided herein, all payments by Borrower shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately available funds, no later than 2:00 p.m. (New York time) on the date specified herein. Any payment received by Agent later than 2:00 p.m. (New York time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Borrower prior to the date on which any payment is due to Lenders that Borrower will not make such payment in full as and when required, Agent may assume that Borrower has made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrower does not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

### **(b) Apportionment and Application of Payments.**

(i) Except as otherwise provided with respect to Defaulting Lenders and except as otherwise provided in the Loan Documents (including letter agreements between Agent and individual lenders, if any), aggregate principal and interest payments shall be apportioned ratably among Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and payments of fees and expenses (other than fees or expenses that are for Agent's separate account) shall be apportioned ratably among Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee relates. So long as no Event of Default has occurred and is continuing, Borrower shall remit all payments to Agent as and when due hereunder for application to the Obligations as described above. During the continuance of any Event of Default, all amounts in the Borrower Accounts and all proceeds of Accounts or other Collateral received by Agent shall be applied by Agent as follows:

(A) first, to pay on a ratable basis, until paid in full any Collateral Custodian Fees then due to Collateral Custodian under the Collateral Custodian Agreement;

(B) second, to pay the Servicing Fee of Servicer and, with respect to a successor Servicer or the Special Servicer, as applicable, expenses and other amounts due to such successor Servicer under the Sale and Servicing Agreement or Special Servicer Fees and Expenses due to the Special Servicer under the applicable Intercreditor Agreement, respectively (provided, that with respect to the initial Servicer, such Servicing Fee shall only be paid so long as no Event of Default has occurred and is continuing), until paid in full;

(C) third, to pay any Lender Group Expenses then due to Agent under the Loan Documents, until paid in full;

(D) fourth, to pay any Lender Group Expenses then due to Lenders under the Loan Documents, on a ratable basis, until paid in full;

(E) fifth, to pay any fees then due to Agent (for its separate account, after giving effect to any letter agreements between Agent and individual Lenders) under the Loan Documents until paid in full;

(F) sixth, to pay interest and fees due in respect of all Agent Advances, until paid in full;

(G) seventh, ratably to pay interest and fees due in respect of the Advances (other than Agent Advances) and the Swingline Loans, until paid in full;

(H) eighth, to pay the outstanding principal of all Agent Advances until paid in full,

(I) ninth, subject to the proviso at the end of this clause (I), ratably

- 1) to pay the outstanding principal of all Swingline Loans until paid in full,
- 2) to pay the outstanding principal of all Revolving Advances until paid in full, and
- 3) ratably, up to the amount (after taking into account any amounts previously paid pursuant to this clause 3) of the most recently established Bank Product Reserve Amount (but in no event in an amount in excess of five percent (5%) of the Maximum Revolver Amount at such time) to (y) the Bank Product Providers based upon amounts then certified by the applicable Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable

to such Bank Product Providers on account of Bank Product Obligations, and (z) with any balance to be paid to Agent, to be held by Agent, for the ratable benefit of the Bank Product Providers, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable) and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.4(b)(i), beginning with tier (A) hereof;

provided, however, that, at any time, upon satisfaction of the conditions described in the definition of “Permitted Restricted Payments” applicable to Permitted Tax Distributions at such time, Borrower may request from Agent, and Agent shall release to Borrower, funds in the Custodial Account for the purposes of making a Permitted Tax Distribution immediately prior to the payment of the amounts described in this clause (I), except that during the Amortization Period any such release to Borrower for the purposes of making a Permitted Tax Distribution shall occur only after an amount of Advances equal to the then applicable Required Amortization Amount shall have already been paid to Lenders pursuant to this clause (I);

(J) tenth, to pay any other Obligations other than Obligations owed to Defaulting Lenders,

(K) eleventh, ratably to pay any Obligations owed to Defaulting Lenders, and

(L) twelfth, to Borrower (to be wired to the Custodial Account) or such other Person entitled thereto under applicable law.

(ii) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(f).

(iii) In each instance, so long as no Event of Default has occurred and is continuing, this Section 2.3(b) shall not apply to any payment made by Borrower to Agent and specified by Borrower to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement.

(iv) For purposes of the foregoing, “paid in full” means payment of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(v) In the event of a direct conflict between the priority provisions of this Section 2.3 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3 shall control and govern.

(c) **Repayment of Swingline Loans.** Borrower shall repay to Agent for account of Swingline Lender each Swingline Loan made by Swingline Lender on the earlier to occur of (i) the date that is five (5) Business Days after such Swingline Loan is made and (ii) the Revolving Credit Availability Period; provided that on each date that a Revolving Advance is made, Borrower shall repay all Swingline Loans then outstanding and the proceeds of any such Revolving Advance shall be applied by Agent to repay any Swingline Loans outstanding. At any time that there shall exist a Defaulting Lender, immediately upon the request of Swingline Lender, Borrower shall repay the outstanding Swingline Loans made by Swingline Lender in an amount sufficient to eliminate any Fronting Exposure in respect of such Swingline Loans.

(d) **Reallocation of Participations to Reduce Fronting Exposure.** All or any part of such Defaulting Lender's participation in Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Share (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to Section 16.21, 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.

(e) **Cash Collateral, Repayment of Swingline Loans.** If the reallocation described in paragraph (d) above cannot, or can only partially, be effected, Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, prepay Swingline Loans in an amount equal to Swingline Lender's Fronting Exposure.

(f) **Defaulting Lender Cure.** If Borrower, Agent and Swingline Lender agree in writing that a Lender is no longer a Defaulting Lender, 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, that Lender will, to the extent applicable, purchase at par that portion of outstanding Swingline Loans of the other Lenders or take such other actions as Agent may determine to be necessary to cause the Swingline Loans and funded and unfunded participations in Swingline Loans to be held pro rata by Lenders in accordance with the Commitments (without giving effect to paragraph (c) above), whereupon, such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(g) **New Swingline Loans.** So long as any Lender is a Defaulting Lender, Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan.

#### **2.5 Overadvances and Required Amortization Amount.**

(a) **Overadvances.** If, at any time or for any reason, the amount of Obligations (other than Bank Product Obligations) owed by Borrower to the Lender Group pursuant to [Section 2.1](#) is greater than (i) the Maximum Revolver Amount or (ii) the Borrowing Base (an "Overadvance"), except as otherwise permitted pursuant to [Section 2.3\(c\)](#), Borrower shall promptly (but in any event within two (2) Business Days after delivery of a Borrowing Base Certificate demonstrating such excess) pay to Agent, in cash, the amount of such excess, which amount shall be used by Agent to reduce the Obligations in accordance with the priorities set forth in [Section 2.4\(b\)](#). All Overadvances shall be treated as ~~Base-Rate~~ [ABR](#) Loans. In addition, Borrower hereby promises to pay the Obligations (including principal, interest, fees, costs, and expenses) in Dollars in full as and when due and payable under the terms of this Agreement and the other Loan Documents.

(b) **Required Amortization Amount.** If, as of any Payment Date following the Amortization Commencement Date, the Amortization Commencement Date Principal Balance has not been reduced by at least the Required Amortization Amount as of such date, then Borrower immediately shall pay to Agent, in cash, the amount of such shortfall, which amount shall be used by Agent to reduce the outstanding principal amount of the Amortization Commencement Date Principal Balance.

#### **2.6 Termination or Reduction of Commitment.**

(a) **Optional.** Borrower may, upon notice to Agent, terminate the unused portion of the Commitments, or from time to time reduce the unused Commitments; provided that (i) each such notice shall be in writing and must be received by Agent at least three (3) Business Days prior to the effective date of such termination or reduction, and shall be irrevocable (provided that a notice of termination of the Commitments may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by Borrower (by notice to Agent on or prior to the specified effective date) if such condition is not satisfied), (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or a larger multiple of \$10,000,000, or as otherwise agreed upon between Agent and Borrower and (iii) Borrower shall not terminate or reduce the Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the total Revolving Credit Exposures would exceed the total Commitments. Unless previously terminated, the Commitments shall automatically terminate at the end of the Revolving Credit Availability Period.

(b) **Application of Commitment Reductions.** Agent will promptly notify Lenders of any termination or reduction of the Commitments pursuant to this [Section 2.6](#). Upon any reduction of unused Commitments, the Commitment of each Lender shall be reduced by such Lender's Pro Rate Share of the amount of such reduction.



## 2.7 Interest Rates: Rates, Payments, and Calculations

(a) **Interest Rates.** Except as provided in Section 2.7(b) below, the greater of (x) all Obligations (except for Bank Product Obligations) that have been charged to the Loan Account pursuant to the terms hereof and (y) during the Revolving Credit Availability Period, 15% of the Maximum Revolver Amount, shall bear interest on the Daily Balance thereof as follows:

- (i) if the relevant Obligation is a ~~LIBOR-Rate~~SOFR Loan, at a per annum rate equal to ~~(A) the LIBOR-Rate or the Adjusted LIBOR Daily-Reset-Rate, as applicable, plus (B) the LIBOR-Rate~~Term SOFR for the Interest Period therefore plus the SOFR Margin, and
- (ii) otherwise, at a per annum rate equal to (A) the ~~Base-Rate~~ABR plus (B) the ~~Base-Rate~~ABR Margin;

provided that, each Swingline Loans shall be a ~~Base-Rate~~ABR Loan.

(b) **Default Rate.** (i) Automatically during the continuation of an Event of Default pursuant to Section 8.1(a) or 8.1(e) or an Event of Default pursuant to Section 8.1(b) that is due to a failure to comply with a covenant contained in Section 7.17, or (ii) at the written election of the Required Lenders during the continuation of any other Event of Default, all Obligations (except for Bank Product Obligations) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof at a per annum rate equal to two percent (2.0%) above the per annum rate otherwise then-applicable hereunder to ~~Base-Rate~~ABR Loans or ~~LIBOR-Rate~~SOFR Loans hereunder.

(c) **Payment.** Except to the extent, if any, provided to the contrary in Section 2.13, Section 2.15, or elsewhere in this Agreement, interest and all other fees payable hereunder shall be due and payable, in arrears, (i) on each Payment Date that Obligations or Commitments are outstanding, and (ii) on the Maturity Date. On or about ten (10) days prior to each Payment Date, Agent will provide Borrower with an indicative statement detailing the amount of interest, fees and expenses payable on the immediately upcoming Payment Date, which amounts shall be subject to modification as a result of changes occurring between the date of delivery of such statement and such Payment Date (and Agent shall use commercially reasonable efforts to provide Borrower with prompt written notice of any such modification(s) on or prior to such Payment Date). Borrower hereby authorizes Agent from time to time to debit (by ACH or otherwise) from any Borrower Account all interest and fees (when due and payable), the fees and costs provided for in Section 2.13 (as and when accrued or incurred), and all other payments as and when due and payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products up to the Bank Product Reserve Amount). Borrower further authorizes Agent, from time to time with prior notice to Borrower, to charge all interest and fees (when due and payable), all Lender Group Expenses (as and when incurred), the fees and costs provided for in Section 2.13 (as and when accrued or incurred), and all other payments as and when due and payable under any Loan Document or any

Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products up to the Bank Product Reserve Amount) to Borrower's Loan Account, which amounts thereafter constitute Revolving Advances hereunder and shall accrue interest at the rate then applicable to Revolving Advances hereunder. Any interest not paid when due shall be compounded and shall thereafter constitute Revolving Advances hereunder and shall accrue interest at the rate then applicable to Revolving Advances hereunder.

(d) **Computation.** All interest and fees chargeable under the Loan Documents shall be computed on the basis of a ~~360-day~~ year of 360 days (or in the case of interest computed by reference to the ABR at times when the ABR is based on the Prime Rate, such interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year)), and in each case shall be payable for the actual number of days elapsed ~~(or, in the case of Base Rate Loans which accrue interest by reference to clause (e) of the definition of Base Rate, on the basis of a 365-day or 366-day year, as applicable, for the actual number of days elapsed). In the event the Base Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Base Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Base Rate, including the first day but excluding the last day).~~ The applicable ABR or Term SOFR shall be determined by the Agent, and such determination shall be conclusive absent manifest error.

(e) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrower and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, ipso facto, as of the date of this Agreement, Borrower is and shall be liable only for the payment of such maximum as allowed by law, and payment received from Borrower in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

(f) SOFR Conforming Changes. In connection with the use or administration of SOFR, the Agent will have the right to make Conforming Changes from time to time in consultation with the Borrower 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. The Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of SOFR.

(g) Interest Elections.

(i) Election by Borrower for Borrowings. Subject to Section 2.3, the Loans comprising each Advance initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a SOFR Loan, shall have the Interest Period specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Loan to a Loan of a different Type or to continue such Loan as a Loan of the same Type

and, in the case of a SOFR Loan, may elect the Interest Period therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Loan, in which case each such portion shall be allocated ratably among the applicable Lenders holding the Loans comprising such Advance, and the Loans comprising each such portion shall be considered a separate Advance. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(ii) Notice of Elections. Each such election pursuant to this Section shall be made upon the Borrower's irrevocable notice to the Agent. Each such notice shall be in the form of a written Interest Election Request, appropriately completed and signed by a Responsible Officer of the Borrower, or may be given by telephone to the Agent (if promptly confirmed in writing by delivery of such a written Interest Election Request consistent with such telephonic notice) and must be received by the Agent not later than the time that a Borrowing Request would be required under Section 2.3 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election.

(iii) Content of Interest Election Requests. Each Interest Election Request pursuant to this Section shall specify the following information in compliance with Section 2.3:

(A) the principal amount of Loans to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Loan (in which case the information to be specified pursuant to clauses (C) and (D) below shall be specified for each resulting Loan);

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

(C) whether the resulting Loan is to be an ABR Loan or a SOFR Loan; and

(D) if the resulting Borrowing is a SOFR Loan, the Interest Period therefor after giving effect to such election.

(iv) Notice by Agent to Lenders. The Agent shall advise each applicable Lender of the details of an Interest Election Request and such Lender's portion of such resulting Borrowing no less than one Business Day before the effective date of the election made pursuant to such Interest Election Request.

(v) Failure to Elect Interest; Events of Default. If the Borrower fails to deliver a timely and complete Interest Election Request with respect to an SOFR Loan prior to the end of the Interest Period therefor, then, unless such SOFR Loan is repaid as provided herein, the Borrower shall be deemed to have selected that such SOFR Loan shall automatically be continued as an SOFR Loan with an Interest Period of one month at the end of such Interest Period. Notwithstanding any contrary provision hereof, if an Event of

Default has occurred and is continuing and the Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as such Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as an SOFR Loan and (ii) unless repaid as provided herein, each SOFR Loan shall automatically be converted to an ABR Borrowing at the end of the Interest Period therefor.

## **2.8 Optional Prepayments.**

(a) **Optional Prepayment of ~~Base-Rate~~ABR Loans.** Borrower may prepay, in whole or in part (but, if in part, in an amount not less than \$1,000,000 unless otherwise agreed to by Agent), any ~~Base-Rate~~ABR Loan at any time, without penalty, upon one (1) Business Day's prior notice by Borrower to Agent prior to the date of prepayment (or, in any case, such shorter period of time then agreed to by Agent).

(b) **Optional Prepayment of ~~LIBOR-Rate~~SOFR Loans.** Borrower may prepay, in whole or in part (but, if in part, in an amount not less than \$1,000,000 unless otherwise agreed to by Agent), any ~~LIBOR-Rate~~SOFR Loan at any time, upon three (3) Business Days prior notice by Borrower to Agent prior to the date of prepayment (or, in any case, such shorter period of time then agreed to by Agent). The prepayment of ~~LIBOR-Rate~~SOFR Loans may be subject to prepayment penalties based on Lenders' actual re-deployment costs and actual ~~LIBOR~~Term SOFR breakage costs.

(c) Any such prepayment shall be made by the payment of the principal amount to be prepaid and all accrued interest thereon to the date fixed for prepayment.

## **2.9 Cash Management.**

(a) **Accounts.** All cash, checks, drafts or other items of payment relating to or constituting payments made in respect of any or all of the Collateral, all Collections, and all other proceeds of the Collateral, shall be deposited directly into the Collection Account, or any other alternative collection account(s) as designated by Agent from time to time in its sole discretion; provided that any such designation of any alternative collection account may not be unreasonably withdrawn by Agent (such withdrawal to be subject to a prior written notice by Agent to Borrower). Borrower shall maintain in effect at all times either (i) instructions to all Account Debtors on Notes Receivable to: (A) make payment of any obligations owing to Borrower directly, by ACH transfer or wire transfer, to the Collection Account or to an account held by Servicer (with such account being subject to an account control agreement that is approved by Agent) for prompt remission (but in no event later than two (2) Business Days) to the Collection Account, and (B) to mail or deliver all checks or other forms of payment for amounts owing to Borrower to a post office box or other address approved in writing by Agent, or (ii) enforceable authorizations from Account Debtors permitting Borrower or Servicer to automatically debit payments in respect of all Notes Receivable directly from such Account Debtors' deposit accounts through the Automated Clearing House (ACH) network or electronic funds transfers. Borrower shall cause all such items referenced in the preceding sentence to be credited either directly to the Collection Account or to an account held by Servicer (with such account being subject to an account control agreement that is approved by Agent) for prompt remission (but in no event later than two (2) Business Days) to the Collection Account. So long as no Event of Default exists and is continuing, amounts on

deposit in the Collection Account may be swept by the Borrower to the Custodial Account. Other than such transfers to the Custodial Account, neither Borrower, Servicer nor any Person claiming through either shall, or attempt to, withdraw or transfer any portion of the Collection Account, make payments from the Collection Account or issue withdrawal, transfer delivery or other instructions with respect to the Collection Account. If Borrower or any of its Affiliates receives any payments on account of Notes Receivable, Collections or any other Collateral, then Borrower shall hold or cause its Affiliates to hold such payments in trust for Agent and shall promptly (and in no event later than two (2) Business Days after receipt thereof) deposit all such payments, to the extent of Borrower's rights therein, into the Collection Account.

(b) Following the occurrence and during the continuance of an Event of Default: (i) Borrower shall not, and shall not attempt to or permit any of its Affiliates to or attempt to, withdraw or transfer any amounts in a Borrower Account, or make payments from either such account or issue withdrawal, transfer, delivery or other instructions with respect to such accounts, except as may be approved by Agent in writing; and (ii) Agent may apply all or any part of the amounts in the Borrower Accounts or any other account of Borrower maintained with MUFG or otherwise to the Obligations as provided in [Section 2.3\(b\)](#).

**2.10 Crediting Payments.** The receipt of any payment item by Agent shall not be considered a payment on account unless such payment item is a wire transfer of immediately available federal funds made to the Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrower shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into the Agent's Account on a Business Day on or before 2:00 p.m. (New York time). If any payment item is received into the Agent's Account on a non-Business Day or after 2:00 p.m. (New York time) on a Business Day, it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

**2.11 Funding of Proceeds.** Agent is authorized to make the Advances under this Agreement based upon instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to [Section 2.7\(c\)](#). Unless otherwise agreed by Agent and Borrower, any Advance or Agent Advance requested by Borrower and made by Agent or Lenders hereunder shall be made to the Custodial Account.

