

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended: **June 30, 2021**

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission file number **000-54799**

HYSTER-YALE MATERIALS HANDLING, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

31-1637659

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

5875 LANDERBROOK DRIVE, SUITE 300

CLEVELAND

OH

(Address of principal executive offices)

(440)

449-9600

(Registrant's telephone number, including area code)

N/A

(Former name, former address and former fiscal year, if changed since last report)

44124-4069

(Zip code)

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Class A Common Stock, \$0.01 Par Value Per Share	HY	New York Stock Exchange

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes **No**

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

Large accelerated filer **Accelerated filer** Non-accelerated filer Smaller reporting company Emerging growth company

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES **NO**

Number of shares of Class A Common Stock outstanding at July 30, 2021: 12,978,326

Number of shares of Class B Common Stock outstanding at July 30, 2021: 3,842,535

HYSTER-YALE MATERIALS HANDLING, INC.
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PART I
FINANCIAL INFORMATION
Item 1. Financial Statements

HYSTER-YALE MATERIALS HANDLING, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS

	JUNE 30 2021	DECEMBER 31 2020
(In millions, except share data)		
ASSETS		
Current Assets		
Cash and cash equivalents	\$ 87.5	\$ 151.4
Accounts receivable, net	470.4	412.1
Inventories, net	678.0	509.4
Prepaid expenses and other	54.1	56.8
Total Current Assets	1,290.0	1,129.7
Property, Plant and Equipment, Net	337.8	340.4
Intangible Assets, Net	54.5	58.5
Goodwill	113.7	114.7
Deferred Income Taxes	31.4	24.4
Investment in Unconsolidated Affiliates	66.9	80.2
Other Non-current Assets	96.9	111.6
Total Assets	\$ 1,991.2	\$ 1,859.5
LIABILITIES AND EQUITY		
Current Liabilities		
Accounts payable	\$ 486.8	\$ 412.0
Accounts payable, affiliates	15.7	16.1
Revolving credit facilities	2.1	0.7
Current maturities of long-term debt	76.3	82.4
Accrued payroll	58.7	46.1
Deferred revenue	45.0	41.7
Other current liabilities	178.5	156.9
Total Current Liabilities	863.1	755.9
Long-term Debt	267.3	206.1
Self-insurance Liabilities	33.5	30.2
Pension Obligations	12.8	19.8
Deferred Income Taxes	14.2	14.9
Other Long-term Liabilities	170.3	181.5
Total Liabilities	1,361.2	1,208.4
Stockholders' Equity		
Common stock:		
Class A, par value \$0.01 per share, 12,973,367 shares outstanding (2020 - 12,956,301 shares outstanding)	0.1	0.1
Class B, par value \$0.01 per share, convertible into Class A on a one-for-one basis, 3,842,936 shares outstanding (2020 - 3,849,136 shares outstanding)	0.1	0.1
Capital in excess of par value	315.5	312.6
Treasury stock	(5.2)	(6.0)
Retained earnings	440.0	443.2
Accumulated other comprehensive loss	(155.3)	(133.1)
Total Stockholders' Equity	595.2	616.9
Noncontrolling Interests	34.8	34.2
Total Equity	630.0	651.1
Total Liabilities and Equity	\$ 1,991.2	\$ 1,859.5

See notes to unaudited condensed consolidated financial statements.

HYSTER-YALE MATERIALS HANDLING, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	JUNE 30		JUNE 30	
	2021	2020	2021	2020
	(In millions, except per share data)			
Revenues	\$ 765.6	\$ 654.4	\$ 1,497.8	\$ 1,440.1
Cost of sales	649.2	550.8	1,263.0	1,199.8
Gross Profit	116.4	103.6	234.8	240.3
Operating Expenses				
Selling, general and administrative expenses	110.5	94.9	225.8	211.4
Operating Profit	5.9	8.7	9.0	28.9
Other (income) expense				
Interest expense	3.8	3.3	6.6	7.6
Income from unconsolidated affiliates	(3.6)	(0.8)	(5.6)	(2.4)
Other, net	5.8	4.5	(0.4)	2.3
	6.0	7.0	0.6	7.5
Income (Loss) Before Income Taxes	(0.1)	1.7	8.4	21.4
Income tax provision (benefit)	(2.4)	(2.3)	—	1.8
Net Income	2.3	4.0	8.4	19.6
Net income attributable to noncontrolling interests	(0.4)	(0.4)	(0.9)	(0.7)
Net Income Attributable to Stockholders	\$ 1.9	\$ 3.6	\$ 7.5	\$ 18.9
Basic Earnings per Share	\$ 0.11	\$ 0.21	\$ 0.45	\$ 1.13
Diluted Earnings per Share	\$ 0.11	\$ 0.21	\$ 0.45	\$ 1.13
Dividends per Share	\$ 0.3175	\$ 0.3175	\$ 0.6350	\$ 0.6350
Basic Weighted Average Shares Outstanding	16.815	16.787	16.813	16.753
Diluted Weighted Average Shares Outstanding	16.860	16.795	16.851	16.791

See notes to unaudited condensed consolidated financial statements.

HYSTER-YALE MATERIALS HANDLING, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	JUNE 30		JUNE 30	
	2021	2020	2021	2020
	(In millions)			
Net Income	\$ 2.3	\$ 4.0	\$ 8.4	\$ 19.6
Other comprehensive income (loss)				
Foreign currency translation adjustment	12.0	8.3	(12.8)	(17.2)
Current period cash flow hedging activity	5.0	7.9	(9.3)	(14.6)
Reclassification of hedging activities into earnings	(1.7)	5.4	(2.3)	8.4
Reclassification of pension into earnings	1.1	0.9	2.2	1.8
Comprehensive Income (Loss)	\$ 18.7	\$ 26.5	\$ (13.8)	\$ (2.0)
Other comprehensive income (loss) attributable to noncontrolling interests				
Net income attributable to noncontrolling interests	(0.4)	(0.4)	(0.9)	(0.7)
Foreign currency translation adjustment attributable to noncontrolling interests	(0.9)	0.2	0.1	0.9
Comprehensive Income (Loss) Attributable to Stockholders	\$ 17.4	\$ 26.3	\$ (14.6)	\$ (1.8)

See notes to unaudited condensed consolidated financial statements.

HYSTER-YALE MATERIALS HANDLING, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

	SIX MONTHS ENDED	
	JUNE 30	
	2021	2020
	(In millions)	
Operating Activities		
Net income	\$ 8.4	\$ 19.6
Adjustments to reconcile net income to net cash used for operating activities:		
Depreciation and amortization	23.3	20.8
Amortization of deferred financing fees	2.4	0.9
Deferred income taxes	(4.2)	2.4
Gain on the sale of investment	(4.6)	—
Stock-based compensation	3.7	0.6
Dividends from unconsolidated affiliates	5.5	7.3
Other non-current liabilities	(4.3)	(8.8)
Other	(9.0)	12.2
Working capital changes:		
Accounts receivable	(56.7)	35.0
Inventories	(172.4)	30.9
Other current assets	(12.8)	(9.6)
Accounts payable	78.9	(58.2)
Other current liabilities	41.1	(65.1)
Net cash used for operating activities	(100.7)	(12.0)
Investing Activities		
Expenditures for property, plant and equipment	(18.1)	(29.9)
Proceeds from the sale of assets	3.2	6.6
Proceeds from the sale of investment	15.7	—
Net cash provided by (used for) investing activities	0.8	(23.3)
Financing Activities		
Additions to long-term debt	84.7	47.9
Reductions of long-term debt	(30.1)	(41.1)
Net change to revolving credit agreements	1.4	38.6
Cash dividends paid	(10.7)	(10.6)
Cash dividends paid to noncontrolling interest	(0.2)	(0.3)
Financing fees paid	(7.6)	—
Purchase of treasury stock	—	(0.1)
Net cash provided by financing activities	37.5	34.4
Effect of exchange rate changes on cash	(1.5)	(3.2)
Cash and Cash Equivalents		
Decrease for the period	(63.9)	(4.1)
Balance at the beginning of the period	151.4	64.6
Balance at the end of the period	\$ 87.5	\$ 60.5

See notes to unaudited condensed consolidated financial statements.

HYSTER-YALE MATERIALS HANDLING, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY

	Accumulated Other Comprehensive Income (Loss)										
	Class A Common Stock	Class B Common Stock	Treasury Stock	Capital in Excess of Par Value	Retained Earnings	Foreign Currency Translation Adjustment	Deferred Gain (Loss) on Cash Flow Hedging	Pension Adjustment	Total Stockholders' Equity	Noncontrolling Interests	Total Equity
	(In millions)										
Balance, March 31, 2020	\$ 0.1	\$ 0.1	\$ (7.6)	\$ 313.2	\$ 437.4	\$ (118.4)	\$ (38.0)	\$ (76.4)	\$ 510.4	\$ 32.3	\$ 542.7
Stock-based compensation	—	—	—	0.3	—	—	—	—	0.3	—	0.3
Stock issued under stock compensation plans	—	—	0.4	(0.4)	—	—	—	—	—	—	—
Net income	—	—	—	—	3.6	—	—	—	3.6	0.4	4.0
Cash dividends	—	—	—	—	(5.3)	—	—	—	(5.3)	(0.3)	(5.6)
Current period other comprehensive income	—	—	—	—	—	8.3	7.9	—	16.2	—	16.2
Reclassification adjustment to net income	—	—	—	—	—	—	5.4	0.9	6.3	—	6.3
Foreign currency translation on noncontrolling interest	—	—	—	—	—	—	—	—	—	(0.2)	(0.2)
Balance, June 30, 2020	\$ 0.1	\$ 0.1	\$ (7.2)	\$ 313.1	\$ 435.7	\$ (110.1)	\$ (24.7)	\$ (75.5)	\$ 531.5	\$ 32.2	\$ 563.7
Balance, March 31, 2021	\$ 0.1	\$ 0.1	\$ (5.5)	\$ 315.6	\$ 443.5	\$ (82.4)	\$ (2.4)	\$ (86.9)	\$ 582.1	\$ 33.7	\$ 615.8
Stock-based compensation	—	—	—	0.2	—	—	—	—	0.2	—	0.2
Stock issued under stock compensation plans	—	—	0.3	(0.3)	—	—	—	—	—	—	—
Net income	—	—	—	—	1.9	—	—	—	1.9	0.4	2.3
Cash dividends	—	—	—	—	(5.4)	—	—	—	(5.4)	(0.2)	(5.6)
Current period other comprehensive income	—	—	—	—	—	12.0	5.0	—	17.0	—	17.0
Reclassification adjustment to net income	—	—	—	—	—	—	(1.7)	1.1	(0.6)	—	(0.6)
Foreign currency translation on noncontrolling interest	—	—	—	—	—	—	—	—	—	0.9	0.9
Balance, June 30, 2021	\$ 0.1	\$ 0.1	\$ (5.2)	\$ 315.5	\$ 440.0	\$ (70.4)	\$ 0.9	\$ (85.8)	\$ 595.2	\$ 34.8	\$ 630.0

See notes to unaudited condensed consolidated financial statements.

HYSTER-YALE MATERIALS HANDLING, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY

	Accumulated Other Comprehensive Income (Loss)										
	Class A Common Stock	Class B Common Stock	Treasury Stock	Capital in Excess of Par Value	Retained Earnings	Foreign Currency Translation Adjustment	Deferred Gain (Loss) on Cash Flow Hedging	Pension Adjustment	Total Stockholders' Equity	Noncontrolling Interests	Total Equity
	(In millions)										
Balance, December 31, 2019	\$ 0.1	\$ 0.1	\$ (15.9)	\$ 321.3	\$ 427.4	\$ (92.9)	\$ (18.5)	\$ (77.3)	\$ 544.3	\$ 32.7	\$ 577.0
Stock-based compensation	—	—	—	0.6	—	—	—	—	0.6	—	0.6
Stock issued under stock compensation plans	—	—	8.8	(8.8)	—	—	—	—	—	—	—
Purchase of treasury stock	—	—	(0.1)	—	—	—	—	—	(0.1)	—	(0.1)
Net income	—	—	—	—	18.9	—	—	—	18.9	0.7	19.6
Cash dividends	—	—	—	—	(10.6)	—	—	—	(10.6)	(0.3)	(10.9)
Current period other comprehensive loss	—	—	—	—	—	(17.2)	(14.6)	—	(31.8)	—	(31.8)
Reclassification adjustment to net income	—	—	—	—	—	—	8.4	1.8	10.2	—	10.2
Foreign currency translation on noncontrolling interest	—	—	—	—	—	—	—	—	—	(0.9)	(0.9)
Balance, June 30, 2020	\$ 0.1	\$ 0.1	\$ (7.2)	\$ 313.1	\$ 435.7	\$ (110.1)	\$ (24.7)	\$ (75.5)	\$ 531.5	\$ 32.2	\$ 563.7
Balance, December 31, 2020	\$ 0.1	\$ 0.1	\$ (6.0)	\$ 312.6	\$ 443.2	\$ (57.6)	\$ 12.5	\$ (88.0)	\$ 616.9	\$ 34.2	\$ 651.1
Stock-based compensation	—	—	—	3.7	—	—	—	—	3.7	—	3.7
Stock issued under stock compensation plans	—	—	0.8	(0.8)	—	—	—	—	—	—	—
Net income	—	—	—	—	7.5	—	—	—	7.5	0.9	8.4
Cash dividends	—	—	—	—	(10.7)	—	—	—	(10.7)	(0.2)	(10.9)
Current period other comprehensive loss	—	—	—	—	—	(12.8)	(9.3)	—	(22.1)	—	(22.1)
Reclassification adjustment to net income	—	—	—	—	—	—	(2.3)	2.2	(0.1)	—	(0.1)
Foreign currency translation on noncontrolling interest	—	—	—	—	—	—	—	—	—	(0.1)	(0.1)
Balance, June 30, 2021	\$ 0.1	\$ 0.1	\$ (5.2)	\$ 315.5	\$ 440.0	\$ (70.4)	\$ 0.9	\$ (85.8)	\$ 595.2	\$ 34.8	\$ 630.0

See notes to unaudited condensed consolidated financial statements.

HYSTER-YALE MATERIALS HANDLING, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
JUNE 30, 2021

(Tabular Amounts in Millions, Except Per Share and Percentage Data)

Note 1—Basis of Presentation

The accompanying unaudited condensed consolidated financial statements include the accounts of Hyster-Yale Materials Handling, Inc., a Delaware corporation, and the accounts of Hyster-Yale's wholly owned domestic and international subsidiaries and majority-owned joint ventures (collectively, "Hyster-Yale" or the "Company"). All intercompany accounts and transactions among the consolidated companies are eliminated in consolidation.

The Company, through its wholly owned operating subsidiary, Hyster-Yale Group, Inc. ("HYG"), designs, engineers, manufactures, sells and services a comprehensive line of lift trucks, attachments and aftermarket parts marketed globally primarily under the Hyster® and Yale® brand names, mainly to independent Hyster® and Yale® retail dealerships. Lift trucks and component parts are manufactured in the United States, China, Northern Ireland, Mexico, the Netherlands, the Philippines, Japan, Italy, Brazil and Vietnam.

The Company operates Bolzoni S.p.A. ("Bolzoni"). Bolzoni is a leading worldwide producer and distributor of attachments, forks and lift tables marketed under the Bolzoni®, Auramo® and Meyer® brand names. Bolzoni products are manufactured in the United States, Italy, China, Germany and Finland. Through the design, production and distribution of a wide range of attachments, Bolzoni has a strong presence in the market niche of lift truck attachments and industrial material handling.

The Company operates Nuvera Fuel Cells, LLC ("Nuvera"). Nuvera is an alternative-power technology company focused on the design, manufacture and sale of hydrogen fuel cell stacks and engines.

Investments in Sumitomo NACCO Forklift Co., Ltd. ("SN"), a 50%-owned joint venture, and HYG Financial Services, Inc. ("HYGFS"), a 20%-owned joint venture, are accounted for by the equity method. SN operates manufacturing facilities in Japan, the Philippines and Vietnam from which the Company purchases certain components, service parts and lift trucks. Sumitomo Heavy Industries, Ltd. ("Sumitomo") owns the remaining 50% interest in SN. Each stockholder of SN is entitled to appoint directors representing 50% of the vote of SN's board of directors. All matters related to policies and programs of operation, manufacturing and sales activities require mutual agreement between the Company and Sumitomo prior to a vote of SN's board of directors. HYGFS is a joint venture with Wells Fargo Financial Leasing, Inc. ("WF"), formed primarily for the purpose of providing financial services to independent Hyster® and Yale® lift truck dealers and National Account customers in the United States. National Account customers are large customers with centralized purchasing and geographically dispersed operations in multiple dealer territories. The Company's percentage share of the net income or loss from these equity investments is reported on the line "Income from unconsolidated affiliates" in the "Other (income) expense" section of the unaudited condensed consolidated statements of operations.

During 2020, broad measures taken by governments, businesses and others across the globe to limit the spread of novel coronavirus ("COVID-19") adversely affected the Company. The resulting significant decline in economic activity also reduced the demand for the Company's products and limited the availability of components from certain suppliers. Production was significantly reduced or suspended at the Company's Chinese and European facilities for certain periods during the first and second quarters of 2020. The Company also initiated several cost reduction measures designed to ease liquidity pressure. These cost containment actions included spending and travel restrictions, significant reductions in temporary personnel, furloughs, suspension of incentive compensation and profit sharing, benefit reductions and salary reductions. Effective January 1, 2021, the Company reinstated pre-pandemic salaries, benefits and incentive compensation programs. The cost containment actions associated with hiring, use of contract and temporary workers, travel and meetings, as well as other discretionary spending are continuing. These measures are expected to remain in place until market and economic uncertainty dissipates and results improve. In addition, the Company adjusted production levels in 2020 at its manufacturing plants to align more closely with the reduced levels of demand, and worked closely with suppliers to help ensure current needs were met while also promoting continuity as the market improved. However, despite these efforts, during the second quarter and first six months of 2021, the Company experienced further pandemic-related and other global supply chain constraints, component shortages, shipping container availability constraints and higher freight costs, as well as significant material cost inflation resulting from the accelerated pace of the market recovery, all of which have negatively impacted the Company.

These financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of

management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation of the financial position of the Company as of June 30, 2021 and the results of its operations and changes in equity for the three and six months ended June 30, 2021 and 2020, and the results of its cash flows for the six months ended June 30, 2021 and 2020 have been included. These unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2020.

The accompanying unaudited condensed consolidated balance sheet at December 31, 2020 has been derived from the audited financial statements at that date but does not include all of the information or notes required by GAAP for complete financial statements.

Note 2—Recently Issued Accounting Standards

The following table provides a brief description of recent accounting standard updates ("ASU") adopted January 1, 2021. The adoption of these standards did not have a material effect on the Company's financial position, results of operations, cash flows or related disclosures.

Standard	Description
ASU 2019-12, Income Taxes (Topic 740), Simplifying the Accounting for Income Taxes	The guidance eliminates certain exceptions to the income tax guidance related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences. The new guidance also simplifies aspects of the accounting for franchise taxes and enacted changes in tax laws or rates and clarifies the accounting for transactions that result in a step-up in the tax basis of goodwill.
ASU 2020-01, Investments—Equity Securities (Topic 321), Investments—Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815): Clarifying the Interactions between Topic 321, Topic 323, and Topic 815	The guidance clarifies certain interactions between the guidance to account for certain equity securities and investments under the equity method of accounting.

The following table provides a brief description of ASUs not yet adopted:

Standard	Description	Required Date of Adoption	Effect on the financial statements or other significant matters
ASU 2020-04, Reference Rate Reform (Topic 848)	The guidance provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met.	From the date of issuance through December 31, 2022	The Company is currently evaluating the guidance and the effect on its financial position, results of operations, cash flows and related disclosures.

Note 3—Revenue

Revenue is recognized when obligations under the terms of a contract with the customer are satisfied, which occurs when control of the trucks, parts, or services are transferred to the customer. Revenue is measured as the amount of consideration expected to be received in exchange for transferring goods or providing services. The satisfaction of performance obligations under the terms of a revenue contract generally gives rise for the right to payment from the customer. The Company's standard payment terms vary by the type and location of the customer and the products or services offered. Generally, the time between when revenue is recognized and when payment is due is not significant. Given the insignificant days between revenue recognition and receipt of payment, financing components do not exist between the Company and its customers. Taxes collected from customers are excluded from revenue. The estimated costs of product warranties are recognized as expense when the products are sold. See Note 11 for further information on product warranties.

The majority of the Company's sales contracts contain performance obligations satisfied at a point in time when title and risks and rewards of ownership have transferred to the customer. Revenues for service contracts are recognized as the services are provided.

The Company also records variable consideration in the form of estimated reductions to revenues for customer programs and incentive offerings, including special pricing agreements, promotions and other volume-based incentives. Lift truck sales revenue is recorded net of estimated discounts. The estimated discount amount is based upon historical experience and trend analysis for each lift truck model. In addition to standard discounts, dealers can also request additional discounts that allow them to offer price concessions to customers. From time to time, the Company offers special incentives to increase market share or dealer stock and offers certain customers volume rebates if a specified cumulative level of purchases is obtained.

For contracts with customers that include multiple performance obligations, judgment is required to determine whether performance obligations specified in these contracts are distinct and should be accounted for as separate revenue transactions for recognition purposes. For such arrangements, revenue is allocated to each performance obligation based on its relative standalone selling price. Standalone selling prices are generally determined based on the prices charged to customers or using expected cost plus margin. Impairment losses recognized on receivables or contract assets were not significant for the three and six months ended June 30, 2021 and 2020, respectively.

The Company generally expenses sales commissions when incurred because the amortization period would have been one year or less. These costs are reported on the line “Selling, general and administrative expenses” in the unaudited condensed consolidated statements of operations.

The Company pays for shipping and handling activities regardless of when control is transferred and has elected to account for shipping and handling as activities to fulfill the promise to transfer the good, rather than a promised service. These costs are reported on the line “Cost of sales” in the unaudited condensed consolidated statements of operations. The following table disaggregates revenue by category:

	THREE MONTHS ENDED JUNE 30, 2021						
	Lift truck business						Total
	Americas	EMEA	JAPIC	Bolzoni	Nuvera	Elims	Total
Dealer sales	\$ 218.0	\$ 140.4	\$ 56.6	\$ —	\$ —	\$ —	\$ 415.0
Direct customer sales	115.8	1.5	—	—	—	—	117.3
Aftermarket sales	114.3	26.8	8.1	—	—	—	149.2
Other	31.0	6.4	0.3	84.8	0.3	(38.7)	84.1
Total Revenues	\$ 479.1	\$ 175.1	\$ 65.0	\$ 84.8	\$ 0.3	\$ (38.7)	\$ 765.6
	THREE MONTHS ENDED JUNE 30, 2020						
	Lift truck business						Total
	Americas	EMEA	JAPIC	Bolzoni	Nuvera	Elims	Total
Dealer sales	\$ 210.4	\$ 96.5	\$ 40.0	\$ —	\$ —	\$ —	\$ 346.9
Direct customer sales	121.0	2.3	—	—	—	—	123.3
Aftermarket sales	93.3	17.6	7.3	—	—	—	118.2
Other	30.1	3.7	0.7	64.2	0.7	(33.4)	66.0
Total Revenues	\$ 454.8	\$ 120.1	\$ 48.0	\$ 64.2	\$ 0.7	\$ (33.4)	\$ 654.4
	SIX MONTHS ENDED JUNE 30, 2021						
	Lift truck business						Total
	Americas	EMEA	JAPIC	Bolzoni	Nuvera	Elims	Total
Dealer sales	\$ 438.7	\$ 277.2	\$ 109.2	\$ —	\$ —	\$ —	\$ 825.1
Direct customer sales	218.2	3.4	—	—	—	—	221.6
Aftermarket sales	223.1	53.7	15.9	—	—	—	292.7
Other	58.8	11.5	0.4	164.3	0.3	(76.9)	158.4
Total Revenues	\$ 938.8	\$ 345.8	\$ 125.5	\$ 164.3	\$ 0.3	\$ (76.9)	\$ 1,497.8

SIX MONTHS ENDED
JUNE 30, 2020

	Lift truck business						Total
	Americas	EMEA	JAPIC	Bolzoni	Nuvera	Elims	
Dealer sales	\$ 497.7	\$ 217.1	\$ 77.2	\$ —	\$ —	\$ —	\$ 792.0
Direct customer sales	255.7	6.0	—	—	—	—	261.7
Aftermarket sales	198.4	41.0	14.4	—	—	—	253.8
Other	53.7	8.1	1.0	152.1	2.1	(84.4)	132.6
Total Revenues	\$ 1,005.5	\$ 272.2	\$ 92.6	\$ 152.1	\$ 2.1	\$ (84.4)	\$ 1,440.1

Dealer sales are recognized when the Company transfers control based on the shipping terms of the contract, which is generally when the truck is shipped from the manufacturing facility to the dealer. The majority of direct customer sales are to National Account customers. In these transactions, the Company transfers control and recognizes revenue when it delivers the product to the customer according to the terms of the contract. Aftermarket sales represent parts sales, extended warranty and maintenance services. For the sale of aftermarket parts, the Company transfers control and recognizes revenue when parts are shipped to the customer. When customers are given the right to return eligible parts and accessories, the Company estimates the expected returns based on an analysis of historical experience. The Company adjusts estimated revenues at the earlier of when the most likely amount of consideration expected to be received changes or when the consideration becomes fixed. The Company recognizes revenue for extended warranty and maintenance agreements based on the standalone selling price over the life of the contract, which reflects the costs to perform under these contracts and corresponds with, and thereby depicts, the transfer of control to the customer. Bolzoni revenue from external customers is primarily the sale of attachments to customers. In these transactions, the Company transfers control and recognizes revenue according to the shipping terms of the contract. In the United States, Bolzoni also has revenue for sales of lift truck components to Lift Truck plants. Nuvera's revenues include development funding from third-party development agreements and the sale of fuel cell stacks and engines to third parties and to Lift Truck. In all revenue transactions, the Company receives cash equal to the invoice price and amount of consideration received and the revenue recognized may vary with changes in marketing incentives. Intercompany revenues between Bolzoni, Nuvera and the lift truck business have been eliminated.

Deferred Revenue: The Company defers revenue for transactions that have not met the criteria for recognition at the time payment is collected, including extended warranties and maintenance contracts. In addition, for certain products, services and customer types, the Company collects payment prior to the transfer of control to the customer.

	Deferred Revenue
Balance, December 31, 2020	\$ 70.5
Customer deposits and billings	23.8
Revenue recognized	(23.1)
Foreign currency effect	(0.1)
Balance, June 30, 2021	\$ 71.1

Note 4—Business Segments

The Company's reportable segments for the lift truck business include the following three management units: the Americas, EMEA and JAPIC. Americas includes operations in the United States, Canada, Mexico, Brazil, Latin America and its corporate headquarters. EMEA includes operations in Europe, the Middle East and Africa. JAPIC includes operations in the Asia and Pacific regions, including China, as well as the equity earnings of SN operations. Certain amounts are allocated to these geographic management units and are included in the segment results presented below, including product development costs, corporate headquarter's expenses and certain information technology infrastructure costs. These allocations among geographic management units are determined by senior management and not directly incurred by the geographic operations. In addition, other costs are incurred directly by these geographic management units based upon the location of the manufacturing plant or sales units, including manufacturing variances, product liability, warranty and sales discounts, which may not be associated with the geographic management unit of the ultimate end user sales location where revenues and margins are reported. Therefore, the reported results of each segment for the lift truck business cannot be considered stand-alone entities as all segments are inter-related and integrate into a single global lift truck business.

The Company reports the results of both Bolzoni and Nuvera as separate segments. Intercompany sales between Nuvera, Bolzoni and the lift truck business have been eliminated.

Financial information for each reportable segment is presented in the following table:

	THREE MONTHS ENDED JUNE 30		SIX MONTHS ENDED JUNE 30	
	2021	2020	2021	2020
Revenues from external customers				
Americas	\$ 479.1	\$ 454.8	\$ 938.8	\$ 1,005.5
EMEA	175.1	120.1	345.8	272.2
JAPIC	65.0	48.0	125.5	92.6
Lift truck business	719.2	622.9	1,410.1	1,370.3
Bolzoni	84.8	64.2	164.3	152.1
Nuvera	0.3	0.7	0.3	2.1
Eliminations	(38.7)	(33.4)	(76.9)	(84.4)
Total	\$ 765.6	\$ 654.4	\$ 1,497.8	\$ 1,440.1
Gross profit (loss)				
Americas	\$ 70.4	\$ 74.9	\$ 145.7	\$ 174.6
EMEA	26.6	15.7	50.1	35.0
JAPIC	6.2	4.2	12.8	8.7
Lift truck business	103.2	94.8	208.6	218.3
Bolzoni	15.8	11.5	32.2	28.4
Nuvera	(2.5)	(3.2)	(5.8)	(5.8)
Eliminations	(0.1)	0.5	(0.2)	(0.6)
Total	\$ 116.4	\$ 103.6	\$ 234.8	\$ 240.3
Operating profit (loss)				
Americas	\$ 13.6	\$ 23.3	\$ 28.2	\$ 61.8
EMEA	3.7	(2.8)	3.8	(7.3)
JAPIC	(1.9)	(3.5)	(4.4)	(9.5)
Lift truck business	15.4	17.0	27.6	45.0
Bolzoni	(0.4)	(0.5)	0.4	2.2
Nuvera	(9.0)	(8.3)	(18.8)	(17.7)
Eliminations	(0.1)	0.5	(0.2)	(0.6)
Total	\$ 5.9	\$ 8.7	\$ 9.0	\$ 28.9
Net income (loss) attributable to stockholders				
Americas	\$ 5.0	\$ 13.5	\$ 14.5	\$ 41.3
EMEA	3.9	(1.5)	4.8	(4.6)
JAPIC	0.4	(1.1)	(1.8)	(5.7)
Lift truck business	9.3	10.9	17.5	31.0
Bolzoni	(0.6)	(0.6)	—	2.1
Nuvera	(6.6)	(5.8)	(10.4)	(12.5)
Eliminations	(0.2)	(0.9)	0.4	(1.7)
Total	\$ 1.9	\$ 3.6	\$ 7.5	\$ 18.9

Note 5—Income Taxes

The income tax provision includes U.S. federal, state and local, and foreign income taxes and is generally based on the application of a forecasted annual income tax rate applied to the current quarter's year-to-date pre-tax income or loss. In determining the estimated annual effective income tax rate, the Company analyzes various factors, including projections of the Company's annual earnings, taxing jurisdictions in which the earnings will be generated, the impact of state and local income taxes, the Company's ability to use tax credits and net operating loss carryforwards and capital loss carryforwards, and available

tax planning alternatives. Discrete items, including the effect of changes in tax laws, tax rates and certain circumstances with respect to valuation allowances or the tax effect of other unusual or nonrecurring transactions or adjustments are reflected in the period in which they occur as an addition to, or reduction from, the income tax provision, rather than included in the estimated annual effective income tax rate. Additionally, the Company's interim effective income tax rate is computed and applied without regard to pre-tax losses where such losses are not expected to generate a current-year tax benefit.

The Tax Cuts and Jobs Act ("Tax Reform Act") includes anti-deferral and anti-base erosion provisions, the global intangible low-taxed income ("GILTI") provisions and the base-erosion and anti-abuse tax ("BEAT") provisions. The GILTI provisions require the Company to include non-U.S. earnings in excess of an allowable return on the Company's non-U.S. subsidiaries' tangible assets in its U.S. income tax return. The Company has elected to account for GILTI tax in the period in which it is incurred. The BEAT provisions in the Tax Reform Act created a minimum tax where a lower tax rate is applied to taxable income determined without the benefit of certain base-erosion payments made to related non-U.S. corporations. The Company is taxed under this regime if such minimum tax exceeds the regular U.S. corporate income tax. The GILTI and BEAT provisions, when applicable, are included in permanent adjustments in the table below.

A reconciliation of the consolidated federal statutory rate to the reported income tax rate is as follows:

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	JUNE 30		JUNE 30	
	2021	2020	2021	2020
Income (loss) before income taxes	\$ (0.1)	\$ 1.7	\$ 8.4	\$ 21.4
Statutory taxes (21%)	\$ —	\$ 0.4	\$ 1.8	\$ 4.5
Interim adjustment	0.2	(2.6)	0.5	(2.6)
Permanent adjustments:				
Federal income tax credits	(0.3)	(3.5)	(0.6)	(4.1)
Non-U.S. rate differences	(0.8)	0.4	(0.7)	0.1
Equity interest earnings	(0.2)	(1.0)	(0.3)	(1.3)
State income taxes	(0.3)	(0.6)	(0.3)	—
Valuation allowance	0.4	2.9	0.5	3.8
Global intangible low-taxed income	0.5	2.6	0.9	2.7
Base-erosion and anti-abuse tax	0.2	4.7	0.2	5.3
Other	—	(1.3)	0.2	(1.2)
Discrete items	(2.1)	(4.3)	(2.2)	(5.4)
Income tax provision (benefit)	\$ (2.4)	\$ (2.3)	\$ —	\$ 1.8
Reported income tax rate	n.m.	n.m.	n.m.	8.4 %

n.m. - not meaningful

During the second quarter of 2021 and 2020, the Company recognized a discrete tax benefit of \$3.3 million and \$4.3 million, respectively, related to the expiration of the statute of limitations for uncertain tax positions related to acquisitions for which an offsetting pre-tax indemnity receivable was also recorded. The expense for the release of the indemnity receivable was recorded in pre-tax earnings on the line "Other, net" in the unaudited condensed consolidated statements of operations.

During the second quarter of 2021, the Company recognized a discrete tax charge of \$1.4 million for the tax impact of the favorable adjustment for social contribution taxes previously imposed on material purchases in Brazil. See Note 12 for additional information.