**2.12 Maintenance of Loan Account; Statements of Obligations.** Agent shall maintain an account on its books in the name of Borrower (the "Loan Account") on which Borrower will be charged with all Advances (including Agent Advances and Swingline Loans) made by Agent, Swingline Lender or Lenders to Borrower or for Borrower's account, and with all other payment Obligations hereunder or under the other Loan Documents (except for Bank Product Obligations), including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with [Section 2.10](#), the Loan Account will be credited with all payments received by Agent from Borrower or for Borrower's account. Agent shall render statements regarding the Loan Account to Borrower, including principal, interest, fees, and including an itemization of all charges and expenses constituting Lender Group Expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrower and the Lender Group unless, within 30 days after receipt thereof by Borrower, Borrower shall deliver to Agent written objection thereto describing the error or errors contained in any such statements.

**2.13 Fees.** Borrower shall pay to Agent the following fees and charges, which fees and charges shall be non-refundable when paid (irrespective of whether this Agreement is terminated thereafter) and shall be apportioned among Lenders in accordance with the terms hereof and of any letter agreements between Agent and individual Lenders:

(a) **Unused Line Fee.** On each Payment Date (other than any Payment Date occurring during the Amortization Period), Borrower shall pay to Agent, on behalf of Lenders, an unused line fee equal to (i) the amount by which (A) the Maximum Revolver Amount then in effect exceeds (B) the greater of (1) 15% of the Maximum Revolver Amount, and (2) the average Daily Balance of Advances that were outstanding from (and including) the immediately preceding Payment Date (or, with respect to the period from the Closing Date until the first Payment Date, from (and including) the Closing Date) until (but excluding) such Payment Date (the amount in this clause (i), the "Average Unused Line Amount"), multiplied by (ii) (A) if the Average Unused Line Amount is less than twenty percent (20%) of the Maximum Revolver Amount then in effect, one-fifth of one percent (0.200%) per annum, (B) if the Average Unused Line Amount is less than fifty percent (50%) of the Maximum Revolver Amount then in effect but greater than or equal to twenty percent (20%) of the Maximum Revolver Amount then in effect, three-eighths of one percent (0.375%) per annum or (C) if the Average Unused Line Amount is equal to or greater than fifty percent (50%) of the Maximum Revolver Amount then in effect, one-half of one percent (0.500%) per annum; provided for the avoidance of doubt, that no unused line fee shall accrue or be due and payable during the Amortization Period.

(b) **Fee Letter Fees.** As and when due and payable under the terms of the Fee Letter, Borrower shall pay to Agent the fees set forth in the Fee Letter.

(c) **Audit, Appraisal, and Valuation Charges.** Subject to any restrictions in Section 4.6, for the separate account of Agent, Borrower shall pay to Agent audit, appraisal, and valuation fees and charges not to exceed (i) \$25,000 per audit (or such higher amount as shall be mutually agreed to by Borrower and Agent) for each financial or collateral audit of Borrower performed by personnel employed by Agent, (ii) Agent's then applicable daily rate per applicable individual, plus reasonable and documented out of pocket expenses, for the establishment of electronic collateral reporting systems, if requested by Agent, and (iii) the actual reasonable and documented charges paid or incurred by Agent if it elects to employ the services of one or more third Persons to perform financial or collateral audits of Borrower, to establish electronic collateral reporting systems, to appraise the Collateral or any portion thereof, or to assess Borrower's procedures or business valuation; provided that so long as no Event of Default has occurred and is continuing, Borrower will not be charged for more than one (1) collateral audit in any twelve-month period.

**2.14 Capital Requirements.** If, after the date hereof, any Lender determines that (i) any Change in Law regarding capital requirements for banks or bank holding companies, or any change in the interpretation or application thereof by any Governmental Authority charged with the administration thereof, or (ii) compliance by such Lender or its parent bank holding company with any guideline, request, or directive of any such entity regarding capital adequacy (whether or not having the force of law), has the effect of reducing the return on such Lender's or such holding company's capital as a consequence of such Lender's Commitments hereunder to a level below that which such Lender or such holding company could have achieved but for such Change in Law or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by such Lender to be material, then such Lender may notify Borrower and Agent thereof. Following receipt of such notice, unless such reduction is on account of Taxes, Borrower agrees to pay such Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 90 days after presentation by such Lender of a statement in the amount and setting forth in reasonable detail such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that such Lender notifies Borrower of such Change in Law giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further that if such claim arises by reason of the Change in Law that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

**2.15 LIBORSOFR Option.**

~~(a) **LIBOR Election.** Borrower may elect from time to time that all (or any portion) of the Revolving Advances (other than Advances with respect to Agent Advances and Overadvances) bear interest at the LIBOR Rate, the Adjusted Daily Reset LIBOR Rate or the Base Rate. So long as no Event of Default has occurred and is continuing, Borrower may, by notifying Agent prior to 1:00 p.m. (New York time) at least three (3) Business Days prior to its desired commencement of an Interest Period for all (or a portion) of the Revolving Advances (the "LIBOR Deadline"), elect to exercise Borrower's option (the "LIBOR Option") to have interest on all (or any portion) of such Revolving Advances (other than Advances with respect to Agent Advances and Overadvances) determined for such Interest Period by reference to the LIBOR Rate or the Adjusted Daily Reset LIBOR Rate. Notice of Borrower's election of the LIBOR Option for any Interest Period, and (if applicable) the Interest Periods selected and the Revolving Advances subject to such Interest Periods, shall be made by delivery by Borrower to Agent of a LIBOR Notice received by Agent before the LIBOR Deadline. Each LIBOR Notice shall be irrevocable and binding on Borrower. Promptly upon its receipt of any LIBOR Notice, Agent shall provide a copy thereof to each of Lenders. There shall be no more than five (5) Interest Periods outstanding at any time. Notwithstanding the foregoing, if Borrower has not exercised the LIBOR Option in accordance with this Section 2.15 prior to the LIBOR Deadline for an Interest Period, then interest on all or such portion of the Revolving Advances then eligible to have interest determined by reference to the LIBOR Rate (including the Revolving Advances that were treated as LIBOR Rate Loans during the immediately preceding Interest Period) shall be determined for such Interest Period by reference to the Adjusted Daily Reset LIBOR Rate unless Borrower has notified Lender prior to 1:00 p.m. (New York time) at least three (3) Business Days prior to the commencement of an Interest Period that it elects interest on such Revolving Advances to accrue by reference to the~~

~~Base Rate. At any time that an Event of Default has occurred and is continuing, Borrower no longer shall have the option to request that Revolving Advances bear interest determined by reference to the LIBOR Rate or the Adjusted Daily Reset LIBOR Rate, and Lender shall have the right to convert the interest rate on all outstanding LIBOR Rate Loans to the rate then applicable to Base Rate Loans hereunder for the remainder of such Interest Period. This Section shall not apply to Swingline Borrowings which may not be converted or continued.~~

~~(b) Base Rate Loans in Absence of LIBOR Election Availability. If Borrower is not entitled to exercise the LIBOR Option for such Interest Period, then interest on all of the Revolving Advances (including Revolving Advances that were treated as LIBOR Rate Loans during the immediately preceding Interest Period) shall be determined for such Interest Period by reference to the Base Rate.~~

~~(a) (e) Special Provisions Applicable to LIBOR Rate:~~

~~(i) The LIBOR Rate Special Provisions Applicable to Term SOFR, Term SOFR may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender ~~of maintaining or obtaining any eurodollar deposits or increased costs~~, in each case, due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including any Change in Law (including changes in tax laws (except changes of general applicability in corporate income tax laws)) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), ~~excluding the Reserve Percentage~~, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest by reference to ~~the LIBOR Rate~~ Term SOFR. In any such event, the affected Lender shall give Borrower and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrower may, by notice to such affected Lender (A) require such Lender to furnish to Borrower a statement setting forth the basis for adjusting ~~such LIBOR Rate~~ Term SOFR and the method for determining the amount of such adjustment, or (B) repay (or convert to ~~Base Rate~~ ABR Loans) the ~~LIBOR Rate~~ SOFR Loans with respect to which such adjustment is made.~~

~~(d) No Requirement of Matched Funding. Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Revolving Advance as to which interest accrues by reference to the LIBOR Rate.~~

~~(e) Compensation for Losses. Upon demand of any Lender (with a copy to Agent) from time to time, Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:~~

~~(i) any continuation, conversion, payment or prepayment of any LIBOR Rate Loan (other than any LIBOR Rate Loan bearing interest at the Adjusted Daily Reset LIBOR Rate) on a day other than the last day of the Interest Period for such LIBOR Rate Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);~~



~~(ii) any failure by Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any LIBOR Rate Loan (other than any LIBOR Rate Loan bearing interest at the Adjusted Daily Reset LIBOR Rate) on the date or in the amount notified by Borrower; or~~

~~(iii) any assignment of a LIBOR Rate Loan (other than any LIBOR Rate Loan bearing interest at the Adjusted Daily Reset LIBOR Rate) on a day other than the last day of the Interest Period therefor as a result of a request by Borrower pursuant to Section 15.2.~~

~~(b) (f)~~ **Termination Right.** If at any time Borrower shall be liable for the payment of any additional amounts in accordance with Section 2.14 or any Lender exercises its rights pursuant to this Section 2.15, then Borrower shall have the option to terminate this Agreement (in accordance with the provisions of Section 3.5); *provided* that such option to terminate shall in no event relieve Borrower of paying any amounts owing pursuant to Sections 2.14 or 2.15 in accordance with the terms hereof. In no event will Borrower be responsible for increased amounts referred to in Section 2.14 or 2.15 which relate to any other entities to which the applicable Lender provides financing.

~~(c) (g)~~ **Designation of Different Lending Office.** Upon the occurrence of any event giving rise to Borrower's obligation to pay additional amounts to a Lender pursuant to Sections 2.14 or any Lender exercises its rights pursuant to this Section 2.15, such Lender will, if requested by Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate a different lending office if such designation would reduce or obviate the obligations of Borrower to make future payments of such additional amounts; *provided* that such designation is made on such terms that such Lender and its lending office suffer no unreimbursed cost or material legal or regulatory disadvantage (as reasonably determined by such Lender), with the object of avoiding future consequence of the event giving rise to the operation of any such provision.

**2.16 Inability to Determine Rates.** Subject to Section 2.20, if, on or prior to the first day of any Interest Period for any SOFR Loan:

(a) the Agent determines (which determination shall be conclusive and binding absent manifest error) that "Term SOFR" cannot be determined pursuant to the definition thereof, or

**2.16 Effect of Benchmark Transition Event**

~~(a) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Agent and the Borrower may amend this Agreement to replace LIBOR Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the tenth (10th) Business Day after the Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders accept such amendment. No replacement of LIBOR Rate with a Benchmark Replacement pursuant to this Section 2.16 will occur prior to the applicable Benchmark Transition Start Date.~~

(b) ~~Benchmark Replacement Conforming Changes.~~ In connection with the implementation of a Benchmark Replacement, the Agent will have the right to make ~~Benchmark Replacement Conforming Changes~~ from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such ~~Benchmark Replacement Conforming Changes~~ will become effective without any further action or consent of any other party to this Agreement. the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, and the Required Lenders have provided notice of such determination to the Agent.

~~(c) Notices; Standards for Decisions and Determinations.~~ The Agent will promptly notify the Borrower and the Lenders of (i) ~~any occurrence of a Benchmark Transition Event or an Early Opt in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date,~~ (ii) ~~the implementation of any Benchmark Replacement,~~ (iii) ~~the effectiveness of any Benchmark Replacement Conforming Changes and~~ (iv) ~~the commencement or conclusion of any Benchmark Unavailability Period.~~ Any determination, decision or election that may be made by the Agent or Lenders (in consultation with the Borrower) pursuant to this Section 2.16, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party ~~hereto~~, except, in each case, as expressly required pursuant to this Section 2.16.

the Agent will promptly so notify the Borrower and each Lender.

~~(d) Benchmark Unavailability Period.~~ Upon notice thereof by the Agent to the Borrower, any obligation of the Lenders to make SOFR Loans, and any right of the Borrower to continue SOFR Loans or to convert ABR Loans to SOFR Loans, shall be suspended (to the extent of the affected SOFR Loans or affected Interest Periods) until the Agent (with respect to clause (b), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice of the commencement of a Benchmark Unavailability Period, (i) ~~the Borrower may revoke any pending request for a Borrowing~~ borrowing of, conversion to or continuation of ~~LIBOR Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and~~ SOFR Loans (to the extent of the affected SOFR Loans or affected Interest Periods) or failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period, the component of Base Rate based upon LIBOR Rate will not be used in any determination of Base Rate. ABR Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 2.8(b). Subject to Section 2.20, if the Agent determines (which determination shall be conclusive and binding absent manifest error) that "Term SOFR" cannot be determined pursuant to the definition thereof on any given day, the interest rate on ABR Loans shall be determined by the Agent without reference to clause (c) of the definition of "ABR" until the Agent revokes such determination.

**2.17 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, the Term SOFR Reference Rate or Term SOFR, or to determine or charge interest based upon SOFR, the Term SOFR Reference Rate or Term SOFR, then, upon notice thereof by such Lender to the Borrower (through the Agent) (an "Illegality Notice"), (a) any obligation of the Lenders to make SOFR Loans, and any right of the Borrower to continue SOFR Loans or to convert ABR Loans to SOFR Loans, shall be suspended, and (b) the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Agent without reference to clause (c) of the definition of "ABR", in each case until each affected Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, (i) the Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Agent), prepay or, if applicable, convert all SOFR Loans to ABR Loans (the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Agent without reference to clause (c) of the definition of "ABR"), on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Loans to such day, (ii) if necessary to avoid such illegality, the Agent shall during the period of such suspension compute the ABR without reference to clause (c) of the definition of "ABR," in each case until the Agent is advised in writing by each affected Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR, the Term SOFR Reference Rate 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 2.8(b).

**(e) Certain Defined Terms.** As used in this Section 2.16:

**"Benchmark Replacement"** means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBOR Rate for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

**"Benchmark Replacement Adjustment"** means, with respect to any replacement of LIBOR Rate with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR Rate with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

~~“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ADR,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Agent and the Borrower mutually agree may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent and the Borrower mutually agree that adoption of any portion of such market practice is not administratively feasible or if the Agent and the Borrower mutually agree that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Agent and the Borrower mutually agree is reasonably necessary in connection with the administration of this Agreement).~~

~~“Benchmark Replacement Date” means the earlier to occur of the following events with respect to LIBOR Rate:~~

- ~~(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of LIBOR Rate permanently or indefinitely ceases to provide LIBOR Rate; or~~
- ~~(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.~~

~~“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to LIBOR Rate:~~

- ~~(1) a public statement or publication of information by or on behalf of the administrator of LIBOR Rate announcing that such administrator has ceased or will cease to provide LIBOR Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR Rate;~~
- ~~(2) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR Rate, a resolution authority with jurisdiction over the administrator for LIBOR Rate or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR Rate, which states that the administrator of LIBOR Rate has ceased or will cease to provide LIBOR Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR Rate; or~~

- (3) ~~a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR Rate announcing that LIBOR Rate is no longer representative.~~

~~“Benchmark Transition Start Date” means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Agent or the Required Lenders, as applicable, by notice to the Borrower, the Agent (in the case of such notice by the Required Lenders) and the Lenders.~~

~~“Benchmark Unavailability Period” means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR Rate and solely to the extent that LIBOR Rate has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced LIBOR Rate for all purposes hereunder in accordance with Section 2.16 and (y) ending at the time that a Benchmark Replacement has replaced LIBOR Rate for all purposes hereunder pursuant to Section 2.16.~~

~~“Early Opt-in Election” means the occurrence of:~~

- ~~(1) (i) a determination by the Agent or (ii) a notification by the Required Lenders to the Agent (with a copy to the Borrower) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in this Section 2.16, are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace LIBOR Rate, and~~
- ~~(2) (i) the election by the Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Agent of written notice of such election to the Borrower and the Lenders or by the Required Lenders of written notice of such election to the Agent.~~

~~“Federal Reserve Bank of New York’s Website” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.~~

~~“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.~~

~~“SOFR” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website.~~

~~“Term SOFR” means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.~~

~~“Unadjusted Benchmark Replacement” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.~~

**2.18 2-17 Increase of Commitments and Maximum Revolver Amount.**

(a) **Additional Commitments.** Provided there exists no Default or Event of Default, Borrower may from time to time request: (i) any one or more existing Lenders to increase their respective Commitments, or (ii) other financial institutions mutually approved by Agent, the Swingline Lender and the Borrower, to agree to a Commitment (each such existing Lender who has agreed to increase its Commitment or such other financial institution who has agreed to provide a new Commitment, an “Acceding Lender”), so that the total Commitments and the Maximum Revolver Amount may be increased, in increments of not less than Twenty-Five Million Dollars (\$25,000,000), by up to no more than ~~Two Hundred~~ Fifty Five Million Dollars (~~\$200,000,000~~ \$55,000,000) in the aggregate (for a maximum of total Commitments of Six Hundred Million Dollars (\$600,000,000)). Each such increase and new Commitment shall be subject to the prior satisfaction of the following conditions, as determined by Agent:

(i) Borrower shall have requested the increased or new Commitment in writing to Agent not less than thirty (30) days prior to the effective date of the proposed new or increased Commitment;

(ii) Agent and Borrower shall have agreed upon an arrangement fee in respect of any such proposed new or increased Commitment and shall have entered into a fee letter evidencing the same (which fee letter, upon its execution and deliver by each party thereto, shall be deemed a “Loan Document” for all purposes);

(iii) the applicable Acceding Lender shall have underwritten and approved by its credit committees the proposed new or increased Commitment;

(iv) there shall exist no Default or Event of Default both at the time of the request for the increased or new Commitment and at the time at which the increased or new Commitment becomes effective;

(v) Agent and Swingline Lender shall have provided its prior written consent to such increase or new Commitment, which consent shall be a matter of its reasonable discretion;

(vi) Borrower shall deliver to Agent all documents (including, without limitation, new Notes and Loan Document modifications as Agent may reasonably request), legal opinions, certificates and instruments as Agent may require in its reasonable discretion in connection with such increase in the Commitments or new Commitment and shall pay all fees owing hereunder or under any fee letter in connection with such increased or new Commitment;

(vii) as of the date of such increased or new Commitment, the representations and warranties contained in the Loan Documents shall be true and correct in all material respects as of such date with the same force and effect as if made on and as of such date (other than (A) those representations and warranties which are qualified by materiality, in which case, such representations and warranties shall be true and correct in all respects on and as of such date, and (B) in each case, to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects, or true and correct in all respects, as the case may be, on and as of such earlier date);

(viii) both before and after giving effect to any such increased or new Commitments, Borrower (or HCI, if applicable) shall be in pro forma compliance with each covenant set forth in Section 7.17; and

(ix) each Acceding Lender shall have delivered to Agent (A) a duly executed Accession Agreement, whereby upon effectiveness thereof such Lender agrees to make Advances pursuant to the terms hereof, and (B) such other documents, instruments and agreements as Agent may require, including a completed and executed administrative details reply, administrative questionnaire or similar document in form satisfactory to Agent.

A new Acceding Lender shall become party to this Agreement by entering into an Accession Agreement. Upon the due execution and delivery of each Accession Agreement and satisfaction of the foregoing conditions, the Maximum Revolver Amount shall thereupon be increased by the amount of such Acceding Lender's Commitment; provided, that Agent (in its capacity as such) shall have given its prior written consent to such accession. No Lender is obligated to increase its Commitment under any circumstances whatsoever, and no Lender's Commitment may be increased except by its execution and delivery of an Accession Agreement or another amendment to this Agreement executed and delivered by such Lender. On the effective date specified in any duly executed and delivered Accession Agreement: (1) the Acceding Lender, to the extent not already a Lender, shall be a "Lender" hereunder and a party hereto, entitled to the rights and benefits, and subject to the duties, of a Lender under the Loan Documents, and (2) Schedule C-1 hereto shall be deemed to be amended to reflect (a) the name, address, Commitment and Pro Rata Share of such Acceding Lender, (b) the Maximum Revolver Amount as increased by such Acceding Lender's Commitment, and (c) the changes to the other Lenders' respective Pro Rata Shares and any changes to the other Lenders' respective Commitments (in the event such Lender is also the Acceding Lender) resulting from such assumption and such increased Maximum Revolver Amount. On the effective date of any such increased or New Commitment, each (I) Lender's Pro Rata Share shall be recalculated to reflect the new proportionate share of the revised total Commitments and increased Maximum Revolver Amount, (II) and each relevant Acceding Lender shall make available to Agent such amounts in immediately available funds as Agent determines, for the benefit of the other Lenders, as being required to cause, after giving effect to such increase and paying such amounts to such other Lenders, each Lender's portion of the outstanding Advances of all Lenders to equal its Pro Rata Share of such outstanding Advances. Upon request of any Acceding Lender, Borrower shall issue a Revolving Loan Note to evidence the Principal Amount of such Lender's Commitment.

2.19 2-18 Notes.

(a) **Revolving Notes.** The portion of Revolving Advances made by each Lender shall be evidenced, if so requested by such Lender, by a promissory note executed by Borrower (each, as may be amended, restated, supplemented, replaced or otherwise modified from time to time, a “Revolving Note”), in an original principal amount equal to such Lender’s Commitments.

(b) **Swingline Notes.** The portion of Swingline Loans made by Swingline Lender shall be evidenced, if so requested by Swingline Lender, by a promissory note executed by Borrower (each, as may be amended, restated, supplemented, replaced or otherwise modified from time to time, a “Swingline Note”), in an original principal amount equal to ~~\$25,000,000~~ the Swingline Sublimit, as in effect at such time.

2.20 Benchmark Replacement Setting.

(a) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5<sup>th</sup>) Business Day after the Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.20 will occur prior to the applicable Benchmark Transition Start Date.

(b) **Benchmark Replacement Conforming Changes.** In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Agent will have the right to make Conforming Changes from time to time in consultation with the Borrower 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.

(c) **Notices; Standards for Decisions and Determinations.** The Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.20(d). Any determination, decision or election that may be made by the Agent or if applicable, any Lender (or group of Lenders) pursuant to this Section 2.20, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.20.



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

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a SOFR Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. 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 2.8(b). During a Benchmark Unavailability Period with respect to any Benchmark or at any time that a tenor for the then-current Benchmark that is the subject of such Benchmark Unavailability Period is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

### 3. CONDITIONS; TERM OF AGREEMENT.

**3.1 Conditions Precedent to the Initial Extension of Credit.** The obligation of each Lender to make its initial extension of credit hereunder shall be deemed to be effective as of the Closing Date upon the fulfillment, to the satisfaction of Agent and each Lender (the making of such initial extension of credit by a Lender being conclusively deemed to be its satisfaction or waiver of the following), of each of the following conditions precedent:

(a) Agent shall have received each of the following documents, in form and substance satisfactory to Agent, duly executed, and each such document shall be in full force and effect:

- (i) this Agreement;
- (ii) the Closing Certificates;

- (iii) the Sale and Servicing Agreement;
- (iv) the Collateral Custodian Agreement,
- (v) Borrowing Base Certificate; and
- (vi) each other Loan Document;

(b) the Existing Loan Agreement Debt shall be paid in full and the Existing Loan Agreement terminated;

(c) Agent shall have received copies of Borrower's and HCI's Governing Documents, as amended, modified, or supplemented to the Closing Date, certified by the Secretary or Assistant Secretary of such Person or the Manager of such Person, as applicable;

(d) Agent shall have received certificates of status on or before the Closing Date with respect to Borrower and HCI issued by the appropriate officer of the jurisdiction of organization of such Person, which certificate shall indicate that such Person is in good standing in such jurisdiction;

(e) Agent shall have received certificates of status on or before the Closing Date with respect to Borrower and HCI issued by the appropriate officer of the jurisdictions (other than the jurisdiction of organization of such Person) in which its failure to be duly qualified or licensed would constitute a Material Adverse Change, which certificates shall indicate that such Person is in good standing in such jurisdictions;

(f) [Reserved];

(g) Agent shall have received a certificate from the chief financial officer or chief executive officer of Borrower, certifying (i) as to the truth and accuracy in all material respects of the representations and warranties of Borrower contained in Section 5 of this Agreement (other than those representations and warranties already qualified by "Material Adverse Change" or a similar materiality qualifier, in which case such certification shall certify as to the truth and accuracy in all respect of the representations and warranties of Borrower contained in Section 5 of this Agreement), (ii) the absence of any Defaults or Events of Default, and (iii) that after giving effect to the incurrence of Indebtedness under this Agreement and the other transactions contemplated by this Agreement, both HCI and Borrower are Solvent;

(h) Agent shall have completed any business, legal, and collateral due diligence requested by it, including a review of the legal structure of Borrower, HCI and their Affiliates, a collateral audit and review of the books and records of Borrower and HCI and any of their Affiliates with business operations similar to those of Borrower, a review of their collateral valuation methods, verification of each of such Person's representations and warranties to the Lender Group, and verification of third-party service providers, in each case, the results of which shall be satisfactory to Agent;

(i) Borrower shall pay all Lender Group Expenses incurred in connection with the transactions evidenced by this Agreement;

(j) with respect to each Eligible Note Receivable as of the making of the initial Revolving Advance, Agent or Collateral Custodian shall be in possession of all of the Required Asset Documents;

(k) Agent shall have received and approved Borrower's Required Procedures, which Borrower's Required Procedures shall be consistent with those previously represented to Agent and shall be acceptable to Agent in its sole discretion;

(l) Agent shall have received evidence satisfactory to Agent either that any Person having a Lien (except for Permitted Liens, if any) with respect to the assets of Borrower shall have released such Lien or that such Lien shall be automatically terminated upon the funding of the Advances to be made on the Closing Date;

(m) Borrower and HCI shall have received all licenses, approvals or evidence of other actions required by any Governmental Authority in connection with the execution and delivery by Borrower or HCI of the Loan Documents or with the consummation of the transactions contemplated thereby;

(n) [Reserved];

(o) Agent shall have received evidence satisfactory to it that Borrower has appointed an Independent Manager who is acceptable to Agent in its reasonable discretion;

(p) there shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable discretion of Agent, singly or in the aggregate, materially impairs any of the transactions contemplated by the Loan Documents or that would reasonably be expected to result in a Material Adverse Change;

(q) Agent and counsel to Agent shall have received executed copies of the written enforceability, corporate UCC, true sale and non-consolidation opinions of Dechert LLP, counsel for Borrower and HCI, as to such matters as Agent may reasonably request, dated as of the Closing Date and otherwise in form and substance reasonably satisfactory to Agent (and Borrower hereby instructs, and HCI shall instruct, such counsel to deliver such opinions to Agent and Lenders);

(r) in order to create in favor of Agent, for the benefit of the Lender Group, a valid, perfected first priority security interest in the Collateral, Borrower shall deliver:

(i) evidence satisfactory to Agent of the compliance by Borrower of its obligations under Section 4 of this Agreement and any other collateral documents to which Borrower is a party (including, without limitation, its obligations to authorize or execute, as the case may be, and deliver Code financing statements, originals of securities, instruments and chattel paper); and

(ii) the results of a recent search, by a Person satisfactory to Agent, of all effective Code financing statements (or equivalent filings) made with respect to any personal or mixed property of Borrower and HCI in the jurisdictions reasonably specified by Agent, together with copies of all such filings disclosed by such search, and Code termination statements (or similar documents) duly authorized by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective Code financing statements (or equivalent filings) disclosed in such search and required by Agent to be terminated; and

(s) all other documents and legal matters in connection with the transactions contemplated by this Agreement shall have been delivered, executed, or recorded and shall be in form and substance satisfactory to Agent.

**3.2 Conditions Precedent to all Extensions of Credit.** The obligation of the Lender Group (or any member thereof) to make any Advances hereunder at any time (or to extend any other credit hereunder), including the initial Advance, shall be subject to the following conditions precedent:

(a) the representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects (except to the extent any such representation or warranty is already qualified by materiality, in which case such representation and warranty shall be true and correct in all respects) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date);

(b) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof;

(c) no injunction, writ, restraining order, or other order of any nature restricting or prohibiting, directly or indirectly, the extension of such Advance shall have been issued and remain in force by any Governmental Authority against Borrower, Agent, any Lender, or any of their respective Affiliates;

(d) no Material Adverse Change shall have occurred;

(e) no less than two (2) Business Days preceding the date of such Advance, Borrower shall have delivered to Agent or Collateral Custodian pursuant to this Agreement and the Sale and Servicing Agreement, with respect to each Note Receivable to be acquired or funded with any portion of such Advance, the originals of each of the Required Asset Documents; and

(f) Agent shall have received a current Borrowing Base Certificate.

**3.3 Term.** This Agreement shall continue in full force and effect for a term commencing on the Closing Date and ending one year after the Amortization Commencement Date (the "Maturity Date"). The foregoing notwithstanding, the Lender Group, upon the election of Required Lenders, shall have the right to terminate its obligations under this Agreement immediately and without notice upon the occurrence and during the continuation of an Event of Default.

**3.4 Effect of Termination.** On the Maturity Date or earlier termination of this Agreement in accordance with its terms, all of the Obligations immediately shall become due and payable without notice or demand and Borrower shall be required to repay all of the Obligations in full. No termination of this Agreement, however, shall relieve or discharge Borrower or HCI of their respective duties, Obligations, or covenants hereunder or under any other Loan Documents and the Agent's Liens in the Collateral shall remain in effect until all Obligations have been paid in full and the Lender Group's obligations to provide additional credit hereunder have been terminated. When this Agreement has been terminated and all of the Obligations have been paid in full and the Lender Group's obligations to provide additional credit under the Loan Documents have been terminated irrevocably, Agent will, at Borrower's sole expense, execute and deliver, or authorize the filing of, any termination statements, lien releases, mortgage releases, re-assignments of trademarks, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, the Agent's Liens and all notices of security interests and liens previously filed by Agent with respect to the Obligations.

**3.5 Early Termination by Borrower.** Borrower has the option, at any time upon thirty (30) days prior written notice to Agent, to terminate this Agreement by repaying to Agent all of the Obligations in full. If Borrower has sent a notice of termination pursuant to the provisions of this Section 3.5, then the Commitments shall terminate and Borrower shall be obligated to repay the Obligations in full, on the date set forth as the date of termination of this Agreement in such notice.

#### **4. CREATION OF SECURITY INTEREST.**

**4.1 Grant of Security Interest.** Borrower hereby grants to Agent, for the benefit of the Lender Group and the Bank Product Providers, a continuing security interest in all of Borrower's right, title, and interest in all currently existing and hereafter acquired or arising Borrower Collateral in order to secure prompt repayment of any and all of the Obligations in accordance with the terms and conditions of the Loan Documents and in order to secure the prompt performance by Borrower of each of its covenants and duties under the Loan Documents. For the avoidance of doubt, the Borrower Collateral shall not include any Retained Interest or Excluded Amounts, and Borrower does not hereby assign, pledge or grant a security interest in any such items. The Agent's Liens in and to the Borrower Collateral shall attach to all Borrower Collateral without further act on the part of Agent or Borrower. Anything contained in this Agreement or any other Loan Document to the contrary notwithstanding, except for Permitted Dispositions, Borrower has no authority, express or implied, to dispose of any item or portion of the Collateral.

**4.2 Negotiable Collateral.** In the event that any Borrower Collateral, including proceeds, is evidenced by or consists of Negotiable Collateral other than Notes Receivable previously delivered to and being held by Agent or Collateral Custodian, Borrower shall promptly endorse and deliver physical possession of such Negotiable Collateral and all agreements and documents related thereto to Collateral Custodian. All Notes Receivable shall be delivered to Agent or Collateral Custodian pursuant to this Agreement and the Sale and Servicing Agreement to hold for the benefit of Agent and Lenders, along with a duly executed Assignment of Note.

**4.3 Collection of Accounts, General Intangibles, and Negotiable Collateral** At any time after the occurrence and during the continuation of an Event of Default, Agent or Agent's designee may (a) notify Account Debtors of Borrower and makers of Notes Receivable that the applicable Accounts, Notes Receivable, chattel paper, or General Intangibles have been assigned to Agent or that Agent has a security interest therein, (b) cause a replacement servicer (including, without limitation, the Special Servicer with respect to Split-Funded Notes Receivable) to take possession of, and collect, Borrower's Accounts or (c) collect such Accounts, Notes Receivable, chattel paper, or General Intangibles directly and charge the collection costs and expenses to the Loan Account. Borrower agrees that it will hold in trust for the Lender Group, as the Lender Group's trustee, any of its Collections that it receives and immediately will deliver such Collections to Servicer pursuant to the Sale and Servicing Agreement or, at the request of Agent, to Agent, in each case in their original form as received by Borrower.

**4.4 Filing of Financing Statements; Commercial Tort Claims; Delivery of Additional Documentation Required**

(a) Borrower authorizes Agent to file any financing statement necessary or desirable to effectuate the transactions contemplated by the Loan Documents, and any continuation statement or amendment with respect thereto, in any appropriate filing office without the signature of Borrower where permitted by applicable law. Borrower hereby ratifies the filing of any financing statement filed without the signature of Borrower prior to the date hereof.

(b) If Borrower acquires any commercial tort claims after the date hereof, Borrower shall promptly (but in any event within three (3) Business Days after such acquisition) deliver to Agent a written description of such commercial tort claim and shall deliver a written agreement, in form and substance satisfactory to Agent, pursuant to which Borrower shall grant a perfected security interest in all of its right, title and interest in and to such commercial tort claim to Agent, as security for the Obligations (a "Commercial Tort Claim Assignment").

(c) At any time upon the request of Agent, Borrower shall execute or deliver to Agent, any and all fixture filings, security agreements, pledges, assignments, Commercial Tort Claim Assignments, endorsements of certificates of title, and all other documents (collectively, the "Additional Documents") that Agent may request in its Permitted Discretion, in form and substance satisfactory to Agent, to create, perfect, and continue perfected or to better perfect the Agent's Liens in the assets of Borrower (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable law, Borrower authorizes Agent to execute any such Additional Documents in Borrower's name and authorizes Agent to file such executed Additional Documents in any appropriate filing office.

**4.5 Power of Attorney.** Borrower hereby irrevocably makes, constitutes, and appoints Agent (and any of Agent's officers, employees, or agents designated by Agent) as Borrower's true and lawful attorney, with power to, following the occurrence and during the continuance of an Event of Default, (a) if Borrower refuses to, or fails timely to execute and deliver any of the documents described in Section 4.4, sign the name of Borrower on any of the documents described in Section 4.4, (b) sign Borrower's name on any invoice or bill of lading relating to the Collateral, drafts against Account Debtors, or notices to Account Debtors, (c) send requests or make telephone inquiries for verification of Borrower's Accounts or Notes Receivable, (d) endorse Borrower's name on any of its payment items (including all of its Collections) that may come into the Lender

Group's possession, (c) make, settle, and adjust all claims under Borrower's policies of insurance and make all determinations and decisions with respect to such policies of insurance, and (f) settle and adjust disputes and claims respecting Borrower's Accounts, Notes Receivable, chattel paper, or General Intangibles directly with Account Debtors or makers of Notes Receivable, for amounts and upon terms that Agent determines to be reasonable, in Agent's Permitted Discretion, and Agent may cause to be executed and delivered any documents and releases that Agent determines to be necessary. The appointment of Agent as Borrower's attorney, and each and every one of its rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully and finally repaid and performed and the Lender Group's obligations to extend credit hereunder are terminated.

#### **4.6 Right to Inspect and Verify.**

(a) Subject to the limitations contained in Section 2.13(c), Agent (through any of its officers, employees, or agents) shall have the right, from time to time hereafter (i) to inspect the Books and make copies or abstracts thereof, (ii) upon the occurrence and during the continuance of an Event of Default and in connection with an audit, to communicate directly with any and all Account Debtors and makers of Notes Receivable to verify the existence and terms thereof (provided, that (A) Agent shall notify Borrower prior to communicating directly with an Account Debtor or maker of Notes Receivable and (B) any such communication shall be in the presence of Borrower's or HCI's officers (and Borrower and HCI shall use reasonable efforts to make such officers available)), and (iii) to check, test, and appraise the Collateral, or any portion thereof, in order to verify Borrower's and its Subsidiaries' financial condition or the amount, quality, value, condition of, or any other matter relating to, the Collateral (provided, that so long as no Event of Default has occurred and is continuing, Borrower shall be responsible for the costs and expenses of only one such check, test or appraisal per fiscal year, which costs and expenses shall not exceed \$25,000 in the aggregate per annum for all such checks, tests and appraisals collectively); and Borrower shall permit any designated representative of Agent to visit and inspect any of the properties of Borrower to inspect and to discuss its finances and properties and Collateral, upon reasonable notice and at such reasonable times during normal business hours.