Note 6—Reclassifications from OCI

The following table summarizes reclassifications out of Accumulated Other Comprehensive Income ("OCI") as recorded in the unaudited condensed consolidated statements of operations:

Details about OCI Components	Amount Reclassified from OCI				Affected Line Item in the Statement Where Net Income Is Presented
	THREE MONTHS ENDED		SIX MONTHS ENDED		
	JUNE 30		JUNE 30		
	2021	2020	2021	2020	
Gain (loss) on cash flow hedges:					
Interest rate contracts	\$ 0.7	\$ 0.5	\$ 1.3	\$ 0.6	Interest expense
Foreign exchange contracts	1.4	(7.8)	1.5	(11.9)	Cost of sales
Total before tax	2.1	(7.3)	2.8	(11.3)	Income before income taxes
Tax (expense) benefit	(0.4)	1.9	(0.5)	2.9	Income tax provision
Net of tax	\$ 1.7	\$ (5.4)	\$ 2.3	\$ (8.4)	Net income
Amortization of defined benefit pension items:					
Actuarial loss	\$ (1.4)	\$ (1.2)	\$ (2.8)	\$ (2.3)	Other, net
Total before tax	(1.4)	(1.2)	(2.8)	(2.3)	Income before income taxes
Tax benefit	0.3	0.3	0.6	0.5	Income tax provision
Net of tax	\$ (1.1)	\$ (0.9)	\$ (2.2)	\$ (1.8)	Net income
Total reclassifications for the period	\$ 0.6	\$ (6.3)	\$ 0.1	\$ (10.2)	

Note 7—Current and Long-Term Financing

On May 28, 2021, the Company entered into an agreement for a \$225.0 million term loan (the "Term Loan") which expires on May 28, 2028 (the "Maturity Date"). The Term Loan replaced the Company's previous term loan facility, which was set to mature on May 30, 2023.

The Term Loan requires quarterly principal payments on the last day of each March, June, September and December commencing September 30, 2021 in an amount equal to \$562,500 and the final principal repayment is due in May 2028. The Term Loan Borrower may also be required to make mandatory prepayments, in certain circumstances, as provided in the Term Loan.

The obligations under the Term Loan are generally secured by a first priority lien on the present and future shares of capital stock, material real property, fixtures and general intangibles consisting of intellectual property and a second priority lien on working capital assets of the Company, which includes, but is not limited to cash and cash equivalents, accounts receivable and inventory.

Borrowings under the Term Loan bear interest at a floating rate, which can be a base rate or Eurodollar rate, as defined in the Term Loan, plus an applicable margin. The applicable margin is 2.50% for base rate loans and 3.50% for Eurodollar loans. In addition, the Term Loan includes a Eurodollar rate floor of 0.50%.

In addition, the Term Loan includes restrictive covenants, which, among other things, limit additional borrowings and investments of the Company subject to certain thresholds, as provided in the Term Loan. The Term Loan limits the payment of dividends and other restricted payments the Company, including its subsidiaries may make up to \$50.0 million in any fiscal year. Additional dividends may be paid if the consolidated total net leverage ratio, as defined in the Term Loan, does not exceed 2.50 to 1.00 at the time of the payment. The Term Loan also contains a provision requiring a premium to be paid in the event of a repricing of the borrowings under the Term Loan, whether by amendment or entry into new loans, within the six-month period following entry into the Term Loan.

At the time of execution of the Term Loan, approximately \$1.5 million of deferred financing fees relating to the old term loan were expensed, which was recorded on the line "Other, net" in the unaudited condensed consolidated statements of operations. In addition, approximately \$5.8 million of additional deferred financing fees were incurred in connection with the Term Loan.

On June 24, 2021, the Company entered into an amended and restated agreement for a \$300.0 million secured floating-rate revolving credit facility (as amended, the "Facility"). The Facility consists of a domestic revolving credit facility in the initial amount of \$210.0 million and a foreign revolving credit facility in the initial amount of \$90.0 million. The facility expires June 24, 2026. The Facility replaced the Company's previous revolving credit facility, which was to expire April 28, 2022. The Facility can be increased to up to \$400.0 million over the term of the Facility in minimum increments of \$10.0 million, subject to approval by the lenders.

The obligations under the Facility are generally secured by a first priority lien on working capital assets of the Company, which includes but is not limited to cash and cash equivalents, accounts receivable and inventory, and a second priority lien on the present and future shares of capital stock, fixtures and general intangibles consisting of intellectual property.

Borrowings under the Facility bear interest at a floating rate, which can be a base rate, LIBOR or EURIBOR, as defined in the Facility, plus an applicable margin. The applicable margins are based on the total excess availability, as defined in the Facility, and range from 0.25% to 0.75% for U.S. base rate loans and 1.25% to 1.75% for LIBOR, EURIBOR and foreign base rate loans. For the period prior to June 30, 2021, the applicable margins under the Facility are 0.25% for U.S. base rate loans and 1.25% for LIBOR, EURIBOR and foreign base rate loans. In addition, the Facility requires the payment of a fee of 0.25% per annum on the unused commitment based on the average daily outstanding balance during the preceding month.

The Facility includes restrictive covenants, which, among other things, limit additional borrowings and investments of the Company and its subsidiaries subject to certain thresholds, as provided in the Facility. The Facility limits the payment of dividends and other restricted payments the Company, including its subsidiaries, may make unless certain total excess availability and/or fixed charge coverage ratio thresholds, each as set forth in the Facility, are satisfied. The Facility also requires the Company, including its subsidiaries to achieve a minimum fixed charge coverage ratio in which total excess availability is less than the greater of 10% of the total borrowing base, as defined in the Facility, and \$20.0 million.

The Company incurred approximately \$1.8 million of additional deferred financing fees in connection with the Facility.

Note 8—Financial Instruments and Derivative Financial Instruments

Financial Instruments

The carrying amounts of cash and cash equivalents, accounts receivable and accounts payable approximate fair value due to the short-term maturities of these instruments. The fair values of revolving credit agreements and long-term debt, excluding capital leases, were determined using current rates offered for similar obligations taking into account company credit risk. This valuation methodology is Level 2 as defined in the fair value hierarchy. At June 30, 2021, the fair value and carrying value of revolving credit agreements and long-term debt, excluding finance leases, was \$318.5 million and \$319.6 million, respectively. At December 31, 2020, the fair value and carrying value of revolving credit agreements and long-term debt, excluding finance leases, was \$257.2 million and \$260.5 million, respectively.

Derivative Financial Instruments

The Company uses forward foreign currency exchange contracts to partially reduce risks related to transactions denominated in foreign currencies. These contracts hedge firm commitments and forecasted transactions relating to cash flows associated with sales and purchases denominated in non-functional currencies. The Company offsets fair value amounts related to foreign currency exchange contracts executed with the same counterparty. Changes in the fair value of forward foreign currency exchange contracts that are effective as hedges are recorded in OCI. Deferred gains or losses are reclassified from OCI to the unaudited condensed consolidated statements of operations in the same period as the gains or losses from the underlying transactions are recorded and are generally recognized in cost of sales.

The Company periodically enters into foreign currency exchange contracts that do not meet the criteria for hedge accounting. These derivatives are used to reduce the Company's exposure to foreign currency risk related to forecasted purchase or sales transactions or forecasted intercompany cash payments or settlements. Gains and losses on these derivatives are generally recognized in cost of sales.

The Company periodically enters into forward foreign currency contracts that are designated as net investment hedges of the Company's net investment in its foreign subsidiaries. For derivative instruments that are designated and qualified as a hedge of a net investment in foreign currency, the gain or loss is reported in other comprehensive income as part of the cumulative translation adjustment to the extent it is effective. The Company utilizes the forward-rate method of assessing hedge effectiveness.

The Company uses interest rate swap agreements to partially reduce risks related to floating rate financing agreements that are subject to changes in the market rate of interest. Terms of the interest rate swap agreements require the Company to receive a variable interest rate and pay a fixed interest rate. The Company's interest rate swap agreements and the associated variable rate financings are predominately based upon the one-month LIBOR. Changes in the fair value of interest rate swap agreements that are effective as hedges are recorded in OCI. Deferred gains or losses are reclassified from OCI to the unaudited condensed consolidated statements of operations in the same period as the gains or losses from the underlying transactions are recorded and are generally recognized in interest expense.

Cash flows from hedging activities are reported in the unaudited condensed consolidated statements of cash flows with the same classification as the hedged item, generally as a component of cash flows from operations.

The Company measures its derivatives at fair value on a recurring basis using significant observable inputs. This valuation methodology is Level 2 as defined in the fair value hierarchy. The Company uses a present value technique that incorporates yield curves and foreign currency spot rates to value its derivatives and also incorporates the effect of the Company's and its counterparties' credit risk into the valuation.

The Company does not currently hold any nonderivative instruments designated as hedges or any derivatives designated as fair value hedges.

Foreign Currency Derivatives: The Company held forward foreign currency exchange contracts with total notional amounts of \$1.0 billion at June 30, 2021, primarily denominated in euros, Japanese yen, U.S. dollars, Chinese renminbi, Mexican pesos, Swedish kroner, British pounds and Australian dollars. The Company held forward foreign currency exchange contracts with total notional amounts of \$840.5 million at December 31, 2020, primarily denominated in euros, U.S. dollars, Japanese yen, British pounds, Chinese renminbi, Mexican pesos, Swedish kroner and Australian dollars. The fair value of these contracts approximated a net asset of \$2.3 million and \$23.5 million at June 30, 2021 and December 31, 2020, respectively.

Forward foreign currency exchange contracts that qualify for hedge accounting are generally used to hedge transactions expected to occur within the next 36 months. The mark-to-market effect of forward foreign currency exchange contracts that are considered effective as hedges has been included in OCI. Based on market valuations at June 30, 2021, \$3.7 million of the amount of net deferred gain included in OCI at June 30, 2021 is expected to be reclassified as income into the unaudited condensed consolidated statements of operations over the next twelve months, as the transactions occur.

Interest Rate Derivatives: The Company holds certain contracts that hedge interest payments on its \$225.0 million Term Loan borrowings. In the second quarter of 2021, the Company entered into new interest rate swaps with a six-year term and \$180.0 million notional amount. The previous interest rate swaps were amended and included in the new interest rate swaps. The fair value of the previous interest rate swaps will be amortized over the remaining original term. In addition, the Company holds certain contracts that hedge interest payments on Bolzoni's debt.

The following table summarizes the notional amounts, related rates, excluding spreads, and remaining terms of interest rate swap agreements at June 30, 2021 and December 31, 2020:

Notional Amount		Average Fixed Rate		Term at June 30, 2021
JUNE 30 2021	DECEMBER 31 2020	JUNE 30 2021	DECEMBER 31 2020	
\$ 180.0	\$ —	1.68 %	— %	Extending to May 2027
\$ 16.0	\$ 19.0	(0.14)%	(0.10) %	Extending to September 2025
\$ —	\$ 56.5	— %	1.94 %	Terminated May 2021
\$ —	\$ 65.7	— %	2.20 %	Terminated May 2021

The fair value of all interest rate swap agreements was a net liability of \$5.5 million and \$4.9 million at June 30, 2021 and December 31, 2020, respectively. The mark-to-market effect of interest rate swap agreements that are considered effective as hedges has been included in OCI. Based on market valuations at June 30, 2021, \$2.7 million of the amount included in OCI as net deferred loss is expected to be reclassified as expense in the unaudited condensed consolidated statements of operations over the next twelve months, as cash flow payments are made in accordance with the interest rate swap agreements.

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The following table summarizes the fair value of derivative instruments reflected on a gross basis by contract as recorded in the unaudited condensed consolidated balance sheets:

	Asset Derivatives				Liability Derivatives			
	Balance Sheet Location	JUNE 30 2021	DECEMBER 31 2020		Balance Sheet Location	JUNE 30 2021	DECEMBER 31 2020	
Derivatives designated as hedging instruments								
Cash Flow Hedges								
Interest rate swap agreements								
Current	Other current liabilities	\$ 0.7	\$ —		Other current liabilities	\$ 2.8	\$ 2.5	
Long-term	Other long-term liabilities	1.4	—		Other long-term liabilities	4.8	2.4	
Foreign currency exchange contracts								
Current	Prepaid expenses and other	6.7	15.7		Prepaid expenses and other	2.6	2.9	
	Other current liabilities	3.1	1.0		Other current liabilities	3.2	3.6	
Long-term	Other non-current assets	2.8	11.3		Other non-current assets	0.5	0.1	
	Other long-term liabilities	1.2	—		Other long-term liabilities	2.0	—	
Total derivatives designated as hedging instruments		<u>\$ 15.9</u>	<u>\$ 28.0</u>			<u>\$ 15.9</u>	<u>\$ 11.5</u>	
Derivatives not designated as hedging instruments								
Cash Flow Hedges								
Foreign currency exchange contracts								
Current	Prepaid expenses and other	0.3	2.8		Prepaid expenses and other	1.4	0.9	
	Other current liabilities	0.9	0.7		Other current liabilities	3.0	0.5	
Total derivatives not designated as hedging instruments		<u>\$ 1.2</u>	<u>\$ 3.5</u>			<u>\$ 4.4</u>	<u>\$ 1.4</u>	
Total derivatives		<u>\$ 17.1</u>	<u>\$ 31.5</u>			<u>\$ 20.3</u>	<u>\$ 12.9</u>	

The following table summarizes the offsetting of the fair value of derivative instruments on a gross basis by counterparty as recorded in the unaudited condensed consolidated balance sheets:

	Derivative Assets as of June 30, 2021				Derivative Liabilities as of June 30, 2021			
	Gross Amounts of Recognized Assets	Gross Amounts Offset	Net Amounts Presented	Net Amount	Gross Amounts of Recognized Liabilities	Gross Amounts Offset	Net Amounts Presented	Net Amount
Cash Flow Hedges								
Interest rate swap agreements	\$ —	\$ —	\$ —	\$ —	\$ 5.5	\$ —	\$ 5.5	\$ 5.5
Foreign currency exchange contracts	5.3	(3.0)	2.3	2.3	3.0	(3.0)	—	—
Total derivatives	<u>\$ 5.3</u>	<u>\$ (3.0)</u>	<u>\$ 2.3</u>	<u>\$ 2.3</u>	<u>\$ 8.5</u>	<u>\$ (3.0)</u>	<u>\$ 5.5</u>	<u>\$ 5.5</u>
	Derivative Assets as of December 31, 2020				Derivative Liabilities as of December 31, 2020			
	Gross Amounts of Recognized Assets	Gross Amounts Offset	Net Amounts Presented	Net Amount	Gross Amounts of Recognized Liabilities	Gross Amounts Offset	Net Amounts Presented	Net Amount
Cash Flow Hedges								
Interest rate swap agreements	\$ —	\$ —	\$ —	\$ —	\$ 4.9	\$ —	\$ 4.9	\$ 4.9
Foreign currency exchange contracts	25.9	(2.4)	23.5	23.5	2.4	(2.4)	—	—
Total derivatives	<u>\$ 25.9</u>	<u>\$ (2.4)</u>	<u>\$ 23.5</u>	<u>\$ 23.5</u>	<u>\$ 7.3</u>	<u>\$ (2.4)</u>	<u>\$ 4.9</u>	<u>\$ 4.9</u>

The following table summarizes the pre-tax impact of derivative instruments as recorded in the unaudited condensed consolidated statements of operations:

	Amount of Gain or (Loss) Recognized in OCI on Derivative (Effective Portion)				Location of Gain or (Loss) Reclassified from OCI into Income (Effective Portion)	Amount of Gain or (Loss) Reclassified from OCI into Income (Effective Portion)			
	THREE MONTHS ENDED		SIX MONTHS ENDED			THREE MONTHS ENDED		SIX MONTHS ENDED	
	JUNE 30					JUNE 30			
	2021	2020	2021	2020		2021	2020	2021	2020
Derivatives Designated as Hedging Instruments									
Cash Flow Hedges									
Interest rate swap agreements	\$ (0.6)	\$ 0.4	\$ 0.7	\$ (3.4)	Interest expense	\$ 0.7	\$ 0.5	\$ 1.3	\$ 0.6
Foreign currency exchange contracts	7.0	10.4	(14.3)	(15.9)	Cost of sales	1.4	(7.8)	1.5	(11.9)
Total	<u>\$ 6.4</u>	<u>\$ 10.8</u>	<u>\$ (13.6)</u>	<u>\$ (19.3)</u>		<u>\$ 2.1</u>	<u>\$ (7.3)</u>	<u>\$ 2.8</u>	<u>\$ (11.3)</u>
Derivatives Not Designated as Hedging Instruments					Location of Gain or (Loss) Recognized in Income on Derivative				
Cash Flow Hedges						2021	2020	2021	2020
Foreign currency exchange contracts					Cost of sales	\$ (1.9)	\$ 2.8	\$ (6.2)	\$ 1.3
Total						<u>\$ (1.9)</u>	<u>\$ 2.8</u>	<u>\$ (6.2)</u>	<u>\$ 1.3</u>

Note 9—Retirement Benefit Plans

The Company maintains various defined benefit pension plans that provide benefits based on years of service and average compensation during certain periods. The Company's policy is to make contributions to fund these plans within the range allowed by applicable regulations. Plan assets consist primarily of publicly traded stocks and government and corporate bonds.

Pension benefits for employees covered under the Company's U.S. and U.K. plans are frozen. Only certain grandfathered employees in the Netherlands still earn retirement benefits under a defined benefit pension plan. All other eligible employees of the Company, including employees whose pension benefits are frozen, receive retirement benefits under defined contribution retirement plans.

The Company presents the components of net benefit cost, other than service cost, in other (income) expense in the unaudited condensed consolidated statements of operations for its pension plans. Service cost for the Company's pension plans is reported in operating profit. The components of pension (income) expense are set forth below:

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	JUNE 30		JUNE 30	
	2021	2020	2021	2020
U.S. Pension				
Interest cost	\$ 0.3	\$ 0.5	\$ 0.7	\$ 1.0
Expected return on plan assets	(1.1)	(1.1)	(2.3)	(2.3)
Amortization of actuarial loss	0.5	0.5	1.0	1.0
Total	<u>\$ (0.3)</u>	<u>\$ (0.1)</u>	<u>\$ (0.6)</u>	<u>\$ (0.3)</u>
Non-U.S. Pension				
Service cost	\$ 0.1	\$ —	\$ 0.1	\$ —
Interest cost	0.7	0.7	1.3	1.5
Expected return on plan assets	(2.7)	(2.7)	(5.3)	(5.4)
Amortization of actuarial loss	0.9	0.7	1.8	1.3
Total	<u>\$ (1.0)</u>	<u>\$ (1.3)</u>	<u>\$ (2.1)</u>	<u>\$ (2.6)</u>

Note 10—Inventories

Inventories are summarized as follows:

	JUNE 30 2021	DECEMBER 31 2020
Finished goods and service parts	\$ 318.8	\$ 269.0
Work in process	27.6	21.0
Raw materials	389.7	269.4
Total manufactured inventories	736.1	559.4
LIFO reserve	(58.1)	(50.0)
Total inventory	<u>\$ 678.0</u>	<u>\$ 509.4</u>

Inventories are stated at the lower of cost or market for last-in, first-out (“LIFO”) inventory or lower of cost or net realizable value for first-in, first-out (“FIFO”) inventory. At June 30, 2021 and December 31, 2020, 48% and 42%, respectively, of total inventories were determined using the LIFO method, which consists primarily of manufactured inventories, including service parts, for the lift truck business in the United States. The FIFO method is used with respect to all other inventories. An actual valuation of inventory under the LIFO method can be made only at the end of the year based on the inventory levels and costs at that time. Accordingly, interim LIFO calculations must be based on management's estimates of expected year-end inventory levels and costs. Because these estimates are subject to change and may be different than the actual inventory levels and costs at the end of the year, interim results are subject to the final year-end LIFO inventory valuation.

Note 11—Product Warranties

The Company provides a standard warranty on its lift trucks, generally for twelve months or 1,000 to 2,000 hours. For certain series of lift trucks, the Company provides a standard warranty of one to two years or 2,000 or 4,000 hours. For certain components in some series of lift trucks, the Company provides a standard warranty of two to three years or 4,000 to 6,000 hours. The Company estimates the costs which may be incurred under its standard warranty programs and records a liability for such costs at the time product revenue is recognized.

In addition, the Company sells separately priced, extended warranty agreements for its lift trucks, which generally provide a warranty for an additional two to five years or up to 2,400 to 10,000 hours. The specific terms and conditions of those warranties vary depending upon the product sold and the country in which the Company does business. Revenue received for the sale of extended warranty contracts is deferred and recognized in the same manner as the costs incurred to perform under the warranty contracts.

The Company also maintains a quality enhancement program under which it provides for specifically identified field product improvements in its warranty obligation. Accruals under this program are determined based on estimates of the potential number of claims and the cost of those claims based on historical and anticipated costs.

The Company periodically assesses the adequacy of its recorded warranty liabilities and adjusts the amounts as necessary. Factors that affect the warranty liability include the number of units sold, historical and anticipated rates of warranty claims and the cost per claim.

Changes in the Company's current and long-term warranty obligations, including deferred revenue on extended warranty contracts, are as follows:

	2021
Balance at December 31, 2020	\$ 64.7
Current year warranty expense	18.8
Change in estimate related to pre-existing warranties	(0.4)
Payments made	(13.9)
Foreign currency effect	(0.5)
Balance at June 30, 2021	<u>\$ 68.7</u>

Note 12—Contingencies

Various legal and regulatory proceedings and claims have been or may be asserted against the Company relating to the conduct of its businesses, including product liability, environmental and other claims. These proceedings and claims are incidental to the ordinary course of business. Management believes that it has meritorious defenses and will vigorously defend the Company in these actions. Any costs that management estimates will be paid as a result of these claims are accrued when the liability is considered probable and the amount can be reasonably estimated. Although the ultimate disposition of these proceedings is not presently determinable, management believes, after consultation with its legal counsel, that the likelihood is remote that costs will be incurred materially in excess of accruals already recognized.

The Company previously filed lawsuits in Brazil to recover certain social integration and social contribution taxes paid on gross sales, including the ICMS, which is a form of state value added tax. During the course of the lawsuit, many other taxpayers filed lawsuits with the same objective. Due to the increasing number of lawsuits filed, the Federal Supreme Court ("STF") declared that all ongoing legal cases should have their decision suspended until the STF decides on the matter, a decision that was expected to apply to all cases on this topic.

In 2019, the Company's legal advisors in Brazil notified the Company that they received judicial notification that the STF had issued a favorable decision in the case granting the Company the right to recover, by offsetting federal tax liabilities, amounts of overpayments collected by the government from 1999 to the present date. The judicial court decision is final and not subject to appeals. The current estimate of the refund calculated on a gross basis is approximately 110 million Brazilian reais, or approximately \$22 million as of June 30, 2021.

Despite the favorable decision of the STF, the Brazilian tax authorities sought clarification in the same main lawsuit on certain issues, including the value of these credits (i.e., the gross rate or the net credit value), and certain other issues that could affect the Brazilian taxpayers' rights with respect to these credits, all of which could materially impact the realization of the credits. During the second quarter of 2021, the STF ruled in favor of taxpayers that the refund should be calculated on a gross basis.

The amount and ultimate timing of realization of these recoveries is dependent upon administrative approvals, generation of federal tax liabilities in Brazil eligible for offset and potential impacts of future legislative actions within Brazil, all of which are uncertain. The Company is in the process of negotiating the sale of these credits at a discount and has revised the net realizable value of the credits to approximately 29 million Brazilian reais, or \$5.8 million as of June 30, 2021. In addition, the Company has generated additional tax credits since the favorable decision in 2019 of approximately 12 million Brazilian reais, or approximately \$2.4 million. The Company recorded approximately \$6.3 million of income related to the revised estimate of net realizable value of these credits in the second quarter of 2021 in "Cost of Sales" in the unaudited condensed consolidated statements of operations.

Note 13—Guarantees

Under various financing arrangements for certain customers, including independent retail dealerships, the Company provides recourse or repurchase obligations such that it would be obligated in the event of default by the customer. Terms of the third-party financing arrangements for which the Company is providing recourse or repurchase obligations generally range from one to five years. Total amounts subject to recourse or repurchase obligations at June 30, 2021 and December 31, 2020 were \$121.7 million and \$119.7 million, respectively. As of June 30, 2021, losses anticipated under the terms of the recourse or repurchase obligations were not significant and reserves have been provided for such losses based on historical experience in the accompanying unaudited condensed consolidated financial statements. The Company generally retains a security interest in the related assets financed such that, in the event the Company would become obligated under the terms of the recourse or repurchase obligations, the Company would take title to the assets financed. The fair value of collateral held at June 30, 2021 was approximately \$185.4 million based on Company estimates. The Company estimates the fair value of the collateral using information regarding the original sales price, the current age of the equipment and general market conditions that influence the value of both new and used lift trucks. The Company also regularly monitors the external credit ratings of the entities for which it has provided recourse or repurchase obligations. As of June 30, 2021, the Company did not believe there was a significant risk of non-payment or non-performance of the obligations by these entities; however, there can be no assurance that the risk may not increase in the future. In addition, the Company has an agreement with WF to limit its exposure to losses at certain eligible dealers. Under this agreement, losses related to \$22.3 million of recourse or repurchase obligations for these certain eligible dealers are limited to 7.5% of their original loan balance, or \$11.4 million as of June 30, 2021. The \$22.3 million is included in the \$121.7 million of total amounts subject to recourse or repurchase obligations at June 30, 2021.

Generally, the Company sells lift trucks through its independent dealer network or directly to customers. These dealers and customers may enter into a financing transaction with HYGFS or other unrelated third parties. HYGFS provides debt and lease financing to both dealers and customers. On occasion, the credit quality of a customer or credit concentration issues within WF

may require the Company to provide recourse or repurchase obligations of the lift trucks purchased by customers and financed through HYGFS. At June 30, 2021, approximately \$95.7 million of the Company's total recourse or repurchase obligations of \$121.7 million related to transactions with HYGFS. In connection with the joint venture agreement, the Company also provides a guarantee to WF for 20% of HYGFS' debt with WF, such that the Company would become liable under the terms of HYGFS' debt agreements with WF in the case of default by HYGFS. At June 30, 2021, loans from WF to HYGFS totaled \$1.1 billion. Although the Company's contractual guarantee was \$225.6 million, the loans by WF to HYGFS are secured by HYGFS' customer receivables, of which the Company guarantees \$95.7 million. Excluding the HYGFS receivables guaranteed by the Company from HYGFS' loans to WF, the Company's incremental obligation as a result of this guarantee to WF is \$208.6 million, which is secured by 20% of HYGFS' customer receivables and other secured assets of \$278.1 million. HYGFS has not defaulted under the terms of this debt financing in the past, and although there can be no assurances, the Company is not aware of any circumstances that would cause HYGFS to default in future periods.

The following table includes the exposure amounts related to the Company's guarantees at June 30, 2021:

	HYGFS	Total
Total recourse or repurchase obligations	\$ 95.7	\$ 121.7
Less: exposure limited for certain dealers	22.3	22.3
Plus: 7.5% of original loan balance	11.4	11.4
	84.8	110.8
Incremental obligation related to guarantee to WF	208.6	208.6
Total exposure related to guarantees	\$ 293.4	\$ 319.4

Note 14—Equity and Debt Investments

The Company maintains an interest in one variable interest entity, HYGFS. HYGFS is a joint venture with WF formed primarily for the purpose of providing financial services to independent Hyster® and Yale® lift truck dealers and National Account customers in the United States and is included in the Americas segment. The Company does not have a controlling financial interest or have the power to direct the activities that most significantly affect the economic performance of HYGFS. Therefore, the Company is not the primary beneficiary and uses the equity method to account for its 20% interest in HYGFS. The Company does not consider its variable interest in HYGFS to be significant.

The Company has a 50% ownership interest in SN, a limited liability company which was formed primarily to manufacture and distribute Sumitomo-branded lift trucks in Japan and export Hyster®- and Yale®-branded lift trucks and related components and service parts outside of Japan. The Company purchases products from SN under agreed-upon terms. The Company's ownership in SN is also accounted for using the equity method of accounting and is included in the JAPIC segment.

The Company's percentage share of the net income or loss from its equity investments in HYGFS and SN is reported on the line "Income from unconsolidated affiliates" in the "Other (income) expense" section of the unaudited condensed consolidated statements of operations. The Company's equity investments are included on the line "Investment in Unconsolidated Affiliates" in the unaudited condensed consolidated balance sheets.

The Company's equity investments in unconsolidated affiliates recorded on the unaudited condensed consolidated balance sheets are as follows:

	June 30, 2021	December 31, 2020
HYGFS	\$ 20.0	\$ 21.4
SN	43.8	44.6
Bolzoni	0.3	0.2

Dividends received from unconsolidated affiliates are summarized below:

	SIX MONTHS ENDED			
	JUNE 30			
	2021		2020	
HYGFS	\$	5.1	\$	6.4
SN		0.4		0.9
	\$	5.5	\$	7.3

Summarized financial information for HYGFS and SN is as follows:

	THREE MONTHS ENDED				SIX MONTHS ENDED			
	JUNE 30				JUNE 30			
	2021		2020		2021		2020	
Revenues	\$	106.7	\$	95.2	\$	209.9	\$	197.0
Gross profit	\$	40.3	\$	49.0	\$	78.1	\$	63.9
Income from continuing operations	\$	13.9	\$	4.5	\$	22.1	\$	10.9
Net income	\$	13.9	\$	4.5	\$	22.1	\$	10.9

The Company has an equity investment in a third party valued using a quoted market price in an active market, or Level 1 in the fair value hierarchy. The Company's investment as of June 30, 2021 and December 31, 2020 was \$2.0 million and \$2.1 million, respectively. Any gain or loss on the investment is included on the line "Other" in the "Other (income) expense" section of the unaudited condensed consolidated statements of operations as follows:

	THREE MONTHS ENDED				SIX MONTHS ENDED			
	JUNE 30				JUNE 30			
	2021		2020		2021		2020	
Gain (loss) on equity investment	\$	1.1	\$	(0.1)	\$	—	\$	(1.2)

During the first quarter of 2021, the Company sold its investment in preferred shares of OneH2, Inc. for \$15.7 million, including accrued dividends, and recognized a gain of \$4.6 million. The gain on the sale of the investment is included on the line "Other, net" in the "Other (income) expense" section of the unaudited condensed consolidated statements of operations. The Company's investment was \$0.8 million and \$11.9 million as of June 30, 2021 and December 31, 2020, respectively.

Note 15—Restructuring

During 2020, the Company performed an in-depth global review to help establish a more sustainable long-term cost structure. As a result, the Company plans to restructure its operations to optimize global commercial operations. The Company recognized a charge of approximately \$4.4 million during the year ended December 31, 2020. These charges primarily related to severance, which was recorded on the line "Selling, general and administrative expenses" in the unaudited condensed consolidated statements of operations. During the second quarter of 2021, the Company recorded a provision of \$0.1 million for additional severance. During the first six months of 2021, the Company recorded a benefit of \$0.3 million as a result of changes in estimates of severance accruals. In addition, approximately \$0.7 million and \$1.3 million of severance payments were paid in the three and six-months ended June 30, 2021, respectively. The remaining severance payments are expected to be paid in 2021. In addition to the restructuring charge recorded during 2020, the Company anticipates it will incur subsequent charges, which were not eligible for accrual at June 30, 2021, of approximately \$0.8 million for additional costs related to the restructuring, which the Company expects to incur during 2021.

Following is the detail of the cash charges incurred by reporting segment:

	Total charges incurred	Total charges incurred through December 31, 2020	Total benefits recorded in the six months ended June 30, 2021
Americas	\$ 0.8	\$ 1.0	\$ (0.2)
EMEA	2.0	2.0	—
JAPIC	1.3	1.4	(0.1)
	<u>\$ 4.1</u>	<u>\$ 4.4</u>	<u>\$ (0.3)</u>

Following is an analysis of the activity related to the liability:

	Americas	EMEA	JAPIC	Total
Balance at January 1, 2021	\$ 1.0	\$ 2.0	\$ 1.4	\$ 4.4
Provision	0.1	—	—	0.1
Changes in estimate	(0.3)	—	(0.1)	(0.4)
Payments	(0.7)	(0.5)	(0.1)	(1.3)
Balance at June 30, 2021	<u>\$ 0.1</u>	<u>\$ 1.5</u>	<u>\$ 1.2</u>	<u>\$ 2.8</u>

Note 16—Other

On May 26, 2021, the Company signed an Equity Transfer Agreement (the “ETA”) with Y-C Hongkong Holding Co., Limited (“HK Holding Co”), pursuant to which the Company will purchase 15% of the equity interest of Hyster-Yale Maximal from HK Holding Co for an aggregate purchase price of \$25.2 million. After the closing under the ETA, which is anticipated to occur on June 1, 2022 (the “Closing Date”), 10% and 90% of the equity interest of Hyster-Yale Maximal will be owned by HK Holding Co and the Company, respectively.

Under the terms of the ETA, on the Closing Date and prior to each of June 1, 2023 and June 1, 2024, the Company will pay \$8.4 million to HK Holding Co. The closing of the transaction is subject to customary closing conditions and required regulatory approvals. There is no guarantee the closing will occur either as provided in the ETA or at all. After the closing, the Company will have an option to purchase HK Holding Co's remaining interest in Hyster-Yale Maximal at any time prior to June 8, 2056 for \$16.8 million. If this option is exercised, the Company will own 100% of the equity interest of Hyster-Yale Maximal.