(b) Subject to the limitations contained in Section 2.13(c), Borrower shall, with respect to each of its properties or facilities, during normal business hours and upon reasonable advance notice: (i) provide access to such facilities or properties to Agent, any Lender and any of their respective officers, employees and agents, as frequently as Agent determines to be appropriate; (ii) permit Agent, any Lender and any of their respective officers, employees and agents to inspect, examine, audit and make extracts from all of its Books and Records; (iii) permit Agent, any Lender and any of their respective officers, employees and agents to inspect, review, evaluate and make physical verifications and appraisals of the Collateral in any manner and through any medium that Agent considers advisable, including pursuant to field audits; and (iv) permit Agent, any Lender and any of their respective officers, employees and agents to discuss with its officers and its independent certified public accountants (in the presence of Borrower's or HCI's officers (and Borrower and HCI shall use reasonable efforts to make such officers available)), its business, assets, liabilities, financial condition, results of operations and business prospects and permit its independent certified public accountants to release to Agent whatever financial information concerning HCI or the Borrower as Agent may reasonably requests, provided that Agent shall schedule such visits on behalf of Lenders and shall (1) coordinate in good faith

with Lenders to determine dates which are acceptable to a majority of Lenders and (2) provide five (5) days' prior notice to Lenders of any such visit and any Lender shall be permitted to accompany Agent in such visit. Borrower shall provide to Agent, at Borrower's expense, such clerical and other assistance as may be reasonably requested with respect thereto; provided, that, so long as no Event of Default has occurred and is continuing Borrower shall be responsible for the expenses of only one such visit per fiscal year. Representatives of Lenders may accompany Agent's representatives on inspections and audits. Borrower shall make available to Agent and its counsel, as quickly as practicable under the circumstances, originals or copies of all of Borrower's Books and Records and any other instruments and documents that Agent may reasonably request. Borrower shall deliver any document or instrument reasonably necessary for Agent, as it may from time to time request, to obtain records from any service bureau or other Person that maintains records for Borrower. If considered necessary by the Agent (in its Permitted Discretion), Borrower shall execute an authorization letter addressed to its accountants authorizing Agent or any Lender to discuss the financial affairs of Borrower with its accountants in the presence of an officer of HCI and HCI will make their officers reasonably available.

**4.7 Control Agreements.** Borrower agrees that it will and will cause its Subsidiaries to take any or all reasonable steps in order for Agent to obtain control in accordance with Sections 8-106, 9-104, 9-105, 9-106, and 9-107 of the Code with respect to all of its or their Securities Accounts, Deposit Accounts, electronic chattel paper, Investment Property, and letter-of-credit rights. Upon the occurrence and during the continuance of an Event of Default, Agent may from time to time notify any bank or securities intermediary to liquidate the applicable Deposit Account or Securities Account or any related Investment Property maintained or held thereby and remit the proceeds thereof to Agent's Account.

**4.8 Servicing of Notes Receivable.** Until such time as Agent shall notify Borrower of the revocation of such right after the occurrence and during the continuation of an Event of Default, Borrower (a) shall, at its own expense (including through the application of available funds pursuant to Section 2.3(b)), cause Servicer to service all of the Notes Receivable, including, without limitation, (i) the billing, posting and maintaining complete records applicable thereto, and (ii) taking of such action with respect to the Notes Receivable as Borrower may deem advisable, and (b) may grant, in the ordinary course of business, to any maker of a Note Receivable, any adjustment to which such maker may be lawfully entitled, and may take such other actions relating to the settling of any such maker's claims as may be commercially reasonable, but in each case in accordance with Borrower's Required Procedures. Agent may, at its option, at any time or from time to time, after the occurrence and during the continuation of an Event of Default hereunder, revoke the collection and servicing rights given to Borrower herein by giving notice to Borrower in accordance with the terms of the Sale and Servicing Agreement.

**4.9 Release of Notes Receivable.**

(a) When a Note Receivable that is in the possession of Agent or Collateral Custodian is repaid in its entirety (or in connection with a restructuring, workout or insolvency involving the applicable Account Debtor), Agent shall return or shall authorize Collateral Custodian to return such Note Receivable to Borrower to facilitate its payment and Agent shall release the Agent's Liens in such Note Receivable promptly upon receipt of the final payment relating to such Note Receivable.



(b) When a Note Receivable is sold by Borrower in accordance with the terms of this Agreement, Agent shall release the Agent's Liens in such Note Receivable and if such Note Receivable is in the possession of Agent or Collateral Custodian, Agent shall transfer or shall authorize Collateral Custodian to transfer such Note Receivable to the purchaser thereof or as otherwise directed by such purchaser against payment of the agreed amount therefor.

(c) In the event Borrower's collateral assignment to Agent of any mortgage and loan documents relating to a Note Receivable has been recorded and such Note Receivable is (i) repaid in its entirety, (ii) sold by Borrower in accordance with the terms of this Agreement or (iii) in default and Borrower is commencing foreclosure proceedings against the Note Receivable Collateral securing such Note Receivable, then Agent shall, at Borrower's sole expense, execute a reassignment or release of such mortgage and loan documents for the benefit of Borrower on forms prepared by Borrower and reasonably acceptable to Agent.

## **5. REPRESENTATIONS AND WARRANTIES.**

In order to induce the Lender Group to enter into this Agreement, Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects, as of the date hereof, and shall be true, correct, and complete, in all material respects, as of the Closing Date, and as of the date of the making of each Advance (or other extension of credit) made thereafter, as though made on and as of the date of such Advance (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

**5.1 No Encumbrances.** Borrower has good and indefeasible title to its assets, free and clear of Liens except for Permitted Liens.

**5.2 Eligible Notes Receivable.** As to each Note Receivable that is identified by Borrower as an Eligible Note Receivable in the most recent Borrowing Base Certificate submitted to Agent, as of the date of such certificate: (a) such Note Receivable is a bona fide existing payment obligation of the maker of such Note Receivable created in the ordinary course of Borrower's business, (b) such Note Receivable has transferred by sale or contribution to, and is now owed by Borrower without any known defenses, disputes, offsets, counterclaims, or rights of cancellation, (c) such Note Receivable is not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Notes Receivable, (d) the original amount of, the unpaid balance of, and the amount and dates of payments on such Note Receivable shown on the Books of Borrower and in the schedules of same delivered to Agent are true and correct, (e) Borrower has no knowledge of any fact which is reasonably likely to impair the validity or collectability of such Note Receivable, (f) such Note Receivable is subject to a first-priority or second priority security interest, as applicable, in favor of Agent (subject to Permitted Liens), (g) such Note Receivable and all collateral therefor complies with all applicable laws and (h) since delivery to Agent, such Note Receivable has not been amended nor any requirements relating thereto waived without the prior written consent of Agent, other than an extension or modification in accordance with Borrower's Required Procedures then in effect.

**5.3 Subsidiaries.** Borrower has no Subsidiaries.

**5.4 [Reserved].**

**5.5 Records.** Borrower keeps, and causes the Servicer to keep, complete, correct and accurate records in all material respects of the Notes Receivable owned by Borrower and all payments thereon.

**5.6 State of Incorporation; Location of Chief Executive Office; Organizational Identification Number; Commercial Tort Claims**

(a) The jurisdiction of organization of HCI and Borrower is set forth on Schedule 5.6(a).

(b) The chief executive office of HCI and Borrower is located at the address(es) indicated on Schedule 5.6(b) (as such Schedule may be updated from time to time).

(c) The organizational identification numbers and federal employer identification numbers, if any, of HCI and Borrower are identified on Schedule 5.6(c).

(d) As of the Closing Date, Borrower does not hold any commercial tort claims except as set forth on Schedule 5.6(d).

**5.7 Due Organization and Qualification; Subsidiaries.**

(a) Borrower is duly organized and existing and in good standing under the laws of the jurisdiction of its organization and qualified to do business in any state where the failure to be so qualified reasonably could be expected to have a Material Adverse Change. Borrower has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) Set forth on Schedule 5.7(b) is a complete and accurate description of the authorized capital Stock of Borrower, by class, and, as of the Closing Date, a description of the interests of each such class that are issued and outstanding. Other than as described on Schedule 5.7(b), there are no subscriptions, options, warrants, or calls relating to any capital Stock of Borrower, including any right of conversion or exchange under any outstanding security or other instrument.

(c) Borrower is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital Stock or any security convertible into or exchangeable for any such capital Stock.

**5.8 Due Authorization; No Conflict.**

(a) The execution, delivery, and performance by Borrower of this Agreement and the other Loan Documents to which it is a party have been duly authorized by all necessary action on the part of Borrower.

(b) The execution, delivery, and performance by Borrower of this Agreement and the other Loan Documents to which it is a party do not and will not (i) violate any provision of federal or state law or regulation, or, to the knowledge of Borrower, local law or regulation, in each case applicable to Borrower, the Governing Documents of Borrower, or any order, judgment, or decree of any court or other Governmental Authority binding on Borrower, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material contractual obligation of Borrower, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any properties or assets of Borrower, other than under this Agreement and the other Loan Documents, or (iv) require any approval of the holders of Borrower's Stock or any approval or consent of any Person under any material contractual obligation of Borrower, other than consents or approvals that have been obtained and that are still in force and effect.

(c) Other than the filing of financing statements, the execution, delivery, and performance by Borrower of this Agreement and the other Loan Documents to which Borrower is a party do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority or other Person, other than consents or approvals that have been obtained and that are still in force and effect.

(d) This Agreement and the other Loan Documents to which Borrower is a party, and all other documents contemplated hereby and thereby, when executed and delivered by Borrower will be the legally valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(e) The Agent's Liens are validly created, perfected, and first priority Liens, subject only to Permitted Liens.

**5.9 Litigation.** (a) There are no actions, suits, or proceedings pending or, to the best knowledge of Borrower, threatened, against Borrower, and (b) there are no actions, suits, or proceedings pending or, to the best knowledge of Borrower, threatened, against HCI that could reasonably be expected to result in a Material Adverse Change.

**5.10 No Material Adverse Change.** All financial statements relating to HCI and its Subsidiaries (including Borrower) that have been delivered to the Lender Group have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects the financial condition of such Persons as of the date thereof and results of operations for the period then ended. There has not been a Material Adverse Change with respect to HCI and its Subsidiaries or Borrower since the date of the latest financial statements submitted to the Lender Group.

**5.11 Fraudulent Transfer.**

(a) Each of HCI and Borrower is Solvent.

(b) No transfer of property is being made by Borrower and no obligation is being incurred by Borrower in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of Borrower.

**5.12 Employee Benefits.** Borrower does not maintain or contribute to any Benefit Plan, and except as would not reasonably be expected to constitute a Material Adverse Change, none of its ERISA Affiliates maintains or contributes to any Benefit Plan.

**5.13 Compliance with Statutes.** Borrower is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property except, in each case, to the extent noncompliance could not reasonably be expected to result in a Material Adverse Change.

**5.14 Brokerage Fees.** Neither Borrower nor any of its Affiliates has utilized the services of any broker or finder in connection with Borrower's obtaining financing from the Lender Group under this Agreement, and any brokerage commission or finder's fee payable in connection herewith shall be the sole responsibility of Borrower or its Affiliates.

**5.15 Intellectual Property.** Borrower owns, or hold licenses in, all trademarks, trade names, copyrights, patents, patent rights, and licenses that are necessary to the conduct of its business as currently conducted, and attached hereto as Schedule 5.15 (as updated from time to time) is a true, correct, and complete listing of all material patents, patent applications, trademarks, trademark applications, copyrights, and copyright registrations as to which Borrower is the owner or is an exclusive licensee, other than shrink wrap and other similar licenses generally available to the public.

**5.16 Leases.** Borrower is not a party to any lease and has no ownership interest in any Real Property.

**5.17 Tax Status.** Borrower is not and will not at any relevant time become an association (or a publicly traded partnership) taxable as a corporation for U.S. federal income tax purposes.

**5.18 Complete Disclosure.** All factual information furnished by or on behalf of and relating to HCI or Borrower, in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents but excluding the Projections, other forward-looking information and information of a general economic or industry-specific nature or information solely related to third parties) for purposes of or in connection with this Agreement, the other Loan Documents, or any transaction contemplated herein or therein, when taken as a whole, does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary to make such information not misleading in any material respect at such time in light of the circumstances under which such information was provided (after giving effect to all supplements and updates thereto from time to time). As of the date on which any Projections are delivered by HCI or the Borrower to Agent, such Projections represent HCI's good faith estimate of its and, if applicable, its Subsidiaries' future performance for the periods covered thereby based upon reasonable assumptions when made; provided, however, that the parties acknowledge that the Projections are merely estimates and that there is no guarantee that HCI, the Borrower or any of its or their Subsidiaries will achieve the results forecast in the Projections.

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**5.19 Indebtedness.** Borrower is not the obligor under any Indebtedness other than Indebtedness permitted under this Agreement and the Loan Documents.

**5.20 Enforceability.** The forms and documents executed in connection with Notes Receivables are commensurate with forms and documentation used by prudent lenders in the same or similar circumstances as Borrower, and, without limiting the foregoing, are sufficient to create valid, binding and enforceable obligations of each Account Debtor named therein.

**5.21 Servicing.** Borrower has entered into the Sale and Servicing Agreement, pursuant to which Borrower has engaged HCI, as the initial Servicer and as Borrower's agent, to monitor, manage, enforce and collect the Notes Receivable and disburse Collections in respect thereof as provided by the Sale and Servicing Agreement, subject to this Agreement. HCI has, and any replacement Servicer proposed by Borrower will have, the requisite knowledge, experience, expertise and capacity to service the Notes Receivable.

**5.22 Permits, Licenses, Etc.** Each of Borrower and HCI has, and is in compliance in all material respects with, all permits, licenses, authorizations, approvals, entitlements and accreditations required for such Person lawfully to own, lease, manage or operate, or to acquire, each business currently owned, leased, managed or operated, or to be acquired, by such Person, except for such permits, licenses, authorizations, approvals, entitlements and accreditations the absence of which would not reasonably be expected to result in a Material Adverse Change. To Borrower's knowledge, no condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, the loss of which could reasonably be expected to result in a Material Adverse Change, and, to Borrower's knowledge, there is no claim that any thereof is not in full force and effect. Schedule 5.22 lists, as of the Closing Date, all of the licenses, franchises, approvals or consents of any Governmental Authority or other Person that is required for Borrower to conduct its business as currently conducted or proposed to be conducted except for such licenses, franchises, approvals, or consents the absence of which could not reasonably be expected to result in a Material Adverse Change.

**5.23 Volcker Rule.** Borrower is not a covered fund under the Volcker Rule.

**5.24 Margin Stock.** Borrower is not and will not be engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System), and no proceeds of any Advance will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

**5.25 Investment Company Act.** Borrower is not required to register as an "investment company" under the provisions of the Investment Company Act of 1940, as amended.

**5.26 LCR.** In connection with this Agreement, Borrower represents, warrants and agrees that it has not, does not and will not during the term of the Agreement (a) issue any obligations that (i) constitute asset-backed commercial paper, or (ii) are securities required to be registered under the Securities Act of 1933, as amended, or that may be offered for sale under Rule 144A of the SEC thereunder, or (b) issue any other debt obligations or equity interests other than (1) the Obligations or other debt obligations substantially similar to the Obligations that are (A) issued to other banks or asset-backed commercial paper conduits in privately negotiated transactions, and (B) subject to transfer restrictions substantially similar to the transfer restrictions set forth in this Agreement, and (2) equity interests issued to HCI under the terms of Borrower's Governing Documents. The assets and liabilities of Borrower are consolidated with the assets and liabilities of HCI under GAAP.

**5.27 Patriot Act.** To the extent applicable, Borrower and HCI are in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Act"). No part of the proceeds of the Advances will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended to the date hereof and from time to time hereafter, and any successor statute.

**5.28 Sanctions: Anti-Corruption.**

(a) None of Borrower, any of its Affiliates or any director, officer, employee, agent, advisor or affiliate of Borrower or any of its Affiliates is an individual or entity ("person") that is, or is owned or controlled by persons that are: (i) the subject/target of any sanctions administered or enforced by the OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "Sanctions"), or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions (including, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

(b) Borrower, its Affiliates and their respective directors, officers and employees and, to the knowledge of Borrower, the agents of Borrower and its Affiliates, are in compliance with all applicable Sanctions and with the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), the UK Bribery Act of 2010 (the "Bribery Act") and any other applicable anti-corruption law, in all material respects. Borrower and its Affiliates have instituted and maintain policies and procedures designed to ensure continued compliance with applicable Sanctions, the FCPA, the Bribery Act and any other applicable anti-corruption laws.

**5.29 Deposit Accounts and Securities Accounts.** Set forth on Schedule 5.28 is a listing of all of Borrower's and its Subsidiaries' Deposit Accounts and Securities Accounts, including, with respect to each bank or securities intermediary (a) the name and address of such Person, and (b) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

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## 6. AFFIRMATIVE COVENANTS.

Borrower covenants and agrees that, from and after the Closing Date and until termination of all of the Commitments and payment in full of the Obligations (other than with respect to contingent and indemnification obligations for which no claim has yet been made on or before the termination of all of Commitments and full and final payment of the Obligations), Borrower shall do all of the following:

**6.1 Accounting System.** Maintain a system of accounting that enables Servicer to produce financial statements in accordance with GAAP and maintain records pertaining to the Collateral that contain information as from time to time reasonably may be requested by Agent. Borrower also shall keep a reporting system that shows all additions, fees, payments and write-downs with respect to the Notes Receivable.

### **6.2 Collateral Reporting.**

(a) Provide or cause Servicer to provide Agent (and if so requested by Agent, with copies for each Lender) with the following documents at the following times in form satisfactory to Agent:

Daily	Within three (3) Business Days after an Authorized Person of Borrower or HCI acquires knowledge thereof, notice of all material claims, offsets, or disputes asserted by Account Debtors with respect to any of Borrower's Notes Receivable;
Date of each Advance and at least monthly (not later than the 10 <sup>th</sup> day of each month)	A Borrowing Base Certificate which includes a detailed calculation of the Borrowing Base as of the date of the requested Advance or the last day of the applicable month (with sufficient details to allow for the Agent to independently verify compliance); <i>provided</i> that a Borrowing Base Certificate need not be delivered in connection with an Advance if a Borrowing Base Certificate has previously been delivered to Agent and lenders in such calendar month and the Treasurer or the Chief Financial Officer of the Servicer certifies and represents that no changes have occurred since the date of such Borrowing Base Certificate that had adversely impacted availability as calculated in such Borrowing Base Certificate.

Monthly (not later than the 10th day of each month), calculated or determined as of the last day of the preceding month

Reports specifying (i) the current unpaid principal balance of each Note Receivable, (ii) current committed amount with respect to each Note Receivable, (iii) current payment status of each Note Receivable, (iv) a reconciliation to the detailed calculation of the Borrowing Base most recently provided to Agent, (v) a summary report of categories of non-Eligible Notes Receivable for the month most recently ended, (vi) Borrower's credit watch list, and (vii) other such information reasonably requested by the Agent in good faith to determine compliance with the various eligibility criteria and concentration limits set forth herein.