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

(Tabular Amounts in Millions, Except Per Share and Percentage Data)

Hyster-Yale Materials Handling, Inc. ("Hyster-Yale" or the "Company") and its subsidiaries, including its operating company Hyster-Yale Group, Inc. ("HYG"), is a leading, globally integrated, full-line lift truck manufacturer. The Company offers a broad array of solutions aimed at meeting the specific materials handling needs of its customers, including attachments and hydrogen fuel cell power products, telematics, automation and fleet management services, as well as a variety of other power options for its lift trucks. The Company, through HYG, designs, engineers, manufactures, sells and services a comprehensive line of lift trucks, attachments and aftermarket parts marketed globally primarily under the Hyster® and Yale® brand names, mainly to independent Hyster® and Yale® retail dealerships. The materials handling business historically has been cyclical because the rate of orders for lift trucks fluctuates depending on the general level of economic activity in the various industries and countries its customers serve. Lift trucks and component parts are manufactured in the United States, China, Northern Ireland, Mexico, the Netherlands, the Philippines, Japan, Italy, Brazil and Vietnam.

The Company operates Bolzoni S.p.A. ("Bolzoni"). Bolzoni is a leading worldwide producer and distributor of attachments, forks and lift tables marketed under the Bolzoni®, Auramo® and Meyer® brand names. Bolzoni products are manufactured in the United States, Italy, China, Germany and Finland. Through the design, production and distribution of a wide range of attachments, Bolzoni has a strong presence in the market niche of lift truck attachments and industrial material handling.

The Company operates Nuvera Fuel Cells, LLC ("Nuvera"). Nuvera is an alternative-power technology company focused on the design, manufacture and sale of hydrogen fuel cell stacks and engines.

During 2020, broad measures taken by governments, businesses and others across the globe to limit the spread of novel coronavirus ("COVID-19") adversely affected the Company. The resulting significant decline in economic activity also reduced the demand for the Company's products and limited the availability of components from certain suppliers. Production was significantly reduced or suspended at the Company's Chinese and European facilities for certain periods during the first and second quarters of 2020. The Company also initiated several cost reduction measures designed to ease liquidity pressure. These cost containment actions included spending and travel restrictions, significant reductions in temporary personnel, furloughs, suspension of incentive compensation and profit sharing, benefit reductions and salary reductions. Effective January 1, 2021, the Company reinstated pre-pandemic salaries, benefits and incentive compensation programs. The cost containment actions associated with hiring, use of contract and temporary workers, travel and meetings, as well as other discretionary spending are continuing. These measures are expected to remain in place until market and economic uncertainty dissipates and results improve. In addition, the Company adjusted production levels in 2020 at its manufacturing plants to align more closely with the reduced levels of demand, and worked closely with suppliers to help ensure current needs were met while also promoting continuity as the market improved. However, despite these efforts, during the second quarter and first six months of 2021, the Company experienced further pandemic-related and other global supply chain constraints, component shortages, shipping container availability constraints and higher freight costs, as well as significant material cost inflation resulting from the accelerated pace of the market recovery, all of which have negatively impacted the Company.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Please refer to the discussion of Critical Accounting Policies and Estimates as disclosed on pages 15 through 17 in the Company's Annual Report on Form 10-K for the year ended December 31, 2020. Critical Accounting Policies and Estimates have not materially changed since December 31, 2020. See Note 2 to the unaudited condensed consolidated financial statements for a discussion of the new accounting pronouncements adopted on January 1, 2021.

FINANCIAL REVIEW

The results of operations for the Company were as follows:

	THREE MONTHS ENDED JUNE 30		Favorable / (Unfavorable) % Change	SIX MONTHS ENDED JUNE 30		Favorable / (Unfavorable) % Change
	2021	2020		2021	2020	
Lift truck unit shipments (in thousands)						
Americas	13.0	13.1	(0.8) %	25.3	29.1	(13.1) %
EMEA	5.9	4.4	34.1 %	12.4	9.7	27.8 %
JAPIC	3.8	2.6	46.2 %	7.3	4.6	58.7 %
	<u>22.7</u>	<u>20.1</u>	<u>12.9 %</u>	<u>45.0</u>	<u>43.4</u>	<u>3.7 %</u>
Revenues						
Americas	\$ 479.1	\$ 454.8	5.3 %	\$ 938.8	\$ 1,005.5	(6.6) %
EMEA	175.1	120.1	45.8 %	345.8	272.2	27.0 %
JAPIC	65.0	48.0	35.4 %	125.5	92.6	35.5 %
Lift truck business	719.2	622.9	15.5 %	1,410.1	1,370.3	2.9 %
Bolzoni	84.8	64.2	32.1 %	164.3	152.1	8.0 %
Nuvera	0.3	0.7	(57.1) %	0.3	2.1	(85.7) %
Eliminations	(38.7)	(33.4)	15.9 %	(76.9)	(84.4)	(8.9) %
	<u>\$ 765.6</u>	<u>\$ 654.4</u>	<u>17.0 %</u>	<u>\$ 1,497.8</u>	<u>\$ 1,440.1</u>	<u>4.0 %</u>
Gross profit (loss)						
Americas	\$ 70.4	\$ 74.9	(6.0) %	\$ 145.7	\$ 174.6	(16.6) %
EMEA	26.6	15.7	69.4 %	50.1	35.0	43.1 %
JAPIC	6.2	4.2	47.6 %	12.8	8.7	47.1 %
Lift truck business	103.2	94.8	8.9 %	208.6	218.3	(4.4) %
Bolzoni	15.8	11.5	37.4 %	32.2	28.4	13.4 %
Nuvera	(2.5)	(3.2)	21.9 %	(5.8)	(5.8)	— %
Eliminations	(0.1)	0.5	n.m.	(0.2)	(0.6)	n.m.
	<u>\$ 116.4</u>	<u>\$ 103.6</u>	<u>12.4 %</u>	<u>\$ 234.8</u>	<u>\$ 240.3</u>	<u>(2.3) %</u>
Selling, general and administrative expenses						
Americas	\$ 56.8	\$ 51.6	(10.1) %	\$ 117.5	\$ 112.8	(4.2) %
EMEA	22.9	18.5	(23.8) %	46.3	42.3	(9.5) %
JAPIC	8.1	7.7	(5.2) %	17.2	18.2	5.5 %
Lift truck business	87.8	77.8	(12.9) %	181.0	173.3	(4.4) %
Bolzoni	16.2	12.0	(35.0) %	31.8	26.2	(21.4) %
Nuvera	6.5	5.1	(27.5) %	13.0	11.9	(9.2) %
	<u>\$ 110.5</u>	<u>\$ 94.9</u>	<u>(16.4) %</u>	<u>\$ 225.8</u>	<u>\$ 211.4</u>	<u>(6.8) %</u>
Operating profit (loss)						
Americas	\$ 13.6	\$ 23.3	(41.6) %	\$ 28.2	\$ 61.8	(54.4) %
EMEA	3.7	(2.8)	n.m.	3.8	(7.3)	(152.1) %
JAPIC	(1.9)	(3.5)	45.7 %	(4.4)	(9.5)	53.7 %
Lift truck business	15.4	17.0	(9.4) %	27.6	45.0	(38.7) %
Bolzoni	(0.4)	(0.5)	(20.0) %	0.4	2.2	(81.8) %
Nuvera	(9.0)	(8.3)	(8.4) %	(18.8)	(17.7)	(6.2) %
Eliminations	(0.1)	0.5	n.m.	(0.2)	(0.6)	n.m.
	<u>\$ 5.9</u>	<u>\$ 8.7</u>	<u>(32.2) %</u>	<u>\$ 9.0</u>	<u>\$ 28.9</u>	<u>(68.9) %</u>
Interest expense	\$ 3.8	\$ 3.3	(15.2) %	\$ 6.6	\$ 7.6	13.2 %
Other (income) expense	\$ 2.2	\$ 3.7	(40.5) %	\$ (6.0)	\$ (0.1)	n.m.

	THREE MONTHS ENDED		Favorable / (Unfavorable) % Change	SIX MONTHS ENDED		Favorable / (Unfavorable) % Change
	JUNE 30			JUNE 30		
	2021	2020		2021	2020	
Net income (loss) attributable to stockholders						
Americas	\$ 5.0	\$ 13.5	(63.0) %	\$ 14.5	\$ 41.3	(64.9) %
EMEA	3.9	(1.5)	n.m.	4.8	(4.6)	204.3 %
JAPIC	0.4	(1.1)	136.4 %	(1.8)	(5.7)	68.4 %
Lift truck business	9.3	10.9	(14.7) %	17.5	31.0	(43.5) %
Bolzoni	(0.6)	(0.6)	— %	—	2.1	(100.0) %
Nuvera	(6.6)	(5.8)	(13.8) %	(10.4)	(12.5)	16.8 %
Eliminations	(0.2)	(0.9)	n.m.	0.4	(1.7)	n.m.
	\$ 1.9	\$ 3.6	(47.2) %	\$ 7.5	\$ 18.9	(60.3) %
Diluted earnings per share	\$ 0.11	\$ 0.21	(47.6) %	\$ 0.45	\$ 1.13	(60.2) %
Reported income tax rate	n.m.	n.m.		n.m.	8.4 %	

n.m. - not meaningful

Following is the detail of the Company's unit shipments, bookings and backlog of unfilled orders placed with its manufacturing and assembly operations for new lift trucks, reflected in thousands of units. As of June 30, 2021, substantially all of the Company's backlog is expected to be sold within the next twelve months.

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	JUNE 30		JUNE 30	
	2021	2020	2021	2020
Unit backlog, beginning of period	60.7	37.3	40.6	41.2
Unit shipments	(22.7)	(20.1)	(45.0)	(43.4)
Unit bookings	46.9	14.3	89.3	33.7
Unit backlog, end of period	84.9	31.5	84.9	31.5

The following is the detail of the approximate sales value of the Company's lift truck unit bookings and backlog, reflected in millions of dollars. The dollar value of bookings and backlog is calculated using the current unit bookings and backlog and the forecasted average sales price per unit.

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	JUNE 30		JUNE 30	
	2021	2020	2021	2020
Bookings, approximate sales value	\$ 1,070	\$ 315	\$ 2,040	\$ 815
Backlog, approximate sales value	\$ 2,070	\$ 810	\$ 2,070	\$ 810

Second Quarter of 2021 Compared with Second Quarter of 2020

The following table identifies the components of change in revenues for the second quarter of 2021 compared with the second quarter of 2020:

	Revenues
2020	\$ 654.4
Increase (decrease) in 2021 from:	
Unit volume and product mix	39.1
Parts	25.3
Bolzoni revenues	20.6
Foreign currency	20.3
Price	5.9
Other	5.7
Eliminations	(5.3)
Nuvera revenues	(0.4)
2021	\$ 765.6

Revenues increased 17.0% to \$765.6 million in the second quarter of 2021 from \$654.4 million in the second quarter of 2020. The increase was primarily due to higher unit and parts volume in the lift truck business and Bolzoni, in addition to favorable currency movements from the translation of sales into U.S. dollars. Customer demand increased in the second quarter of 2021, resulting in higher unit shipments, mainly in EMEA and JAPIC, as well as higher parts sales in the lift truck business.

Revenues in the Americas increased in the second quarter of 2021 compared with the second quarter of 2020, primarily from favorable parts sales driven by an increase in customer demand and dealers ordering safety stock due to supply chain constraints, as well as an increase in fleet management services and the favorable effect of price increases put in place to mitigate the impact of material cost inflation.

EMEA's revenues increased mainly due to higher unit and parts volume and favorable foreign currency movements of \$15.5 million from the translation of sales into U.S. dollars.

JAPIC's revenues increased primarily as a result of improved unit volumes and favorable foreign currency movements of \$5.2 million.

The increase in Bolzoni's revenues was mainly due to higher unit volume and favorable foreign currency movements of \$1.9 million.

The following table identifies the components of change in operating profit for the second quarter of 2021 compared with the second quarter of 2020:

	Operating Profit
2020	\$ 8.7
Increase (decrease) in 2021 from:	
Lift truck gross profit	7.8
Bolzoni operations	0.1
Nuvera operations	(0.7)
Lift truck selling, general and administrative expenses	(10.0)
2021	\$ 5.9

The Company recognized operating profit of \$5.9 million in the second quarter of 2021 compared with \$8.7 million in the second quarter of 2020. The decrease in operating profit was mainly due to higher selling, general and administrative expenses in the lift truck business primarily due to the reinstatement of pre-pandemic employee-related salaries and benefits. In addition, the second quarter of 2020 included \$8.3 million of government support incentives received at EMEA and Bolzoni. The increase in selling, general and administrative expenses was somewhat offset by higher gross profit, primarily from higher unit and part volume and a favorable \$6.3 million adjustment for tax credits in Brazil. The increase in gross profit was somewhat

offset by significant material and freight cost inflation due to supply chain and logistics constraints, mainly in the Americas. See Note 12 for further discussion of the Brazilian tax credits.

Operating profit in the Americas significantly decreased to \$13.6 million in the second quarter of 2021 compared with \$23.3 million the second quarter of 2020 due to an increase in operating expenses mainly resulting from the reinstatement of pre-pandemic salaries and benefits that were suspended in 2020 and a decrease in gross profit. Gross profit declined primarily due to material cost inflation and increased freight costs of \$11.6 million, net of price increases of \$4.2 million, a shift in sales mix to lower-margin lift trucks and higher manufacturing costs of \$3.7 million resulting from inefficiencies associated with component shortages. The decrease in gross profit was partly offset by the realization of higher margins on parts sales and a \$6.3 million favorable adjustment for social contribution taxes previously imposed on material purchases in Brazil.

Despite the absence of \$4.7 million of government support incentives received in the prior year, EMEA's operating profit increased to \$3.7 million in the second quarter of 2021 from an operating loss of \$2.8 million in the second quarter of 2020. The increase was primarily the result of a substantial improvement in gross profit partially offset by higher operating expenses mainly resulting from the reinstatement of pre-pandemic salaries and employee benefits. Gross profit improved mainly due to an increase in unit and parts volumes, the favorable effect of currency exchange rates and higher prices implemented to partially offset increases in material and freight costs.

JAPIC's operating loss improved to \$1.9 million in the second quarter of 2021 from \$3.5 million in the second quarter of 2020 primarily due to improved gross profit from higher unit volume and favorable foreign currency movements.

Bolzoni recognized an operating loss of \$0.4 million in the second quarter of 2021 compared with \$0.5 million in the second quarter of 2020. The improvements in gross profit from higher unit volumes of higher margin products and lower manufacturing costs from improved operating efficiencies were offset by material cost and freight cost inflation and the absence of government subsidies of \$3.6 million recorded in the second quarter of 2020.

Nuvera's operating loss increased to \$9.0 million in the second quarter of 2021 compared with \$8.3 million in the second quarter of 2020 as result of the reinstatement of pre-pandemic salaries and benefits and the absence of \$0.6 million of a gain on the sale of assets recognized in the second quarter of 2020.

The Company recognized net income attributable to stockholders of \$1.9 million in the second quarter of 2021 compared with \$3.6 million in the second quarter of 2020. The decrease was primarily the result of lower operating profit and the write-off of deferred financing fees from the refinancing of the Term Loan (as defined below) in the second quarter of 2021. These items were partially offset by higher equity earnings in unconsolidated subsidiaries. See Note 7 for further discussion of the refinancing of the Term Loan.

First Six Months of 2021 Compared with First Six Months of 2020

The following table identifies the components of change in revenues for the first six months of 2021 compared with the first six months of 2020:

	Revenues
2020	\$ 1,440.1
Increase (decrease) in 2021 from:	
Foreign currency	36.4
Parts	25.1
Other	16.1
Bolzoni revenues	12.2
Eliminations	7.5
Price	4.7
Unit volume and product mix	(42.5)
Nuvera revenues	(1.8)
2021	\$ 1,497.8

Revenues increased 4.0% to \$1,497.8 million in the first six months of 2021 from \$1,440.1 million in the first six months of 2020. The increase was mainly due to favorable currency movements from the translation of sales into U.S. dollars, primarily in

EMEA, higher parts volumes in all geographic segments of the lift truck business and higher volume at Bolzoni, primarily due to increased customer demand due to post-pandemic recovery. The increase in revenue was partially offset by lower unit volumes in the Americas, primarily due to global supply chain constraints and component shortages.

Revenues in the Americas decreased in the first six months of 2021 compared with the first six months of 2020, primarily from lower unit volumes in all classes of lift trucks due to global supply chain constraints and component shortages. The decrease was partially offset by favorable parts sales driven by an increase in customer demand.

EMEA's revenues increased mainly due to favorable foreign currency movements of \$32.8 million from the translation of sales into U.S. dollars and higher unit and parts volume resulting from increased customer demand.

JAPIC's revenues increased primarily as a result of improved unit volumes and favorable foreign currency movements of \$8.0 million, partially offset by a shift in sales to lower-priced lift trucks.

The increase in Bolzoni's revenues was mainly due to higher unit volume and favorable foreign currency movements of \$5.1 million.

The following table identifies the components of change in operating profit for the first six months of 2021 compared with the first six months of 2020:

	Operating Profit
2020	\$ 28.9
Increase (decrease) in 2021 from:	
Lift truck gross profit	(9.3)
Lift truck selling, general and administrative expenses	(7.7)
Bolzoni operations	(1.8)
Nuvera operations	(1.1)
2021	\$ 9.0

The Company recognized operating profit of \$9.0 million in the first six months of 2021 compared with \$28.9 million in the first six months of 2020. The decrease in operating profit was primarily due to lower gross profit and unfavorable selling, general and administrative expenses. Gross profit declined mainly due to lower unit volumes, material cost inflation and increased freight costs, as well as higher manufacturing costs resulting from inefficiencies associated with component shortages. The decrease in gross profit was partially offset by favorable parts volume in all geographic lift truck segments, favorable foreign currency movements of \$12.1 million and a favorable \$6.3 million adjustment for tax credits in Brazil. Selling, general and administrative expenses increased as pre-pandemic salaries and benefits were reinstated, including \$12.1 million of incentive compensation. In addition, the first six months of 2020 included \$9.6 million of government subsidies at EMEA and Bolzoni.

Operating profit in the Americas decreased to \$28.2 million in the first six months of 2021 compared with \$61.8 million in the first six months of 2020 due to a decrease in gross profit and higher operating expenses. Gross profit declined mainly due to lower volume, a shift in mix to lower-margin products, material cost inflation and increased freight costs of \$12.7 million, as well as higher manufacturing costs resulting from inefficiencies associated with component shortages of \$8.0 million. These items were partially offset by favorable parts sales and a favorable \$6.3 million favorable adjustment for social contribution taxes previously imposed on material purchases in Brazil. The increase in operating expenses primarily resulted from the reinstatement of pre-pandemic salaries and benefits, including \$8.8 million of incentive compensation.

EMEA recognized operating profit of \$3.8 million in the first six months of 2021 compared with an operating loss of \$7.3 million in the first six months of 2020 mainly as a result of improved gross profit from favorable foreign currency movements of \$6.6 million, improved unit and parts volume and improved pricing, partially offset by the absence of \$5.0 million of government subsidies received in the first six months of 2020.

JAPIC's operating loss decreased to \$4.4 million in the first six months of 2021 from \$9.5 million in the first six months of 2020 primarily due to improved gross profit from higher unit volume and favorable foreign currency movements of \$4.3 million partially offset by a shift in mix to lower-margin products.

Operating profit at Bolzoni decreased to \$0.4 million in the first six months of 2021 compared with \$2.2 million in the first six months of 2020 mainly from material cost inflation, including freight, which offset the improved volumes. Operating profit was

also unfavorably affected by the absence of government subsidies of \$4.6 million and the reinstatement of pre-pandemic salaries and employee benefits, including \$1.7 million of incentive compensation.

Nuvera's operating loss increased as result of the reinstatement of pre-pandemic salaries and employee benefits and the absence of \$0.6 million of a gain on the sale of assets recognized in the first six months of 2020.

The Company recognized net income attributable to stockholders of \$7.5 million in the first six months of 2021 compared with \$18.9 million in the first six months of 2020. The decrease was primarily the result of lower operating profit and the write-off of deferred financing fees from the refinancing of the Term Loan in the second quarter of 2021. These items were partially offset by a \$4.6 million gain related to the sale of the Company's preferred shares of OneH2 in the first six months of 2021 and higher equity earnings in unconsolidated subsidiaries. See Note 7 for further discussion of the refinancing of the Term Loan.

LIQUIDITY AND CAPITAL RESOURCES

Cash Flows

The following tables detail the changes in cash flow for the six months ended June 30:

	2021	2020	Change
Operating activities:			
Net income	\$ 8.4	\$ 19.6	\$ (11.2)
Depreciation and amortization	23.3	20.8	2.5
Dividends from unconsolidated affiliates	5.5	7.3	(1.8)
Working capital changes	(121.9)	(67.0)	(54.9)
Other	(16.0)	7.3	(23.3)
Net cash used for operating activities	(100.7)	(12.0)	(88.7)
Investing activities:			
Expenditures for property, plant and equipment	(18.1)	(29.9)	11.8
Proceeds from the sale of assets	18.9	6.6	12.3
Net cash provided by (used for) investing activities	0.8	(23.3)	24.1
Cash flow before financing activities	\$ (99.9)	\$ (35.3)	\$ (64.6)

Net cash used for operating activities increased \$88.7 million in the first six months of 2021 compared with the first six months of 2020, primarily as a result of changes in working capital items and the impact of currency translation included in "Other". The change in working capital was mainly due to higher inventory levels in the first six months of 2021 resulting from global supply chain constraints and component shortages. This was partially offset by significantly lower payments of employee-related compensation in the first six months of 2021 compared with the first six months of 2020 due to the Company's cost containment actions in 2020.

The change in net cash provided by (used for) investing activities during the first six months of 2021 compared with the first six months of 2020 is due to the proceeds from the sale of preferred shares of OneH2 for \$15.7 million and lower capital expenditures in 2021.

	2021	2020	Change
Financing activities:			
Net increase of long-term debt and revolving credit agreements	\$ 56.0	\$ 45.4	\$ 10.6
Cash dividends paid	(10.7)	(10.6)	(0.1)
Financing fees paid	(7.6)	—	(7.6)
Other	(0.2)	(0.4)	0.2
Net cash provided by financing activities	\$ 37.5	\$ 34.4	\$ 3.1

Net cash provided by financing activities increased \$3.1 million in the first six months of 2021 compared with the first six months of 2020. The increase was primarily related to additional borrowings from refinancing the Term Loan (as defined below) in the first six months of 2021 compared to higher borrowings on the Facility (as defined below) during the first six months of 2020 which were primarily used to fund working capital needs. The increase was partially offset by financing fees paid in connection with the Facility and Term Loan (both defined below).

Financing Activities

The Company has a \$300.0 million secured, floating-rate revolving credit facility (the "Facility") that expires in June 2026. There were no borrowings outstanding under the Facility at June 30, 2021. The availability under the Facility at June 30, 2021 was \$285.4 million, which reflects reductions of \$14.6 million for letters of credit and other restrictions. As of June 30, 2021, the Facility consisted of a U.S. revolving credit facility of \$210.0 million and a non-U.S. revolving credit facility of \$90.0 million. The obligations under the Facility are generally secured by a first lien on the working capital assets of the borrowers in the Facility, which include but are not limited to, cash and cash equivalents, accounts receivable and inventory (the "Facility Collateral") and a second lien on the Term Loan Collateral (defined below). The approximate book value of assets held as collateral under the Facility was \$960 million as of June 30, 2021.

Borrowings under the Facility bear interest at a floating rate, which can be a base rate, LIBOR or EURIBOR, as defined in the Facility, plus an applicable margin. The applicable margins are based on the total excess availability, as defined in the Facility, and range from 0.25% to 0.75% for U.S. base rate loans and 1.25% to 1.75% for LIBOR, EURIBOR and foreign base rate loans. The applicable margins, as of June 30, 2021, for U.S. base rate loans and LIBOR loans were 0.25% and 1.25%, respectively. The applicable margin, as of June 30, 2021, for non-U.S. base rate loans and LIBOR loans was 1.25%. The Facility also required the payment of a fee of 0.25% per annum on the unused commitments as of June 30, 2021.

The Facility includes restrictive covenants, which, among other things, limit additional borrowings and investments of the Company and its subsidiaries subject to certain thresholds, as provided in the Facility. The Facility limits the payment of dividends and other restricted payments the Company, including its subsidiaries, may make unless certain total excess availability and/or fixed charge coverage ratio thresholds, each as set forth in the Facility, are satisfied. The Facility also requires the Company, including its subsidiaries to achieve a minimum fixed charge coverage ratio in which total excess availability is less than the greater of 10% of the total borrowing base, as defined in the Facility, and \$20.0 million. At June 30, 2021, the Company was in compliance with the covenants in the Facility.

The Company also has a \$225.0 million term loan (the "Term Loan"), which matures in May 2028. The Term Loan requires quarterly principal payments on the last day of each March, June, September and December commencing September 30, 2021 in an amount equal to \$562,500 and the final principal repayment is due in May 2028. The Company may also be required to make mandatory prepayments, in certain circumstances, as provided in the Term Loan. At June 30, 2021, there was \$225.0 million of principal outstanding under the Term Loan which has been reduced in the unaudited condensed consolidated balance sheet by \$5.7 million for discounts and unamortized deferred financing fees.

The obligations under the Term Loan are generally secured by a first priority lien on the present and future shares of capital stock, material real property, fixtures and general intangibles consisting of intellectual property (collectively, the "Term Loan Collateral") and a second priority lien on the Facility Collateral. The approximate book value of assets held as collateral under the Term Loan was \$650 million as of June 30, 2021.

Borrowings under the Term Loan bear interest at a floating rate, which can be a base rate or Eurodollar rate, as defined in the Term Loan, plus an applicable margin. The applicable margin, as provided in the Term Loan, is 2.50% for base rate loans and 3.50% for Eurodollar loans. The interest rate on the amount outstanding under the Term Loan at June 30, 2021 was 4.00%. In addition, the Term Loan includes restrictive covenants, which, among other things, limit additional borrowings and investments of the Company subject to certain thresholds, as provided in the Term Loan. The Term Loan limits the payment of dividends and other restricted payments the Company, including its subsidiaries, may make up to \$50.0 million in any fiscal year, unless the consolidated total net leverage ratio, as defined in the Term Loan, does not exceed 2.50 to 1.00 at the time of the payment. The Term Loan also contains a provision requiring a premium to be paid in the event of a repricing of the borrowings under the Term Loan, whether by amendment or entry into new loans, within the six-month period following entry into the Term Loan. At June 30, 2021, the Company was in compliance with the covenants in the Term Loan.

The Company incurred fees and expenses of \$7.6 million in 2021 related to the amendment of the Facility and the Term Loan. These fees were deferred and are being amortized as interest expense over the term of the applicable debt agreements. Fees related to the Term Loan are presented as a direct deduction of the corresponding debt.

The Company had other debt outstanding, excluding finance leases, of approximately \$100.3 million at June 30, 2021. In addition to the excess availability under the Facility of \$285.4 million, the Company had remaining availability of \$28.5 million related to other non-U.S. revolving credit agreements.

The Company believes funds available from cash on hand, the Facility, other available lines of credit and operating cash flows will provide sufficient liquidity to meet its operating needs and commitments during the next twelve months and until the expiration of the Facility in April 2028.

Contractual Obligations, Contingent Liabilities and Commitments

On May 28, 2021, the Company entered into an agreement providing for the Amendment and Restatement of the Term Loan, which is described above. Since December 31, 2020, there have been no other significant changes in the total amount of the Company's contractual obligations or commercial commitments, or the timing of cash flows in accordance with those obligations, as reported on pages 23 and 24 in the Company's Annual Report on Form 10-K for the year ended December 31, 2020.

Capital Expenditures

The following table summarizes actual and planned capital expenditures:

	Six Months Ended June 30, 2021	Planned for Remainder of 2021	Planned 2021 Total	Actual 2020
Lift truck business	\$ 13.1	\$ 39.2	\$ 52.3	\$ 44.2
Bolzoni	4.1	6.6	10.7	5.3
Nuvera	0.9	4.1	5.0	2.2
	<u>\$ 18.1</u>	<u>\$ 49.9</u>	<u>\$ 68.0</u>	<u>\$ 51.7</u>

Planned expenditures for the remainder of 2021 are primarily for product development, improvements to information technology infrastructure, improvements at manufacturing locations and manufacturing equipment. The principal sources of financing for these capital expenditures are expected to be internally generated funds and bank financing.

Capital Structure

The Company's capital structure is presented below:

	JUNE 30 2021	DECEMBER 31 2020	Change
Cash and cash equivalents	\$ 87.5	\$ 151.4	\$ (63.9)
Other net tangible assets	720.0	615.7	104.3
Intangible assets	54.5	58.5	(4.0)
Goodwill	113.7	114.7	(1.0)
Net assets	<u>975.7</u>	<u>940.3</u>	<u>35.4</u>
Total debt	<u>(345.7)</u>	<u>(289.2)</u>	<u>(56.5)</u>
Total equity	<u>\$ 630.0</u>	<u>\$ 651.1</u>	<u>\$ (21.1)</u>
Debt to total capitalization	35 %	31 %	4 %

BUSINESS PROSPECTS

Lift truck markets continued to grow during the 2021 second quarter, but not at the growth rates seen in the fourth quarter of 2020 and first quarter of 2021. The global lift truck market increased more than 70% over the second quarter of 2020 when the global economy was experiencing the peak of global pandemic-related shutdowns. Compared to the first quarter of 2021, the global lift truck market increased 4.7% primarily driven by an 11.9% increase in EMEA. The market improvements over the first quarter combined with the Company's share gain programs, as well as long lead times and the pull forward of orders before price increases went into effect, translated into an increase in the Company's 2021 second-quarter bookings that exceeded market growth.

The lift truck market growth for the remainder of the year is expected to decrease compared with the high levels in the first half of 2021 as markets begin to return toward pre-pandemic levels. As a result, the lift truck business is anticipating a substantial decrease in bookings in the second half of 2021 compared with the first half of 2021. Nevertheless, as a result of the strategic projects which the Company continues to pursue at each of its businesses, the Company expects increased bookings in the second half of 2021 over the second half of 2020 at levels higher than the expected year-over-year market growth rate. These strategic projects gained traction in the first half of 2021, although definitive time frames for achieving full potential share gain

results are still uncertain due both to the timing of the full impact of the strategic projects and the continuing financial impact of the pandemic and subsequent pandemic-related supply chain and cost challenges.

While recent Lift Truck and Bolzoni market and bookings activity have been strong and better than expected, the level of future bookings and the resulting shipments are still uncertain. Overall, the Company continues to operate on the assumption that the economic and market environment will remain difficult for at least the remainder of the year until COVID-19 and its variants are mitigated through the broad acceptance of vaccinations and subsequent herd immunity, and related supply chain issues are resolved.

Early in 2020, the Company put in place plans to mitigate the impact of declining markets and bookings and the consequential impact of reduced manufacturing activity from pandemic-related shutdowns by initiating cost reduction measures. These measures included spending and travel restrictions, significant reductions in temporary personnel, furloughs, salary reductions and suspension of other benefits, including incentive compensation. Effective January 1, 2021, the Company reinstated pre-pandemic salaries, benefits and incentive compensation programs. The other cost containment actions are generally still in place, and are expected to remain so until market and economic uncertainty dissipates and results improve.

In the 2020 fourth quarter, the Lift Truck business restructured some of its operations to create a lower long-term cost structure. The Company anticipates it will incur charges of approximately \$0.8 million in the remainder of 2021 for additional costs related to this restructuring. Estimated benefits from this restructuring program are expected to be approximately \$9 million annually beginning in 2022.

The Lift Truck business adjusted production levels at its manufacturing plants early in 2020 to align them more closely with the lower market demand and target bookings levels and has been building those levels back up moderately over the past 12 months. Given the strong bookings in the prior year fourth quarter and the first half of 2021, as well as backlog levels at historic highs, higher build rates at first appeared reasonable for 2021, but as a result of continuing supply chain and logistics constraints, the Lift Truck business and Bolzoni have not been able to achieve the production levels originally planned for the first half of 2021. The Company is beginning to see improvement in the supply chain, but production levels are expected to experience continued disruption in the third quarter of 2021, with easing anticipated in the fourth quarter. However, the Company hopes that these challenges will abate sooner and production levels will be able to be increased above currently planned rates for the second half of the year. Significant material cost inflation and higher freight costs are also expected to continue into the second half of the year, and the non-renewal of tariff exclusions is also expected to affect the cost of components in the second half of 2021. Both the Lift Truck business and Bolzoni have announced and implemented price increases to moderate the effect of material cost inflation but many of the orders in the backlog slotted for production in 2021 do not reflect the full effect of these price increases. As a result, the Company expects to continue to experience margin pressure throughout the second half of 2021 due to the lag between when these price increases went into effect and when they are effective since customer orders in the backlog are generally price protected. The Company will continue to work closely with suppliers to increase component supply levels and its production levels. However, the Company anticipates that commodity costs will remain elevated through the second half of the year, although these costs, particularly for steel, remain volatile and sensitive to changes in the global economy and to tariffs, and could be higher or lower than currently forecasted. The Company will continue to monitor potential future supply and logistics costs and tariffs closely and adjust pricing accordingly.

As a result of these factors, and the increase in costs associated with the reinstatement of pre-pandemic salaries and benefits and the loss of the COVID-related government subsidies, the Company expects substantially lower consolidated operating profit and net income in the second half of 2021 compared with the second half of 2020, primarily due to the Americas and EMEA Lift Truck businesses, with anticipated operating and net losses in the third quarter of 2021 partly as a result of the Lift Truck business' seasonal third-quarter plant shutdowns. Bolzoni expects significant increases in operating profit and net income in the second half of the year compared with both the respective prior-year period and the first half of 2021.