Promptly after reasonable request by Agent

Subject to any confidentiality obligations, such other reports as to the Collateral, or the financial condition of Borrower, as Agent may reasonably request, so long as such reports are within the possession of Borrower or Servicer or may be obtained with neither undue burden or expense.

In connection with the foregoing reports, (i) Borrower shall maintain and utilize accounting and reporting systems in accordance with GAAP, and (ii) to the extent required by Agent, an Authorized Person or other representative acceptable to Agent will meet with Agent from time to time as requested by Agent to review and discuss all Notes Receivable then owned by Borrower.

(b) Within forty-five (45) days after the end of each fiscal quarter, provide, or cause HCI to provide, to Agent documents representing the same information as provided for in Section 6.2(a) with respect to the Wells Fargo Facility's "collateral" to the extent such documents have been delivered by HCI or its Subsidiaries in accordance with and pursuant to the Wells Fargo Agreement.

**6.3 Financial Statements, Reports, Certificates.** Deliver to Agent, with copies to be delivered by Agent to each Lender (provided, if any delivery hereunder shall be due on a day that is not a Business Day, the date for delivery shall be extended to the next succeeding Business Day):

(a) [Reserved],

(b) as soon as available, but in any event within (i) forty-five (45) days after (A) with respect to HCI, the end of the first three fiscal quarters of each fiscal year of HCI and (B) with respect to Borrower, the end of the first three fiscal quarters of each fiscal year of Borrower, and (ii) sixty (60) days after, with respect to Borrower, the fourth fiscal quarter of each fiscal year of Borrower,

(i) an unaudited consolidated and consolidating balance sheet, income statement and statement of cash flow covering each of (A) Borrower, and (B) HCI's and its Subsidiaries' (taken as a whole) operations during such period and the year-to-date period ending thereon, in each case setting forth in comparative form the figures for the corresponding periods in the prior year; provided, that the availability via EDGAR, or any successor system of the SEC, of the financial statements in HCI's applicable quarterly report on Form 10-Q shall be deemed delivery to Agent of the financial statements required to be delivered pursuant to this clause (b)(i), on the date such documents are made so available, and



(ii) a Compliance Certificate demonstrating in reasonable detail Borrower's and HCI's compliance at the end of such period with the applicable financial and portfolio covenants contained in Section 7.17 that are measured on a quarterly basis;

(c) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of HCI,

(i) consolidated financial statements of HCI and its Subsidiaries, in each case for such fiscal year, audited by independent certified public accountants of recognized national standing and certified, without any qualifications (A) as to "going concern" or like qualification or exception, (B) qualification or exception as to the scope of such audit, or (C) qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item, the effect of which would be to cause any noncompliance with the provisions of Section 7.17, by such accountants to have been prepared in accordance with GAAP (such audited financial statements to include a balance sheet, income statement, and statement of cash flow and, if prepared, such accountants' letter to management); provided, that the availability via EDGAR, or any successor system of the SEC, of the financial statements in HCI's annual report on Form 10-K shall be deemed delivery to Agent of the financial statements required to be delivered pursuant to this clause (c)(i), on the date such documents are made so available,

(ii) unaudited consolidating financial statements of HCI and its Subsidiaries, in each case for such fiscal year (such financial statements to include a balance sheet, income statement, and statement of cash flow and, if prepared, such accountants' letter to management); and

(iii) a Compliance Certificate demonstrating in reasonable detail Borrower's and HCI's, as applicable, compliance at the end of such period with the applicable financial and portfolio covenants contained in Section 7.17;

(d) as soon as available, but in any event not later than thirty (30) days after the commencement of each fiscal year of HCI, copies of Projections for HCI that have been provided to the Board of Directors of HCI for such fiscal year, certified by the chief financial officer of HCI, as being such officer's good faith estimate of the financial performance of HCI during the period covered thereby;

(e) [Reserved.];

(f) promptly upon Borrower or any Affiliate of Borrower having knowledge thereof, notify Agent of the following regarding each Note Receivable and Collateral which secures such Note Receivable:

(i) the occurrence of any event which may materially impair the prospect of payment of such Note Receivable;

(ii) the filing by Servicer or Borrower of any lawsuit to enforce its rights in the Note Receivable (including case number and court);

(iii) the consummation of any foreclosure sale or any deed or bill of sale in lieu of foreclosure, retention of collateral in satisfaction of debt or similar transaction, and deliver to Agent true and complete copies of all documentation executed in respect thereof (in the case of notices, postings and the like, and in the case of deeds, bills of sale or retention of collateral transactions, all documents related to consummation of such transaction or transfer of such property); and

(iv) the receipt by Servicer or Borrower of a notice by any Person of which Servicer or Borrower is actually aware of (x) a default with respect to any agreement evidencing or governing a Lien on any Note Receivable Collateral or (y) any foreclosure sale with respect to any Note Receivable Collateral;

(g) promptly, but in any event within five (5) Business Days after Borrower has knowledge of any event or condition that constitutes a Default (provided that if such Default is subsequently cured within the time periods set forth herein, the failure to provide notice of such Default shall not itself result in an Event of Default hereunder) or an Event of Default, notice thereof and a statement of the curative action that Borrower proposes to take with respect thereto;

(h) promptly after the commencement thereof, but in any event within five (5) Business Days after the service of process with respect thereto on HCI, Borrower or any Subsidiary of HCI that is then an obligor under Funded Indebtedness, notice of all actions, suits, or proceedings brought by or against HCI, Borrower or any such Subsidiary before any Governmental Authority which reasonably could be expected to: (i) be determined adversely to HCI, Borrower or such Subsidiary, and (ii) result in a Material Adverse Change;

(i) with respect to any Split-Funded Note Receivable Party which owns a portion of an Eligible Split-Funded Note simultaneously with the Borrower, promptly (but in any event within two (2) Business Days) upon having knowledge of the occurrence of any event of default (however styled) under the facility or securitization, as applicable, related to such Split-Funded Note Receivable Party, notice thereof and a statement of the curative action proposed to be taken with respect thereto;

(j) (A) promptly, but in event within seven (7) Business Days after an Authorized Person has knowledge thereof, notice that a new proposed Split-Funded Note Receivable will be initially included in the calculation of availability for extensions of credit under any credit facility for an Affiliate of Borrower or HCI, and (B) promptly, but in any event within seven (7) Business Days after an Authorized Person has knowledge thereof, notice that a Split-Funded Note Receivable or newly proposed Split-Funded Note Receivable has been or will be excluded from the calculation of availability for extensions of credit under any credit facility for an Affiliate of Borrower or HCI; and

(k) upon the request of Agent, any other information reasonably requested relating to the financial condition of Borrower or HCI or any of its Subsidiaries.

In addition, Borrower agrees that it will not have a fiscal year different from that of HCI.

**6.4 Notices Regarding Collections Servicing Staff** Provide Agent with notice promptly (and in any case within four (4) Business Days) if any Authorized Person of Borrower or HCI ceases to continue to hold such position.

**6.5 Collection of Notes Receivable.** (a) Subject to Section 4.8, to use or cause Servicer to use commercially reasonable efforts, at Borrower's sole cost and expense (including through the application of available funds pursuant to Section 2.3(b)) and in its own name, in accordance with industry standards and applicable laws, to promptly and diligently collect and enforce payment of all Notes Receivable to the extent that it is commercially reasonable to do so and in a commercially reasonable manner, and (b) upon Agent's prior written request, permit Agent or its representatives to discuss with Borrower's officers or with appraisers furnishing appraisals of any Note Receivable the procedures for preparation, review and retention of, and to review and obtain copies of, such appraisals (subject to receipt of a non-reliance letter from Agent or its representative, as applicable).

**6.6 [Reserved].**

**6.7 Taxes.** Cause all assessments and taxes, whether real, personal, or otherwise, due or payable by, or imposed, levied, or assessed against Borrower or any of its assets to be paid in full, before delinquency or before the expiration of any extension period, except to the extent that the validity of such assessment or tax shall be the subject of a Permitted Protest. Borrower will make timely payment or deposit of all tax payments and withholding taxes required of it and them by applicable laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon reasonable request, furnish Agent with proof satisfactory to Agent indicating that Borrower has made such payments or deposits.

**6.8 Insurance.** Borrower shall ensure that HCI maintain, for the benefit of and on behalf of both the Borrower and HCI, insurance of the kinds customarily insured against by Persons engaged in the same or similar business as the Borrower (in the good faith determination of HCI and the Borrower).

**6.9 [Reserved].**

**6.10 Compliance with Laws.** Comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Change.

**6.11 Separateness.** Borrower acknowledges that Lenders are entering into this Agreement in reliance upon Borrower's identity as a legal entity that is separate from any other Person. Therefore, from and after the date of this Agreement, Borrower shall take all reasonable steps, including without limitation, all steps that Agent may from time to time reasonably request, to maintain Borrower's identity as a separate legal entity and to make it manifest to third parties that Borrower is a separate legal entity. Without limiting the generality of the foregoing, Borrower agrees that it shall (a) at all times preserve and keep in full force and effect its valid existence and good standing and any rights and franchises material to its business;

(b) unless in favor of Borrower with respect to the allocation of ordinary course operating expenses, conduct all transactions with its Affiliates strictly on an arm's-length basis and allocate all overhead expenses (including, without limitation, telephone and other utility charges) for items shared with such other Affiliates and Borrower on the basis of actual use to the extent practicable and, to the extent such allocation is not practicable, on a basis reasonably related to actual use;

(c) observe all corporate formalities as a distinct entity;

(d) maintain Borrower's Books separate from those of its other Affiliates and otherwise readily identifiable as its own assets rather than assets of its other Affiliates;

(e) not commingle funds or other assets of Borrower with those of its other Affiliates and, except for the Borrower Accounts, not maintain bank accounts or other depository accounts to which Borrower is an account party, into which Borrower makes deposits or from which Borrower has the power to make withdrawals;

(f) not permit Borrower to pay or finance any of its other Affiliates' operating expenses not properly allocable to Borrower;

(g) not engage in any business or activity other than the ownership, operation and maintenance of the Notes Receivable and any Permitted Investments owned by Borrower from time to time in accordance with this Agreement, and activities incidental thereto;

(h) [reserved];

(i) not commingle its assets with the assets of any of its Affiliates or of any other Person or entity;

(j) [reserved];

(k) maintain its records, books of account and bank accounts separate and apart from those of its Affiliates and any other Person;

(l) maintain separate financial statements from those of its Affiliates; provided, however, Borrower's financial position, assets, liabilities, net worth and operating results may be included in the consolidated financial statements of an Affiliate, provided that such consolidated financial statements contain a footnote indicating that Borrower is a separate legal entity and that it maintains separate books and records;

(m) not seek the dissolution or winding up in whole, or in part, of Borrower or take any action that would cause such entity to become insolvent;

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(n) correct any known misunderstandings regarding the separate identity of Borrower or any Affiliate thereof, as the case may be;

(o) not maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(p) not assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit of any other Person (other than in connection with Permitted Liens) or hold out its credit as being available to satisfy the obligations of any other Person;

(q) either file its own tax returns or file a consolidated federal income tax return with another Person (unless prohibited or required, as the case may be, by applicable law);

(r) either to hold itself out to the public as a legal entity separate and distinct from any other entity or Person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any Affiliate of Borrower);

(s) [reserved];

(t) not share any common logo with or hold itself out as or be considered as a department or division of any Affiliate of Borrower or any other Person or entity;

(u) [reserved];

(v) [reserved];

(w) [reserved];

(x) not account for or treat (whether in financial statements or otherwise) the transactions contemplated by the Sale and Servicing Agreement in any manner other than the sale of Notes Receivable to Borrower or in any other respect account for or treat the transactions contemplated therein in any manner other than as a sale of Notes Receivable to Borrower; and

(y) cause its members, managers, directors, officers, agents and other representatives to act at all times with respect to Borrower consistently and in furtherance of the foregoing.

**6.12 Disclosure Updates.** Promptly and in no event later than five (5) Business Days after obtaining knowledge thereof, notify Agent if any written factual material information furnished by or on behalf of and relating to HCI or Borrower to the Lender Group (excluding the Projections, other forward looking information and information of a general economic or industry specific nature or information solely related to third parties) for purposes of or in connection with this Agreement, the other Loan Documents, or any transaction contemplated herein or therein, when taken as a whole, contained at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make such information (taken as a whole)

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not misleading in any material respect at such time in light of the circumstances under which such information was provided (after giving effect to all supplements and updates thereto from time to time). For the avoidance of doubt, any notification pursuant to the foregoing provisions will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

**6.13 [Reserved].**

**6.14 Required Asset Documents.** Promptly upon receipt, deliver to Agent or Collateral Custodian all of the Required Asset Documents related to such Note Receivable (including any Required Asset Document relating to any amendment, waiver or modification thereto from time to time).

**6.15 Sale and Servicing Agreement.** Cause Servicer to promptly provide Agent with true and complete copies of all notices sent or received by Servicer under the Sale and Servicing Agreement.

**6.16 Escrow Deposits.** Deposit into the Custodial Account all amounts advanced by Borrower to be held in escrow, including, without limitation, construction funds, insurance premiums and proceeds, taxes, and other funds delivered to Borrower to be held on behalf of any Account Debtor.

**6.17 [Reserved].**

**6.18 Further Assurances.** At any time or from time to time upon the request of Agent or any Lender through the Agent, Borrower will, at its expense, (a) promptly execute, acknowledge and deliver such further documents (so long as such documents are within the possession of Borrower or may be obtained with neither undue burden nor expense) and do such other acts and things as Agent or such Lender through the Agent may reasonably request in order to effect fully the purposes of the Loan Documents, and (b) take all actions necessary to perfect, protect and more fully evidence Borrower's ownership of such Note Receivable, including, without limitation, executing or causing to be executed (or filing or causing to be filed) such other instruments or notices as may be necessary or reasonably appropriate. In furtherance and not in limitation of the foregoing, Borrower shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are secured by substantially all of the assets of Borrower.

**6.19 Acquisition of Notes Receivable.** With respect to each Note Receivable owned by Borrower, Borrower shall acquire such Note Receivable directly or pursuant to and in accordance with the terms of the Sale and Servicing Agreement.

**6.20 Sanctions: Anti-Corruption Laws.** Borrower will maintain in effect policies and procedures designed to promote compliance by Borrower, its Affiliates, and their respective directors, officers, employees, and agents with applicable Sanctions and with the FCPA and any other applicable anti-corruption laws.

**6.21 Most Favored Nation.** If at any time after the Closing Date, Borrower, HCI or any of HCI's Subsidiaries enter into any other secured financing facility for borrowed money (each a "New Facility") (excluding Permitted Financings), and provided HCI has not obtained an investment grade rating from Moody's, S&P or Fitch Ratings, Inc., then to the extent that any such New Facility shall contain any Fundamental Terms (as defined below) that are more favorable to any agent or lender thereunder than those granted to Agent and Lenders under this Agreement in any material respect, then the Fundamental Terms of this Agreement and the other Loan Documents shall, within five (5) Business Days of any such New Facility becoming effective, be amended to be as favorable (from the perspective of the Agent and Lenders), as determined by Agent and Borrower in good faith, as such more favorable Fundamental Terms agreed to under the New Facility, and this Agreement and the Loan Documents shall for all purposes be automatically amended to implement such amendments and adjustments without the further need for action by any Person. "Fundamental Terms" are limited to those terms directly relating to Section 7.17 and other financial maintenance covenants. The Wells Fargo Facility shall not be considered a New Facility for purposes of this Section 6.21.

**6.22 Investment Company Act of 1940.** Servicer shall at all times maintain compliance with the "asset coverage" requirements for "business development companies" as such terms are defined and such requirements are set forth in the Investment Company Act of 1940.

**6.23 Post-Closing Matters.** Following the Second Amendment Effective Date, Borrower will use commercially reasonable efforts to complete the following actions within 120 days of the date hereof (as such period may be extended in the sole discretion of Agent):

(a) provide an amended and restated Collateral Custodian Agreement (or a replacement thereof), in form and substance reasonably satisfactory to the Agent; and

(b) provide an amended and restated Control Agreement for each of its Deposit Accounts or Securities Accounts (or replacements thereof), in form and substance reasonably satisfactory to the Agent.

## 7. NEGATIVE COVENANTS.

Borrower covenants and agrees that, from and after the Closing Date and until termination of all of the Commitments and full and final payment of the Obligations (other than with respect to contingent and indemnification obligations for which no claim has yet been made on or before the termination of all of Commitments and full and final payment of the Obligations), Borrower will not do any of the following:

**7.1 Indebtedness.** Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except:

- (a) Indebtedness evidenced by this Agreement and the other Loan Documents,
- (b) endorsement of instruments or other payment items for deposit;~~and~~
- (c) customary indemnification, expense reimbursement and similar provisions under the documentation governing any Note Receivable; and

(d) Indebtedness of the Borrower under any Hedge Agreements in an aggregate amount not to exceed \$25,000,000 at any time outstanding for bona fide and not for speculative purposes (for clarity, the amount of any Indebtedness under any Hedge Agreement shall be the amount Borrower would be obligated for under such Hedge Agreement if such Hedge Agreement were terminated at the time of determination).

**7.2 Liens.** Create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

**7.3 Restrictions on Fundamental Changes.**

(a) Enter into any merger, consolidation, reorganization, or recapitalization, or amend, without the prior written consent of Agent, any of its Governing Documents as in effect on the Closing Date.

(b) Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution).

(c) Suspend or go out of a substantial portion of its business.

(d) Convey, sell, lease, license, assign, transfer, or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its assets, other than through Permitted Dispositions.

(e) Divide itself into two or more limited liability companies (pursuant to a “plan of division” as contemplated under the Delaware Limited Liability Company Act or otherwise).

**7.4 Disposal of Assets.** Other than (x) Permitted Dispositions and (y) Restricted Payments permitted pursuant to Section 7.10, convey, sell, lease, license, assign, transfer, or otherwise dispose of (or enter into an agreement to convey, sell, lease, license, assign, transfer, or otherwise dispose of) any of Borrower’s assets.

**7.5 Change Name.** Change Borrower’s name, organizational identification number, state of organization or organizational identity provided, however, that Borrower may change its name upon at least 30 days prior written notice to Agent of such change and so long as, at the time of such written notification, Borrower provides any financing statements necessary to perfect and continue perfected the Agent’s Liens.

**7.6 Nature of Business.** Make any change in the nature of its or their business, or acquire any properties or assets that are not reasonably related to the conduct of such business activities.

**7.7 No Subsidiaries.** Form, create, organize, acquire or otherwise have any Subsidiaries other than Tax Blocker Subsidiaries.



**7.8 Change of Control.** Cause, permit, or suffer, directly or indirectly, any Change of Control without the prior written consent of (i) Agent and (ii) Required Lenders.

**7.9 Required Procedures.** Make any changes or revisions, in each case, in any material respect to the Borrower's Required Procedures without advance notice to, and the prior written consent of, Agent.

**7.10 Restricted Payments.** Make any Restricted Payment other than Permitted Restricted Payments.

**7.11 Accounting Methods.** Modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP) or enter into, modify, or terminate any agreement currently existing, or at any time hereafter entered into with any third party accounting firm or service bureau for the preparation or storage of Borrower's accounting records without said accounting firm or service bureau agreeing to provide Agent information regarding the Collateral or Borrower's financial condition.

**7.12 Investments.** Except for Permitted Investments and Notes Receivable, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment (excluding any asset acquired in connection with a workout or restructuring with respect to an Account Debtor).

**7.13 Transactions with Affiliates.** Except as may be otherwise required or permitted by the Sale and Servicing Agreement, directly or indirectly enter into or permit to exist any transaction with any Affiliate of Borrower except for (a) transactions that are otherwise permitted hereunder (including Permitted Dispositions) and (b) transactions that (i) are fully disclosed to Agent, (ii) are upon terms no less favorable to Borrower or its Subsidiaries, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate, and (iii) satisfy the applicable requirements of Section 6.11.

**7.14 Use of Proceeds.** Use the proceeds of the Advances, if any, made on the Closing Date for any purpose other than to (i) pay off in full the Existing Loan Agreement Debt, (ii) pay transactional fees, costs, and expenses incurred in connection with this Agreement and the other Loan Documents, and (iii) to acquire Eligible Notes Receivable from the Originator pursuant to the Sale and Servicing Agreement. Use the proceeds of the Advances, if any, made after the Closing Date for any purpose other than (a) to pay fees, costs, and expenses incurred in connection with this Agreement and the other Loan Documents, (b) to acquire Eligible Notes Receivable, from the Originator pursuant to the Sale and Servicing Agreement, (c) for working capital purposes or to make distributions to the holders of its Stock to the extent permitted by applicable law to the extent permitted by this Agreement and (d) as otherwise permitted under this Agreement.

**7.15 Sanctions; Anti-Corruption Use of Proceeds.** Borrower will not, directly or indirectly, use the proceeds of the Advances, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of the FCPA or any other applicable anti-corruption law, or (ii) (A) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (B) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Advances, whether Agent, Lender, underwriter, advisor, investor, or otherwise).

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**7.16 No Unfunded Commitments.** The Borrower shall not acquire or own any unfunded commitments to the makers of Notes Receivable.

**7.17 Financial Covenants.**

(a) **Minimum Interest Coverage Ratio of Borrower.** Permit Borrower to fail to maintain, as measured as of the last day of each fiscal quarter beginning with the first fiscal quarter ending after the Closing Date, an Interest Coverage Ratio for the three (3) fiscal month period then ended that is greater than or equal to 2.25x.

(b) **Minimum Tangible Net Worth of Borrower.** Fail to maintain as of the end of each of its fiscal quarters a Tangible Net Worth of at least the sum of the outstanding principal balances of Borrower's three largest Eligible Notes Receivable. Notwithstanding the foregoing, Borrower shall not be required to calculate or comply with the financial covenant in this Section 7.17(b) as of the end of any fiscal quarter on which there are no outstanding Advances under this Agreement as of the end of such fiscal quarter.

(c) **Minimum Tangible Net Worth of HCI.** Permit HCI, on a consolidated basis with its Subsidiaries, to maintain as of the last day of each fiscal quarter a Tangible Net Worth that is less than \$723,000,000.

**7.18 [Reserved].**

**7.19 Sale and Servicing Agreement**

(a) [Reserved].

(b) Allow Servicer to delegate any of its duties or functions under the Sale and Servicing Agreement to any Person, or otherwise engage any such Person to perform any such duties or functions for or on behalf of Servicer or Borrower, in any such case without the prior written consent of Agent (other than as expressly permitted under the Sale and Servicing Agreement).

(c) Transfer the duties and functions of Servicer under the Sale and Servicing Agreement to any other Person without the prior written consent of Agent (other than as expressly permitted under the Sale and Servicing Agreement).

**7.20 Independent Manager.** Borrower shall not fail at any time to have at least one independent manager (an "Independent Manager") who has at least three (3) years' prior experience as an independent director, independent manager or independent member and who is provided by a nationally recognized provider of independent directors that is not an Affiliate of Borrower and that provides professional Independent Managers and other corporate services in the ordinary course of its business, and which individual is duly appointed as an Independent Manager and is not, and for the five-year period prior to such individual's appointment as Independent Manager has not been, and will not while serving as Independent Director be, any of the following:

(a) a shareholder, member, partner, equityholder, manager, director, officer or employee of Borrower, HCI, or Affiliates (other than as an Independent Manager of any Affiliate of HCI that is a special purpose vehicle that is required by a creditor to be a single purpose bankruptcy remote entity; provided that such Independent Manager is employed by a company that routinely provides professional Independent Managers or managers in the ordinary course of its business);

(b) a creditor, supplier or service provider (including provider of professional services) to Borrower, HCI, or Affiliates (other than as an employee of a nationally-recognized company that routinely provides professional Independent Managers and other corporate services to Borrower, the Parent or any of their respective Affiliates in the ordinary course of its business);

(c) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider;  
or

(d) a Person that controls (whether directly, indirectly or otherwise) any Person described in (a), (b) or (c) above;

For purposes of this definition, “family member” includes any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships and any person sharing the Independent Manager’s household (other than a tenant or employee).

Upon Borrower learning of the death or incapacity of an Independent Manager, Borrower shall have ten (10) Business Days following such death or incapacity to appoint a replacement Independent Manager. Any replacement manager shall satisfy the criteria set forth in this Section 7.20, and the Agent shall receive a two (2) Business Days prior written notice before such replacement. For the avoidance of doubt, other than in the event of the death or incapacity of an Independent Manager, Borrower shall at all times have an Independent Manager and may not terminate any Independent Manager without the prior written consent of Agent (which consent shall not be unreasonably withheld).

**7.21 No Further Negative Pledges.** Except pursuant to the Loan Documents, Borrower shall not enter into any contractual obligation prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired.

## **8. EVENTS OF DEFAULT.**

**8.1 Events of Default.** Any one or more of the following events shall constitute an event of default (each, an “Event of Default”) under this Agreement:

(a) If Borrower fails to pay when due and payable, (i) any portion of the Obligations constituting principal or (ii) any other payment required to be made to Agent or any Lender pursuant to this Agreement or the other Loan Documents and, solely in the case of this clause (ii), such failure has not been cured within two (2) Business Days after written notice thereof by the Agent;

(b) If Borrower (i) fails to perform, keep, or observe any covenant or other provision contained in Sections 2.9, 6.2, 6.3, 6.10, 6.11, 6.12, 6.13, 6.14, 6.16, 6.17 or Article 7 of this Agreement or any comparable provision contained in any of the other Loan Documents, (ii) fails to perform, keep, or observe any covenant or other provision contained in Sections 6.1 or 6.5 through 6.9 of this Agreement and such failure continues for a period of ten (10) days after the earlier to occur of (A) the date on which written notice of such failure requiring the same to be remedied shall have been given to Borrower by Agent, any Lender or Custodian, and (B) the date on which an Authorized Person of Borrower or HCI acquires knowledge thereof, or (iii) fails to perform, keep, or observe any covenant or other provision contained in any Section of this Agreement (other than a Section that is expressly dealt with elsewhere in this Section 8.1(b)) or the other Loan Documents, and such failure continues for a period of ten (10) Business Days after the earlier to occur of (A) the date on which written notice of such failure shall have been given to Borrower or the Servicer by Agent, any Lender or Custodian, or (B) the date on which an Authorized Person of Borrower or HCI acquires knowledge thereof;

(c) If (i) any assets of Borrower having an aggregate value in excess of \$250,000 or (ii) any assets of HCI having an aggregate value in excess of \$35,000,000, are attached, seized, subjected to a writ or distress warrant, levied upon, or comes into the possession of any court-appointed receiver, trustee, custodian, conservator, or similar official;

(d) If an Insolvency Proceeding is commenced by Borrower or HCI;

(e) If an Insolvency Proceeding is commenced against Borrower or HCI, and any of the following events occur: (i) such Person consents to the institution of such Insolvency Proceeding against it, (ii) the petition commencing the Insolvency Proceeding is not timely controverted; provided, however, that, during the pendency of such period, Agent (including any successor agent) and each other member of the Lender Group shall be relieved of their obligations to extend credit hereunder, (iii) the petition commencing the Insolvency Proceeding is not dismissed within 60 calendar days of the date of the filing thereof; provided, however, that, during the pendency of such period, Agent (including any successor agent) and each other member of the Lender Group shall be relieved of their obligations to extend credit hereunder, (iv) an interim trustee is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of such Person, or (v) an order for relief shall have been entered therein;

(f) If Borrower or HCI is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs;

(g) If a notice of Lien, levy, or assessment is filed of record with respect to (i) any of the assets of Borrower having an aggregate value in excess of \$250,000 or (ii) any of the assets of HCI having an aggregate value in excess of \$35,000,000, by the United States, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, or if any taxes or debts owing at any time hereafter to any one or more of such entities becomes a Lien upon (x) any of the assets of Borrower having an aggregate value in excess of \$100,000 or (y) any of the assets of HCI having an aggregate value in excess of \$35,000,000, and in any such case the same is not paid before such payment is delinquent;

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(h) If a judgment or other claim becomes a Lien or encumbrance upon (i) any assets of Borrower having an aggregate value in excess of \$250,000 or (ii) any of the assets of HCI having an aggregate value in excess of \$35,000,000 (in each case, not covered by insurance), and in the case of this clause (ii) either (A) enforcement of such judgment or claim remains unstayed or unsatisfied for a period of thirty (30) consecutive days or is not fully covered (subject to standard deductibles) by insurance coverage under which the insurer has accepted liability, or (B) the judgment creditor or claimant begins enforcement proceedings of such judgment or Lien;

(i) If there is (i) a payment default by HCI or by any Subsidiary of HCI as borrower or obligor under any Indebtedness in an aggregate principal amount in excess of \$35,000,000; or (ii) any other type of default by HCI or by any Subsidiary of HCI, in each case, as borrower or obligor under any such Indebtedness and any such default results in an acceleration of the maturity of the obligations of HCI or any Subsidiary of HCI, as applicable, or to terminate the applicable loan agreement;

(j) If a Servicer Default (as defined under the Sale and Servicing Agreement) occurs under the Sale and Servicing Agreement;

(k) If there is a failure of any representation or warranty of Borrower or HCI made in any Loan Document to be correct, in each case, in all material respects (unless otherwise already qualified as to materiality or Material Adverse Change) when the same shall have been made, and in instances where such representations or warranty is capable of being cured such failure continues for a period of thirty (30) days since the earlier of (i) an Authorized Person of HCI or the Borrower obtaining knowledge of such default or (ii) written notice thereof by the Agent;

(l) If this Agreement or any other Loan Document that purports to create a Lien in favor of Agent or Lenders shall, for any reason, fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on or security interest in (subject to Permitted Liens) the Collateral covered hereby or thereby in favor of Agent or Lenders, except (i) as permitted under this Agreement or the other Loan Documents or (ii) the Agent's or the Collateral Custodian's failure to take any action required to establish or maintain perfection (x) reasonably requested by Borrower or HCI in order to maintain a valid and perfected Lien on any Collateral or (y) within the Agent's or the Collateral Custodian's control and customarily performed by such Person;

(m) (i) Either Servicer or Borrower fails to comply, in any material respect, with its obligations under the Sale and Servicing Agreement (subject to applicable grace periods thereunder), or (ii) if applicable, Special Servicer fails to comply, in any material respect, with its obligations under the Intercreditor Agreement (subject to applicable grace periods thereunder);

(n) Any provision of any Loan Document that Agent in its Permitted Discretion deems to be material shall at any time for any reason be declared to be null and void, or the validity or enforceability thereof shall be contested by Borrower or by HCI, or a proceeding shall be commenced by Borrower or by HCI, or by any Governmental Authority having jurisdiction over Borrower or HCI seeking to establish the invalidity or unenforceability thereof, or Borrower or HCI, shall deny that such Person has any liability or obligation purported to be created under any Loan Document to which it is a party;

(o) If any of the individuals serving as of the Closing Date (or serving thereafter as a replacement acceptable to the Agent) as the Chief Executive Officer or Chief Financial Officer, respectively, of either Borrower or HCI, shall cease to be actively involved in the business of Borrower or HCI (as applicable) in such capacity and such individual has not been replaced within ninety (90) days (or any such extended period as agreed by to Agent in its Permitted Discretion); provided, that, for the avoidance of doubt, the appointment of an interim Chief Executive Officer or interim Chief Financial Officer shall constitute the replacement of the Chief Executive Officer or Chief Financial Officer, respectively, ceasing to be actively involved in the business of Borrower or HCI (as applicable); or

(p) Borrower fails to maintain at least seven (7) different Account Debtors with respect to Eligible Notes Receivable in the Collateral and such failure continues for a period of ten (10) days after the date on which an Authorized Person of Borrower or HCI acquires knowledge thereof.

## **8.2 Cure Right**

(a) Notwithstanding anything to the contrary contained in Section 8.1, in the event that Borrower fails to comply with the requirements of Section 7.17(b), HCI or any other Person designated by Borrower shall have the right, within ten (10) days after an Authorized Person of HCI or Borrower acquires knowledge or is given notice of such failure to comply, to make a direct or indirect equity investment in Borrower in cash in the form of common Equity Interests or otherwise receive cash contributions to the capital of Borrower (collectively, the “Cure Right”), and upon the receipt by Borrower of net cash proceeds pursuant to the exercise of the Cure Right (the “Cure Amount”), such covenant(s) shall be recalculated, giving effect to a pro forma of the total shareholder’s equity of Borrower for the period in which Borrower failed to comply with Section 7.17(b) in an amount equal to such Cure Amount; provided that such pro forma adjustment to total shareholder’s equity shall be given solely for the purpose of determining the existence of a Default or an Event of Default under Section 7.17(b) and not for any other purpose under any Loan Document.

(b) If, after the exercise of the Cure Right and the recalculations pursuant to clause (a) above, Borrower shall then be in compliance with the requirements of Section 7.17(b), as applicable, Borrower shall be deemed to have satisfied the requirements of Section 7.17(b), as applicable, as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable Default or Event of Default under Section 8.1(b) that had occurred shall be deemed cured; provided that the Cure Right may be exercised on no more than two (2) occasions during the term of this Agreement.

## 9. THE LENDER GROUP'S RIGHTS AND REMEDIES.

**9.1 Rights and Remedies.** Upon the occurrence, and during the continuation, of an Event of Default, Required Lenders (at their election but without notice of their election and without demand) may authorize and instruct Agent to do any one or more of the following on behalf of the Lender Group (and Agent, acting upon the instructions of Required Lenders, shall do the same on behalf of the Lender Group), all of which are authorized by Borrower:

(a) Declare all or any portion of the Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents, immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrower shall be obligated to repay all of such Obligations in full;

(b) Declare the Revolving Credit Availability Period and the Commitments terminated, whereupon the Revolving Credit Availability Period and the Commitments shall immediately be terminated together with any obligation of any Lender to advance money or extend credit to or for the benefit of Borrower under this Agreement, under any of the Loan Documents, or under any other agreement between Borrower and the Lender Group;

(c) Terminate this Agreement and any of the other Loan Documents as to any future liability or obligation of the Lender Group, but without affecting any of the Agent's Liens in the Collateral and without affecting the Obligations;

(d) Settle or adjust disputes and claims directly with Borrower's Account Debtors and makers of Notes Receivable for amounts and upon terms which Agent considers advisable, and in such cases, Agent will credit Borrower's Loan Account with only the net amounts received by Agent in payment of such disputed Accounts or Notes Receivable after deducting all Lender Group Expenses incurred or expended in connection therewith;

(e) Exercise or assign any and all rights to collect, manage, and service the Notes Receivable, including, (i) receive, process and account for all Collections in respect of Notes Receivable, (ii) terminate the Sale and Servicing Agreement and assign servicing responsibilities to any replacement servicer, (iii) without notice to or demand upon Borrower, make any payments as are reasonably necessary or desirable in connection with the Sale and Servicing Agreement or any other agreement that Agent enters into with any replacement servicer, and (iv) take all lawful actions and procedures which Agent or such assignee deems necessary to collect the amounts due to Borrower in connection with Notes Receivable (all amounts incurred by Agent pursuant to this Section 9.1(e) shall be Lender Group Expenses);

(f) Without notice to or demand upon Borrower or any other Person, make such payments and do such acts as Agent considers necessary or reasonable to protect its security interests in the Collateral. Borrower agrees to assemble the Collateral if Agent so requires, and to make the Collateral available to Agent at a place that Agent may designate which is reasonably convenient to both parties. Borrower authorizes Agent to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any Lien that in Agent's determination appears to conflict with the priority of the Agent's Liens in and to the Collateral and to pay all expenses incurred in connection

therewith and to charge Borrower's Loan Account therefor. With respect to any of Borrower's owned or leased premises, Borrower hereby grants Agent a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of the Lender Group's rights or remedies provided herein, at law, in equity, or otherwise;

(g) Without notice to Borrower (such notice being expressly waived), and without constituting an acceptance of any collateral in full or partial satisfaction of an obligation (within the meaning of the Code), set off and apply to the Obligations any and all (i) balances and deposits of Borrower held by the Lender Group (including any amounts in the Borrower Accounts), or (ii) Indebtedness at any time owing to or for the credit or the account of Borrower held by the Lender Group;

(h) Hold, as cash collateral, any and all balances and deposits of Borrower held by the Lender Group, and any amounts in any Borrower Account, to secure the full and final repayment of all of the Obligations;

(i) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Borrower Collateral. Borrower hereby grants to Agent a license or other right to use, without charge, Borrower's labels, patents, copyrights, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Borrower Collateral, in completing production of, advertising for sale, and selling any Borrower Collateral and Borrower's rights under all licenses and all franchise agreements shall inure to the Lender Group's benefit;

(j) Sell the Borrower Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as Agent determines is commercially reasonable. It is not necessary that the Borrower Collateral be present at any such sale;

(k) Except in those circumstances where no notice is required under the Code, Agent shall give notice of the disposition of the Borrower Collateral as follows:

(i) Agent shall give Borrower a notice in writing of the time and place of public sale, or, if the sale is a private sale or some other disposition other than a public sale is to be made of the Borrower Collateral, the time on or after which the private sale or other disposition is to be made; and

(ii) The notice shall be personally delivered or mailed, postage prepaid, to Borrower as provided in Section 12, at least 10 days before the earliest time of disposition set forth in the notice; no notice needs to be given prior to the disposition of any portion of the Borrower Collateral that is perishable or threatens to decline speedily in value or that is of a type customarily sold on a recognized market;

(l) Agent, on behalf of the Lender Group, may credit bid and purchase at any public sale;



(m) Agent may seek the appointment of a receiver or keeper to take possession of all or any portion of the Borrower Collateral or to operate same and, to the maximum extent permitted by applicable law, may seek the appointment of such a receiver without the requirement of prior notice or a hearing;

(n) Exercise any and all rights of Borrower under the Sale and Servicing Agreement or assume or assign (including, without limitation, to the Special Servicer pursuant to the Intercreditor Agreement, or otherwise) any and all rights and responsibilities to collect, manage, and service the Notes Receivables, including (i) the responsibility for the receipt, processing and accounting for all payments on account of the Notes Receivables, (ii) periodically sending demand notices and statements to the Account Debtors or makers of Notes Receivable, (iii) enforcing legal rights with respect to the Notes Receivables, including hiring attorneys to do so to the extent Agent or such assignee deems such engagement necessary, and (iv) taking all lawful actions and procedures which Agent or such assignee deems necessary to collect the Notes Receivables, and all such amounts shall be Lender Group Expenses; and

(o) The Lender Group shall have all other rights and remedies available at law or in equity or pursuant to any other Loan Document.