While the Company's expectations for the 2021 second half have been based on the most recent information available, past quarters have shown that the effects of the pandemic on the economic and lift truck market environments can change expectations rapidly. Further Company shutdowns or supplier shortages could occur as a result of the new Delta variant that has emerged globally. Lockdown measures are still in place in a number of European and Asian countries to mitigate the spread of the COVID-19 virus and its variants, and similar actions could be taken by other countries. At this time, the lockdown measures in place have not required closure of the Company's plants. The Company is monitoring this situation, including closely monitoring a number of suppliers based in areas where COVID-19 cases are high. The Company continues to maintain procedures designed to limit the exposure of employees to COVID-19. However, the Company is prepared to take further action if necessary to maintain the health and safety of its global workforce and to address additional production and supply chain issues that may develop. The Company remains committed to meeting the needs of dealers and end customers by

ensuring they receive equipment, parts and services in a timely manner to the degree reasonably possible. More broadly, pandemic-related uncertainty and its effect on the supply chain continue to limit the Company's ability to forecast bookings and shipment levels past the third quarter of 2021.

Despite these challenges, the Company expects to increase its investment in working capital and other expenditures to support growth in its business. Capital expenditures are expected to be approximately \$50 million in the second half of 2021. While the Company expects to make these substantial additional investments in the business during 2021, maintaining liquidity also continues to be a priority. At June 30, 2021, the Company's cash on hand was \$87.5 million and debt was \$345.7 million compared with cash on hand of \$103.0 million and debt of \$285.4 million at March 31, 2021. Term Loan debt increased with the refinancing of the Company's term loan in May 2021. In addition, as of June 30, 2021, the Company had unused borrowing capacity of approximately \$313.9 million under the Company's existing revolving credit facilities, including the Company's recently refinanced Asset Backed Revolver, compared with \$265.3 million at March 31, 2020.

Despite the potential volatility of near-term economic activity, the Company continues to execute its long-term strategy by focusing on advancing its key strategic initiatives. Collectively, the key projects underlying its strategic initiatives are expected to have a transformational impact on the Company's competitiveness, market position and economic performance. While essentially all of the projects required to execute these initiatives continue to move forward, in the context of the COVID-19 pandemic and current logistics challenges, the pace of certain projects has been given greater emphasis than others. In addition, certain accelerated projects have experienced delays as a result of the impact of pandemic-related challenges, although the continued increase in bookings and the Company's historically high backlog reinforce the long-term potential payoff from these programs.

At the Lift Truck business, product projects are expected to lay the groundwork for enhanced market position by providing lower cost of ownership and enhanced productivity for the Company's customers. While the Company continues to introduce a number of new products during this period, the primary focus continues to be on the Company's new modular and scalable product families covering both internal combustion engine and electric trucks designed to provide customers with enhanced flexibility for meeting their application needs in addition to the benefit of low total cost of ownership. The introduction of the first of these new modular products, the standard version of the 2-to-3 ton internal-combustion engine lift truck for the EMEA market, was launched in April 2021. These new EMEA trucks have been very well received and the launch of this new range of the 2-to-3 ton counterbalanced trucks in other markets is expected to continue throughout 2021 and 2022.

The introduction of these new products has led to, and will continue to lead to, significant changes in supply chain sourcing and in the Company's various manufacturing facilities around the world as certain products are moved between plants. Consolidated component volume sourced globally from reliable partners is expected to reduce long-term costs and improve quality as these new products are brought to market over time. Hyster-Yale Group's largest manufacturing facilities, its Berea, Craigavon and Fuyang plants, are undergoing significant changes to accommodate these new products and significant investments are being made to expand the Berea and Craigavon plants. Further, the Company is accelerating plans to move certain production locations to provide permanent structural changes designed to reduce costs and optimize its manufacturing footprint.

The Company believes the modular nature of the new products being introduced will enhance its ability to meet customer needs at low cost, and with more specificity, both at the industry level and at the individual customer level. To capitalize on this capability, the Company has accelerated its focus on implementing comprehensive industry strategies and investing in industry-focused sales capabilities to support its dealers. Given the COVID-19 environment, the Company has also focused on enhancing its remote selling capabilities through technology and IT enhancements.

Bolzoni continues to focus on implementing its "One Company - 3 Brands" organizational approach to help streamline corporate operations and strengthen its North America and JAPIC commercial operations. Bolzoni is also focused on increasing its Americas business and strengthening its ability to serve industries in the North America market by introducing a broader range of locally produced attachments with shorter lead times to serve its customer base and through continuing to sell cylinders and various other components produced in its Sulligent, Alabama plant.

Nuvera continues to focus on serving heavy-duty applications, particularly bus and truck applications, with its 45kW and 60kW engines, which were both released for sale late in 2020. As a result of those milestones, Nuvera accelerated the 45kW and 60kW engine commercialization operations for the global market and has been focusing on ramping up demonstrations, quotes and bookings of these products in 2021. In addition, Nuvera has initiated development of a new 125kW engine and also continues to focus on the forklift truck market.

The Company believes that, despite significant current inflation and logistics issues, it is at an inflection point in its businesses as a result of the momentum of its strategic projects as they move to full implementation. While these initiatives may reduce the Company's near-term financial results, they are expected to position the Company with enhanced market position as market and component supply conditions return to more normal levels. Nevertheless, the Company recognizes that the timing and shape of the market recovery remains uncertain, and it will continue to maintain its contingency plans which are designed to respond appropriately and with agility to changing conditions. Once the COVID-19 pandemic and its resulting effects have fully abated and markets have returned to normal, the Company believes the full impact of these projects will lead to significant profitability improvements for a number of years into the future.

In summary, the Company's strategy for the longer term is clear and transformative. Key projects, as well as explicit objectives for the Lift Truck, Bolzoni and Nuvera businesses, support this long-term strategy, but nearer-term prospects, particularly in 2021, are uncertain as a result of a number of abnormal, largely external, influences. These influences include the direct impact of the COVID-19 pandemic on some markets, suppliers' manufacturing levels around the world and logistics issues, which collectively create supply and cost challenges, as well as the timing of adoption rates for key fuel cell market segments. Importantly, the Company has a record lift truck backlog and a strong current booking environment. Future increased shipment opportunities are very significant. However, when these increases will occur, given the supply and logistics challenges, is difficult to forecast.

EFFECTS OF FOREIGN CURRENCY

The Company operates internationally and enters into transactions denominated in foreign currencies. As a result, the Company is subject to the variability that arises from exchange rate movements. The effects of foreign currency fluctuations on revenues, operating profit and net income are addressed in the previous discussions of operating results. See also Item 3, "Quantitative and Qualitative Disclosures About Market Risk," in Part I of this Quarterly Report on Form 10-Q.

FORWARD-LOOKING STATEMENTS

The statements contained in this Form 10-Q that are not historical facts are "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These forward-looking statements are made subject to certain risks and uncertainties, which could cause actual results to differ materially from those presented. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. The Company undertakes no obligation to publicly revise these forward-looking statements to reflect events or circumstances that arise after the date hereof. Among the factors that could cause plans, actions and results to differ materially from current expectations are, without limitation: (1) delays in delivery, and other supply chain disruptions, or increases in costs, including materials and transportation costs, shortages, the imposition of tariffs, or the renewal of tariff exclusions, of raw materials or sourced products and labor or changes in or unavailability of quality suppliers, (2) the duration and severity of the COVID-19 pandemic, any preventive or protective actions taken by governmental authorities, the effectiveness of actions taken globally to contain or mitigate its effects, and any unfavorable effects of the COVID-19 pandemic on either the Company's or its suppliers plants' capabilities to produce and ship products if COVID-19 continues to spread or quarantines are re-established, (3) reduction in demand for lift trucks, attachments and related aftermarket parts and service on a global basis, including any reduction in demand as a result of a COVID-19 triggered economic recession, (4) the ability of the Company and its dealers, suppliers and end-users to access credit in the current economic environment, or obtain financing at reasonable rates, or at all, as a result of current economic and market conditions, (5) delays in manufacturing and delivery schedules, (6) the successful commercialization of Nuvera's technology, (7) customer acceptance of pricing, (8) the political and economic uncertainties in the countries where the Company does business, (9) exchange rate fluctuations and monetary policies and other changes in the regulatory climate in the countries in which the Company operates and/or sells products, (10) bankruptcy of or loss of major dealers, retail customers or suppliers, (11) customer acceptance of, changes in the costs of, or delays in the development of new products, (12) introduction of new products by, or more favorable product pricing offered by, competitors, (13) product liability or other litigation, warranty claims or returns of products, (14) the effectiveness of the cost reduction programs implemented globally, including the successful implementation of procurement and sourcing initiatives, (15) changes mandated by federal, state and other regulation, including tax, health, safety or environmental legislation, and (16) unfavorable effects of geopolitical and legislative developments on global operations, including without limitation the entry into new trade agreements and the imposition of tariffs and/or economic sanctions.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

See pages 27 and 28 and F-23 through F-26 of the Company's Annual Report on Form 10-K for the year ended December 31, 2020 for a discussion of the Company's derivative hedging policies and use of financial instruments. There have been no material changes in the Company's market risk exposures since December 31, 2020.

Item 4. Controls and Procedures

Evaluation of disclosure controls and procedures: An evaluation was carried out under the supervision and with the participation of the Company's management, including the principal executive officer and the principal financial officer, of the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, these officers have concluded that the Company's disclosure controls and procedures were effective as of the end of the period covered by this report.

Changes in internal control over financial reporting: During the second quarter of 2021, there were no changes in the Company's internal control over financial reporting that materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

**PART II
OTHER INFORMATION**

Item 1 Legal Proceedings

None

Item 1A Risk Factors

There have been no material changes from risk factors previously disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 in the Section entitled "Risk Factors."

Item 2 Unregistered Sales of Equity Securities and Use of Proceeds

None

Item 3 Defaults Upon Senior Securities

None

Item 4 Mine Safety Disclosures

Not applicable

Item 5 Other Information

None

Item 6 Exhibits

The following exhibits are filed as part of this report:

Exhibit Number*	Description of Exhibits
10.1	Amended and Restated Term Loan Credit Agreement, dated as of May 28, 2021, among Hyster-Yale Group, Inc., as the Borrower, Hyster-Yale Materials Handling, Inc., as Holdings, Bank of America, N.A., as Administrative Agent, and the Other Lenders party thereto is attached hereto
10.2	Second Amended and Restated Loan, Security and Guaranty Agreement, dated as of June 24, 2021, among Hyster-Yale Materials Handling, Inc., Bolzoni Auramo, Inc. and Hyster-Yale Group, Inc., as U.S. Borrowers, Hyster-Yale Nederland B.V., as a Dutch Borrower, Hyster-Yale UK Limited, as a UK Borrower, any other Borrowers party thereto from time to time and certain Persons party thereto from time to time as Guarantors, certain financial institutions, as Lenders, Bank of America, N.A., as Administrative Agent and Security Trustee, BOFA Securities, Inc. and CitiBank, N.A., as Joint Lead Arrangers and Joint Book Managers and CitiBank, N.A., as Syndication Agent is attached hereto
10.3	Equity Transfer Agreement between Y-C HongKong Holding Co., Limited and Hyster-Yale Acquisition Holding LTD regarding Hyster-Yale Maximal Forklift (Zhejiang) Co., Ltd. dated May 26, 2021 is attached hereto
31(i)(1)	Certification of Alfred M. Rankin, Jr. pursuant to Rule 13a-14(a)/15d-14(a) of the Exchange Act
31(i)(2)	Certification of Kenneth C. Schilling pursuant to Rule 13a-14(a)/15d-14(a) of the Exchange Act
32	Certifications pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, signed and dated by Alfred M. Rankin, Jr. and Kenneth C. Schilling
101.INS	Inline XBRL Instance Document - The instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	The cover page from this Quarterly Report on Form 10-Q for the quarter ended June 30, 2021, formatted in Inline XBRL and contained in Exhibit 101

* Numbered in accordance with Item 601 of Regulation S-K.

Signatures

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

Date: August 3, 2021

Hyster-Yale Materials Handling, Inc.

/s/ Kenneth C. Schilling

Kenneth C. Schilling

Senior Vice President and Chief Financial Officer (principal financial officer)

AMENDED AND RESTATED TERM LOAN CREDIT AGREEMENT

Dated as of May 28, 2021

among

HYSTER-YALE GROUP, INC.

as the Borrower,

HYSTER-YALE MATERIALS HANDLING, INC.

as Holdings,

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

and

The Other Lenders Party Hereto

BANK OF AMERICA, N.A.,
CITIBANK, N.A., and
WELLS FARGO SECURITIES, LLC

as Joint Lead Arrangers and Joint Bookrunners

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AMENDED AND RESTATED TERM LOAN CREDIT AGREEMENT

This AMENDED AND RESTATED TERM LOAN CREDIT AGREEMENT (“Agreement”) is entered into as of May 28, 2021, among HYSTER-YALE GROUP, INC., a Delaware corporation (the “Borrower”), HYSTER-YALE MATERIALS HANDLING, INC., a Delaware corporation (“Holdings”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), and BANK OF AMERICA, N.A., as Administrative Agent.

PRELIMINARY STATEMENTS:

WHEREAS, on the Original Closing Date, a credit agreement (the “Existing Credit Agreement”) was entered into among the Borrower, Holdings, the Lenders party thereto and Bank of America, N.A., as the Administrative Agent;

WHEREAS, the Borrower has requested that the Lenders provide a term loan facility in the initial principal amount of \$225,000,000, and the Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

WHEREAS, the proceeds of the Loans borrowed on the Restatement Effective Date will be used by the Borrower: (i) to finance the repayment of all amounts outstanding under the Existing Credit Agreement, (ii) to finance the repayment of certain other existing debt obligations, (iii) for ongoing working capital and other general corporate purposes and (iv) to pay the transaction costs;

WHEREAS, the parties hereto have agreed to amend and restate the Existing Credit Agreement in its entirety;

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

Article I

DEFINITIONS AND ACCOUNTING TERMS

I.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“ABL Agent” means Bank of America in its capacity as administrative agent and collateral agent under the ABL Facility, and any successor thereto.

“ABL Credit Agreement” means that certain Amended and Restated Loan, Security and Guaranty Agreement, dated as of April 28, 2016, as amended, among the Borrower, certain Affiliates of the Borrower, the ABL Agent and the lenders from time to time party thereto, as may be further amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part (whether with the original administrative agent and lenders or other agents and lenders or otherwise and whether provided under the original ABL Credit Agreement or

another credit agreement, indenture, instrument, other document or otherwise, unless such credit agreement, indenture, instrument or document expressly provides that it is not an ABL Credit Agreement), in each case as and to the extent permitted by this Agreement and the Intercreditor Agreement.

“ABL Documents” means, collectively, the ABL Credit Agreement and all other documents, agreements and instruments executed and delivered in connection therewith, and any refinancing thereof, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time, in each case as and to the extent permitted by this Agreement and the Intercreditor Agreement.

“ABL Facility” means the credit facilities under the ABL Credit Agreement or any amendment, supplement, modification, substitution, replacement, restatement or refinancing thereof, in whole or in part, in each case as and to the extent permitted by this Agreement and the Intercreditor Agreement.

“ABL Priority Collateral” has the meaning specified in the Intercreditor Agreement.

“Accounting Changes” means, with respect to any Person, changes in accounting principles required or permitted by the promulgation of any rule, regulation, pronouncement or opinion of the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or any successor thereto or any agency with similar functions).

“Acquisition” means, with respect to any Person, any acquisition, whether by purchase, merger, amalgamation or otherwise, by such Person of (a) Equity Interests of any other Person if, after giving effect to the acquisition of such Equity Interests, such other Person would be a Subsidiary of such Person, (b) all or substantially all of the assets of any other Person or (c) assets constituting one or more business units, lines of business or division of any other Person.

“Additional Junior Lien Intercreditor Agreement” shall mean an intercreditor agreement among the Collateral Agent and one or more Junior Representatives for holders of Permitted Junior Debt (or Permitted Refinancing Indebtedness in respect thereof) providing that, *inter alia*, the Liens on the Collateral in favor of the Collateral Agent (for the benefit of the Secured Parties) shall be senior to such Liens in favor of the Junior Representatives (for the benefit of the holders of Permitted Junior Debt (or Permitted Refinancing Indebtedness in respect thereof)), as such intercreditor agreement may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof. Any Additional Junior Lien Intercreditor Agreement shall be in form and substance reasonably satisfactory to the Administrative Agent and the Borrower.

“Additional Lender” has the meaning assigned to such term in Section 2.13(b).

“Additional Pari Passu Intercreditor Agreement” shall mean an intercreditor agreement among the Collateral Agent and one or more Pari Passu Representatives for holders of Permitted Pari Passu Notes or Permitted Pari Passu Loans (or Permitted Refinancing Indebtedness in

respect thereof) providing that, *inter alia*, the Liens on the Collateral in favor of the Collateral Agent (for the benefit of the Secured Parties) shall be *pari passu* with such Liens in favor of the Pari Passu Representatives (for the benefit of the holders of Permitted Pari Passu Notes or Permitted Pari Passu Loans (or Permitted Refinancing Indebtedness in respect thereof)), as such intercreditor agreement may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof. Any Additional Pari Passu Intercreditor Agreement shall be in form and substance reasonably satisfactory to the Administrative Agent and the Borrower.

“Additional Restatement Effective Date Lender” means a Lender with an Additional Restatement Effective Date Loan Commitment.

“Additional Restatement Effective Date Loan” means a Loan that is made pursuant to the second sentence of Section 2.01 on the Restatement Effective Date.

“Additional Restatement Effective Date Loan Commitment” means, as to each Additional Restatement Effective Date Lender, its obligation to make Additional Restatement Effective Date Loans to the Borrower pursuant to Section 2.01 in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 (which represents an amount equal to \$225,000,000 minus the aggregate principal amount of all Exchanged Loans), it being understood that after the funding of the Additional Restatement Effective Date Loans on the Restatement Effective Date pursuant to Section 2.01, the Additional Restatement Effective Date Loan Commitment of each Lender shall be zero.

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

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

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied from time to time by the Administrative Agent.

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

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

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

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

“AHYDO Payment” means any payment required to be made under the terms of Indebtedness to the extent necessary to avoid the application of Section 163(e)(5) of the Code to such Indebtedness.

“All-In Yield” means, as to any Indebtedness, the yield thereof, whether in the form of interest rate margins, original issue discount (“OID”), upfront fees and any LIBOR floor greater than 0.50% per annum (with such increased amount being equated to interest margins for purposes of determining any increase to the Applicable Rate), or otherwise, in each case as reasonably determined by the Administrative Agent; provided that OID and upfront fees shall be equated to interest rate assuming a four-year life to maturity (or, if less, the stated weighted average life to maturity at the time of its incurrence of the applicable Indebtedness); and provided, further, that “All-In Yield” shall not include arrangement fees, commitment fees, structuring fees, underwriting fees, amendment fees or similar fees paid or payable to the applicable lenders or arrangers (or their affiliates) for such Indebtedness or any other fees not payable generally to all of the lenders providing such Indebtedness.

“Applicable Percentage” means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) represented by the principal amount of such Lender’s Loans at such time in relation to the Facility.

“Applicable Rate” means, at any time from and after the Restatement Effective Date, 2.50% per annum for Base Rate Loans and 3.50% per annum for Eurodollar Rate Loans.

“Approved Floorplan and Factoring Facilities” means one or more floorplan and factoring facilities provided to certain Foreign Subsidiaries.

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

“Arrangers” means Bank of America, N.A. (or any of its designated affiliates), Citibank, N.A. and Wells Fargo Securities, LLC, in their capacity as joint lead arrangers and joint bookrunners.

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

“Attributable Indebtedness” means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, subject to Section 1.03.

“Audited Financial Statements” means the audited consolidated balance sheet of Holdings and its Subsidiaries for the fiscal year ended December 31, 2020, and the related

consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of Holdings and its Subsidiaries, including the notes thereto.

“Available Amount” means, on any date (the “Determination Date”), an amount equal to:

1(1) the sum of, without duplication:

(a) \$15,000,000;

(b) an amount (which may not be less than zero) equal to 50% (or 0%, if negative) of Consolidated Net Income for the period (taken as one accounting period) beginning on April 1, 2021 to the end of Holdings' most recently ended fiscal quarter for which internal financial statements are available at the time of the Determination Date; *plus*

(c) 100% of the aggregate net proceeds, including cash and the fair market value of property other than cash received by Holdings after the Restatement Effective Date (A) as a contribution to its common equity capital or (B) from the issue or sale of the Equity Interests of Holdings (other than Disqualified Equity Interests), *plus*

(d) 100% of the aggregate amount of proceeds, including cash and the fair market value of property other than cash received by Holdings or a Restricted Subsidiary of Holdings from (A) the sale or disposition (other than to Holdings or a Restricted Subsidiary of Holdings) of Investments made after the Restatement Effective Date the permissibility of which was contingent upon the utilization of the Available Amount and from repayments, repurchases and redemptions of such Investments from Holdings and its Restricted Subsidiaries by any Person (other than Holdings or its Restricted Subsidiaries); (B) a return, profit, distribution or similar amounts from an Investment made after the Restatement Effective Date the permissibility of which was contingent upon the utilization of the Available Amount, to the extent that such amounts were not otherwise included in Consolidated Net Income for such period, (C) the sale (other than to Holdings or its Restricted Subsidiaries) of the Equity Interests of an Unrestricted Subsidiary; (D) a distribution or dividend from an Unrestricted Subsidiary, to the extent that such amounts were not otherwise included in Consolidated Net Income for such period; and (E) any Investment that was made after the Restatement Effective Date in a Person that is not a subsidiary at such time that subsequently becomes a Restricted Subsidiary of Holdings; *plus*

(e) in the event that any Unrestricted Subsidiary of Holdings designated as such in reliance on the Available Amount after the Restatement Effective Date is redesignated as a Restricted Subsidiary or has been merged or consolidated with or into or transfers or conveys its assets to, or is liquidated into, Holdings or a Restricted Subsidiary of Holdings, the fair market value of the Investment of Holdings and the Restricted Subsidiaries in such Subsidiary as of

the date of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable), after deducting any Indebtedness associated with the Unrestricted Subsidiary so designated or combined or any Indebtedness associated with the assets so transferred or conveyed (limited to the extent that the designation of such Subsidiary as an Unrestricted Subsidiary constituted an Investment not made entirely in reliance on the Available Amount, to the percentage of such fair market value that is proportional to the portion of such Investment that was made in reliance on the Available Amount); *plus*

(f) the principal amount of any Indebtedness, or the liquidation preference or maximum fixed repurchase price, as the case may be, of any Disqualified Equity Interests, in each case, of Holdings or any Restricted Subsidiary issued after the Closing Date that, in each case, has been converted into or exchanged for Equity Interests in Holdings that do not constitute Disqualified Equity Interests;

1(2) *minus* the sum of, without duplication:

(a) the aggregate amount of all Restricted Payments made by Holdings and its Restricted Subsidiaries pursuant to Section 7.06(f) on or after the Restatement Effective Date and on or prior to the Determination Date; *plus*

(b) the aggregate amount of all Investments made by Holdings and its Restricted Subsidiaries pursuant to Section 7.03(m) on or after the Restatement Effective Date and on or prior to the Determination Date.

1 “Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

“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).

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

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1% (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate”, and (c) the Eurodollar Rate applicable to a Eurodollar Rate Loan with an Interest Period of one month plus 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

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

“Benchmark” means, initially, LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to Section 3.03(c) then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“Benchmark Replacement” means:

1(1) for purposes of Section 3.03(c)(i), the first alternative set forth below that can be determined by the Administrative Agent:

(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months’ duration, 0.42826% (42.826 basis points) for an Available Tenor of six-months’ duration, and 0.71513% (71.513 basis points) for an Available Tenor of twelve-months’ duration, or

(b) the sum of: (i) Daily Simple SOFR and (ii) 0.11448% (11.448 basis points) (in the case of monthly payment periods) or 0.26161% (26.161 basis points) (in the case of quarterly payment periods);

2 *provided* that, if initially LIBOR is replaced with the rate contained in clause (b) above (Daily Simple SOFR plus the applicable spread adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its sole discretion, and the Administrative Agent notifies the Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Benchmark Replacement shall be as set forth in clause (a) above; and

1(2) for purposes of Section 3.03(c)(ii), the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrower as the replacement Benchmark giving due consideration to any evolving or then-prevailing

market convention, including any applicable recommendations made by a Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

3 provided that, if the Benchmark Replacement as determined pursuant to clause (1) or **(Error! Reference source not found.** would be less than 0.50%, the Benchmark Replacement will be deemed to be 0.50% for the purposes of this Agreement and the other Loan Documents.

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

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

“Benchmark Transition Event” means, with respect to any then-current Benchmark other than LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark or a Governmental Authority with jurisdiction over such administrator announcing or stating that all Available Tenors are or will no longer be representative, or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, provided that, at the time of such statement or publication, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide any representative tenors of such Benchmark after such specific date.

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

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

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

“Bolzoni Entities” means (a) Bolzoni Holding S.p.A., a corporation organized under the laws of Italy, and (b) Bolzoni S.p.A., a corporation organized under the laws of Italy, and each of its Subsidiaries.

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

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a borrowing consisting of simultaneous Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period.

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

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases, subject to Section 1.03.

“Cash Equivalents” means:

(a) marketable direct obligations issued or unconditionally guaranteed by the U.S. government and backed by the full faith and credit of the U.S. government;

(b) repurchase agreements on obligations of the type specified in clause (a) above with respect to which, at the time of acquisition, the senior long-term debt of the party agreeing to repurchase such obligations is rated AAA (or better) by S&P or Aaa (or better) by Moody’s;

(c) domestic and eurodollar certificates of deposit and time deposits, bankers’ acceptances and floating rate certificates of deposit issued by any commercial bank organized under the laws of the U.S., any state thereof, the District of Columbia, any foreign bank, or its branches or agencies (fully protected against currency fluctuations), which, at the time of acquisition, are rated A-1 (or better) by S&P or P-1 (or better) by Moody’s;

(d) commercial paper of U.S. and foreign banks and bank holding companies and their subsidiaries and U.S. and foreign finance, commercial industrial or utility companies which, at the time of acquisition, are rated A-1 (or better) by S&P or P-1 (or better) by Moody’s;

(e) marketable direct obligations of any state of the U.S. or any political subdivision of any such state given on the date of such investment the highest credit rating by Moody’s and S&P; or

(f) securities of money market funds rated Am (or better) by S&P or A (or better) by Moody's; provided, that the maturities of any such Cash Equivalents referred to in clauses (a), (c), (d) and (e) shall not exceed 270 days.

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

“Cash Management Bank” means any Person that either (a) at the time it enters into a Cash Management Agreement, is a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent or (b) is a party to a Cash Management Agreement at the time it (or its applicable Affiliate) becomes a Lender or the Administrative Agent (either on the Restatement Effective Date or thereafter as an Eligible Assignee), in each case in its capacity as a party to such Cash Management Agreement.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“CFC” means a Person that is a controlled foreign corporation within the meaning of Section 957 of the Code.

“CFC Holdco” means a Domestic Subsidiary substantially all of the assets of which consist of Equity Interests of, or Indebtedness owing from, one or more Subsidiaries that are CFCs or CFC Holdcos.

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

“Change of Control” means the occurrence of any of the following:

(a) any Person or group of Persons (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934) other than one or more Permitted Holders, is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the

Securities Exchange Act of 1934), either directly or indirectly, of thirty-three percent (33%) or more of the total voting power of the outstanding voting Equity Interests of Holdings; provided, however, that the Permitted Holders beneficially own (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, in the aggregate a lesser percentage of the total voting power of the voting Equity Interests of Holdings than such other Person and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors of Holdings; or

(b) one hundred percent (100%) of the Equity Interests of the Borrower ceasing to be owned (directly or indirectly) by Holdings.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all of the “Collateral” or other similar term referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral and Guarantee Requirement” means, at any relevant time of determination (subject to the time periods for satisfaction thereof set forth in this Agreement and the other Loan Documents if applicable), any or all of the following (as applicable):

(a) each Material Domestic Subsidiary of Holdings (other than an Excluded Subsidiary) shall have executed and delivered to the Administrative Agent a Guaranty and Holdings shall be party to the Guaranty contained in Article X;

(b) each Loan Party shall have executed and delivered to the Administrative Agent (i) the Security and Pledge Agreement, with respect to (A) all or substantially all of its assets other than Excluded Assets and (B) the Equity Interests in its first tier Subsidiaries (limited in the case of pledges of CFCs, CFC Holdcos and Bolzoni Holdings LLC to 65% of the total outstanding voting Equity Interests and 100% of any non-voting Equity Interests), other than Excluded Assets, (ii) if applicable, an Intellectual Property Security Agreement, and (iii) such other Collateral Documents as may be reasonably required to satisfy this Collateral and Guarantee Requirement and effectuate the intent of the parties with respect to the grant of Collateral;

(c) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Owned Real Property duly executed and delivered by the record owner of such Material Owned Real Property (together with UCC fixture filings if reasonably requested by the Administrative Agent), (ii) a policy or policies of title insurance in the amount equal to the fair market value of such Mortgaged Property and fixtures, as determined by the Borrower in its reasonable discretion, issued by a nationally recognized title insurance company reasonably acceptable to the Administrative Agent (the “Title Company”) insuring the Lien of each such Mortgage as a first priority Lien on the Mortgaged Property described therein, free of any other Liens

except as expressly permitted by Section 7.01, together with such customary endorsements as the Administrative Agent may reasonably request, together with evidence reasonably satisfactory to the Administrative Agent of payment of all expenses and premiums of the Title Company and all other sums required in connection with the issuance of each title policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgages in the appropriate real estate records, (iii) such affidavits, certificates, information (including financial data and environmental reports) and instruments of indemnification as shall be reasonably required as determined by the Borrower to induce the Title Company to issue the title policies and endorsements contemplated above and which are reasonably requested by such Title Company, (iv) a completed “Life-of-Loan” Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each such Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the applicable Loan Party relating to such Mortgaged Property), (v) [reserved], (vi) to the extent in the possession of any applicable Loan Party, an ALTA survey for each such Mortgaged Property, together with an affidavit of no change, if applicable, in favor of the Title Company, and (vii) an opinion letter delivered by local counsel in the jurisdiction in which such Mortgaged Property is located with respect to the validity and enforceability of the applicable Mortgage and containing such customary opinions of local counsel reasonably requested by the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent;

(d) to the extent required to be delivered pursuant to the terms of the applicable Collateral Documents (giving effect to the Intercreditor Agreement), the Administrative Agent shall have received all instruments, documents and chattel paper in the possession of any of the Loan Parties, together with allonges or assignments as may be necessary or appropriate to perfect the Administrative Agent’s (on behalf of the Secured Parties) security interest in the Collateral;

(e) all (i) certificates (including certificates representing Equity Interests and powers in blank with respect thereto), agreements, documents and instruments, including UCC financing statements and intellectual property filings, required by the Collateral Documents or Applicable Law to be filed, delivered, registered or recorded to create the Liens intended to be created by the Collateral Documents and perfect such Liens to the extent required by, and with the priority required by, the Collateral Documents and the other provisions of the term “Collateral and Guarantee Requirement” (giving effect to the Intercreditor Agreement) shall have been filed, registered or recorded or delivered to the Administrative Agent for filing, registration or recording and (ii) Taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of any of the Loan Documents shall have been paid;

(f) in the case of any of the foregoing executed and delivered after the Original Closing Date, to the extent reasonably requested by the Administrative Agent, the Administrative Agent shall have received documents, Organization Documents,

certificates, resolutions and opinions of the type referred to in Section 4.01(a) with respect to each such Person and its Guarantee and/or provision and perfection of Collateral;

(g) in connection with any of the foregoing, the Administrative Agent shall have been provided such lien searches and ownership searches (including in respect of intellectual property) as may be reasonably requested by the Administrative Agent; and

(h) the Administrative Agent shall have received copies of insurance policies, declaration pages, certificates, and endorsements of insurance or insurance binders evidencing insurance meeting the requirements set forth herein or in the Collateral Documents;

provided that the Collateral shall not include, and the Collateral and Guarantee Requirement shall not require, any of the following: (i) any filings or other action in any jurisdiction outside of the United States, or required by the Laws of any jurisdiction outside of the United States to create or perfect any security interest outside the United States, including any intellectual property registered in any jurisdiction outside the United States, (ii) control agreements or other control or similar arrangements with respect to deposit accounts, securities accounts or other assets requiring perfection by control (but not, for the avoidance of doubt, control by possession, including of certificated Equity Interests), (iii) all leasehold interests in real property (and in no event shall any landlord waivers be required), (iv) any Mortgages on any real property other than Material Owned Real Property or that contains improvements located in an area determined by the Federal Emergency Management Agency to have special flood hazards, (v) Equity Interests (1) in any Immaterial Subsidiary (including any Subsidiary of Holdings that is engaged solely in retail operations to the extent such Subsidiary is not a Material Domestic Subsidiary) to the extent a security interest therein cannot be perfected by filing of a UCC-1 financing statement, (2) in any Unrestricted Subsidiary, (3) in any Person (other than the Borrower and wholly-owned Restricted Subsidiaries of the Borrower) to the extent and for so long as the pledge thereof in favor of the Collateral Agent is not permitted by the terms of such Person's joint venture agreement or other applicable Organization Documents; provided that such prohibition exists on the Restatement Effective Date or at the time such Equity Interests are acquired (so long as such prohibition did not arise in contemplation of the Restatement Effective Date or such acquisition) other than to the extent rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable Law or principles of equity, or (4) constituting voting equity interests in excess of 65% of the total outstanding voting equity interests of CFCs, CFC Holdcos and Bolzoni Holdings LLC, (vi) any deposit account used exclusively for payroll, payroll taxes or employee benefits, trust or escrow accounts, in each case, to the extent maintained solely for the benefit of unaffiliated third parties that are not Loan Parties, (vii) any asset if and only for so long as the grant of a security interest or Lien under this Agreement is prohibited or restricted by applicable Law or would constitute or result in the abandonment, invalidation or unenforceability of any right, title or interest of such Loan Party therein pursuant to applicable Law other than to the extent rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable Law or principles of equity, (viii) any lease, license, contract or agreement or any

rights or interests thereunder, or property subject to a purchase money security interest, Capitalized Lease obligation or similar arrangement permitted to be incurred under this Agreement, if and only for so long as the grant of a security interest or Lien under this Agreement would constitute or result in a breach, termination or default under, or create a right of termination in favor of any other party (other than a Loan Party) to, any such lease, license, contract or agreement or purchase money arrangement, Capitalized Lease or similar arrangement (in each case other than to the extent rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable Law or principles of equity), (ix) “intent-to-use” trademark applications prior to the filing of a “Statement of Use” or “Amendment to Allege Use” filing to the extent, if any, that and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under federal law, (x) accounts receivable and related assets sold pursuant to any receivables factoring, discounting facility, receivables assignment facility or other supply chain finance arrangement permitted hereunder, and (xi) assets to the extent a security interest in such assets would result in material adverse tax consequences (including, without limitation, as a result of the operation of Section 956 of the Code or any similar law or regulation in any applicable jurisdiction), or material adverse regulatory consequences, in each case, as reasonably determined by the Borrower and notified to the Administrative Agent (and any assets not required to be granted or pledged pursuant to this proviso shall be referred to as “Excluded Assets”); provided that (1) such asset will be an Excluded Asset only to the extent and for so long as the consequences specified above will result and will cease to be an Excluded Asset and will become Collateral, immediately and automatically, at such time and for so long as such consequences will no longer result and (2) no asset shall be an Excluded Asset if it constitutes collateral security granted by Holdings or a Domestic Subsidiary (other than (x) collateral security granted by a CFC Holdco or any direct or indirect Subsidiary of a Subsidiary that is a CFC or (y) greater than 65% of the equity interests of a Subsidiary that is a CFC) in respect of the ABL Facility. The Administrative Agent may grant extensions of time for, or exceptions to, the creation and perfection of security interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any Guarantee by any Restricted Subsidiary (including extensions beyond the Restatement Effective Date or in connection with assets acquired, or Restricted Subsidiaries formed or acquired, after the Restatement Effective Date) where it determines that such action cannot be accomplished without undue effort, expense or detriment.

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

“Commitment” means, as to each Lender, its obligation to make Loans to the Borrower or convert Existing Loans pursuant to Section 2.01, it being understood that after the funding and exchange of the Loans on the Restatement Effective Date pursuant to Section 2.01, the Commitment of each Lender shall be zero.

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

“Communication” has the meaning specified in Section 11.10.

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

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

“Consolidated EBITDA” means, for any period, (a) Consolidated Net Income for such period plus (b) to the extent deducted in determining Consolidated Net Income for such period, but without duplication, the aggregate amount of (i) non-cash expense relating to stock compensation; (ii) depreciation and amortization expense, (iii) Consolidated Interest Expense, (iv) foreign, federal, state and local income taxes, (v) extraordinary losses, (vi) equity in losses of unconsolidated Restricted Subsidiaries and Affiliates, (vii) accruals for long-term deferred compensation (net of cash payments of deferred compensation accrued in prior periods), (viii) losses from minority interests in Affiliates, (ix) non-cash charges and expenses incurred outside of the Ordinary Course of Business (including the cumulative effect of any Accounting Changes but excluding any non-cash charge that relates to the write-down or write-off of accounts or inventory), provided that if any such non-cash charges or expenses represent(s) an accrual or reserve for potential cash items in any future period the cash payment thereof in such future period shall be subtracted from Consolidated EBITDA during such period, (x) non-cash expenses relating to the mark to market provision for derivative instruments, (xi) cash receipts related to the termination of any derivative instrument that, as of the end of the prior period, had a net gain since the inception of such derivative instrument, (xii) cash dividends or distributions received from joint ventures in which Holdings or the Borrower directly or indirectly own a minority interest, (xiii) [reserved], (xiv) [reserved], (xv) transaction costs and expenses associated with the incurrence of the Loans on the Restatement Effective Date and transaction costs and expenses associated with any amendment, amendment and restatement or other modification of the ABL Credit Agreement, and (xvi) costs associated with any Permitted Acquisition or Permitted Investment (whether or not consummated) in an aggregate amount not to exceed \$10,000,000 in any four fiscal quarter period, minus (c) to the extent included in determining Consolidated Net Income for such period, but without duplication, (i) non-cash income relating to stock compensation, (ii) extraordinary gains, (iii) equity in earnings of unconsolidated Restricted Subsidiaries and Affiliates for such period, (iv) income from minority interests in Affiliates (other than cash dividends or distributions received from joint ventures in which Holdings directly or indirectly owns a minority interest), (v) non-cash gains outside of the Ordinary Course of Business (including the cumulative effect of any Accounting Changes), (vi) non-cash income relating to the mark to market provision for derivative instruments, and (vii) cash payments related to the termination of any derivative instrument that, as of the end of the prior period, had a net loss since the inception of such derivative instrument.

“Consolidated First Lien Net Leverage Ratio” means, as of any date of determination, the ratio of (i) Consolidated First Lien Secured Indebtedness as of such date to (ii) Consolidated

EBITDA of Holdings and its Restricted Subsidiaries for the most recently completed Measurement Period.

“Consolidated First Lien Secured Indebtedness” means, as of any date of determination, (i) the sum of all Consolidated Funded Indebtedness as of such date that is secured by a Lien on any assets of Holdings or any of its Restricted Subsidiaries *less* (ii) the aggregate principal amount of Indebtedness of Holdings and its Restricted Subsidiaries at such time that is secured solely by Liens on assets of Holdings or its Restricted Subsidiaries that are junior to the Liens securing the Obligations (for the avoidance of doubt, obligations in respect of the ABL Facility shall be deemed Consolidated First Lien Secured Indebtedness and shall not be excluded pursuant to this clause (ii)), *less* (iii) the aggregate amount of (a) unrestricted cash and Cash Equivalents of Holdings and its Restricted Subsidiaries and (b) Permitted Restricted Cash.

“Consolidated Funded Indebtedness” means, with respect to any Loan Party and its Restricted Subsidiaries, without duplication, its (a) Indebtedness that (i) arises from the lending of money by any Person to such Loan Party or such Restricted Subsidiary, (ii) is evidenced by notes, drafts, bonds, debentures, credit documents or similar instruments, or (iii) accrues interest or is a type upon which interest charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business); (b) Capitalized Leases; (c) unreimbursed amounts with respect to letters of credit; and (d) guarantees of any Indebtedness of the foregoing types owing by another Person; provided that Consolidated Funded Indebtedness shall not include (x) amounts owing under the Financing Agreements or (y) the Maximal Forklift Purchase Price Obligations.

“Consolidated Interest Expense” means, for any period, all as determined in conformity with GAAP, (a) total interest expense, whether paid or accrued (without duplication) (including the interest component of Capitalized Lease obligations), of Holdings and its Restricted Subsidiaries on a consolidated basis, including, without limitation, all recurring bank loan fees and commissions, discounts and other fees and charges owed with respect to letters of credit, but excluding, however, amortization of discount, interest paid in property other than cash or any other interest expense not payable in cash, plus (b) any net payments made during such period under Swap Contracts providing interest rate protection minus (c) any net payments received during such period under Swap Contracts providing interest rate protection, plus (d) to the extent deducted in determining Consolidated Interest Expense, any interest income.

“Consolidated Net Income” means, for any period, the net earnings (or loss) after taxes of Holdings and its Restricted Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

“Consolidated Secured Indebtedness” means, as of any date of determination, (i) the sum of all Consolidated Funded Indebtedness as of such date that is secured by a Lien on any assets of Holdings or any of its Restricted Subsidiaries, *less* (ii) the aggregate amount of (a) unrestricted cash and Cash Equivalents of Holdings and its Restricted Subsidiaries and (b) Permitted Restricted Cash.

“Consolidated Secured Net Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Secured Indebtedness as of such date to (b) Consolidated EBITDA of

Holdings and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

“Consolidated Total Assets” means, as of any date of determination, for Holdings and its Restricted Subsidiaries on a consolidated basis, the sum of the total assets held by Holdings and its Restricted Subsidiaries on that date.

“Consolidated Total Net Leverage Ratio” means, as of any date of determination, the ratio of (a) the excess of (i) Consolidated Funded Indebtedness as of such date less (ii) the aggregate amount of (x) unrestricted cash and Cash Equivalents of Holdings and its Restricted Subsidiaries and (y) Permitted Restricted Cash to (b) Consolidated EBITDA of Holdings and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

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

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Covered Party” has the meaning specified in Section 11.20(a).

“Credit Party” has the meaning assigned to such term in Section 9.13.

“Customary Permitted Liens” means (a) Liens (other than any Lien imposed under ERISA) for Taxes, assessments or charges of any Governmental Authority or claims not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained in accordance with the provisions of GAAP, (b) statutory Liens of landlords and Liens of carriers, warehousemen, consignors, mechanics, materialmen, workmen, customs and revenue authorities and other Liens (other than any Lien imposed under ERISA) imposed by law and created in the ordinary course of business for amounts not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained in accordance with the provisions of GAAP, (c) Liens (other than any Lien imposed under ERISA) incurred or deposits made in the ordinary course of business (including, without limitation, surety bonds and appeal bonds and Liens securing obligations under indemnity agreements for surety bonds) or other Liens in connection with workers’ compensation, unemployment insurance and other types of social security benefits, (d) Liens consisting of any right of offset, or statutory or consensual banker’s lien, on bank deposits or securities accounts maintained in the ordinary course of business, (e) easements (including, without limitation, reciprocal easement agreements and utility agreements), rights-of-way, covenants, consents, licenses, reservations, encroachments, variations and other restrictions, charges or encumbrances (whether or not recorded), which do not interfere materially with the

ordinary conduct of the business of the Borrower or its Restricted Subsidiaries, (f) building restrictions, zoning laws and other similar statutes, law, rules, regulations, ordinances and restrictions, now or at any time hereafter adopted by any Governmental Authority having jurisdiction, (g) such Liens as identified on the title policy applicable to such property and acceptable to the Administrative Agent, (h) certain statutory and contractual rights of retention on the inventory of Holdings and its Restricted Subsidiaries located outside of the U.S. which are subordinate to Administrative Agent's security interest therein, (i) Liens arising from precautionary UCC-1 financing statement filings (or the equivalent in other jurisdictions) regarding operating leases covering only the property subject thereto, (j) Liens upon cash or Cash Equivalents securing obligations owing by Holdings or any Restricted Subsidiary to Administrative Agent, a Lender or an Affiliate thereof that arise as a result of the termination of a Swap Contract in respect of interest rates permitted hereunder to which Holdings or any Restricted Subsidiary, as applicable, and Administrative Agent, a Lender, or an Affiliate thereof, as applicable, were subject and (k) Liens on assets being sold or otherwise Disposed of in a transaction permitted by this Agreement prior to the consummation of such sale or other Disposition for the benefit of the purchaser of such assets and consisting of the agreement by the owner thereof to sell or otherwise Dispose of such assets to such purchaser.

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

“Debt Rating” means, as applicable, (a) the corporate family rating of Holdings as determined by each of Moody's and S&P from time to time, (b) the corporate rating of the Borrower as determined by each of Moody's and S&P from time to time and (c) the ratings of the Facility as determined by each of Moody's and S&P from time to time.

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

“Deemed Non-Cash Consideration” means

(i) any liabilities, as shown on the most recent consolidated balance sheet of Holdings or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Obligations), or any Guarantees of Indebtedness of Persons other than Holdings or its Restricted Subsidiaries, that are assumed (contractually or otherwise) by the person acquiring such assets to the extent that Holdings and its Restricted Subsidiaries have no further liability with respect to such liabilities;

(ii) any securities, notes or other obligations received by Holdings or any such Restricted Subsidiary from such transferee that are converted by Holdings or

such Restricted Subsidiary into cash within 180 days of their receipt to the extent of the cash received in that conversion; and

(iii) any Designated Noncash Consideration received by Holdings or its Restricted Subsidiary in any Disposition having an aggregate fair market value, taken together with all other Designated Noncash Consideration received pursuant to this clause (iii) that is at that time outstanding in the aggregate, not to exceed \$15,000,000, in each case at the time of the receipt of such Designated Noncash Consideration, with the fair market value of each item of Designated Noncash Consideration measured at the time received and without giving effect to subsequent changes in value.

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

“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2% per annum; provided, however, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum.

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

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

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

“Designated Non-cash Consideration” means the fair market value of non-cash consideration received by Holdings or any of the Restricted Subsidiaries in connection with a Disposition made pursuant to Section 7.05(k) that is designated as “Designated Non-cash Consideration” on the date received pursuant to a certificate of a Responsible Officer of the Borrower, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

“Disposition” or “Dispose” means the sale, transfer, license, consignment, lease or other disposition (including any sale and leaseback transaction or synthetic lease) of any property by any Person, including any sale, transfer or other disposition, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith (in each case, other than any issuances of additional Equity Interests (a) by Holdings, (b) by any Loan Party or Restricted Subsidiary to its existing parent, (c) of directors’ qualifying shares and (d) by any Loan Party or Restricted Subsidiary to another Loan Party or Restricted Subsidiary).

“Disqualified Equity Interests” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Latest Maturity Date

“Disqualified Institution” means, on any date, any Person that is a competitor of the Borrower or any of its Subsidiaries, or an Affiliate of a competitor, which Person has been designated by the Borrower as a “Disqualified Institution” by written notice to the Administrative Agent and the Lenders (by posting such notice to the Platform) not less than 2 Business Days prior to such date (or, in the case of any Affiliate, is clearly identifiable as an Affiliate based solely by similarity of such Affiliate’s name to the name of a competitor on such

list); provided that (x) “Disqualified Institutions” shall exclude any Person that the Borrower has designated as no longer being a “Disqualified Institution” by written notice delivered to the Administrative Agent and the Lenders from time to time and (y) notwithstanding the foregoing, in no event shall any bona fide fixed income investors or debt funds that are Affiliates of competitors be “Disqualified Institutions.”

“Division” has the meaning specified in Section 1.07.

“Division Successor” has the meaning specified in Section 1.07.

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

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

“DQ List” has the meaning specified in Section 11.06(f)(iv).

3 “Early Opt-in Effective Date” means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

4 “Early Opt-in Election” means the occurrence of:

- (1) a determination by the Administrative Agent, or a notification by the Borrower to the Administrative Agent that the Borrower has made a determination, that U.S. dollar-denominated syndicated credit facilities currently being executed, or that include language similar to that contained in Section 3.03(c), are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, and
- (2) the joint election by the Administrative Agent and the Borrower to replace LIBOR with a Benchmark Replacement and the provision by the Administrative Agent of written notice of such election to the Lenders.

“ECF Prepayment Percentage” means, for any relevant fiscal year of Holdings, commencing with the fiscal year ending December 31, 2022, (a) 50% if the Consolidated Total Net Leverage Ratio as of the last day of such fiscal year is greater than 3.00 to 1.00, (b) 25% if the Consolidated Total Net Leverage Ratio as of the last day of such fiscal year is less than or equal to 3.00 to 1.00 but greater than 2.50 to 1.00 and (c) 0% if the Consolidated Total Net Leverage Ratio as of the last day of such fiscal year is less than or equal to 2.50 to 1.00.

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

in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

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

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

“Electronic Copy” has the meaning specified in Section 11.10.

“Electronic Record” has the meaning specified in Section 11.10.

“Electronic Signature” has the meaning specified in Section 11.10.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 11.06(b)(iii)). For the avoidance of doubt, any Disqualified Institution is subject to Section 11.06(f).

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

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

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

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” means the interest of any (a) shareholder in a corporation; (b) partner in a partnership (whether general, limited, limited liability or joint venture); (c) member in a limited liability company; or (d) other Person having any other form of equity security or ownership interest.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

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

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

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

“Eurodollar Rate” means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day; and

(c) if the Eurodollar Rate shall be less than 0.50%, such rate shall be deemed 0.50% for purposes of this Agreement (including in connection with the computation of the Base Rate pursuant to clause (c) of such definition);

provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

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

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

“Excess Cash Flow” means, for Holdings and its Restricted Subsidiaries on a consolidated basis, in accordance with GAAP for any fiscal year, the excess (if any) of:

(a) the sum, without duplication, of (i) Consolidated Net Income for such fiscal year, (ii) the amount of all non-cash charges or losses to the extent deducted in determining Consolidated Net Income for such fiscal year (excluding any non-cash charges representing an accrual or reserve for a potential cash charge in any future fiscal year or amortization of a prepaid cash gain that was paid in a prior fiscal year) and (iii) decreases in Working Capital for such fiscal year,

minus

(b) the sum, without duplication, of

(i) the aggregate amount of all scheduled principal payments (other than mandatory prepayments or voluntary prepayments) in respect of Loans and other Indebtedness permitted to be incurred hereunder that ranks *pari passu* with the Loans made by the Borrower and its Restricted Subsidiaries during such fiscal year, but only to the extent that such scheduled principal payments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or any portion of such Indebtedness,

(iv) the amount of all non-cash credits to the extent included in determining Consolidated Net Income for such fiscal year,

(v) increases to Working Capital for such fiscal year,

(vi) the aggregate amount of non-cash gains on Dispositions of property by the Borrower or its Restricted Subsidiaries during such fiscal year, to the extent included in arriving at Consolidated Net Income,

(vii) any fees and expenses paid in cash during such fiscal year in connection with any Investment, Disposition, incurrence or repayment of Indebtedness, issuance of Equity Interests or amendment or modification of any debt instrument (including any amendment or other modification of this Agreement or the other Loan Documents) and including any such transaction

undertaken but not completed, in each case to the extent not already deducted from the calculation of Consolidated Net Income, and

(viii) payments made in respect of pension obligations during such fiscal year.

“Excess Cash Flow Prepayment” has the meaning given thereto in Section 2.03(b).

“Exchanged Loans” shall mean each Existing Loan outstanding on the Restatement Effective Date (or portion thereof) held by a Rollover Lender on the Restatement Effective Date immediately prior to the extension of credit hereunder on the Restatement Effective Date and as to which the Rollover Lender thereof has consented to exchange into a Loan under this Agreement and the Administrative Agent has allocated into a Loan under this Agreement

“Excluded Assets” has the meaning given thereto in the proviso to the definition of “Collateral and Guarantee Requirement.”

“Excluded Subsidiary” means (i) any Subsidiary to the extent prohibited by law, regulation or contractual obligation or that would require governmental consent or approval that has not been obtained, (ii) any Unrestricted Subsidiary and (iii) any Subsidiary to the extent the cost/burden outweighs the benefit, as the Borrower and Administrative Agent may mutually agree; provided, however, (x) neither the Borrower, Holdings nor any Subsidiary that directly or indirectly owns Equity Interests of the Borrower shall be an Excluded Subsidiary and (y) that any Domestic Subsidiary (other than a CFC Holdco or any direct or indirect Subsidiary of a Subsidiary that is a CFC) that is a borrower or guarantor in respect of the ABL Facility shall not be an Excluded Subsidiary.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.10 and any other “keepwell, support or other agreement” for the benefit of such Guarantor and any and all guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to Recipient or required to be withheld or deducted from payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of,

or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in the Loan or Commitment or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any Taxes imposed pursuant to FATCA.

"Existing Loan" means each "Loan" (as defined under the Existing Credit Agreement, as amended, restated or otherwise modified prior to the Restatement Effective Date) outstanding on the Restatement Effective Date immediately prior to the effectiveness of this Agreement on the Restatement Effective Date.

"Existing Term Loan Tranche" has the meaning set forth in 2.16(a).

"Extended Loans" has the meaning set forth in 2.16(a).

"Extending Lender" has the meaning set forth in 2.16(b).

"Extension" means the establishment of an Extension Series by amending a Loan pursuant to the terms of Section 2.16 and the applicable Extension Amendment.

"Extension Amendment" has the meaning set forth in 2.16(c).

"Extension Election" has the meaning set forth in 2.16(b).

"Extension Offer" has the meaning set forth in **Error! Reference source not found.**

"Extension Request" has the meaning set forth in Section 2.16(a).

"Extension Series" has the meaning set forth in Section 2.16(a).

"Facility" means, at any time, the aggregate principal amount of the Loans of all Lenders outstanding at such time.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

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

Code (or any amended or successor version described above) and any intergovernmental agreement or treaty (and any related law, regulation or official administrative guidance) implementing the foregoing.

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

“Financial Institution” means (a) any Financing Affiliate, (b) any financial institution listed on Schedule 1.01(A) and (c) any financial institution from time to time approved by the Administrative Agent (such approval not to be unreasonably withheld).

“Financing Affiliate” means HYGFS or any other Affiliate of the Borrower party to a Financing Agreement.

“Financing Agreements” means (a) the Third Amended and Restated Joint Venture and Shareholders Agreement, dated September 17, 2018, as amended, restated, supplemented or otherwise modified from time to time, between the Borrower and Wells Fargo Financial Leasing, Inc. and (b) any agreement or program entered into with a Financial Institution on substantially the same terms, or for substantially the same purpose, as the agreements referred to in clause (a) above (including, without limitation, the agreements listed on Part A of Schedule 7.02) or otherwise as consented to by the Administrative Agent, such consent not to be unreasonably withheld, as any of the same may be amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time on terms, taken as a whole, not materially less favorable to the Borrower as reasonably determined by the Borrower.

“Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio, determined on a consolidated basis for Holdings and its Restricted Subsidiaries for the most recently completed Measurement Period, of (a) Consolidated EBITDA *minus* capital expenditures (except those financed with Consolidated Funded Indebtedness) to (b) Fixed Charges.

“Fixed Charges” means the sum of (a) cash Consolidated Interest Expense, (b) scheduled principal payments made on Consolidated Funded Indebtedness (including the principal component of Capitalized Leases), (c) all foreign, federal, state and local income taxes and all franchise taxes that are calculated based on net income paid in cash during such period (net of any cash tax refunds received during such period but not less than \$0) and (d) Restricted Payments made in cash.

“Foreign Lender” means Lender that is not a U.S. Person. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

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

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

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States as in effect from time to time subject to Section 1.03.

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

“Guarantee” means, as to any Person, any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (b) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (d) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantors” means, collectively, (a) Holdings, (b) the Subsidiary Guarantors and (c) with respect to (i) Obligations owing by any Loan Party or any Subsidiary of a Loan Party (other than the Borrower) under any Secured Hedge Agreement or any Secured Cash Management Agreement and (ii) the payment and performance by each Specified Loan Party of its obligations under its Guaranty with respect to all Swap Obligations, the Borrower.

“Guaranty” means, collectively, the Guaranty made by Holdings under Article X in favor of the Secured Parties and the Guaranty made by the Subsidiary Guarantors and the Borrower in favor of the Secured Parties, substantially in the form of Exhibit E, including as supplemented or joined from time to time by the execution and delivery of supplements and joinders as provided therein or as otherwise reasonably acceptable to the Administrative Agent, and any other document pursuant to which any Person Guarantees any portion of the Obligations.

“Guaranty Reaffirmation” shall have the meaning provided in Section 4.01(a)(i).

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

“Hedge Bank” means any Person that either (a) at the time it enters into a Swap Contract permitted under Article VI or VII, is a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent, or (b) is a party to a Swap Contract permitted under Article VI or VII at the time it (or its applicable Affiliate) becomes the Administrative Agent or a Lender (either on the Restatement Effective Date or thereafter as an Eligible Assignee), in each case in its capacity as a party to such Swap Contract.

“HMT” has the meaning specified in the definition of “Sanction(s)”

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

“HYGFS” means HYG Financial Services, Inc., a Delaware corporation in which the Borrower holds a minority interest.

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

“Immaterial Subsidiary” means each Subsidiary that individually represents less than either (a) five percent (5%) of Consolidated Total Assets or (b) five percent (5%) of Consolidated EBITDA; provided that in the event that Holdings, the Borrower and the Subsidiaries that do not constitute Immaterial Subsidiaries on a combined basis do not represent at least ninety percent (90%) of Consolidated Total Assets and Consolidated EBITDA on a consolidated basis as of the end of the most recently ended fiscal year of Holdings, then in such

case Holdings shall identify Subsidiaries which shall no longer constitute Immaterial Subsidiaries such that each of the foregoing ninety percent (90%) tests is satisfied.

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

“Increase Effective Date” has the meaning assigned to such term in Section 2.13(c).

“Incremental Increases” has the meaning assigned to such term in Section 2.13(a).

“Incremental Term Loan” has the meaning assigned to such term in Section 2.13(a).

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial) and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than (x) trade accounts payable in the ordinary course of business and (y) earnouts or similar obligations unless and until such amounts are earned);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness in respect of Capitalized Leases;
- (g) Disqualified Equity Interests; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. Notwithstanding the foregoing, in no event shall Maximal Forklift Purchase Price Obligations be considered Indebtedness.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitee” has the meaning specified in Section 11.04(b).

“Information” has the meaning specified in Section 11.07.

“Intellectual Property Security Agreement” means an intellectual property security agreement, in form and substance reasonably satisfactory to the Administrative Agent, as supplemented and joined from time to time by the execution and delivery of supplements and joinders as provided therein or otherwise reasonably acceptable to the Administrative Agent.

“Intercreditor Agreement” means (i) the Intercreditor Agreement dated as of the Original Closing Date by and among the Administrative Agent and the ABL Agent, as it may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof or (ii) any other intercreditor agreement among the Administrative Agent and any agent or trustee with respect to the ABL Facility that is reasonably acceptable to the Administrative Agent, as it may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

“Intercreditor Reaffirmation” shall have the meaning provided in Section 4.01(a)(i).

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

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter (in each case, subject to availability), as selected by the Borrower in its Loan Notice, or such other period that is twelve months or less requested by the Borrower and consented to by all the Lenders; 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, in the case of a Eurodollar Rate Loan, 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 pertaining to a Eurodollar Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

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

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person constituting (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, or other investment in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit, line of business or division. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IP Rights” has the meaning specified in Section 5.18.

“IRS” means the United States Internal Revenue Service.

“Junior Representative” means, with respect to any series of Permitted Junior Debt (or Permitted Refinancing Indebtedness in respect thereof), the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Permitted Junior Debt (or Permitted Refinancing Indebtedness in respect thereof) is issued, incurred or otherwise obtained and each of their successors in such capacities.

“JV Financing Facility” means an inventory financing facility provided by HYGFS to a Loan Party during the period that such inventory is being shipped to certain customers and until such customers’ acceptance of such inventory, at which time such inventory is sold by such Loan Party to HYGFS for ultimate lease to such customers.

“Latest Maturity Date” means the latest of the Maturity Date for the Facility and any maturity date applicable to then-existing Incremental Term Loans, Refinancing Term Loans and Extended Loans, as of any date of determination.

“Laws” means, collectively, all laws, rules, regulations and governmental guidelines applicable to the Person, conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

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

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

“LIBOR” has the meaning assigned to such term in clause (a) of the definition of “Eurodollar Rate.”

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

“Limited Condition Acquisition” means any Permitted Acquisition the consummation of which is not conditioned on the availability of, or on obtaining, third-party financing (as notified by the Borrower to the Administrative Agent in the notice described in the definition thereof).

“Loan” means an extension of credit by a Lender to the Borrower under Article II. For the avoidance of doubt, the Additional Restatement Effective Date Loans and the Exchanged Loans shall each constitute a single fungible class of Loans and be part of the same Facility.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) the Collateral Documents, (e) the Intercreditor Agreement, (f) the Guaranty Reaffirmation, (g) the Security Reaffirmation, (h) the Intercreditor Reaffirmation, (i) any Extension Amendment, (j) any Additional Junior Lien Intercreditor Agreement and (k) any Additional Pari Passu Intercreditor Agreement.

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

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

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect” means a material adverse effect upon (a) the financial condition, performance or properties of the Borrower, or Holdings and its Subsidiaries taken as a whole, (b) the ability of any of the Loan Parties to perform their respective obligations under the Loan Documents, (c) the ability of the Lenders or the Administrative Agent to enforce any of the Loan Documents, taken as a whole, or (d) a material portion of the Collateral or the validity or priority of the Administrative Agent’s Liens thereon or the ability of the Administrative Agent to realize upon a material portion of the Collateral.

“Material Domestic Subsidiary” means each wholly-owned Domestic Subsidiary (other than a CFC Holdco or any direct or indirect Subsidiary of a Subsidiary that is a CFC) that is not an Immaterial Subsidiary.

“Material Owned Real Property” means any real property fee (or similarly, under applicable Law) owned by a Loan Party that has a fair market value (as reasonably determined

by the Borrower) in excess of \$10,000,000. As of the Restatement Effective Date, no Loan Party owns any Material Owned Real Property.

“Maturity Date” means (i) with respect to Loans borrowed on the Restatement Effective Date, the seventh anniversary of the Restatement Effective Date, (ii) with respect to any Incremental Term Loans, the final maturity date as specified in the applicable Term Loan Increase, (iii) with respect to any Refinancing Term Loans, the final maturity date as specified in the applicable Refinancing Amendment and (iv) with respect to any tranche of Extended Loans, the final maturity date as specified in the applicable Extension Amendment; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Maximal Forklift Purchase Price Obligations” means one or more installments or payments otherwise made on a deferred basis, in an aggregate amount not to exceed \$42,000,000, with such amounts representing consideration for all or a portion of the remaining 25% of outstanding equity interests in Hyster-Yale Maximal Forklift (Zhejiang) Co., Ltd.

“Maximum Increase Amount” means the sum of (a) the greater of (x) \$100,000,000 and (y) 100% of Consolidated EBITDA for the most recently completed Measurement Period (this clause (a), the “Fixed Incremental Amount”) plus (b) the amount of any voluntary prepayments after the Restatement Effective Date in respect of Loans and other Indebtedness permitted to be incurred hereunder that ranks *pari passu* with the Loans (this clause (b), the “Voluntary Prepayment Amount”), plus (c) an unlimited amount so long as any of (A) in the case of any Indebtedness secured by a Lien on the Collateral that is *pari passu* with any Lien on the Collateral securing the Obligations, the Consolidated First Lien Net Leverage Ratio, determined on a *pro forma basis* as of such date of incurrence, would not exceed 2.50:1.00, (B) solely for purposes of Section 7.02(w), in the case of any Permitted Junior Debt consisting of Indebtedness secured by the Collateral on a junior-lien basis relative to the Liens on such Collateral securing the Obligations, the Consolidated Secured Net Leverage Ratio, determined on a *pro forma basis* as of such date of incurrence, would not exceed 3.50:1.00 or (C) solely for purposes of Section 7.02(w), in the case of any Permitted Junior Debt consisting of unsecured Indebtedness, the Fixed Charge Coverage Ratio, determined on a *pro forma basis* as of such date of incurrence, would not be less than 2.00:1.00 (this clause (c), the “Incremental Ratio Amount”). For purposes of calculating the Maximum Increase Amount, (i) the Borrower shall be deemed to have used capacity under the Incremental Ratio Amount (to the extent compliant therewith) before capacity under the Fixed Incremental Amount or Voluntary Prepayment Amount, and capacity under the Voluntary Prepayment Amount shall be deemed to be used before capacity under the Fixed Incremental Amount, (ii) Indebtedness may be incurred under clauses (a), (b) and (c) above, and proceeds from any such incurrence under clauses (a), (b) and (c) above, may be utilized in a single transaction by first calculating the incurrence under clause (c) above (without inclusion of any amounts to be utilized pursuant to clause (a) or (b)) and then calculating the incurrence under clause (b) above (without inclusion of any amounts to be utilized pursuant to clause (a)), as applicable and (iii) in the event that any Indebtedness incurred under the Fixed Incremental Amount (the “Fixed Incremental Amount Indebtedness”) subsequently meets the criteria of indebtedness incurred under the Incremental Ratio Amount, the Borrower, in its sole discretion,

at such time may divide and classify any such Fixed Incremental Amount Indebtedness as indebtedness incurred under the Incremental Ratio Amount and the Fixed Incremental Amount shall be deemed to be increased by the amount so reclassified.

“Measurement Period” means, at any date of determination, the most recently completed four fiscal quarters of Holdings.

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

“Mortgage” means a mortgage or deed of trust or other similar security document executed by a Loan Party that purports to grant a Lien to the Administrative Agent (or a trustee for the benefit of the Administrative Agent) for the benefit of the Secured Parties in any owned real property that becomes, or is required to become, a Mortgaged Property pursuant to the Loan Documents, in each case in form and substance reasonably satisfactory to the Administrative Agent.

“Mortgaged Property” means any Material Owned Real Property and any other owned real property of a Loan Party that is or becomes, or is required to become, encumbered by a Mortgage in favor of the Administrative Agent in accordance with the terms of this Agreement.

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

“Net Cash Proceeds” means:

(a) with respect to any Disposition by any Loan Party or any of their Restricted Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by such Loan Party or such Restricted Subsidiary in connection with such transaction including legal fees and sales commissions, (C) taxes reasonably estimated to be actually payable in connection therewith (taking into account any available tax credits or deductions); provided that, if the amount of any estimated taxes pursuant to this subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds, and (D) reserves for indemnities until such reserves are no longer needed; and

(b) with respect to the incurrence or issuance of any Indebtedness by any Loan Party or any of their Restricted Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-

pocket expenses, incurred by such Loan Party or such Restricted Subsidiary in connection therewith.

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

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

“Non-Exchanged Loan” means each Existing Loan outstanding immediately prior to the effectiveness of this Agreement on the Restatement Effective Date (or portion thereof) under the Existing Credit Agreement (immediately prior to the effectiveness of this Agreement on the Restatement Effective Date) other than an Exchanged Loan.

“Non-Loan Party” means any Restricted Subsidiary of Holdings that is not a Loan Party.