The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 8.1(e), in addition to the remedies set forth above, without any notice to Borrower or any other Person or any act by the Lender Group, the Revolving Credit Availability Period and the Commitments shall automatically terminate and the Obligations (other than Bank Product Obligations), inclusive of all accrued and unpaid interest thereon and all fees and all other amounts due under this Agreement and the other Loan Documents, shall automatically and immediately become due and payable and Borrower shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or notice of any kind, all of which are expressly waived by Borrower.

**9.2 Remedies Cumulative.** The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

## **10. TAXES AND EXPENSES.**

If Borrower fails to pay any monies (whether taxes, assessments or insurance premiums) due to third Persons, or fails to make any deposits or furnish any required proof of payment or deposit, all as required under the terms of this Agreement (except where the failure to make such payment or deposit is due to a good faith dispute between Borrower and such third Person), then, Agent, in its sole discretion and without prior notice to Borrower, may do any or all of the following: (a) make payment of the same or any part thereof or (b) set up such reserves against the Borrowing Base or the Maximum Revolver Amount as Agent deems necessary to protect the Lender Group from the exposure created by such failure. Any such amounts paid by Agent shall

constitute Lender Group Expenses and any such payments shall not constitute an agreement by the Lender Group to make similar payments in the future or a waiver by the Lender Group of any Event of Default under this Agreement. Agent need not inquire as to, or contest the validity of, any such expense, tax, or Lien and the receipt of the usual official notice for the payment thereof shall be conclusive evidence that the same was validly due and owing.

## **11. WAIVERS; INDEMNIFICATION.**

**11.1 Demand; Protest; etc.** Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which Borrower may in any way be liable.

**11.2 The Lender Group's Liability for Borrower Collateral.** Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the Code, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Borrower Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Borrower Collateral shall be borne by Borrower.

**11.3 Indemnification.** (a) Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Agent, each Joint Lead Arranger, the Lender-Related Persons with respect to each Lender, each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by applicable law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts and consultants and other reasonable costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution, delivery, enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of Borrower's compliance with the terms of the Loan Documents, (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by Borrower or any Environmental Actions, Environmental Liabilities and Costs or Remedial Actions related in any way to any such assets or properties (all the foregoing, collectively, the "Indemnified Liabilities"). The foregoing notwithstanding, Borrower shall have no obligation to any Indemnified Person under this Section 11.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person. This provision shall survive the termination of this Agreement and the repayment of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrower

was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrower with respect thereto. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrower was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrower with respect thereto. If Borrower has made any payments in respect of Indemnified Liabilities to any Indemnified Person pursuant to this Section 11.3 and such Indemnified Person thereafter collects any of such amounts from others or is found by a court of competent jurisdiction not to be entitled to such indemnification, such Indemnified Person will promptly repay such amounts collected to Borrower, without interest. Notwithstanding anything to the contrary herein, in no event shall Borrower be liable to an Indemnified Person for any special, indirect, consequential, remote, speculative or punitive damages (as opposed to direct or actual damages), even if Borrower has been advised of the likelihood of such loss or damage and regardless of the form of action, and each Indemnified Person hereby waives, releases, and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

## 12. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands by Borrower or Agent to the other relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as Borrower or Agent, as applicable, may designate to each other in accordance herewith), or telefacsimile to Borrower or Agent, as the case may be, at its address set forth below:

If to Borrower:

Hercules Funding IV LLC  
c/o Hercules Capital, Inc.  
400 Hamilton Avenue, Suite 310  
Palo Alto, California 94301  
Attn: Chief Executive Officer, Chief Financial Officer and Treasurer  
Fax No. 650-473-9194

with copies (which shall not constitute notice) to:

Hercules Funding IV LLC  
c/o Hercules Capital, Inc.  
400 Hamilton Avenue, Suite 310  
Palo Alto, California 94301  
Attn: General Counsel  
Fax No. 650-473-9194

and

Dechert LLP  
1095 Avenue of the Americas  
New York, New York 10036  
Attn: Jay Alicandri  
Email: [jay.alicandri@dechert.com](mailto:jay.alicandri@dechert.com)

If to Agent or Swingline Lender (for notices other than borrowing requests):

~~MUFG UNION BANK, N.A.~~  
~~MUFG Bank, Ltd., as Administrative Agent~~  
~~1221 Avenue of the Americas, 6th Floor~~  
~~New York, NY 10020~~  
~~Commercial Loan & Attention: Agency Services Desk~~  
~~1980 Saturn Street~~  
~~Monterey Park, CA 91755~~  
~~Attn: Commercial Loan Operations Supervisor~~  
~~Fax No. Telephone: (800) 212-4464 05-9951-6621~~  
~~(323) 565-2549~~  
~~Tel: (323) 720-7378~~  
Email: ~~CLD.SF@unionbank.com~~ [LODAgencyServices@us.mufg.jp](mailto:LODAgencyServices@us.mufg.jp)  
[agencydesk@us.sc.mufg.jp](mailto:agencydesk@us.sc.mufg.jp)

with copies (which shall not constitute notice) to:

~~MUFG UNION BANK, N.A.~~  
~~MUFG Bank, Ltd., as Administrative Agent~~  
~~350 California Street, 20th Floor~~  
~~San Francisco, CA 94104~~  
~~Attention: Kenneth Beck, J. William Bloore, Managing Director~~  
~~99 Almaden Boulevard, Suite 200~~  
~~San Jose, California 95113~~  
~~Fax Telephone: (408) 280-279-7163 7719~~  
Email: ~~Kenneth.Beck@unionbank.com~~ [william.bloore@us.mufg.jp](mailto:william.bloore@us.mufg.jp)

with copies (which shall not constitute notice) to:

[DLA Piper LLP \(US\)](#)  
[1251 Avenue of the Americas, 27th Floor](#)  
[New York, NY 10020](#)  
[Attention: Shmuel Klahr, Esq.](#)  
[Telephone: \(212\) 335-4721](#)  
[Email: \[shmuel.klahr@us.dlapiper.com\]\(mailto:shmuel.klahr@us.dlapiper.com\)](#)

If to Agent (for borrowing requests):

[MUFG Bank, Ltd., as Administrative Agent](#)  
[Harborside 3](#)  
[210 Hudson Street, Suite 500](#)  
[Jersey City, NJ 07311](#)  
[Telephone: \(201\) 413-8901](#)  
[Email: \[LODAgencyServices@us.mufg.jp\]\(mailto:LODAgencyServices@us.mufg.jp\)](#)

with copies (which shall not constitute notice) to:

MUFG Bank, Ltd., as Administrative Agent  
1221 Avenue of the Americas, 6th Floor  
New York, NY 10020  
Attention: Agency Desk  
Telephone: (212) 405-6621  
Email: [LODAgencyServices@us.mufg.jp](mailto:LODAgencyServices@us.mufg.jp)  
[agencydesk@us.sc.mufg.jp](mailto:agencydesk@us.sc.mufg.jp)

If to Swingline Lender:

MUFG Bank, Ltd., as Administrative Agent  
1221 Avenue of the Americas, 6th Floor  
New York, NY 10020  
Attention: Agency Desk  
Telephone: (212) 405-6621  
Email: [LODAgencyServices@us.mufg.jp](mailto:LODAgencyServices@us.mufg.jp)  
[agencydesk@us.sc.mufg.jp](mailto:agencydesk@us.sc.mufg.jp)

Agent and Borrower may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 12, other than notices by Agent in connection with enforcement rights against the Borrower Collateral under the provisions of the Code, shall be deemed received on the earlier of the date of actual receipt or three (3) Business Days after the deposit thereof in the mail as provided herein, or if sent by facsimile when sent with receipt confirmed by the recipient. Borrower acknowledges and agrees that notices sent by the Lender Group in connection with the exercise of enforcement rights against Borrower Collateral under the provisions of the Code shall be deemed sent when deposited in the mail or personally delivered, or, where permitted by law, transmitted by telefacsimile or any other method set forth above.

### **13. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.**

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

(b) **THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK, PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR**

WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 13(b).

(c) BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST AGENT, SWINGLINE LENDER, ANY OTHER LENDER, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

#### 14. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

##### 14.1 Assignments and Participations.

(a) Any Lender may, upon Agent's written consent (such consent not to be unreasonably withheld, conditioned or delayed), assign and delegate to one or more assignees (each an "Assignee") that are Eligible Transferees all or any portion of the Obligations, the Commitments and the other rights and obligations of such Lender hereunder and under the other Loan Documents, in a minimum amount (unless waived by Agent) of \$5,000,000 (except such minimum amount shall not apply to (x) an assignment or delegation by any Lender to any other Lender or an Affiliate of any Lender or (y) a group of new Lenders, each of whom is an Affiliate of each other or a fund or account managed by any such new Lender or an Affiliate of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000); provided, however, that Borrower and Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice

of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Servicer, Borrower and Agent by such Lender and the Assignee, (ii) such Lender and its Assignee have delivered to Servicer, Borrower and Agent an Assignment and Acceptance and Agent has notified the assigning Lender of its receipt thereof in accordance with Section 14.1(b), and (iii) unless waived by Agent, the assigning Lender or Assignee has paid to Agent for Agent's separate account a processing fee in the amount of \$3,500; provided, further, that no assignment or participation shall be made at any time to Competitors (other than in the case of an Event of Default under Sections 8.1(a), (c), (d), (e) or (p)) and any such assignment or participation shall be void *ab initio*. Anything contained herein to the contrary notwithstanding, the payment of any fees shall not be required and the Assignee need not be an Eligible Transferee if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of the assigning Lender.

(b) From and after the date that Agent notifies the assigning Lender (with a copy to Borrower) that it has received an executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 11.3 hereof) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto), and such assignment shall effect a novation among Borrower, the assigning Lender, and the Assignee; provided, however, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 16 and Section 17.7(a) of this Agreement.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement as are delegated to Agent, by the terms hereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 14.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender pro tanto.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (excluding, in each case, so long as no Event of Default under Sections 8.1(a), (c), (d), (e) or (p) has occurred and is continuing, any Competitor) (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, however, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrower, Agent, and Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender, or (E) change the amount or due dates of scheduled principal repayments or prepayments or premiums, and (v) all amounts payable by Borrower hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrower, the Collections, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by Lenders among themselves.



(f) In connection with any such assignment or participation or proposed assignment or participation, a Lender may, subject to the provisions of Section 17.7, disclose all documents and information which it now or hereafter may have relating to Borrower and its and its Subsidiaries and their respective business.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

(h) Agent may, and Borrower hereby expressly authorizes Agent, to provide the Competitor List from time to time to each Lender requesting the same.

**14.2 Successors.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not assign this Agreement or any rights or duties hereunder without Lenders' prior written consent and any prohibited assignment shall be absolutely void ab initio. No consent to assignment by Lenders shall release Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 14.1 hereof and, except as expressly required pursuant to Section 14.1 hereof, no consent or approval by Borrower is required in connection with any such assignment.

## 15. AMENDMENTS; WAIVERS.

**15.1 Amendments and Waivers.** No amendment or waiver of any provision of this Agreement or any other Loan Document (other than the Fee Letter), and no consent with respect to any departure by Borrower therefrom, shall be effective unless the same shall be in writing and signed by Required Lenders (or by Agent at the written request of Required Lenders) and Borrower and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall:

- (a) increase or extend any Commitment of any Lender without the written consent of each Lender directly affected thereby;
- (b) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;
- (c) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;
- (d) change the Pro Rata Share that is required to take any action hereunder without the written consent of each Lender directly affected thereby;

(e) amend or modify this Section or any provision of this Agreement providing for consent or other action by all Lenders without the written consent of each Lender directly affected thereby;

(f) other than as permitted by Section 16.12, release Agent's Lien in and to any of the Collateral without the written consent of each Lender directly affected thereby;

(g) change the definitions of "Maximum Revolver Amount," "Amortization Commencement Date," "Amortization Commencement Date Principal Balance," "Amortization Period," "Required Amortization Amount" "Required Lenders", "Revolving Credit Availability Period" or "Pro Rata Share" without the written consent of each Lender directly affected thereby;

(h) contractually subordinate any of the Agent's Liens without the written consent of each Lender directly affected thereby;

(i) release Borrower from any obligation for the payment of money without the written consent of each Lender directly affected thereby; or

(j) change the definitions of "Borrowing Base" or "Eligible Notes Receivable" without the written consent of each Lender directly affected thereby;

provided, further, however, that no amendment, waiver or consent shall, unless in writing and signed by Agent, or Swingline Lender, as applicable, affect the rights or duties of Agent or Swingline Lender, as applicable, under this Agreement or any other Loan Document (including, in the case of Agent, Section 2.3(b)(i) and Section 16). The foregoing notwithstanding, (x) any amendment, modification, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of Borrower, shall not require consent by or the agreement of Borrower, and (y) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender.

Notwithstanding any provision in this Section 15.1, any amendment to this Agreement that only adds one or more additional lenders as a Lender under this Agreement or adds or increases the amount of a Lender's Commitment shall be effective if signed by the additional or existing Lender whose Commitment is added or increased thereby, Borrower and Agent, and shall not require the consent of Required Lenders or any other Lender.

Furthermore, notwithstanding any provision in this Section 15.1, any amendment to this Agreement pursuant to: (x) Section 16.21 below shall not require the consent of any Lender or (y) Section 2.16 shall be subject only to the requirements set forth in such section.

### **15.2 Replacement of Holdout Lender.**

(a) If any action to be taken by the Lender Group or Agent hereunder requires the unanimous consent, authorization, or agreement of all Lenders, and a Lender (“Holdout Lender”) fails to give its consent, authorization, or agreement, then Agent, upon at least 5 Business Days prior irrevocable notice to the Holdout Lender, may permanently replace the Holdout Lender with one or more substitute Lenders (each, a “Replacement Lender”), and the Holdout Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Holdout Lender and each Replacement Lender shall execute and deliver an Assignment and Acceptance Agreement, subject only to the Holdout Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever. If the Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance Agreement prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such Assignment and Acceptance Agreement. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 14.1. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender hereunder and under the other Loan Documents, the Holdout Lender shall remain obligated to make the Holdout Lender’s Pro Rata Share of Advances.

**15.3 No Waivers; Cumulative Remedies.** No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent’s and each Lender’s rights thereafter to require strict performance by Borrower of any provision of this Agreement. Agent’s and each Lender’s rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

### **16. AGENT; THE LENDER GROUP.**

**16.1 Appointment and Authorization of Agent.** Each Lender hereby designates and appoints MUFG as its representative under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as such on the express conditions contained in this Section 16. The provisions of this Section 16 are solely for the benefit of Agent, and Lenders and Borrower shall have no rights as a third party beneficiary of any of the provisions contained herein. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (including Swingline Lender), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent; it being expressly understood and agreed that the use of the word “Agent” is for convenience only, that MUFG is merely the representative of Lenders, and only has the contractual duties set forth herein. Except

as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, the Collections, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) make Advances, for itself or on behalf of Lenders as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the Collections as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the Collections, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Borrower, the Obligations, the Collateral, the Collections, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

**16.2 Delegation of Duties.** Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects as long as such selection was made without gross negligence or willful misconduct.

**16.3 Liability of Agent.** None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of Lenders for any recital, statement, representation or warranty made by Borrower or any Affiliate of Borrower, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the Books or properties of Borrower or the books or records or properties of any of Borrower's Subsidiaries or Affiliates.

**16.4 Reliance by Agent.** Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrower or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the requisite Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of Lenders.

**16.5 Notice of Default or Event of Default** Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of Lenders and, except with respect to any Default or Event of Default of which Agent has actual knowledge, and unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 16.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders in accordance with Section 9; provided, however, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

**16.6 Credit Decision.** Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of Borrower and its Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of an investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower and any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower and any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower and any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons.

**16.7 Costs and Expenses: Indemnification.** Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys' fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrower is obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from the Collections received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event Agent is not reimbursed for such costs and expenses by Borrower and each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's Pro Rata Share thereof. Whether or not the transactions contemplated hereby are consummated, Lenders shall indemnify upon demand the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), according to their Pro Rata Shares, from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make an Advance or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's Pro Rata Share of any costs or out-of-pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

**16.8 Agent in Individual Capacity.** MUFG and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrower and its Affiliates and any other Person party to any Loan Documents as though MUFG were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge that, pursuant to such activities, MUFG or its Affiliates may receive information regarding Borrower or its Affiliates and any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to Lenders, and Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include MUFG in its individual capacity.

**16.9 Successor Agent.** Agent may resign as Agent upon 45 days' notice to Lenders (unless such notice is waived by Required Lenders). If Agent resigns under this Agreement, Required Lenders shall appoint a successor Agent for Lenders. If, at the time that Agent's resignation is effective, it is acting as Swingline Lender, such resignation shall also operate to effectuate its resignation as Swingline Lender and it shall automatically be relieved of any further obligation to make Swingline Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with Lenders, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among Lenders. In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 16 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 45 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Agent hereunder until such time, if any, as Lenders appoint a successor Agent as provided for above.

**16.10 Lender in Individual Capacity.** Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with Borrower and its Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Borrower or its Affiliates and any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to Lenders, and Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them. With respect to the Swingline Loans and Agent Advances, Swingline Lender shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the sub-agent of Agent.