“Note” means a promissory note made by the Borrower payable to a Lender and its registered assigns evidencing the Loan made by such Lender, substantially in the form of Exhibit B.

“NPL” means the National Priorities List under CERCLA.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Secured Cash Management Agreement or Secured Hedge Agreement, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that the Obligations shall exclude any Excluded Swap Obligations.

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

“OID” has the meaning given such term in the definition of “All-In Yield.”

“Ordinary Course of Business” the ordinary course of business of Holdings or any Restricted Subsidiary, undertaken in good faith and consistent with applicable Law and past practices.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint

venture or other applicable agreement of formation or organization and any similar agreement or instrument governing the formation or operation of such entity.

“Original Closing Date” and, for purposes of any Loan Document entered into prior to the Restatement Effective Date, “Closing Date,” means, May 30, 2017.

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

5 “Other Rate Early Opt-in” means the Administrative Agent and the Borrower have elected to replace LIBOR with a Benchmark Replacement other than a SOFR-based rate pursuant to (1) an Early Opt-in Election and (2) Section 3.03(c)(ii) and paragraph (2) of the definition of “Benchmark Replacement.”

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

“Outstanding Amount” means on any date, the aggregate outstanding principal amount of Loans after giving effect to any borrowings and prepayments or repayments of Loans, as the case may be, occurring on such date.

“Pari Passu Representative” shall mean, with respect to any series of Permitted Pari Passu Notes or Permitted Pari Passu Loans (or Permitted Refinancing Indebtedness in respect thereof), the trustee, collateral agent, security agent or similar agent under the indenture or other agreement pursuant to which such Permitted Pari Passu Notes or Permitted Pari Passu Loans (or Permitted Refinancing Indebtedness in respect thereof) is issued, incurred or otherwise obtained and each of their successors in such capacities.

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

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

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any employee pension benefit plan (other than a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Acquisition” means any Acquisition so long as:

(a) the acquiring Person and any newly-created or acquired Restricted Subsidiary shall comply (or the Borrower shall cause compliance) with the requirements of Section 6.12 on the terms and within the time periods set forth therein to the extent applicable;

(b) the lines of business of the Person to be (or the property of which is to be) so purchased or otherwise acquired shall be substantially the same lines of business as, or complementary, ancillary, incidental or related to, or a reasonable extension of, one or more of the businesses of the Borrower and its Restricted Subsidiaries;

(c) immediately before and immediately after the consummation of any such Acquisition (and any related transactions, including the incurrence or repayment of Indebtedness), no Default shall have occurred and be continuing; provided that if such Acquisition is a Limited Condition Acquisition, then at the option of the Borrower the condition set forth in this clause (c) may be satisfied as of the date of the entering into of the definitive agreement for such Limited Condition Acquisition so long as no Specified Default shall have occurred and be continuing at the time of, or would result from, the consummation thereof;

(d) such Acquisition shall be consensual and shall have been approved by the subject Person’s Board of Directors or the requisite holders of such capital stock or other Equity Interests; and

(e) the Borrower shall have delivered to the Administrative Agent (i) no less than five Business Days prior to the date on which any such Acquisition is to be consummated (or such later date as may be approved by the Administrative Agent), written notice of such Acquisition, which notice shall include the proposed closing date of such Acquisition and whether such Permitted Acquisition is a Limited Condition Acquisition and (ii) all financial reports and other documents reasonably requested by the Administrative Agent in connection with such Acquisition and available to Holdings or its Restricted Subsidiaries.

“Permitted Holders” means the “Participating Stockholders” as existing under, and defined in, that certain Stockholders’ Agreement dated as of September 28, 2012, by and among Holdings, as depository, Holdings and the Participating Stockholders, as amended through, and in effect on, the Restatement Effective Date.

“Permitted Investments” means any Investments permitted by Section 7.03.

“Permitted Junior Debt” shall mean any Permitted Junior Notes and any Permitted Junior Loans.

“Permitted Junior Debt Documents” shall mean any Permitted Junior Notes Documents and any Permitted Junior Loan Documents.

“Permitted Junior Loan Documents” shall mean, after the execution and delivery thereof, each agreement, document or instrument relating to the incurrence of Permitted Junior Loans, in each case as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

“Permitted Junior Loans” shall mean any Indebtedness of any Loan Party in the form of unsecured or secured loans; provided that (i) except as provided in clause (v) below, no such Indebtedness shall be secured by any asset of Holdings or any of its Subsidiaries, (ii) no such Indebtedness shall be guaranteed by any Person other than the Loan Parties, (iii) no such Indebtedness shall be subject to scheduled amortization or have a final stated maturity, in either case, prior to the date occurring ninety-one (91) days following the Latest Maturity Date as of the date such Indebtedness was incurred or shall have a Weighted Average Life to Maturity of less than the Weighted Average Life to Maturity as then in effect for the tranche of then outstanding Loans with the then longest Weighted Average Life to Maturity, (iv) any “asset sale” mandatory prepayment provision included in the agreement governing such Indebtedness shall not prohibit Holdings or the respective Subsidiary from repaying obligations required to be repaid under this Agreement before prepaying or offering to prepay such Indebtedness, (v) in the case of any such Indebtedness that is secured, (a) such Indebtedness is secured only by assets comprising Collateral on a junior-lien basis relative to the Liens on such Collateral securing the Obligations of the Loan Parties, and not secured by any property or assets of any Loan Party other than the Collateral, (b) the security agreements relating to such Indebtedness are substantially the same in all material respects as the Collateral Documents (with such differences as are necessary to reflect the differing lien priorities or as otherwise reasonably satisfactory to the Collateral Agent) and (c) a Junior Representative acting on behalf of the holders of such Indebtedness shall have become party to the Additional Junior Lien Intercreditor Agreement; provided that if such Indebtedness is the initial incurrence of Permitted Junior Debt that is secured by assets of any Loan Party, then the Administrative Agent, the Collateral Agent and the Junior Representative for such Indebtedness shall have executed and delivered, and each Loan Party shall have acknowledged, the Additional Junior Lien Intercreditor Agreement and (vi) the covenants and events of default, taken as a whole, contained in the agreement governing such Indebtedness, shall not be materially more favorable to the lenders providing such Permitted Junior Loans than the related provisions, taken as a whole, contained in this Agreement; provided that any such terms may be more favorable to the extent (x) they take effect after the Latest Maturity Date as of the date such Indebtedness was incurred, (y) the Borrower shall have offered in good faith to enter into an amendment to this Agreement to add any such covenants or events of default as are not then contained in this Agreement or (z) such terms are consistent with the then-prevailing market convention, as determined in good faith by the Borrower (provided that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (vi), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Borrower of an objection during such five Business Day period (including a reasonable description of the basis upon which it objects)).

“Permitted Junior Notes” shall mean any Indebtedness of any Loan Party in the form of unsecured or secured notes and incurred pursuant to one or more issuances of such notes; provided that (i) except as provided in clause (v) below, no such Indebtedness shall be secured by any asset of Holdings or any of its Subsidiaries, (ii) no such Indebtedness shall be guaranteed by any Person other than the Loan Parties, (iii) no such Indebtedness shall be subject to scheduled amortization or have a final stated maturity, in either case, prior to the date occurring ninety-one (91) days following the Latest Maturity Date as of the date such Indebtedness was incurred, or shall have a Weighted Average Life to Maturity of less than the Weighted Average Life to Maturity as then in effect for the tranche of then outstanding Loans with the then longest Weighted Average Life to Maturity, (iv) any “asset sale” offer to purchase covenant included in the indenture governing such Indebtedness shall not prohibit Holdings or the respective Subsidiary from repaying obligations required to be repaid under this Agreement before offering to purchase such Indebtedness, (v) in the case of any such Indebtedness that is secured, (a) such Indebtedness is secured only by assets comprising Collateral on a junior-lien basis relative to the Liens on such Collateral securing the Obligations of the Loan Parties, and not secured by any property or assets of any Loan Party other than the Collateral, (b) the security agreements relating to such Indebtedness are substantially the same in all material respects as the Collateral Documents (with such differences as are necessary to reflect the differing lien priorities or as otherwise reasonably satisfactory to the Collateral Agent) and (c) a Junior Representative acting on behalf of the holders of such Indebtedness shall have become party to the Additional Junior Lien Intercreditor Agreement; provided that if such Indebtedness is the initial incurrence of Permitted Junior Debt that is secured by assets of any Loan Party, then the Administrative Agent, the Collateral Agent and the Junior Representative for such Indebtedness shall have executed and delivered, and each Loan Party shall have acknowledged, the Additional Junior Lien Intercreditor Agreement and (vi) the covenants and events of default, taken as a whole, contained in the indenture governing such Indebtedness shall not be materially more favorable to the holders of such Permitted Junior Notes than the related provisions, taken as a whole, contained in this Agreement; provided that any such terms may be more favorable to the extent (x) they take effect after the Latest Maturity Date as of the date such Indebtedness was incurred, (y) the Borrower shall have offered in good faith to enter into an amendment to this Agreement to add any such covenants or events of default as are not then contained in this Agreement or (z) such terms are consistent with the then-prevailing market convention, as determined in good faith by the Borrower (provided that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (viii), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Borrower of an objection during such five Business Day period (including a reasonable description of the basis upon which it objects)).

“Permitted Junior Notes Documents” shall mean, after the execution and delivery thereof, each Permitted Junior Notes Indenture, and the Permitted Junior Notes, in each case as the same

may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

“Permitted Junior Notes Indenture” shall mean any indenture or similar agreement entered into in connection with the issuance of Permitted Junior Notes, as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

“Permitted Notes” shall mean and include (i) any Permitted Junior Notes and (ii) any Permitted Pari Passu Notes.

“Permitted Pari Passu Loan Documents” shall mean, after the execution and delivery thereof, each agreement, document or instrument relating to the incurrence of Permitted Pari Passu Loans, in each case as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

“Permitted Pari Passu Loans” shall mean any Indebtedness of any Loan Party in the form of secured loans; provided that (i) no such Indebtedness shall be guaranteed by any Person other than the Loan Parties, (ii) in the case of Indebtedness comprising a term loan facility, no such Indebtedness shall have a final stated maturity prior to the Latest Maturity Date as of the date such Indebtedness was incurred, or shall have a Weighted Average Life to Maturity of less than the Weighted Average Life to Maturity as then in effect for the tranche of then outstanding Loans with the then longest Weighted Average Life to Maturity, (iii) any “asset sale” mandatory prepayment provision included in the agreement governing such Indebtedness shall not prohibit the Borrower or the respective Subsidiary from repaying Loans required to be repaid under this Agreement on at least a pro rata basis with such Indebtedness from asset sale proceeds, (iv)(a) such Indebtedness is secured only by assets comprising Collateral on a *pari passu* basis relative to the Liens on such Collateral securing the Obligations of the Loan Parties, and not secured by any property or assets of any Loan Party other than the Collateral, (b) the security agreements relating to such Indebtedness are substantially the same in all material respects as the Collateral Documents (or with such differences as are reasonably satisfactory to the Collateral Agent) and (c) a Pari Passu Representative acting on behalf of the holders of such Indebtedness shall have become party to any Additional Pari Passu Intercreditor Agreement; provided that if such Indebtedness is the initial incurrence of Permitted Pari Passu Loans by a Loan Party, then the Administrative Agent, the Collateral Agent and the Pari Passu Representative for such Indebtedness shall have executed and delivered, and each Loan Party shall have acknowledged, the Additional Pari Passu Intercreditor Agreement, (v) any Permitted Pari Passu Loans that take the form of a term loan shall be subject to the provisions set forth in Section 2.13(a)(iv)(B) hereof as if such term loans were Incremental Term Loans incurred thereunder and (vi) the covenants and events of default, taken as a whole, contained in the agreement governing such Indebtedness shall not be materially more favorable to the lenders providing such Permitted Pari Passu Loans than the related provisions, taken as a whole, contained in this Agreement; provided that any such terms may be more favorable to the extent (x) they take effect after the Latest Maturity Date as of the date such Indebtedness was incurred, (y) the Borrower shall have offered

in good faith to enter into an amendment to this Agreement to add any such covenants or events of default as are not then contained in this Agreement or (z) such terms are consistent with the then-prevailing market convention, as determined in good faith by the Borrower (provided that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (vi), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Borrower of an objection during such five Business Day period (including a reasonable description of the basis upon which it objects)).

“Permitted Pari Passu Notes” shall mean any Indebtedness of any Loan Party in the form of secured notes and incurred pursuant to one or more issuances of such notes; provided that (i) no such Indebtedness shall be guaranteed by any Person other than the Loan Parties, (ii) no such Indebtedness shall have a final stated maturity prior to the Latest Maturity Date as of the date such Indebtedness was incurred or have a Weighted Average Life to Maturity of less than the Weighted Average Life to Maturity as then in effect for the tranche of then outstanding Loans with the then longest Weighted Average Life to Maturity, (iii) any “asset sale” offer to purchase covenant included in the indenture governing such Indebtedness shall not prohibit Holdings or the respective Subsidiary from repaying Loans required to be repaid under this Agreement on at least a *pro rata* basis with such Indebtedness from asset sale proceeds, (iv) (a) such Indebtedness is secured only by assets comprising Collateral on a *pari passu* basis relative to the Liens on such Collateral securing the Obligations of the Loan Parties, and not secured by any property or assets of any Loan Party other than the Collateral, (b) the security agreements relating to such Indebtedness are substantially the same in all material respects as the Collateral Documents (or with such differences as are reasonably satisfactory to the Collateral Agent) and (c) a Pari Passu Representative acting on behalf of the holders of such Indebtedness shall have become party to any Additional Pari Passu Intercreditor Agreement; provided that if such Indebtedness is the initial issue of Permitted Pari Passu Notes by a Loan Party, then the Administrative Agent, the Collateral Agent and the Pari Passu Representative for such Indebtedness shall have executed and delivered, and each Loan Party shall have acknowledged, any Additional Pari Passu Intercreditor Agreement and (v) the covenants and events of default, taken as a whole, contained in the indenture governing such Indebtedness shall not be materially more favorable to the holders of such Permitted Pari Passu Notes than the related provisions, taken as a whole, contained in this Agreement; provided that any such terms may be more favorable to the extent they (x) take effect after the Latest Maturity Date as of the date such Indebtedness was incurred, (y) the Borrower shall have offered in good faith to enter into an amendment to this Agreement to add any such covenants or events of default as are not then contained in this Agreement or (z) such terms are consistent with the then-prevailing market convention, as determined in good faith by the Borrower (provided that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement set

out in the foregoing clause (v), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Borrower of an objection during such five Business Day period (including a reasonable description of the basis upon which it objects)).

“Permitted Pari Passu Notes Documents” shall mean, after the execution and delivery thereof, each Permitted Pari Passu Notes Indenture and the Permitted Pari Passu Notes, in each case as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

“Permitted Pari Passu Notes Indenture” shall mean any indenture or similar agreement entered into in connection with the issuance of Permitted Pari Passu Notes, as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

“Permitted Refinancing” means, with respect to any Person, any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to “Refinance”), the Indebtedness being Refinanced (or previous refinancings thereof constituting a Permitted Refinancing); provided, that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus (i) unpaid accrued interest and premiums thereon and underwriting discounts, defeasance costs, fees, commissions and expenses, (ii) reasonable original issue discount and upfront fees plus other fees and expenses reasonably incurred, in connection with such Refinance, and (iii) an amount equal to any existing commitments unutilized under the debt being Refinanced), (b) the maturity date and the Weighted Average Life to Maturity of such Permitted Refinancing is greater than or equal to the maturity date and the Weighted Average Life to Maturity of the Indebtedness being Refinanced, (c) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing shall be subordinated in right of payment to such Obligations on terms, taken as a whole, at least as favorable to the Secured Parties as those contained in the documentation governing the Indebtedness being Refinanced, (d) no Permitted Refinancing shall have direct or indirect obligors who were not also obligors of the Indebtedness being Refinanced, or greater guarantees or security, than the Indebtedness being Refinanced, (e) such Permitted Refinancing shall be otherwise on terms not materially less favorable (other than with respect to interest rates, fees and other economic terms), taken as a whole, to the Secured Parties than those contained in the documentation governing the Indebtedness being Refinanced (including, without limitation, with respect to financial and other covenants and events of default), other than to the extent such terms (x) take effect after the Latest Maturity Date as of the date of such Refinancing or (y) are consistent with the then-prevailing market convention, as determined in good faith by the Borrower and (f) at the time thereof, no Default or Event of Default shall have occurred and be continuing.

“Permitted Restricted Cash” shall mean any cash and Cash Equivalents of Holdings and its Restricted Subsidiaries restricted solely in favor of or pursuant to (x) any Loan Document, the

ABL Credit Agreement, any Permitted Pari Passu Notes Document or any Permitted Pari Passu Loan Document and (y) any Permitted Junior Debt Document, to the extent such cash and Cash Equivalents also secure the Indebtedness hereunder on a senior priority basis.

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

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

“primary obligor” has the meaning specified in the definition of Guarantee.”

“Platform” has the meaning specified in Section 6.02.

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

“Public Lender” has the meaning specified in Section 6.02.

“QFC Credit Support” has the meaning specified in Section 11.20.

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

“Recipient” means the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party under any Loan Document.

“Refinancing Amendment” means an amendment to this Agreement (which may, at the option of the Administrative Agent and the Borrower, be in the form of an amendment and restatement of this Agreement) in a form reasonably satisfactory to the Administrative Agent, each existing or new Lender that agrees to provide any portion of the Refinancing Term Loans being incurred pursuant thereto, in accordance with Section 2.14 and the Borrower executed by each of (a) Holdings, (b) the Borrower, (c) the Administrative Agent and (d) each existing or new Lender that agrees to provide any portion of the Refinancing Term Loans being incurred pursuant thereto, in accordance with Section 2.14.

“Refinancing Effective Date” has the meaning specified in Section 2.14(b).

“Refinancing Notes” has the meaning specified in Section 2.14(d).

“Refinancing Term Lenders” has the meaning specified in Section 2.14(a)(v).

“Refinancing Term Loans” has the meaning specified in Section 2.14(a).

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

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

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

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

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

“Repricing Event” means (a) any prepayment, repayment, refinancing, substitution or replacement of all or a portion of the Loans (except in connection with a Change of Control that results in the prepayment in full of the Facility) with the proceeds of, or any conversion of any such Loans into, any new or replacement tranche of term loans or Indebtedness (including, without limitation, any Refinancing Term Loans or Refinancing Notes) with an All-In Yield less than the All-In Yield applicable to such Loans (as such comparative yields are determined in the reasonable judgment of the Administrative Agent consistent with generally accepted financial practices) and (b) any amendment to the pricing terms of the Loans which reduces the All-In Yield applicable to such Loans (other than as a result of no longer applying the Default Rate).

“Required Lenders” means, at any time, Lenders holding more than 50% of the sum of the (a) Outstanding Amount of Loans on such date and (b) aggregate unused Commitments; provided that the portion of the Facility held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Rescindable Amount” has the meaning assigned to such term in Section 2.10(a)(ii).

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

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated

in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restatement Effective Date” means May 28, 2021.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property, but excluding payment-in-kind) with respect to any capital stock or other Equity Interest of any Person, or any payment (whether in cash, securities or other property, but excluding payment-in-kind), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or any option, warrant or other right to acquire any such dividend or other distribution or payment.

“Restricted Subsidiary” means any Subsidiary that is not an Unrestricted Subsidiary.

“Rollover Lender” means each Lender with an Existing Loan outstanding on the Restatement Effective Date that has consented to exchange such Existing Loan into a Loan under this Agreement and that has been allocated such Loan (or portion thereof) by the Administrative Agent.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sanction(s)” means any sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

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

“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

“Secured Hedge Agreement” means any Swap Contract permitted under Article VI or VII that is entered into by and between any Loan Party and any Hedge Bank.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“Security and Pledge Agreement” means that certain Security and Pledge Agreement dated as of the Original Closing Date by the Company and the other Loan Parties to the

Administrative Agent for the benefit of the Secured Parties, as supplemented or joined from time to time by the execution and delivery of supplements and joinders as provided therein or as otherwise reasonably acceptable to the Administrative Agent.

“Security Reaffirmation” shall have the meaning provided in Section 4.01(a)(i).

7 “SOFR Early Opt-in” means the Administrative Agent and the Borrower have elected to replace LIBOR pursuant to
(1) an Early Opt-in Election and (2) Section 3.03(c)(i) and paragraph (1) of the definition of “Benchmark Replacement.”

8

“Solvent” and “Solvency” mean as to any Person, such Person (a) owns property or assets whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns property or assets whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not “insolvent” within the meaning of Section 101(32) of the Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. “Fair salable value” means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

“Specified Default” shall mean an Event of Default arising under any or all of Sections 8.01(a), (f) or (g).

“Specified Disposition” means any sale or other Disposition after the Restatement Effective Date of the Equity Interest in, or any assets constituting all or any portion of, Nuvera Fuel Cells, LLC (including for non-cash consideration) and any other non-core assets (including for non-cash consideration) related thereto that are Disposed of in connection with any such Disposition.

“Specified Loan Party” means any Loan Party that is not an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.10).

“Specified Transaction” means any Investment that results in a Person becoming a Restricted Subsidiary, any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, any Permitted Acquisition, any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of Holdings, or any Disposition of a business unit, line of business or division of Holdings or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation, Division or otherwise, or any incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes without any adjustment to the

commitments thereunder), Restricted Payment or other event that by the terms of this Agreement requires a test to be calculated for “*pro forma compliance*” or on a “*pro forma basis*” or after giving “*pro forma effect*.”

“Subordinated Provisions” shall have the meaning provided in Section 8.01(m).

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Holdings.

“Subsidiary Guarantors” means, collectively, (a) each Material Domestic Subsidiary of Holdings that is a party to the Guaranty and (b) any other Domestic Subsidiary that is from time to time party to the Guaranty or any other agreement pursuant to which it guarantees the Obligations or any portion thereof.

“Supported QFC” has the meaning specified in Section 11.20.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

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

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

other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

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

“Term Loan Increase” has the meaning assigned to such term in Section 2.13(a).

“Term Loan Priority Collateral” has the meaning specified in the Intercreditor Agreement.

9 “Term SOFR” means, for the applicable corresponding tenor (or if any Available Tenor of a Benchmark does not correspond to an Available Tenor for the applicable Benchmark Replacement, the closest corresponding Available Tenor and if such Available Tenor corresponds equally to two Available Tenors of the applicable Benchmark Replacement, the corresponding tenor of the shorter duration shall be applied), the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Threshold Amount” means \$15,000,000.

“Trade Date” has the meaning assigned to such term in Section 11.06(f).

“Transactions” means, collectively, (a) the entering into of this Agreement and making of Loans on the Restatement Effective Date, (b) the payment of fees, commissions, transaction costs and expenses incurred in connection with each of the foregoing and (c) all related transactions to occur on or prior to the Restatement Effective Date.

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

“UCC” means the Uniform Commercial Code as in effect in the State of New York provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

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

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

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

“Unrestricted Subsidiary” means any Subsidiary that has been designated as an “Unrestricted Subsidiary” pursuant to Section 2.12 hereof and has not been re-designated as a Restricted Subsidiary in accordance with such Section 2.12.

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

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

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness; *provided* that (x) AHYDO payments and the effects of any reductions in scheduled amortization or other scheduled payments as a result of any prior prepayment of the applicable Indebtedness shall be disregarded and (y) with respect to any bridge financing, the Weighted Average Life to Maturity shall be determined by reference to the notes or loans into which such bridge financing is converted or exchanged.

“Working Capital” means, for Holdings and its Restricted Subsidiaries on a consolidated basis and calculated in accordance with GAAP, as of any date of determination, the excess of (a) current assets (other than cash, Cash Equivalents, taxes and deferred taxes) over (b) current liabilities, excluding, without duplication, (i) the current portion of any long-term Indebtedness, (ii) the current portion of current taxes and deferred income taxes and (iii) the current portion of accrued Consolidated Interest Expenses.

“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.

I.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

I.03 Accounting Terms. Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded. If at any time, any change in GAAP (including the adoption of IFRS) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders

and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, for all purposes of this Agreement only those leases that would constitute Capitalized Leases in conformity with GAAP as in effect prior to giving effect to the adoption of ASU No. 2016-02 “Leases (Topic 842)” and ASU No. 2018-11 “Leases (Topic 842)” shall be considered Capitalized Leases, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

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

(c) Pro Forma Calculations. For purposes of calculating the Consolidated Total Net Leverage Ratio, Consolidated First Lien Net Leverage Ratio, Consolidated Secured Net Leverage Ratio or Fixed Charge Coverage Ratio for any purpose hereunder, Specified Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (A) during the period in respect of which such calculations are required to be made or (B) subsequent to such period and prior to or simultaneously with the event for which the calculation of any such ratio is made on a *pro forma* basis (solely with respect to determining *pro forma* compliance for such event, and not for other purposes (including pricing or the applicable percentage for Excess Cash Flow prepayments)) shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used in either of the foregoing attributable to any Specified Transaction) had occurred on the first day of the period in respect of which such calculations are required to be made. If since the beginning of any applicable period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into Holdings or any of its Restricted Subsidiaries since the beginning of such period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.03(d), then, at the option of the Borrower, the Consolidated Total Net Leverage Ratio, Consolidated First Lien Net Leverage Ratio, Consolidated Secured Net Leverage Ratio and Fixed Charge Coverage Ratio shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.03(d).

(i) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Responsible Officer, subject, in the case of any Permitted Acquisition for consideration in excess of \$50,000,000, to the Administrative Agent’s receipt of, to the extent available to Holdings or the Restricted

Subsidiaries, (x) the most recent financial statements with respect to the acquired Person or business available and prepared by such acquired Person or the seller thereof and (y) the most recent audited and interim unaudited financial statements with respect to the acquired Person.

I.04 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

I.05 Times of Day; Rates. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable)

I.06 Currency Equivalents Generally. Any amount specified in this Agreement (other than in Articles II, IX and X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.06, the “Spot Rate” for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

I.07 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) (each, a “Division”): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person (such different Person, a “Division Successor”), then it shall be deemed to have been transferred from the original Person to the Division Successor, 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.

I.08 Existing Credit Agreement. On the Restatement Effective Date, (i) this Agreement shall amend and restate the Existing Credit Agreement in its entirety but, for the avoidance of doubt, this Agreement shall not constitute a novation of the Existing Credit Agreement, the Loan Documents (as defined in the Existing Credit Agreement) or the parties’ rights and obligations thereunder and (ii) the Liens and security interests as granted under the Existing Credit Agreement or any Loan Document (as defined in the Existing Credit Agreement) securing payment of indebtedness, liabilities and obligations thereunder are in all respects continuing and in full force and effect.

I.09 Interest Rates. The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Rate” or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any of such rate (including, without limitation, any Benchmark Replacement) or the effect of any of the foregoing, or of any Benchmark Replacement Conforming Changes.

Article II

THE COMMITMENTS AND LOANS

II.01 The Term Loan. Subject to the terms and conditions set forth herein, each Rollover Lender severally agrees to exchange its Exchanged Loans for a like principal amount of Loans on the Restatement Effective Date. Subject to the terms and conditions set forth herein, each Additional Restatement Effective Date Lender severally agrees to make an Additional Restatement Effective Date Loan (which shall be part of the Loans hereunder) to the Borrower in a single borrowing on the Restatement Effective Date in an amount equal to such Lender’s Additional Restatement Effective Date Loan Commitment. The Borrower shall prepay the Non-Exchanged Loans with a like amount of the gross proceeds of the Additional Restatement Effective Date Loans substantially concurrently with the receipt thereof. The Borrower shall pay the Rollover Lenders immediately prior to the effectiveness of this Agreement all accrued and unpaid interest on their Existing Loans to, but not including, the Restatement Effective Date on the Restatement Effective Date. Amounts borrowed or exchanged under this Section 2.01 and repaid or prepaid may not be reborrowed. Loans may be Base Rate Loans or Eurodollar Rate Loans as further provided herein.

II.02 Borrowings, Conversions and Continuations of Loans. The Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower’s irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Loan Notice; provided that any telephone notice must be confirmed immediately by delivery to the Administrative Agent of a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of, or conversion to, Base Rate Loans; provided, however, that if the Borrower wishes to request Eurodollar Rate Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of “Interest Period,” the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., three Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all

the Lenders. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$500,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Eurodollar Rate Loans having an Interest Period of one month. Any such automatic continuation or conversion shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic continuation or conversion described in Section 2.02(a). In the case of the initial Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction or waiver of the applicable conditions set forth in Section 4.01, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(c) A Eurodollar Rate Loan that is continued or converted other than on the last day of an Interest Period for such Eurodollar Rate Loan shall be subject to Section 3.05. During the existence of an Event of Default, upon the election of the Required Lenders, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than 6 Interest Periods in effect.

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

II.03 Prepayments.

(a) Optional. Subject to the last sentence of this Section 2.03(a), the Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty (except as set forth in clause (c) below); provided that (A) such notice must be in a form reasonably acceptable to the Administrative Agent and received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans.

The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that any notice of prepayment may state that it is conditioned upon the occurrence or non-occurrence of any event specified therein (including the effectiveness of other credit facilities), in which case such notice may be revoked or delayed by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied or delayed. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Loans pursuant to this Section 2.03(a) shall be applied to the principal repayment installments thereof as the Borrower may direct (and in the absence of any such direction, on a pro-rata basis), and subject to Section 2.15, each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages. Notwithstanding anything to the contrary contained herein, the Borrower shall not be permitted to prepay the Loans pursuant to this Section 2.03(a) during the period from the Restatement Effective Date through the date ten Business Days thereafter.

(b) Mandatory.

(i) Following the end of each fiscal year of the Holdings, commencing with the fiscal year ending December 31, 2022, the Borrower shall prepay Loans in an aggregate amount equal to (A) the ECF Prepayment Percentage of Excess Cash Flow for

such fiscal year less (B) the aggregate principal amount of any voluntary prepayments in respect of Loans and other Indebtedness permitted to be incurred hereunder that ranks pari passu with the Loans (except, in each case, to the extent financed with the proceeds of long-term Indebtedness (other than revolving Indebtedness)) during such fiscal year or, without duplication, after the end of such fiscal year but prior to the date on which the prepayment described in this clause (i) (each, an “Excess Cash Flow Prepayment”) is required less (C) (x) the aggregate amount of cash actually paid by Holdings and its Restricted Subsidiaries during such fiscal year on account of capital expenditures, Permitted Acquisitions or other Permitted Investments (other than any amounts that were committed during a prior fiscal year to the extent such amounts reduced the Excess Cash Flow Prepayment in such prior fiscal year per clause (y) hereof (except, in each case, to the extent financed with the proceeds of long-term Indebtedness (other than revolving Indebtedness)), and (y) without duplication of amounts deducted from the Excess Cash Flow Prepayment in respect of a prior period, at the option of the Borrower, the aggregate consideration required to be paid in cash by Holdings and its Restricted Subsidiaries pursuant to binding contracts (the “Contract Consideration”) entered into during such fiscal year or, without duplication, after the end of such fiscal year but prior to the date on which the Excess Cash Flow Prepayment is required relating to capital expenditures, Permitted Acquisitions or other Permitted Investments, in each case, to be consummated or made during the period of four consecutive fiscal quarters of Holdings following the end of such period (except, in each case, to the extent financed with the proceeds of long-term Indebtedness (other than revolving Indebtedness)); provided that to the extent the aggregate amount actually utilized in cash to finance such capital expenditure, Permitted Acquisition or other Permitted Investment during such subsequent period of four consecutive fiscal quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of the Excess Cash Flow Prepayment at the end of such subsequent period of four consecutive fiscal quarters, less (D) permitted Restricted Payments paid in cash or otherwise declared by Holdings during such fiscal year or, at the option of the Borrower, prior to the date on which the Excess Cash Flow Prepayment is required and permitted Restricted Payments paid in cash or otherwise declared by any Restricted Subsidiary to any person other than Holdings or any of the Restricted Subsidiaries during such fiscal year or, at the option of the Borrower, prior to the date on which the Excess Cash Flow Prepayment is required, in each case in accordance with Section 7.06; provided that, with respect to any reduction for any declared Restricted Payments, to the extent the aggregate amount actually utilized in cash in connection with any such Restricted Payment during the subsequent period of four consecutive fiscal quarters is less than the declared amount, the amount of such shortfall shall be added to the calculation of the Excess Cash Flow Prepayment at the end of such subsequent period of four consecutive fiscal quarters.

Each Excess Cash Flow Prepayment shall be applied as set forth in clause (v) below and shall be made no later than the date that is five Business Days after the date on which financial statements are required to be delivered pursuant to Section 6.01(a) with respect to the fiscal year for which Excess Cash Flow is being calculated.

(ii) If Holdings or any of its Restricted Subsidiaries Disposes (including as a result of any casualty or condemnation) of any property (other than (A) any Disposition of any property permitted by any of Sections 7.05(a)-(i), (B) any Specified Disposition and (C) so long as the ABL Credit Agreement is in effect, any Disposition of ABL Priority Collateral, the proceeds of which are used to prepay the ABL Facility or cash collateralize undrawn letters of credit thereunder) which results in the realization by such Person of Net Cash Proceeds, the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of such Net Cash Proceeds within five Business Days of receipt thereof by such Person (such prepayments to be applied as set forth in clause (v) below); provided that with respect to an aggregate amount of such Net Cash Proceeds not to exceed \$10,000,000 received by Holdings and its Restricted Subsidiaries in any fiscal year under Dispositions described in this Section 2.03(b)(ii), such Net Cash Proceeds shall not be required to be so applied or used to make mandatory prepayments of Loans and any required prepayment in respect of such Disposition shall be only the amount in excess thereof; provided further that with respect to any Net Cash Proceeds realized under a Disposition described in this Section 2.03(b)(ii), at the election of the Borrower (as notified by the Borrower to the Administrative Agent on or prior to the date of such Disposition), and so long as no Default shall have occurred and be continuing, Holdings or such Restricted Subsidiary may reinvest all or any portion of such Net Cash Proceeds in operating assets so long as (A) within 360 days after receipt of such Net Cash Proceeds, such reinvestment shall have been consummated (or a definitive agreement to so reinvest shall have been executed), and (B) if a definitive agreement to so reinvest has been executed within such 360-day period, then such reinvestment shall have been consummated within 180 days after the date of entering into of such definitive agreement (in each case, as certified by the Borrower in writing to the Administrative Agent); and provided further that any Net Cash Proceeds not subject to such definitive agreement or so reinvested shall be applied within five Business Days to the prepayment of the Loans as set forth in this Section 2.03(b)(ii).