**16.11 Withholding Taxes.**

(a) All payments made by Borrower hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes except as required by applicable law. In the event any deduction or withholding of Taxes other than (A) net income taxes (however denominated) or franchise taxes, and in each case imposed on a Lender as a result of (a) such Lender being organized under the laws of, or having its applicable lending office located in, the jurisdiction imposing such tax or (b) a present or former connection between such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein, (B) any tax similar to

branch profits taxes imposed by the United States that are imposed by any jurisdiction described in clause (A) above, (C) any taxes that are attributable to such Lender's failure to comply with the requirements of Section 16.11(b), (D) any withholding taxes imposed on amounts payable to such Lender at the time that such Lender becomes a party to this Agreement or changed its lending office, except to the extent that such Lender's assignor (if any) was entitled, at the time of assignment, or such Lender was entitled, immediately before it changed its lending office, to receive additional amounts from Borrower with respect to such withholding taxes pursuant to this Section 16.11(a), or (E) any amounts withheld pursuant to FATCA (all Taxes other than those described in (A) through (E) being "Non-Excluded Taxes") from any such payment is required, Borrower shall comply with the penultimate sentence of this Section 16.11(a). "Taxes" shall mean, any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments and all interest, penalties or similar liabilities with respect thereto. If any Non-Excluded Taxes are so levied or imposed, Borrower agrees to pay the full amount of such taxes and such additional amounts as may be necessary so that such payment due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16.11(a) after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein; provided, however, that Borrower shall not be required to increase any such amounts if the increase in such amount payable results from Agent's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction). Borrower will furnish to Agent as promptly as possible after the date the payment of any Tax is due pursuant to applicable law certified copies of tax receipts evidencing such payment by Borrower.

(b) If a Lender is entitled to an exemption from or reduction of United States withholding tax with respect to a payment made under this Agreement or any other Loan Document, such Lender agrees with and in favor of Agent and Borrower, to deliver to Agent and Borrower (in such number of copies as shall be requested by the recipient):

(i) if such Lender is a Foreign Lender and claims an exemption from United States withholding tax pursuant to its portfolio interest exception, (A) a statement of Lender, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a "10% shareholder" of Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the IRC (a "U.S. Tax Compliance Certificate"), and (B) a properly completed and executed IRS Form W-8BEN or Form W-8BEN-E before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower;

(ii) if such Lender is a Foreign Lender and claims an exemption from, or a reduction of, withholding tax under a United States tax treaty, (A) with respect to payments of interest under any Loan Document, properly completed and executed IRS Form W-8BEN or Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (B) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, 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, each before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower;



(iii) if such Lender is a Foreign Lender and claims that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, two properly completed and executed copies of IRS Form W-8ECI, or any applicable successor form before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower;

(iv) if such Lender is not a beneficial owner, executed IRS Form W-8IMY, accompanied by IRS Form W-8BEN, Form W-8BEN-E, Form W-8ECI, IRS Form W-9, a U.S. Tax Compliance Certificate for one or more direct or indirect partners of the Lender that are claiming the portfolio interest exemption, or any successor form, as applicable, that is required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding tax before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower; or

(v) such other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower.

Such Lender agrees promptly to notify Agent and Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a payment made to a Lender under this Agreement or any other Loan Document would be subject to United States 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 IRC, as applicable), such Lender shall deliver to Agent and Borrower at the time or times prescribed by law and at such time or times reasonably requested by Agent or Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Agent or Borrower as may be necessary for them 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.

Such Lender agrees promptly to notify Agent and Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender agrees with and in favor of Agent and Borrower, to deliver to Agent any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower.

Such Lender agrees promptly to notify Agent and Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(e) If any Lender claims exemption from, or reduction of, withholding tax and such Lender sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrower to such Lender, such Lender agrees to notify Agent and Borrower of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrower to such Lender. To the extent of such percentage amount, Agent and Borrower will treat such Lender's documentation provided pursuant to Sections 16.11(b) or 16.11(c) as no longer valid. With respect to such percentage amount, such Lender may provide new documentation, pursuant to Sections 16.11(b) or 16.11(c), if applicable.

(f) If any Lender is entitled to a reduction in the applicable withholding tax, Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by Sections 16.11(b) or 16.11(c) are not delivered to Agent, then Agent may withhold from any interest payment to such Lender not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(g) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent or Borrower did not properly withhold tax from amounts paid to or for the account of any Lender due to a failure on the part of Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent or Borrower of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent and Borrower harmless for all amounts paid, directly or indirectly, by Agent or Borrower, as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent or Borrower under this Section 16.11, together with all costs and expenses (including attorneys' fees and expenses).

(h) The obligations of Lenders under this Section 16.11 shall survive the payment, satisfaction or discharge of all Obligations, the termination of the Commitments, the resignation or replacement of Agent, and assignment of rights by, or replacement of, a Lender.

#### **16.12 Collateral Matters.**

(a) Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Borrower of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if such sale or disposition is a Permitted Disposition or Borrower certifies to Agent that the sale or disposition is permitted under Section 7.4 (and Agent may rely conclusively on any such certificate, without further inquiry), or (iii) constituting property in which Borrower owned no interest at the time Agent's Lien was granted

nor at any time thereafter. Borrower and Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the instruction of Required Lenders, to (a) consent to, credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Section 363 of the Bankruptcy Code, (b) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (c) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by Agent (whether by judicial action or otherwise) in accordance with applicable law. In connection with any such credit bid or purchase, the Obligations owed to Lenders and the Bank Product Providers shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and Lenders and the Bank Product Providers whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Stock of the acquisition vehicle or vehicles that are used to consummate such purchase). Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or Borrower at any time, Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 16.12; provided, however, that (1) Agent shall not be required to execute any document necessary to evidence such release on terms that, in Agent's opinion, would expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of Borrower in respect of) all interests retained by Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(b) Agent shall have no obligation whatsoever to any of Lenders (or the Bank Product Providers) to assure that the Collateral exists or is owned by Borrower or is cared for, protected, or insured or has been encumbered, or that the Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or that any particular items of Collateral meet the eligibility criteria applicable in respect thereof or whether to impose, maintain, reduce, or eliminate any particular reserve hereunder or whether the amount of any such reserve is appropriate or not, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission,

or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise provided herein.

**16.13 Restrictions on Actions by Lenders; Sharing of Payments**

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to Borrower or any deposit accounts of Borrower now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings, to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among Lenders in accordance with their Pro Rata Shares; provided, however, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

**16.14 Agency for Perfection.** Agent hereby appoints each other Lender as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting the Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected only by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

**16.15 Payments by Agent to Lenders.** All payments to be made by Agent to Lenders shall be made by bank wire transfer or internal transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

**16.16 Concerning the Collateral and Related Loan Documents.** Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of Lenders.

**16.17 Field Audits and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information** By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report (each a "Report" and collectively, "Reports") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any audit or examination will inspect only specific information regarding Borrower and will rely significantly upon the Books, as well as on representations of Borrower's personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Borrower and its operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.7, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrower, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing: (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by Borrower to Agent that has not been contemporaneously provided by Borrower to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Borrower, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Borrower, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrower a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

**16.18 Several Obligations; No Liability.** Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 16.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to Borrower or any other Person for any failure by any other Lender to fulfill its obligations to make credit available hereunder, nor to advance for it or on its behalf in connection with its Commitment, nor to take any other action on its behalf hereunder or in connection with the financing contemplated herein.

**16.19 Bank Product Providers.** Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents, and to have provided Agent with the same authorizations, representations, acknowledgments and consents made by each Lender under the preceding Sections 16.1 through 16.18; it being understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the relevant Bank Product Provider. In the absence of an updated certification, Agent shall be entitled

to assume that the amount due and payable to the relevant Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Borrower may obtain Bank Products from any Bank Product Provider, although Borrower is not required to do so. Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents (except the Bank Product Agreements of the applicable Bank Product Provider), including as to any matter relating to the Collateral or the release of Collateral.

**16.20 No other duties, etc.** Anything herein to the contrary notwithstanding, neither of the Joint Lead Arrangers nor any other agent (other than Agent) 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 a Lender hereunder.

**16.21 Acknowledgment and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

## 17. GENERAL PROVISIONS.

**17.1 Effectiveness.** This Agreement shall be binding and deemed effective when executed by Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof.

**17.2 Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

**17.3 Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

**17.4 Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision. Without limiting the foregoing provisions of this Section 17.4, if and to the extent that the enforceability of any provision of this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by Agent or Swingline Lender, as applicable, then such provision shall be deemed to be in effect only to the extent not so limited.

**17.5 Counterparts; Electronic Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document mutatis mutandis.

**17.6 Revival and Reinstatement of Obligations.** If the incurrence or payment of the Obligations by Borrower or the transfer to the Lender Group of any property should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "Voidable Transfer"), and if the Lender Group is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lender Group is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys' fees of the Lender Group related thereto, the liability of Borrower automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.



### **17.7 Confidentiality.**

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding Borrower, its operations, assets, and existing and contemplated business plans shall be treated by Agent and Lenders in a confidential manner, and shall not be disclosed by Agent and Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, agents, director or indirect counterparties in connection with swaps or derivatives, market data collectors, rating agencies and consultants to any member of the Lender Group, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers), provided that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.7, (iii) as may be required by statute, decision, or judicial or administrative order, rule, or regulation, (iv) as may be agreed to in advance by Borrower or as requested or required by any Governmental Authority pursuant to any subpoena or other legal process, (v) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or Lenders), (vi) in connection with any assignment, prospective assignment, sale, prospective sale, participation or prospective participations, or pledge or prospective pledge of Agent's or such Lender's interest under this Agreement (in each case, other than to a Competitor of HCI or the Borrower), provided that any such assignee, prospective assignee, purchaser, prospective purchaser, participant, prospective participant, pledgee, or prospective pledgee shall have agreed in writing to receive such information hereunder subject to an agreement with terms substantially similar to the terms of this Section 17.7(a), and (vii) in connection with any actual or proposed exercise of remedies hereunder or litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents. The provisions of this Section 17.7(a) shall survive for two (2) years after the payment in full of the Obligations.

(b) Anything in this Agreement to the contrary notwithstanding, Agent may provide information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services.

**17.8 Lender Group Expenses.** Borrower agrees to pay any and all Lender Group Expenses promptly after demand therefor by Agent and agrees that its obligations contained in this Section 17.8 shall survive payment or satisfaction in full of all other Obligations.

**17.9 USA Patriot Act** Each Lender that is subject to the requirements of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109-177) (the "Patriot Act") hereby notifies Borrower that pursuant to the requirements of the Patriot Act, such Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender to identify Borrower in accordance with the Patriot Act. In addition, if Agent is required by law or regulation or internal policies to do so, it shall have the right to periodically conduct (a) Patriot Act searches, OFAC/PEP searches, and customary individual background checks for HCI or Borrower and (b) OFAC/PEP searches and customary individual background checks for the senior management and key principals of HCI or Borrower, and Borrower agrees to cooperate in respect of the conduct of such searches and further agrees that the reasonable costs and charges for such searches shall constitute Lender Group Expenses hereunder and be for the account of Borrower.

**17.10 Acknowledgement Regarding Any Supported OFCs** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Bank Product Agreements or any other agreement or instrument that is a OFC (such support, "OFC Credit Support" and, each such OFC, a "Supported OFC"), the parties acknowledge and agree as follows with respect to the resolution power of the FDIC 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 OFC and OFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported OFC 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): In the event a Covered Entity that is party to a Supported OFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported OFC and the benefit of such OFC Credit Support (and any interest and obligation in or under such Supported OFC and such OFC Credit Support, and any rights in property securing such Supported OFC or such OFC 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 OFC and such OFC 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 OFC or any OFC 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 OFC 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 OFC or any OFC Credit Support.

**17.11 Integration.** This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

**17.12 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), Borrower and each other Loan Party acknowledges and agrees and acknowledges its Affiliates' understanding that that: (i) (A) the arranging and other services regarding this Agreement provided by Agent are arm's-length commercial transactions between Borrower, each other Loan Party and their respective Affiliates, on the one hand, and Agent, the Joint Lead Arrangers and the Lenders, on the other hand, (B) each of Borrower and the other Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate, and (C) Borrower and each other Loan Party is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) Agent, the Joint Lead Arrangers and each Lender are and have been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, have not been, are not, and will not be acting as an advisor, agent or fiduciary, for Borrower, any other Loan Party, or any of their respective Affiliates, or any other Person and (B) none of Agent, the Joint Lead Arrangers or any Lender has any obligation to Borrower, any other Loan Party or any of their Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) Agent, the Joint Lead Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower, the other Loan Parties and their respective Affiliates, and neither Agent, the Joint Lead Arrangers nor any Lender has any obligation to disclose any of such interests to Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of Borrower and the other Loan Parties hereby waive and release, any claims that it may have against Agent, the Joint Lead Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**17.13 Effect of Second Amendment. On and after the Second Amendment Effective Date:**

(a) each reference in the Loan Documents to the "Loan and Security Agreement", "thereunder", "thereof" or words of like import referring to this Agreement shall mean and be a reference to this Agreement as amended by the Second Amendment. Except as specifically amended by the Second Amendment, this Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed and the Second Amendment shall not be considered a novation;

(b) all references in the Loan Documents to the "Agent" shall be deemed to be references to MUFG Bank, Ltd., in its capacity as successor agent pursuant to the Agency Assignment Agreement;

(c) the Obligations of each Loan Party shall remain in full force and effect without setoff, defense, counter-claim or claims in recoupment. Each Loan Party hereby reaffirms its pledges, grants of security interests or other similar rights or obligations (if any), as applicable, under each of the Loan Documents to which it is party, and such remain in full force and effect. Without limiting the generality of the foregoing, each Loan Party further agrees (A) that any reference to "Obligations" contained in any Loan Document shall include, without limitation, the "Obligations" as such term is defined in the Loan Agreement, as amended by the Second Amendment and (B) that the related guarantees, pledges and grants of security interests contained in such Loan Documents shall include and extend to such Obligations; and

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(d) Schedule C-1 shall be deemed to be amended to reflect the changes therein to the Maximum Revolver Amount and the changes to the other Lenders' respective Pro Rata Shares. In accordance with Section 2.18, as of the Second Amendment Effective Date, (I) each Lender's Pro Rata Share shall be recalculated to reflect the new proportionate share of the revised total Commitments and increased Maximum Revolver Amount, and (II) each Lender with an increased Commitment shall make available to Agent such amounts in immediately available funds as Agent determines, for the benefit of the other Lenders, as being required to cause, after giving effect to such increase and paying such amounts to such other Lenders, each Lender's portion of the outstanding Advances of all Lenders to equal its Pro Rata Share of such outstanding Advances.

[Signature pages to follow.]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

**HERCULES FUNDING IV LLC,**  
a Delaware limited liability, as Borrower

By: \_\_\_\_\_  
Name: Seth H. Meyer  
Title: Chief Financial Officer

*[Signature Page to Loan and Security Agreement]*

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**MUFG ~~UNION~~ BANK, N.A. ALTD.,**  
as Agent, Lender, Swingline Lender, Joint Lead Arranger and  
Sole Bookrunner

By: \_\_\_\_\_  
Name: Jeffrey Knowles  
Title: Managing Director

*[Signature Page to Loan and Security Agreement]*



### **Hercules Capital Expands Its Credit Facilities to \$720 Million to Support Strong Investment Portfolio Growth**

*The Company has increased its \$400.0 million MUFG credit facility to \$545.0 million and its \$100.0 million SMBC credit facility to \$175.0 million.*

**PALO ALTO, Calif., June 15, 2022** - Hercules Capital, Inc. (NYSE: HTGC) (“Hercules” or the “Company”), the largest and leading specialty finance provider to innovative, venture, growth and established stage companies backed by some of the leading and top-tier venture capital and select private equity firms, today announced that it has increased its existing credit facilities with MUFG Bank, Ltd. (“MUFG”) and Sumitomo Mitsui Banking Corporation (“SMBC”) from a combined \$500.0 million to \$720.0 million subject to borrowing base, leverage and other restrictions, respectively. The maturity dates for each credit facility remain the same.

Hercules has increased its existing \$400.0 million credit facility with MUFG to \$545.0 million, under which City National Bank, a National Banking Association, Goldman Sachs Bank USA and MUFG, have each increased their credit commitment. The uncommitted accordion feature of \$55.0 million, or a total of \$600.0 million, remains the same.

Hercules has also increased its existing \$100.0 million credit facility with SMBC to \$175.0 million in credit capacity with Synovus Financial Corporation providing a new \$75.0 million commitment. The uncommitted accordion feature of \$325.0 million, or a total of \$500.0 million, was expanded from the previous capacity of \$150.0 million.

“The expansion of our credit facilities will further support the growth of our business and allow us to take advantage of our current and future market opportunities,” said Seth Meyer, chief financial officer of Hercules. “We welcome Synovus and thank our existing bank partners, MUFG, SMBC, City National Bank and Goldman Sachs Bank USA for their support of our industry-leading franchise and look forward to continuing our long-term relationship.”

For additional information, please review the Company’s current report on Form 8-K, to be filed with the Securities and Exchange Commission (“SEC”).

#### **About Hercules Capital, Inc.**

Hercules Capital, Inc. (NYSE: HTGC) is the leading and largest specialty finance company focused on providing senior secured venture growth loans to high-growth, innovative venture capital-backed companies in a broad variety of technology, life sciences and sustainable and renewable technology industries. Since inception (December 2003), Hercules has committed more than \$14.0 billion to over 570 companies and is the lender of choice for entrepreneurs and venture capital firms seeking growth capital financing. Companies interested in learning more about financing opportunities should contact [info@htgc.com](mailto:info@htgc.com), or call 650.289.3060.

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Hercules, through its wholly owned subsidiary, Hercules Adviser LLC (“Hercules Adviser”), also maintains an asset management business through which it manages investments for external parties (“Adviser Funds”). Hercules Adviser is registered as an investment adviser under the Investment Advisers Act of 1940.

Hercules’ common stock trades on the New York Stock Exchange (NYSE) under the ticker symbol “HTGC.” In addition, Hercules has one retail bond issuance of 6.25% Notes due 2033 (NYSE: HCXY).

**Forward-Looking Statements**

This press release may contain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. You should understand that under Section 27A(b)(2)(B) of the Securities Act of 1933, as amended, and Section 21E(b)(2)(B) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995 do not apply to forward-looking statements made in periodic reports we file under the Exchange Act.

The information disclosed in this press release is made as of the date hereof and reflects Hercules’ most current assessment of its historical financial performance. Actual financial results filed with the SEC may differ from those contained herein due to timing delays between the date of this release and confirmation of final audit results. These forward-looking statements are not guarantees of future performance and are subject to uncertainties and other factors that could cause actual results to differ materially from those expressed in the forward-looking statements including, without limitation, the risks, uncertainties, including the uncertainties surrounding the current market volatility, and other factors the Company identifies from time to time in its filings with the SEC. Although Hercules believes that the assumptions on which these forward-looking statements are based are reasonable, any of those assumptions could prove to be inaccurate and, as a result, the forward-looking statements based on those assumptions also could be incorrect. You should not place undue reliance on these forward-looking statements. The forward-looking statements contained in this release are made as of the date hereof, and Hercules assumes no obligation to update the forward-looking statements for subsequent events.

**Contact:**

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