(iii) Upon the incurrence or issuance by Holdings or any of its Restricted Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.02 (other than any Refinancing Term Loans or Refinancing Notes)), the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by Holdings or such Restricted Subsidiary (such prepayments to be applied as set forth in clauses (iv) and (vi) below).

(iv) Subject to clause (vi) below, each prepayment of Loans pursuant to any of the foregoing Sections 2.03(b)(i) through (iii) shall be applied, to the Facility and to the principal repayment installments thereof in direct order of maturity to the next four principal repayment installments of the Facility and, thereafter, to the remaining principal repayment installments (including any installment on the Maturity Date) of the Facility on a pro rata basis.

(v) Notwithstanding anything to the contrary contained in Section 2.03(b)(i) through (iii), to the extent attributable to a Disposition by a Restricted Subsidiary that is a Foreign Subsidiary, or arising from Excess Cash Flow attributable to a Foreign Subsidiary, and in any such case a Restricted Payment or other distribution to the Borrower or Holdings is required (notwithstanding the Loan Parties' commercially reasonable efforts to make such mandatory prepayment without making such Restricted Payment or other payment) in connection with such prepayment (or portion thereof), no prepayment (or a portion thereof) required under Section 2.03(b)(i) through (iii) shall be made if either of Holdings or any Restricted Subsidiary determines in good faith that it would incur a liability in respect of Taxes (including any withholding tax) in connection with making such Restricted Payment or other distribution which Holdings, in its reasonable judgment, deems to be material.

(vi) Prepayments of the Loans and, if applicable, Refinancing Term Loans with the proceeds of Refinancing Term Loans or Refinancing Notes shall be made in accordance with Section 2.14.

(c) Call Premium. In the event that, during the six (6) month period following the Restatement Effective Date, the Borrower (i) prepays, refinances, substitutes or replaces any Loans in connection with any Repricing Event the primary purpose of which is to decrease the All-In Yield on such Loans or (ii) effects any amendment of this Agreement resulting in a Repricing Event the primary purpose of which is to decrease the All-In Yield on such Loans, the Borrower shall pay to the Administrative Agent, for the ratable account of each applicable Lender, a fee in an amount equal to, (x) in the case of clause (i), a prepayment premium of 1.00% of the principal amount of the Loans so prepaid, refinanced, substituted or replaced and (y) in the case of clause (ii), a payment equal to 1.00% of the aggregate principal amount of the applicable Loans outstanding immediately prior to such amendment which are affected by such Repricing Event (it being understood that any prepayment premium with respect to a Repricing Event shall apply to any required assignment by a Non-Consenting Lender in connection with any such amendment pursuant to Section 11.13). Such fees shall be due and payable on the date of the effectiveness of such Repricing Event.

II.04 Termination of Commitments. The aggregate Commitments shall be automatically and permanently reduced to zero on the Restatement Effective Date immediately after giving effect to the Borrowing and conversion set forth in Section 2.01 on the Restatement Effective Date.

II.05 Repayment of Loans. The Borrower shall repay to the Lenders the aggregate principal amount of all Loans outstanding on the last day of each March, June, September and December commencing September 30, 2021 in an amount equal to 0.25% times the aggregate initial principal amount of the Loans actually made on the Restatement Effective Date pursuant to Section 2.01 (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.04); provided, however, that the final principal repayment installment of the Loans shall be repaid on the Maturity Date and in any

event shall be in an amount equal to the aggregate principal amount of all Loans outstanding on such date.

II.06 Interest. Subject to the provisions of Section 2.06(b), (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b)

(i) If any amount payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Upon the request of the Required Lenders, while any Specified Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

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

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

II.07 Fees.

(a) The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

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

II.8 Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other

computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.10(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

II.9 Evidence of Debt. The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loan made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

II.10 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base

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

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount") : (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative agent has for any reason otherwise erroneously made such payment; then each of the Lenders, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by

the Administrative Agent in accordance with banking industry rules on interbank compensation.

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

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

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

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

(e) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

II.11 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents

at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations 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 Section shall not be construed to apply to (A) any payment made by or on behalf of the Loan Parties pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender or Disqualified Institution), or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to Holdings, the Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply).

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

Notwithstanding anything to the contrary contained in this Section 2.11 or elsewhere in this Agreement, the Borrower may extend the final maturity of Loans in connection with an Extension that is permitted under Section 2.16 (each, an “Extension Offer”) without being obligated to effect such extensions on a pro rata basis among the Lenders (it being understood that no such extension (i) shall constitute a payment or prepayment of any Loans for purposes of this Section 2.11 or (ii) shall reduce the amount of any scheduled amortization payment due under Section 2.05, except that the amount of any scheduled amortization payment due to a Lender of Extended Loans may be reduced to the extent provided pursuant to the express terms of the respective Extension Offer) without giving rise to any violation of this Section 2.11 or any other provision of this Agreement. Furthermore, the Borrower may take all actions contemplated by Section 2.16 in connection with any Extension (including modifying pricing, amortization and repayments or prepayments), and in each case such actions shall be permitted, and the differing payments contemplated therein shall be permitted without giving rise to any violation of this Section 2.11 or any other provision of this Agreement.

II.12 Designation of Unrestricted and Restricted Subsidiaries.

(a) At any time after the Restatement Effective Date, upon written notice to the Administrative Agent (which written notice shall contain a certification as to the matters set forth

in this clause (a)), the Borrower may designate any Restricted Subsidiary of Holdings (along with all Subsidiaries of such Restricted Subsidiary) as an “Unrestricted Subsidiary”; provided that (i) both before and after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing, (ii) the Investment in such Unrestricted Subsidiary must be permitted at such time under either Section 7.03(c), (h), (i), (j) or (m), (iii) once designated as an Unrestricted Subsidiary, the Borrower may re-designate such Subsidiary as a “Restricted Subsidiary” pursuant to Section 2.12(b), but, thereafter, the Borrower shall not re-designate such Subsidiary as an “Unrestricted Subsidiary” pursuant to this Section 2.12(a), and (iv) no Subsidiary may be designated as an Unrestricted Subsidiary or continue as an Unrestricted Subsidiary (A) if it is a borrower or guarantor under the ABL Facility or (B) unless each of its direct and indirect Subsidiaries is also designated an Unrestricted Subsidiary pursuant to this Section 2.12(a). The designation of any Subsidiary as an Unrestricted Subsidiary after the Restatement Effective Date shall constitute an Investment (with the amount of such Investment being deemed to be the fair market value of the net assets of such Subsidiary at the time such Subsidiary is designated an Unrestricted Subsidiary (or, with respect to any such Subsidiary that is not a wholly-owned Subsidiary, the percentage of such fair market value of the net assets that is equal to the percentage ownership of the Equity Interests held by Holdings, the Borrower or a Restricted Subsidiary) by Holdings, the Borrower or a Restricted Subsidiary therein at the date of designation.

(b) At any time after the Restatement Effective Date and upon written notice to the Administrative Agent, the Borrower may re-designate any Unrestricted Subsidiary as a “Restricted Subsidiary”; provided that (i) no Subsidiary holding or owning Equity Interests in such re-designated Restricted Subsidiary shall be an Unrestricted Subsidiary (unless also being re-designated at such time) and (ii) both before and after giving effect to such designation, no Event of Default shall have occurred and be continuing. The re-designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such re-designated Restricted Subsidiary existing at such time and (ii) a return on any Investment by Holdings, the Borrower or other applicable Restricted Subsidiary in such re-designated Restricted Subsidiary in an amount equal to the fair market value at the date of such designation of Holdings’, the Borrower’s or its Restricted Subsidiary’s (as applicable) Investment in such re-designated Restricted Subsidiary.

(c) Any designation of a Subsidiary as an Unrestricted Subsidiary or a Restricted Subsidiary shall be deemed a representation and warranty by the Borrower that each of the requirements in Section 2.12(a) or Section 2.12(b), as applicable, are satisfied in all respects.

(d) Notwithstanding the foregoing, in no event shall the Borrower or any Subsidiary that directly or indirectly owns Equity Interests of the Borrower be an Unrestricted Subsidiary.

(e) As of the Restatement Effective Date, the Subsidiaries listed on Schedule 2.12 are Unrestricted Subsidiaries.

II.13 Increase in Commitments.

(a) Request for Increase. The Borrower may, from time to time, request by notice to the Person appointed by the Borrower to arrange an incremental Facility (such Person (who (i) may be the Administrative Agent, if it so agrees, or (ii) any other Person (other than an Affiliate of the Borrower) appointed by the Borrower after consultation with the Administrative Agent; provided that such Person may not be an Affiliate of the Borrower), the “Incremental Arranger”) (x) one or more increases in the Facility (each, a “Term Loan Increase”) or (y) one or more term loan tranches to be made available to the Borrower (each, an “Incremental Term Loan”; each Incremental Term Loan and each Term Loan Increase, collectively, referred to as the “Incremental Increases”); provided that (i) the principal amount for such Incremental Increase, when combined with the aggregate principal amount of all Incremental Increases and incurrences of Permitted Pari Passu Notes, Permitted Pari Passu Loans and Permitted Junior Debt pursuant to Section 7.02(w)(A) after the Restatement Effective Date, shall not exceed the Maximum Increase Amount as of such date (it being understood that the reclassification mechanics set forth in the definition of “Maximum Increase Amount” shall apply to Incremental Increases pursuant to this Section 2.13(a)); (ii) any such request for an Incremental Increase shall be in a minimum amount of \$10,000,000 (or a lesser amount in the event such amount represents all remaining availability under this Section); (iii) no Incremental Term Loan shall mature earlier than the Latest Maturity Date then in effect or have a shorter Weighted Average Life to Maturity than the remaining Weighted Average Life to Maturity of the Facility or any other Incremental Term Loan; (iv) each Incremental Term Loan shall (A) rank *pari passu* or junior in right of payment, prepayment, voting and/or security with the Loans, including sharing in mandatory prepayments under Section 2.03(b) *pro rata* with the Loans (unless agreed to be paid after the Loans and/or any other Incremental Term Loans by the Lenders providing such Incremental Term Loan) (and any Incremental Term Loans that are junior in right of payment and/or security shall have customary second lien, prepayment, standstill and other provisions, including any applicable intercreditor agreement, in each case reasonably acceptable to the Administrative Agent and the Borrower) and (B) shall have an Applicable Rate or pricing grid as determined by the Lenders providing such Incremental Term Loans and the Borrower; provided that, if the All-In Yield in respect of any Incremental Term Loan established on or prior to the date that is twelve months after the Restatement Effective Date exceeds the Applicable Rate then in effect for the Facility by more than 0.50% for each Type of Loan, then the Applicable Rate for the Facility shall be increased so that the Applicable Rate in respect of the Facility for each Type of Loan is equal to the Applicable Rate for the Incremental Term Loan for each Type of Loan minus 0.50%; provided, further, solely for the purposes of this Section 2.13(a), in determining the Applicable Rate(s) applicable to each Incremental Term Loan and the Applicable Rate(s) for the Facility, (1) OID or upfront fees (which shall be deemed to constitute like amounts of OID) payable by the Borrower to the Lenders under such Incremental Term Loan or the Facility in the initial primary syndication thereof shall be included (with OID being equated to interest based on assumed four-year life to maturity), (2) the effects of any and all LIBOR floors shall be included and (3) customary arrangement, commitment, structuring or underwriting fees payable to the Arrangers (or their respective affiliates) in connection with the Facility or to one or more Incremental Arrangers (or their affiliates) of any Incremental Term Loan shall be excluded; (v) except as provided above, all other terms and conditions applicable to any Incremental Term Loan, to the extent not consistent with the terms and conditions applicable to the Facility, shall be reasonably satisfactory to the Incremental Arranger, the applicable Lenders providing such Term Loan

Increase or Incremental Term Loan and the Borrower, provided that in no event shall the covenants, defaults and similar non-economic provisions applicable to any Incremental Term Loan, taken as a whole, (x) be materially more restrictive than the corresponding terms set forth in or made applicable to the Facility (except to the extent (1) only applicable after the Latest Maturity Date then in effect, (2) such covenants, defaults and similar non-economic provisions are incorporated into this Agreement and the other Loan Documents for the benefit of all existing Lenders (it being understood and agreed that the Borrower and the Administrative Agent may amend the Loan Documents to reflect such changes without the consent of any other person) or (3) consistent with the then-prevailing market convention, as determined in good faith by the Borrower) or (y) contravene any of the terms of the then existing Loan Documents; (vi) each Term Loan Increase shall be on the same terms and conditions (including pricing, maturity, amortization, payments and prepayments) as the Facility; (vii) each Incremental Increase shall constitute Obligations hereunder and, except as provided above with respect to any Incremental Term Loan that is junior in right of payment, prepayment, voting and/or security, shall be guaranteed and secured pursuant to the Guaranty and the Collateral Documents (including an Intercreditor Agreement) on a *pari passu* basis with the other Obligations hereunder; and (viii) the applicable documentation (including amendments to this Agreement and the other Loan Documents) with respect to any Term Loan Increase or Incremental Term Loan shall be reasonably satisfactory to the Administrative Agent, the applicable Lenders providing such Term Loan Increase or Incremental Term Loan and the Borrower.

(b) Process for Increase. Incremental Increases may be (but shall not be required to be) provided by any existing Lender, in each case on terms permitted in this Section 2.13, or by any other Person that qualifies as an Eligible Assignee (each such other Person, an “Additional Lender”) pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent; provided that the Administrative Agent shall have consented (in each case, such consent not to be unreasonably withheld, delayed or conditioned) to each proposed Additional Lender providing such Incremental Increase to the extent the Administrative Agent would be required to consent to an assignment to such Additional Lender pursuant to Section 11.06(b)(iii); provided further that the Borrower shall not be required to offer or accept commitments from existing Lenders for any Incremental Increase. No Lender shall have any obligation to increase its Commitment or Loans or participate in any Incremental Term Loan, as the case may be, and no consent of any Lender, other than the Lenders agreeing to provide any portion of an Incremental Increase, shall be required to effectuate such Incremental Increase.

(c) Effective Date and Allocations. The Administrative Agent and the Borrower shall determine the effective date of any Incremental Increase (the “Increase Effective Date”). The Administrative Agent shall promptly notify the Borrower, the Administrative Agent and the Lenders of the final allocation of such Incremental Increase and the Increase Effective Date.

(d) Conditions to Effectiveness of Increase.

(i) As a condition precedent to each Incremental Increase, the Borrower shall deliver to the Administrative Agent a certificate of the Borrower and, if reasonably determined by the Administrative Agent to be necessary or desirable under applicable

Law with respect to the Guaranty of a Guarantor, of each such Guarantor, dated as of the Increase Effective Date, signed by a Responsible Officer of the applicable Borrower or Guarantor and (x) certifying and attaching the resolutions adopted by the applicable Borrower or Guarantor approving or consenting to such Incremental Increase (which, with respect to any such Loan Party, may, if applicable, be the resolutions entered into by such Loan Party in connection with the incurrence of the Obligations on the Restatement Effective Date) and (y) certifying that, before and after giving effect to such increase:

(A) the representations and warranties contained in Article V and the other Loan Documents shall be true and correct in all material respects (or, with respect to representations and warranties modified by a materiality or Material Adverse Effect standard, in all respects) on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or, with respect to representations and warranties modified by a materiality or Material Adverse Effect standard, in all respects) as of such earlier date, and except that for purposes of this Section 2.13, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements of Holdings and its Subsidiaries furnished pursuant to subsections (a) and (b), respectively, of Section 6.01; provided that in the case of any Incremental Term Loan or Term Loan Increase the proceeds of which are to be used to finance a Limited Condition Acquisition, the applicable representations and warranties may, if agreed to by the lenders providing such Incremental Term Loan or Term Loan Increase, be limited to (1) the specified representations (or such other formulation thereof as may be agreed by the lenders providing such Incremental Increase) and (2) customary acquisition agreement representations for limited condition acquisitions; provided further that in such a case, on the date of entering into the definitive documentation for such Limited Condition Acquisition (and as a condition to the requested Incremental Term Loan or Term Loan Increase), the representations and warranties contained in Article V and the other Loan Documents shall be true and correct in all material respects (or, with respect to representations and warranties modified by a materiality or Material Adverse Effect standard, in all respects) on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or, with respect to representations and warranties modified by a materiality or Material Adverse Effect standard, in all respects) as of such earlier date; and

(B) no Default shall exist and be continuing; provided that in the case of any Incremental Term Loan or Term Loan Increase the proceeds of which are to be used to finance a Limited Condition Acquisition, to the extent agreed by the lenders providing such Incremental Term Loan or Term Loan Increase, (x) on the date of entering into the definitive documentation for such Limited Condition Acquisition, no Default shall have occurred and be continuing or shall occur as a result thereof and (y) on the date of effectiveness of any such Incremental Term

Loan or Term Loan Increase and the making of any Loan thereunder, no Specified Default shall have occurred and be continuing or shall occur as a result thereof.

(ii) To the extent that any Incremental Increase shall take the form of a Term Loan Increase or an Incremental Term Loan, this Agreement may be amended to the extent necessary (without the need to obtain the consent of any Lender other than the Lenders providing such Incremental Term Loans or Term Loan Increase), in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, to include such terms as are customary for a term loan commitment, including mandatory prepayments, assignments and voting provisions; provided that (i) if any terms taken as a whole are adverse to the material interests of the existing Lenders, as reasonably determined by the Administrative Agent, then that shall constitute a reasonable basis for the Administrative Agent not to be satisfied with such terms or amendment and (ii) no such terms or amendment shall contravene any of the terms of the then existing Loan Documents.

(iii) As a condition precedent to each Incremental Increase, all fees and expenses relating to each Incremental Increase, to the extent due and payable, shall have been paid in full.

(e) Conflicting Provisions. This Section shall supersede any provisions in Section 2.11 or 11.01 to the contrary.

II.14 Refinancing Amendments.

(a) At any time after the Restatement Effective Date, the Borrower may, by written notice to the Administrative Agent, request the establishment of one or more additional classes of term loans under this Agreement or an increase to an existing class of term loans under this Agreement ("Refinancing Term Loans") to refinance, renew, replace, defease or refund all or a portion of any class of Loans then outstanding; provided that:

(i) the net proceeds of such Refinancing Term Loans shall be applied, concurrently or substantially concurrently with the incurrence thereof, solely to the pro rata repayment of the outstanding class of Loans or other Refinancing Term Loans being so refinanced;

(ii) each class of Refinancing Term Loans shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof (or such other amount necessary to repay any class of outstanding Loans or Refinancing Term Loans in full);

(iii) such Refinancing Term Loans shall be in an aggregate principal amount not greater than the aggregate principal amount of Loans or other Refinancing Term Loans to be refinanced or replaced, plus any accrued interest, premium, fees and expenses related thereto (including any original issue discount or upfront fees);

(iv) the final maturity date of such Refinancing Term Loans shall be no earlier than the Maturity Date of the Loans or other Refinancing Term Loans being refinanced (or, in the case of any unsecured or second lien Refinancing Term Loans, no earlier than the date 91 days after the Maturity Date of the Loans or other the Refinancing Term Loans so being refinanced), and the Weighted Average Life to Maturity of such Refinancing Term Loans shall be no shorter than the then remaining Weighted Average Life to Maturity of each class of Loans or Refinancing Term Loans being refinanced;

(v) the pricing, rate floors, discounts, fees and optional and mandatory prepayment or redemption provisions applicable to such Refinancing Term Loans shall be as agreed between the Borrower and each Person with a commitment for a Refinancing Term Loan (each, a “Refinancing Term Lender”) so long as, in the case of any mandatory prepayment or redemption provisions, such Refinancing Term Lenders do not participate on a greater than pro rata basis in any mandatory prepayments as compared to the Lenders;

(vi) the covenants, other terms and security documents applicable to such Refinancing Term Loans (excluding those terms described in the immediately preceding clause (v)), shall be (1) substantially identical to, or (taken as a whole) not materially less favorable to the Borrower than those applicable to the class of Loans being refinanced or replaced, except to the extent such covenants and other terms (x) apply solely to any period after the Maturity Date of the Loans existing at the time of such refinancing or replacement (or, in the case of any unsecured or second lien Refinancing Term Loans, after the date 91 days after the Maturity Date), (y) are incorporated into this Agreement and the other Loan Documents for the benefit of all existing Lenders (it being understood and agreed that the Borrower and the Administrative Agent may amend the Loan Documents to reflect such changes without the consent of any other person, or (z) are consistent with the then-prevailing market convention, as determined in good faith by the Borrower, or (2) otherwise reasonably satisfactory to the Administrative Agent;

(vii) no Restricted Subsidiary is a borrower or a guarantor with respect to such Refinancing Term Loans unless such Restricted Subsidiary is or becomes a Loan Party;

(viii) any Unrestricted Subsidiary shall be an “unrestricted subsidiary” under the terms of any Refinancing Term Loans;

(ix) no existing Lender shall be required to provide any Refinancing Term Loans;

(x) any secured Refinancing Term Loans (1) shall be subject to an Intercreditor Agreement or another intercreditor agreement reasonably acceptable to the Administrative Agent and (if applicable) the ABL Agent (including, as applicable, with respect to the ABL Facility) and other reasonably customary documentation on terms reasonably satisfactory to the Administrative Agent and (2) shall not be secured by any assets that do not also constitute Collateral for the Facility (and shall not be secured on a basis senior to that of the Liens in favor of the Secured Parties under the Loan Documents

with respect to any Collateral, including any Collateral covered by an Intercreditor Agreement) and shall not have a more senior lien priority than the Facility being so refinanced;

(xi) both before and after any such incurrence, the representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) on such date of issuance or incurrence, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date; and

(xii) the documentation with respect to any Refinancing Term Loans will be reasonably satisfactory to the Borrower, the Administrative Agent and the institutions providing such Refinancing Term Loans.

(b) Each such notice shall specify (x) the date (each, a “Refinancing Effective Date”) on which the Borrower proposes that the Refinancing Term Loans be made, which shall be a date reasonably acceptable to the Administrative Agent and (y) in the case of Refinancing Term Loans, the identity of the Persons (each of which shall be a Person that would be an Eligible Assignee (for this purpose treating a Lender of Refinancing Term Loans as if it were an assignee)) whom the Borrower proposes would provide the Refinancing Term Loans and the portion of the Refinancing Term Loans to be provided by each such Person. On each Refinancing Effective Date, each Refinancing Term Lender shall make a Refinancing Term Loan to the Borrower in a principal amount equal to such Person’s commitment therefor.

(c) This Section 2.14 shall supersede any provisions in Section 2.11 or Section 11.01 to the contrary. The Refinancing Term Loans shall be documented by a Refinancing Amendment executed by the Persons providing the Refinancing Term Loans (and the other Persons specified in the definition of “Refinancing Amendment” but no other existing Lender), and the Refinancing Amendment may provide for such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14. The effectiveness of any Refinancing Amendment shall be subject to the satisfaction on the date thereof of conditions consistent with the conditions in Section 4.01 and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) customary legal opinions, board resolutions and officers’ certificates substantially consistent with those delivered on the Restatement Effective Date (conformed as appropriate) or otherwise in form and substance reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Refinancing Term Loan is provided with the benefit of the applicable Loan Documents.

(d) Notwithstanding anything to the contrary contained in this Section 2.14 or elsewhere in this Agreement, the Borrower may elect to issue any notes or loans, in each case which will be pari passu or junior in right of payment and be secured by the Collateral on a pari passu or junior Lien basis (and if so secured, shall be subject to an Intercreditor Agreement or another intercreditor agreement reasonably acceptable to the Administrative Agent and, if applicable, the ABL Agent with respect to any such security in the Collateral, and in no event secured on a basis senior to the Obligations with respect to any such Collateral) or which will be unsecured, issued pursuant to one or more indentures, note purchase agreements or other agreements in lieu of Refinancing Term Loans to refinance, renew, replace, defease or refund all or a portion of any class of Loans then outstanding (“Refinancing Notes”); provided that such Refinancing Notes shall be consistent with the provisions and requirements set forth in subsection (a) above with respect to Refinancing Term Loans, including the use of the proceeds thereof to repay the Loans or other Refinancing Term Loans.

II.15 Defaulting Lenders.

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

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

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; *fourth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; and *fifth*, 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 in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 4.01 were satisfied or waived, such payment

shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.15(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent 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, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

II.16 Extension of Loans.

(a) Extension of Loans. The Borrower may at any time and from time to time request that all or a portion of the Loans of a given class (each, an "Existing Term Loan Tranche") be amended to extend the scheduled maturity date(s) with respect to all or a portion of any principal amount of such Loans (any such Loans which have been so amended, "Extended Loans") and to provide for other terms consistent with this Section 2.16. In order to establish any Extended Loans, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Term Loan Tranche) (each, a "Extension Request") setting forth the proposed terms of the Extended Loans to be established, which shall (x) be identical as offered to each Lender under such Existing Term Loan Tranche (including as to the proposed interest rates and fees payable) and offered pro rata to each Lender under such Existing Term Loan Tranche and (y) (except as to interest rates, fees, amortization, final maturity date, AHYDO Payments, optional prepayments and redemptions, premium, required prepayment dates and participation in prepayments, which shall be determined by the Borrower and the Extending Lenders and set forth in the relevant Extension Request), be substantially identical to, or (taken as a whole) not materially more favorable (as reasonably determined by the Borrower) to the Extending Lenders than those applicable to the Existing Term Loan Tranche subject to such Extension Request (except to the extent (1) only applicable after the Latest Maturity Date then in effect (immediately prior to the establishment of such Extended Loans), (2) such covenants, defaults and similar non-economic provisions are incorporated into this Agreement and the other Loan Documents for the benefit of all existing

Lenders (it being understood and agreed that the Borrower and the Administrative Agent may amend the Loan Documents to reflect such changes without the consent of any other person), (3) such terms are consistent with the then-prevailing market convention, as determined in good faith by the Borrower, or (4) such terms are reasonably satisfactory to the Administrative Agent) including: (i) all or any of the scheduled amortization payments of principal of the Extended Loans may be delayed to later dates than the scheduled amortization payments of principal of the Loans of such Existing Term Loan Tranche, to the extent provided in the applicable Extension Amendment; *provided, however*, that at no time shall there be classes of Loans hereunder (including Refinancing Term Loans and Extended Loans) which have more than five different Maturity Dates; (ii) the All-In Yield, pricing, optional redemptions and prepayments and AHYDO Payments with respect to the Extended Loans (whether in the form of interest rate margin, upfront fees, OID or otherwise) may be different than the All-In Yield, pricing, optional redemptions and prepayments and AHYDO Payments for the Loans of such Existing Term Loan Tranche, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that (1) apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Loans), (2) are incorporated into this Agreement and the other Loan Documents for the benefit of all existing Lenders (it being understood and agreed that the Borrower and the Administrative Agent may amend the Loan Documents to reflect such changes without the consent of any other person), (3) are consistent with the then-prevailing market convention, as determined in good faith by the Borrower, or (4) are reasonably satisfactory to the Administrative Agent; and (iv) Extended Loans may have call protection as may be agreed by the Borrower and the Lenders thereof; *provided, however*, that (A) in no event shall the final maturity date of any Extended Loans of a given Extension Series at the time of establishment thereof be earlier than the then Latest Maturity Date of any other Loans hereunder, (B) the Weighted Average Life to Maturity of any Extended Loans of a given Extension Series at the time of establishment thereof shall be no shorter than the remaining Weighted Average Life to Maturity of the applicable Existing Term Loan Tranche, (C) any such Extended Loans (and the Liens securing the same) shall be permitted by the terms of the Intercreditor Agreements (to the extent any Intercreditor Agreement is then in effect), (D) all documentation in respect of such Extension Amendment shall be consistent with the foregoing and (E) any Extended Loans may participate on a pro rata basis or less than a pro rata basis (but not greater than a pro rata basis) in any mandatory repayments or prepayments hereunder, in each case as specified in the respective Extension Request. Any Extended Loans amended pursuant to any Extension Request shall be designated a series (each, a “Extension Series”) of Extended Loans for all purposes of this Agreement; *provided* that any Extended Loans amended from an Existing Term Loan Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Extension Series with respect to such Existing Term Loan Tranche. Each Extension Series of Extended Loans incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than \$10,000,000 (or, if less, the entire principal amount of the Indebtedness being extended pursuant to this Section 2.16(a)).

(b) Extension Request. The Borrower shall provide an Extension Request at least five Business Days prior to the date on which Lenders under the Existing Term Loan Tranche are

requested to respond (or such shorter period as agreed by the Administrative Agent), and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent and the Borrower, in each case acting reasonably to accomplish the purposes of this Section 2.16. Subject to Section 3.06, no Lender shall have any obligation to agree to have any of its Loans of any Existing Term Loan Tranche amended into Extended Loans pursuant to any Extension Request. Any Lender holding a Loan under an Existing Term Loan Tranche (each, an “Extending Lender”) wishing to have all or a portion of its Loans under the Existing Term Loan Tranche subject to such Extension Request amended into Extended Loans shall notify the Administrative Agent (each, an “Extension Election”) on or prior to the date specified in such Extension Request of the amount of its Loans under the Existing Term Loan Tranche which it has elected to request be amended into Extended Loans (subject to any minimum denomination requirements imposed by the Administrative Agent). In the event that the aggregate principal amount of Loans under the Existing Term Loan Tranche in respect of which applicable Lenders shall have accepted the relevant Extension Request exceeds the amount of Extended Loans requested to be extended pursuant to the Extension Request, Loans subject to Extension Elections shall be amended to Extended Loans on a pro rata basis (subject to rounding by the Administrative Agent, which shall be conclusive) based on the aggregate principal amount of Loans included in each such Extension Election.

(c) Extension Amendment. Extended Loans shall be established pursuant to an amendment (each, an “Extension Amendment”) to this Agreement among the Borrower, the Administrative Agent and each Extending Lender providing an Extended Loan thereunder, which shall be consistent with the provisions set forth in Section 2.16(a) or **Error! Reference source not found.** above (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject to, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) legal opinions, board resolutions and officers’ certificates consistent with those delivered on the Restatement Effective Date other than changes to such legal opinion resulting from a change in law, change in fact or change to counsel’s form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that the Extended Loans are provided with the benefit of the applicable Loan Documents. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Loans incurred pursuant thereto, (ii) modify the scheduled repayments set forth in Section 2.05 with respect to any Existing Term Loan Tranche subject to an Extension Election to reflect a reduction in the principal amount of the Loans thereunder in an amount equal to the aggregate principal amount of the Extended Loans amended pursuant to the applicable Extension (with such amount to be applied ratably to reduce scheduled repayments of such Loans required pursuant to Section 2.05), (iii) modify the prepayments set forth in Section 2.03 to reflect the existence of the Extended Loans and the application of prepayments with respect thereto, (iv) make such other changes to this Agreement and the other Loan Documents consistent with the provisions and intent of the third paragraph of Section 11.01 (without the consent of the

Required Lenders called for therein) and (v) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.16, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment.

(d) No conversion or extension of Loans or Commitments pursuant to any Extension in accordance with this Section 2.16 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement. This Section 2.16 shall supersede any provisions in Section 2.11 or 11.01 to the contrary.

Article III

TAXES, YIELD PROTECTION AND ILLEGALITY

III.01 Taxes. Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

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

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

Notwithstanding anything to the contrary contained in any other Loan Document, all fees described in Section 2.07 shall be governed by this Section 3.01.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay to the relevant Governmental Authority in

accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications. Each of the Loan Parties shall jointly and severally, indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Administrative Agent and the Loan Parties, as applicable, against any Taxes of such Lender attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

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

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to any payments made under any Loan Document shall

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

(ii) Without limiting the generality of the foregoing,

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

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

(1) executed original copies of IRS Form W-8BEN-E (or W-8BEN, as applicable), or applicable successor form, establishing an exemption from, or reduction of, U.S. federal withholding Tax;

(2) executed original copies of IRS Form W-8ECI, or applicable successor form;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled

foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code and that no payment under any Loan Document is effectively connected with such Lender’s conduct of a U.S. trade or business (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable), or applicable successor form; or

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

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(e).

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

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

III.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder or make, maintain or fund or charge interest with respect to any Loan or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Loan or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by

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

III.03 Inability to Determine Rates.

(a) If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof, (i) the Administrative Agent determines that (A) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (B) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan (in each case with respect to clause (i)(A) above, “Impacted Loans”), or (ii) the Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods) and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent upon the instruction of the Required Lenders revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in Section 3.03(a)(i) (A), the Administrative Agent, in consultation with the Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under the first sentence of Section 3.03(a)(i), (ii) the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

(c) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents:

(i) On March 5, 2021 the Financial Conduct Authority (“FCA”), the regulatory supervisor of LIBOR’s administrator (“IBA”), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12- month U.S. dollar LIBOR tenor settings. On the earliest of (A) the date that all Available Tenors of U.S. dollar LIBOR have permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023 and (C) the Early Opt-in Effective Date in respect of a SOFR Early Opt-in, if the then-current Benchmark is LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(ii) (x) Upon (A) the occurrence of a Benchmark Transition Event or (B) a determination by the Administrative Agent that neither of the alternatives under clause (1) of the definition of “Benchmark Replacement” are available, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders (and any such objection shall be conclusive and binding absent manifest error); provided that solely in the event that the then-current Benchmark at the time of such Benchmark Transition Event is not a

SOFR-based rate, the Benchmark Replacement therefor shall be determined in accordance with clause (1) of the definition of “Benchmark Replacement” unless the Administrative Agent determines that neither of such alternative rates is available; and (y) on the Early Opt-in Effective Date in respect of an Other Rate Early Opt-in, the Benchmark Replacement will replace LIBOR for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document.

(iii) At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower’s receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, 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 the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.

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

(v) The Administrative Agent will promptly notify the Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this [Section 3.03\(c\)](#), 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 sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this [Section 3.03\(c\)](#).

(vi) At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or LIBOR), then the Administrative Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including

Benchmark Replacement) settings and (B) the Administrative Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

III.04 Increased Costs; Reserves on Eurodollar Rate Loans. Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e));

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

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or, in the case of clause (ii) above, any Loan), or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

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

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

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

III.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the 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:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank

eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

III.06 Mitigation Obligations; Replacement of Lenders. Designation of a Different Lending Office. Each Lender may make any Loan to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrower to repay the Loan in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower such Lender shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense 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 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, and in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Lender in accordance with Section 11.13.

III.07 Survival. All of the Loan Parties' obligations under this Article III shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

Article IV

CONDITIONS PRECEDENT TO CLOSING AND FUNDING

IV.01 Conditions to Closing and Funding. The obligation of each Lender to make its Loan hereunder on the Restatement Effective Date is subject to satisfaction or waiver of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Restatement Effective Date (or, in the case of certificates of governmental officials, a recent date before the Restatement Effective Date) and each in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders:

- (i) executed counterparts of (a) this Agreement, (b) a reaffirmation agreement relating to the Guaranty (the “Guaranty Reaffirmation”), (c) a reaffirmation agreement relating to the Security and Pledge Agreement and the other Collateral Documents (the “Security Reaffirmation”) and (d) a reaffirmation agreement relating to the Intercreditor Agreement (the “Intercreditor Reaffirmation”) properly executed by the Responsible Officer of each Loan Party and by the ABL Agent and in substantially the form of Exhibit I;
- (ii) a Note executed by the Borrower in favor of each Lender requesting a Note;
- (iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of the Borrower and each Guarantor as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which the Borrower or Guarantor is a party or is to be a party;
- (iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that the Borrower and each Guarantor is duly organized or formed, and that the Borrower and each Guarantor is validly existing, in good standing and qualified to engage in business in its jurisdiction of organization;
- (v) a customary opinion of Jones Day, as counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, dated as of the Restatement Effective Date;
- (vi) a solvency certificate substantially in the form of Exhibit H signed by a financial officer of Holdings and the Borrower;
- (vii) [reserved];
- (viii) a certificate signed by a Responsible Officer of the Borrower certifying that the conditions specified in Section 4.01(c), 4.01(d) and 4.01(e) have been satisfied;
- (ix) (A) audited consolidated balance sheets and related consolidated statements of income and cash flows of Holdings and its consolidated Subsidiaries for the fiscal year ended on or closest to December 31, 2020, and (B) unaudited consolidated balance sheets and related consolidated statements of income and cash flows of Holdings and its consolidated Subsidiaries for the fiscal quarter ended March 31, 2021;
- (x) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with the certificates of insurance, naming the Administrative Agent, on behalf of the Secured Parties, as an additional insured or lenders loss payee, as the case may be, under all property and general liability

insurance policies maintained with respect to the assets and properties of the Loan Parties that constitutes Collateral;

(b) The Collateral and Guarantee Requirement (other than in accordance with Section 6.17 and Schedule 6.17) shall have been satisfied and the Collateral shall be subject to no Liens other than Permitted Liens.

(c) Since December 31, 2020 there shall not have occurred any event, change, circumstance, occurrence, effect or state of facts that, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect.

(d) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) on the Restatement Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date.

(e) No Default shall exist, or would result from such proposed Loan.

(f) The Borrower shall have received (and provided evidence thereof to the Administrative Agent) recent Debt Ratings from each of S&P and Moody's.

(g) [Reserved].

(h) (i) All fees required to be paid to the Administrative Agent and the Arrangers on or before the Restatement Effective Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Restatement Effective Date shall have been paid.

(i) Unless waived by the Administrative Agent, all reasonable and documented out-of-pocket expenses required to be paid on or before the Restatement Effective Date shall have been paid (to the extent invoiced at least two (2) Business Days (or such shorter time as the Borrower may agree) prior to the Restatement Effective Date (provided that any such invoice shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

(j) The Administrative Agent and the Lenders shall have received, at least three Business Days prior to the Restatement Effective Date, (i) all documentation and other information about the Loan Parties as the Administrative Agent or the Lenders shall have reasonably determined is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") and (ii) to the extent that the Borrower qualifies as a "legal entity customer", a Beneficial Ownership Certification, that in each case, shall have been reasonably requested by the

Administrative Agent or any Arrangers in writing at least 10 Business Days prior to the Restatement Effective Date.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Restatement Effective Date specifying its objection thereto.

Article V

REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Borrower represents and warrants to the Administrative Agent and the Lenders that:

V.01 Existence, Qualification and Power. Each Loan Party and each of its Restricted Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such jurisdiction provides for the designation of entities organized or incorporated thereunder as existing in good standing), (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the Transactions, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

V.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien (other than Permitted Liens) under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law; except in each case referred to in clause (b) or (c), as could not reasonably be expected to have a Material Adverse Effect.

V.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or

performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, or (c) the perfection or maintenance of the Liens created under the Collateral Documents (including, as applicable, the priority thereof contemplated by the Collateral Documents), except (i) as have been made, obtained, given or taken, (ii) filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Administrative Agent for filing and/or recordation pursuant to the Collateral Documents, or (iii) the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

V.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar law affecting the enforcement of creditor's rights generally.

V.05 Financial Statements; No Material Adverse Effect. The Audited Financial Statements (i) were prepared in all material respects in accordance with GAAP, except as noted therein, consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) fairly present in all material respects the financial condition of the Loan Parties as of the date thereof and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited consolidated balance sheet of Holdings and its Subsidiaries dated March 31, 2021, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in all material respects in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the balance sheet included in the Audited Financial Statements, there has been no event or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

V.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Loan Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings or any of its Restricted Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement, any other Loan Document or the consummation of the Transactions, or

(b) except as specifically disclosed in Schedule 5.06, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

V.07 No Default. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

V.08 Ownership of Property; Liens; Investments. Each Loan Party and each of its Restricted Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, free and clear of all Liens, other than Permitted Liens.

V.09 Environmental Compliance. Except as could not reasonably be expected to have a Material Adverse Effect:

(a) The Loan Parties and their respective Restricted Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Borrower has reasonably concluded that, except as specifically disclosed in Schedule 5.09, such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) None of the properties currently or formerly owned or operated by any Loan Party or any of its Restricted Subsidiaries is listed or formally proposed for listing on the NPL or on the CERCLIS or, to the knowledge of the Loan Parties, any analogous foreign, state or local list or is adjacent to any such property; there are no and to the knowledge of the Loan Parties and their Restricted Subsidiaries never have been any treatment, recycling, storage or disposal of any hazardous waste requiring a permit under 40 C.F.R. Parts 264 and 265 or any state equivalent, or any solid waste landfill, waste pile, petroleum or hazardous waste, swamp, pit, pond, underground storage tank or surface impoundment on any property currently or formerly owned or operated by any Loan Party or any of its Restricted Subsidiaries; to the knowledge of the Loan Parties, there is no asbestos or asbestos-containing material on, at or in any property currently owned or operated by any Loan Party or any of its Restricted Subsidiaries except in compliance with Environmental Law; and Hazardous Materials have not been released on, at, under or from any property currently or formerly owned or operated by any Loan Party or any of its Restricted Subsidiaries.

(c) Neither any Loan Party nor any of its Restricted Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened Release of Hazardous Materials at, on, under, or from any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Restricted Subsidiaries have been disposed of.

(d) The Loan Parties and their respective Restricted Subsidiaries: (i) are in compliance with all applicable Environmental Laws; (ii) hold all Environmental Permits (each of which is in full force and effect) required for any of their current operations or for any property owned, leased, or otherwise operated by any of them; and (iii) are in compliance with all of their Environmental Permits.

V.10 Insurance. The properties of the Holdings and its Restricted Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of Holdings (other than in respect of any self-insurance which the Borrower believes (in the good faith judgment of management of the Borrower) is reasonable and prudent in light of the size and nature of its business), in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where Holdings or the applicable Restricted Subsidiary operates.

V.11 Taxes. Holdings and each of its Restricted Subsidiaries have timely filed all federal and other material tax returns and reports required to be filed by it, and have timely paid all federal and other material Taxes (whether or not shown on a tax return), including in its capacity as a withholding agent, levied or imposed upon it or its properties, income or assets otherwise due and payable, except (x) those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (y) as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Neither Holdings nor any Restricted Subsidiary has any knowledge of any proposed tax assessment against Holdings or any Restricted Subsidiary that shall have or is reasonably likely to have a Material Adverse Effect.

V.12 ERISA Compliance. In relation to Plans and Multiemployer Plans subject to ERISA, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect:

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from Federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status. The Borrower has met all applicable requirements under the Code, ERISA and the Pension Protection Act of 2006, and no application for a waiver of the minimum funding standards or an extension of any amortization period has been made with respect to any Pension Plan.

(b) There are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan.

(c) (i) No ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher; and (iii) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA.

V.13 Subsidiaries; Equity Interests; Loan Parties. As of the Restatement Effective Date, Holdings has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable (in each case, to the extent such concept is applicable under applicable law) and are owned in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except (x) those created under the Collateral Documents, the ABL Documents or constituting Permitted Liens pursuant to any other Indebtedness permitted to be incurred hereunder that ranks and is permitted hereunder to rank *pari passu* with the Loans with respect to Collateral and (y) Permitted Liens arising by operation of Law. Set forth on Part (b) of Schedule 5.13 is a complete and accurate list of all Loan Parties, showing as of the Restatement Effective Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number.

V.14 Margin Regulations; Investment Company Act. Neither Holdings nor any of its Restricted Subsidiaries is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) No Loan Party is (a) an “investment company” or a “person directly or indirectly controlled by or acting on behalf of an investment company” within the meaning of the Investment Company Act of 1940; or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other applicable Law regarding its authority to incur Indebtedness.

V.15 Disclosure. No Loan Document contains any untrue statement of a material fact, nor fails to disclose any material fact necessary to make the statements contained therein, in light of the circumstances under which and at the time at which they were made, taken as a whole, not materially misleading. There is no fact or circumstance that any Loan Party has failed to disclose to the Administrative Agent in writing that could reasonably be expected to have a Material Adverse Effect.

V.16 Compliance with Laws. Each Loan Party and each Restricted Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

V.17 Brokers. There are no brokerage commissions, finder's fees or investment banking fees payable in connection with any transactions contemplated by the Loan Documents.

V.18 Intellectual Property; Licenses, Etc. Each Loan Party and each of its Restricted Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened, which could reasonably be expected to have a Material Adverse Effect.

V.19 Solvency. The Borrower is, together with its Subsidiaries on a consolidated basis, Solvent.

V.20 Reserved.

V.21 Reserved.

V.22 Labor Matters. Except as described on Schedule 5.22, there are no collective bargaining agreements covering the employees of Holdings or any of its Restricted Subsidiaries as of the Restatement Effective Date, and there are no material grievances, disputes or controversies with any union or other organization of any of Holdings or any of its Restricted Subsidiaries' employees, or, to any Loan Party's knowledge, any asserted or threatened strikes or work stoppages.

V.23 Ranking. Each Collateral Document has or will have the ranking in priority which it is expressed to have therein and, other than as permitted under or contemplated by the Loan Documents (including with respect to Permitted Liens), it is not subject to any prior ranking or pari passu ranking Lien.

V.24 Reserved.

V.25 OFAC. Neither Holdings, nor any of its Subsidiaries, nor, to the knowledge of Holdings and its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (a) currently the subject or target of any Sanctions, (b) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (c) located, organized or resident in a Designated Jurisdiction.

V.26 Anti-Corruption Laws. None of the Loan Parties or any of their Subsidiaries nor, to the knowledge of any Loan Party, any director, officer, agent, employee or other person acting on behalf of such Loan Party or any of its Subsidiaries have taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder or any other applicable

anticorruption law; and the Loan Parties and their Subsidiaries have instituted and maintain policies and procedures designed to ensure continued compliance therewith.

V.27 Affected Financial Institutions. No Loan Party is an Affected Financial Institution.

V.28 Plan Assets. The Borrower represents and warrants as of the Restatement Effective Date that the Borrower is not and will not be using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans.

Article VI

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, each of Holdings and the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Restricted Subsidiary to:

VI.01 Financial Statements. Deliver to the Administrative Agent and each Lender:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of Holdings (commencing with the fiscal year ending December 31, 2021), a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders’ equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and certified by an independent certified public accountant of recognized standing reasonably acceptable to the Administrative Agent (it being understood that Ernst & Young LLP is acceptable to the Administrative Agent), which certification shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit (other than with respect to an upcoming maturity date of Indebtedness that is scheduled to occur within one year from the time such audit is delivered);

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of Holdings (commencing with the fiscal quarter ending June 30, 2021), a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations and cash flows for such fiscal quarter and for the portion of Holdings’ fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief executive officer, chief financial officer, treasurer or controller of Holdings as fairly presenting the financial condition, results of operations and cash flows of Holdings and

its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

VI.02 Certificates; Other Information. Deliver to the Administrative Agent and each Lender:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of Holdings (which delivery may, unless the Administrative Agent or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes) (i) containing a listing of each Unrestricted Subsidiary designated as of the date thereof; (ii) stating that Holdings was in compliance with the Collateral and Guarantee Requirement and Section 6.12 as of such date; and (iii) stating that such officer has reviewed the terms of the Loan Documents and has made, or has caused to be made under his supervision, a review in reasonable detail of the transactions and condition of Holdings and its Subsidiaries during the accounting period covered by such financial statements and that such review has not disclosed the existence of any Default or Event of Default that has occurred and is continuing at the end of such accounting period and that such officer does not have knowledge of the existence, as at the date of such certificate, of any Default or Event of Default that has occurred and is continuing, or, if he does have knowledge that a Default or an Event of Default exists, specifying the nature and period of existence thereof and what action Holdings or the Borrower has taken, is taking, or proposes to take with respect thereto;

(b) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or other material reports submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the financial statements referred to in Section 6.01(a);

(c) promptly after the sending or filing thereof, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Holdings, and copies of all annual, regular, periodic and special reports and registration statements which Holdings files with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Restricted Subsidiaries with any Environmental Law that could reasonably be expected to have a Material Adverse Effect; and

(e) promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Restricted Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b), Section 6.02(c) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings or the Borrower posts such documents, or provides a link thereto on Holdings' or the Borrower's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on Holdings' or the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) Holdings and the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to Holdings or the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) Holdings or the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and, upon request by the Administrative Agent, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Holdings or the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Each of Holdings and the Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar, or a substantially similar electronic transmission system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material nonpublic information with respect to Holdings, the Borrower or their respective Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each of Holdings and the Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," Holdings and the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to Holdings or the Borrower or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

VI.03 Notices. Promptly notify the Administrative Agent and each Lender upon a Responsible Officer becoming aware:

(a) of the occurrence of any Default;

(b) of any event that has resulted or could reasonably be expected to result in a Material Adverse Effect; and

(c) of the (i) occurrence of any Disposition of property or assets for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.03(b)(ii) and (ii) incurrence or issuance of any Indebtedness for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.03(b)(iii).

Each notice pursuant to Section 6.03 (other than Section 6.03(c)) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

VI.4 Payment of Obligations. (a) Pay and discharge as the same shall become due and payable (i) all Tax liabilities, assessments and governmental charges or levies imposed upon it or its properties or assets and (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property and (b) timely file all tax returns required to be filed, except in each case (x) those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (y) as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

VI.5 Preservation of Existence, Etc. Except as otherwise permitted under Section 7.04 or 7.05, (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

VI.6 Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in reasonably good working order and condition, ordinary wear and tear, casualty and Dispositions permitted by this Agreement excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except, in the case of clauses (a) and (b), where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

VI.7 Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of Holdings (other than in respect of any self-insurance which the Borrower believes (in the good faith judgment of management of the Borrower) is reasonable

and prudent in light of the size and nature of its business), insurance in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where Holdings or the Restricted Subsidiaries operates.

VI.8 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

VI.9 Books and Records. Maintain adequate books of record and account, in which proper entries in all material respects in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of Holdings or such Subsidiary, as the case may be.

VI.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties (subject to the rights of any tenants or occupants of such property), to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom (other than privileged correspondence with legal counsel), and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (with respect to independent public accountants, in the presence of representatives of the Loan Parties or otherwise with the consent of Holdings), all at such reasonable times during normal business hours and, subject to the limitation below, as often as may be reasonably desired, upon reasonable advance written notice to the Borrower; provided that, excluding any such visits and inspections when an Event of Default exists, only the Administrative Agent on behalf of the Lenders may exercise visitation and inspection rights of the Administrative Agent and the Lenders under this Section 6.10 (and representatives of any Lender may accompany the Administrative Agent on any such visit at their own expense) and the Administrative Agent shall not exercise such rights more often than two times during any calendar year absent the existence of an Event of Default and only one such time shall be at the Borrower's expense; provided further that when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice. Notwithstanding anything to the contrary in this Section 6.10, none of Holdings, the Borrower nor any Restricted Subsidiary will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product.

VI.11 Use of Proceeds. Use the proceeds of the Loans to (a) refinance the term loans outstanding under the Existing Credit Agreement; (b) refinance certain other outstanding

Indebtedness; (c) pay fees and expenses in connection with the Transactions; and (d) for working capital and for general corporate purposes (including Permitted Acquisitions) not in contravention of any Law or of any Loan Document.

VI.12 Covenant to Guarantee Obligations and Give Security.

(a) If after the Restatement Effective Date any Material Domestic Subsidiary of Holdings (other than an Excluded Subsidiary) is formed or acquired (or ceases to constitute an Excluded Subsidiary) then in any such case, within fifteen days after such occurrence, notify the Administrative Agent thereof and, within sixty days after such occurrence (as such period may be extended by the Administrative Agent in its reasonable discretion), cause the Collateral and Guarantee Requirement to be satisfied (other than pursuant to clause (c) of the definition thereof in respect of Material Owned Real Property, which shall be subject to clause (b) below).

(b) If, after the Restatement Effective Date, (i) any material assets (including any owned real property constituting Material Owned Real Property) are acquired by the Borrower or any other Loan Party or are held by any Restricted Subsidiary on or after the time it becomes a Loan Party pursuant to this Section 6.12 or the Collateral and Guarantee Requirement (other than assets constituting Collateral under a Collateral Document that become subject to the Lien created by such Collateral Document upon acquisition thereof or constituting Excluded Assets or described in clause (b)(i)(B) of the definition of “Collateral and Guarantee Requirement”), or (ii) any commercial tort claim with a value in excess of \$2,500,000 arises, then in any such case notify the Administrative Agent thereof within fifteen days of any such occurrence, and (upon request of the Administrative Agent for those assets and actions subject to such request pursuant to the Collateral and Guarantee Requirement) within sixty days after such occurrence or request (as such period may be extended by the Administrative Agent in its reasonable discretion) cause such assets to be subjected to a Lien securing the Obligations and take and cause the other Loan Parties to take, such actions as shall be necessary and reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions as required pursuant to the Collateral and Guarantee Requirement and/or the applicable Collateral Documents; provided that in the event any Material Owned Real Property is or is required to be mortgaged pursuant to this Section 6.12(b), the Borrower or other Loan Party, as applicable, shall not be required to comply with the Collateral and Guarantee Requirement and this Section 6.12 with respect to such Material Owned Real Property until a reasonable time following the acquisition thereof (or time the Person owning such real property becomes a Loan Party or the time such real property becomes Material Owned Real Property, as the case may be), and in no event shall compliance be required until the latest of (1) 90 days following such acquisition (or such Person becoming a Loan Party or such real property becoming Material Owned Real Property, as the case may be), (2) the Administrative Agent completing all required diligence related to flood insurance and flood zone status of such property, and (3) otherwise such longer time period as agreed to by the Administrative Agent in its reasonable discretion.

(c) If at any time the Borrower obtains knowledge that the Collateral and Guarantee Requirement has not been satisfied for any reason (including by reason of notice thereof by the Administrative Agent or any Lender) or has not been waived, then within fifteen days of receipt

of such knowledge notify the Administrative Agent thereof and, within sixty days after such notice (or such longer time period as agreed to by the Administrative Agent in its reasonable discretion), cause the Collateral and Guarantee Requirement to be satisfied with respect thereto.

(d) Furnish (or cause to be furnished) to the Administrative Agent promptly (and in any event within five days prior or such other period as reasonably agreed to by the Administrative Agent) written notice of any change (i) in any Loan Party's legal name (as set forth in its certificate of organization or like document), or (ii) in the jurisdiction of organization or formation of any Loan Party or in the form of its organization.

(e) Promptly notify the Administrative Agent if any portion of the Collateral is damaged or destroyed, which individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

(f) In connection with any requirement to take actions set forth in this Section 6.12, the Administrative Agent may waive such requirement, or grant extensions of required time therefore, where, in its reasonable discretion, it determines that such action cannot be accomplished without undue effort or expense.

Notwithstanding anything to the contrary contained herein, if at any time any Domestic Subsidiary of Holdings becomes a borrower or guarantor under the ABL Documents and such Domestic Subsidiary is not already a Subsidiary Guarantor, such Domestic Subsidiary shall be required (i) to become a Subsidiary Guarantor hereunder in accordance with the terms of this Section 6.12 and (ii) to otherwise comply with all applicable terms of this Section 6.12, regardless of whether or not such Domestic Subsidiary would be required to do so; provided that, in no event shall a CFC Holdco or any direct or indirect Subsidiary of a Subsidiary that is a CFC be required to become a Subsidiary Guarantor.

VI.13 Compliance with Environmental Laws. Except as could not reasonably be expected to result in a Material Adverse Effect, (a) comply with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all Environmental Permits necessary for its operations and properties; and (c) conduct any investigation, study, sampling and testing, and undertake any cleanup, response or other corrective action necessary to address all Hazardous Materials at, on, under or emanating from any of properties owned, leased or operated by it to the extent required by all Environmental Laws; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

VI.14 Further Assurances. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and reregister any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably

require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Restricted Subsidiaries is or is to be a party, and cause each of its Restricted Subsidiaries to do so.

VI.15 Anti-Corruption Laws. Conduct its business in compliance with the United States Foreign Corrupt Practices Act of 1977 and any other applicable anti-corruption law. Holdings will maintain in effect policies and procedures designed to promote compliance by Holdings, its Subsidiaries, and their respective directors, officers, employees, and agents with the United States Foreign Corrupt Practices Act of 1977 and any other applicable anti-corruption laws.

VI.16 Maintenance of Debt Ratings. Use commercially reasonable efforts to maintain Debt Ratings from both Moody's and S&P.

Article VII

NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, neither Holdings nor the Borrower shall, nor shall it permit any Restricted Subsidiary to:

VII.01 Liens. Create, or suffer to exist any Lien upon any of its property, assets or revenues, other than the following (collectively, the "Permitted Liens"):

- (a) Liens pursuant to any Loan Document;
- (b) Customary Permitted Liens;
- (c) Liens existing on the date hereof and listed on Schedule 7.01 and any renewals, extensions, refunding or replacements thereof, provided that (i) no additional property is covered thereby and (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(d);
- (d) any Lien existing on any property or asset prior to the acquisition thereof by Holdings or any Restricted Subsidiary or on any property or asset of a Person prior to such Person becoming a Restricted Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not apply to any other property or assets of Holdings or any Restricted Subsidiary (other than such Person or any other Person that such Person merges with

or that acquires the assets of such Person or such Person's Subsidiaries), and (iii) the obligations secured by any such Lien, when combined with any Indebtedness secured by Liens under Section 7.01(j), do not exceed \$50,000,000;

(e) Liens on Collateral securing obligations in respect of Refinancing Loans, Refinancing Notes and Extended Loans; provided that all such Liens to the extent not addressed in the Intercreditor Agreement, are subject to an intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent;

(f) Liens securing judgments, decrees or attachments for the payment of money not constituting an Event of Default under Section 8.01(h);

(g) Liens securing Indebtedness permitted under Section 7.02(i); provided that such Liens do not at any time encumber any property other than the property financed by such Indebtedness and any replacements, additions and accessions thereto and any income or profits thereof and customary security deposits related thereto; provided further that individual financings provided by a lender may be cross collateralized to other financings provided by such lender or its affiliates;

(h) Liens on assets of a Non-Loan Party securing Indebtedness or other obligations of such Non-Loan Party otherwise permitted under Sections 7.02(f), (g) or (h); provided that no such Lien shall be granted on, or attach to, any asset that is or is required to be Collateral; and

(i) Liens securing Indebtedness incurred pursuant to Section 7.02(b) and other obligations in respect of bank products (including Cash Management Agreements) and Swap Contracts secured under the ABL Documents, which Liens in the case of Loan Parties are subject to the Intercreditor Agreement or an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent;

(j) other Liens securing obligations outstanding in an aggregate amount not to exceed \$50,000,000;

(k) Liens on inventory of Restricted Subsidiaries that are Foreign Subsidiaries securing Indebtedness permitted under Section 7.02(u);

(l) Liens securing obligations in respect of Indebtedness permitted by Section 7.02(w); and

(m) Liens on inventory and related assets securing obligations in respect of Indebtedness permitted by Section 7.02(z).

VII.02 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness in respect of the ABL Facility in an aggregate principal amount at any time outstanding not to exceed \$400,000,000; provided that, to the extent secured, the

Indebtedness described in this clause (b) shall at all times be subject to an Intercreditor Agreement;

(c) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 and any extensions, renewals, refundings or replacements of such Indebtedness, provided that any such extension, renewal, refunding or replacement is in an aggregate principal amount not greater than the principal amount of (plus (i) unpaid accrued interest and premiums thereon and underwriting discounts, defeasance costs, fees, commissions and expenses, (ii) reasonable original issue discount and upfront fees plus other fees and expenses reasonably incurred in connection with such extension, renewal, refunding or replacement, and (iii) an amount equal to any existing commitments unutilized under the indebtedness being extended, renewed, refunded or replaced), and taken as a whole is on terms not materially less favorable to Holdings or any Restricted Subsidiary, as applicable, than the terms of such Indebtedness so extended, renewed, refunded or replaced;

(e) Guarantees of the Borrower or any Restricted Subsidiary in respect of Indebtedness otherwise permitted to be incurred hereunder by the Borrower or such Restricted Subsidiary, including without limitation, Guarantees of Financing Agreements;

(f) Indebtedness of Non-Loan Parties owing to third-party creditors in an aggregate amount not to exceed the greater of (i) \$75,000,000 and (ii) 4.0% of Consolidated Total Assets;

(g) intercompany Indebtedness owing by any Loan Party or any Restricted Subsidiary to any Loan Party or Restricted Subsidiary; provided that any such Indebtedness owing by a Loan Party to a Non-Loan Party shall be subordinated to the Obligations of such Loan Party under the Facility in a manner reasonably satisfactory to the Administrative Agent;

(h) Indebtedness of Foreign Subsidiaries under bi-lateral uncommitted lines of credit providing for short-term borrowings and overdrafts in an aggregate amount not to exceed \$10,000,000 at any one time outstanding;

(i) Indebtedness in respect of Capitalized Leases, purchase money obligations and sale-leaseback transactions for fixed or capital assets within the limitations set forth in Section 7.01(g); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$100,000,000;

(j) Indebtedness of a Person existing at the time such Person became a Restricted Subsidiary or assets were acquired from such Person in connection with an Investment permitted pursuant to Section 7.03 so long as any such Indebtedness (i) was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary or the acquisition of such assets and (ii) none of Holdings, the Borrower nor any Restricted Subsidiary (other than

such Person or any other Person that such Person merges with or that acquires the assets of such Person or such Person's Subsidiaries) shall have any liability or other obligation with respect to such; provided that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$50,000,000 at any time outstanding;

- (k) other Indebtedness in an aggregate principal amount not to exceed \$75,000,000 at any time outstanding;
- (l) Refinancing Term Loans, Refinancing Notes and Extended Loans;
- (m) Indebtedness for trade payables, wages and other accrued expenses incurred in the Ordinary Course of Business;
- (n) Indebtedness in respect of taxes, assessments, governmental charges and claims for labor, materials or supplies, to the extent that payment thereof is not required pursuant to Section 6.04;
- (o) Indebtedness constituting Investments permitted by Section 7.03;
- (p) Indebtedness with respect to customary warranties and indemnities made under (i) any agreements for asset sales permitted under Section 7.05, or (ii) Contractual Obligations of Holdings or any Restricted Subsidiary entered into in the Ordinary Course of its Business;
- (q) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the Ordinary Course of Business;
- (r) Indebtedness arising under a declaration of joint and several liability used for the purpose of section 2:403 of the Dutch Civil Code (and any residual liability under such declaration arising pursuant to section 2:404(2) of the Dutch Civil Code);
- (s) unsecured Indebtedness arising from unsecured intercompany loans borrowed for the use in Holdings or any Subsidiary's business and operations in the People's Republic of China not to exceed, together with Investments permitted under Section 7.03(l), \$12,000,000 in principal amount outstanding at any time;
- (t) Indebtedness arising under any receivables factoring, discounting facility or receivables assignment facility by any Restricted Subsidiary that is a Foreign Subsidiary in an aggregate amount not to exceed \$10,000,000 outstanding at any time;
- (u) Indebtedness of Restricted Subsidiaries that are Foreign Subsidiaries with respect to Approved Floorplan and Factoring Facilities in an aggregate amount not to exceed \$7,500,000 at any one time outstanding;
- (v) Indebtedness incurred in the ordinary course of business in respect of Cash Management Agreements;

(w) (A) Permitted Pari Passu Notes, Permitted Pari Passu Loans or Permitted Junior Debt in an aggregate principal amount not to exceed, as of the date of incurrence thereof and after giving effect thereto, when taken together with any Incremental Increase pursuant to Section 2.13(a) and other incurrences of Permitted Pari Passu Notes, Permitted Pari Passu Loans and Permitted Junior Debt pursuant to this Section 7.02(w)(A) after the Restatement Effective Date, the Maximum Increase Amount (it being understood that the reclassification mechanics set forth in the definition of “Maximum Increase Amount” shall apply to amounts incurred pursuant to this Section 7.02(w)(A)), in each case, so long as no Event of Default then exists or would result therefrom (*provided* that with respect to any such Indebtedness incurred to finance a Limited Condition Acquisition, such requirement shall be limited to the absence of a Specified Default); and (B) Permitted Refinancing Indebtedness in respect of Indebtedness incurred pursuant to the foregoing subclause (A);

(x) Indebtedness of Holdings or its Restricted Subsidiaries; *provided* that after giving pro forma effect to the incurrence thereof, the Fixed Charge Coverage Ratio shall be at least 2.00:1.00; *provided further*, that the amount of Indebtedness which may be incurred pursuant to this clause (x) by Non-Loan Parties shall not exceed the greater of \$35,000,000 and 1.5% of Consolidated Total Assets of Holdings and its Restricted Subsidiaries for the Measurement Period most recently ended at any time outstanding;

(y) Indebtedness in an aggregate amount not to exceed \$10,000,000 that would otherwise constitute Maximal Forklift Purchase Price Obligations if it were not in excess of the amount set forth in the definition thereof;

(z) Indebtedness incurred by Loan Parties with respect to any JV Financing Facility in an aggregate amount not to exceed \$15,000,000 at any one time outstanding; provided that if secured, such Indebtedness shall be secured by Liens encumbering only the inventory and related assets that are the subject of such JV Financing Facility;

(aa) in addition to Indebtedness permitted by clauses (a) through (z) above, other unsecured Indebtedness (but excluding intercompany loans) in an aggregate principal amount not to exceed \$100,000,000 at any time outstanding; *provided* that all such Indebtedness outstanding under this clause (aa) shall have a scheduled maturity at least six (6) months after the Latest Maturity Date.

Notwithstanding anything to the contrary contained in this Agreement, Indebtedness incurred in the form of the ABL Facility may only be incurred pursuant to Section 7.02(b).

VII.03 Investments. Make or hold any Investments, except:

(a) Investments held by Holdings and its Restricted Subsidiaries in the form of cash and Cash Equivalents;

(b) advances to officers, directors and employees of Holdings and Restricted Subsidiaries in an aggregate amount not to exceed \$1,500,000 at any time outstanding, for any

lawful purpose including travel, entertainment, relocation, salary, commissions and analogous ordinary business purposes;

(c) Investments made by any Loan Party or any Restricted Subsidiary in any Loan Party or Restricted Subsidiary;

(d) Investments (i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business or received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss or otherwise in connection with the bankruptcy or reorganization of such account debtors or (ii) received in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the Ordinary Course of Business;

(e) Guarantees permitted by Section 7.02;

(f) Investments existing on the date hereof and set forth on Schedule 7.03;

(g) Permitted Acquisitions;

(h) other Investments made after the Restatement Effective Date, the amount of which at any time outstanding shall not exceed the greater of (i) \$100,000,000 and (ii) 5.5% of Consolidated Total Assets;

(i) other Investments by Holdings and its Restricted Subsidiaries so long as (i) in the case of any Acquisition, such Acquisition shall constitute a Permitted Acquisition, (ii) no Default or Event of Default has occurred and is continuing at the time of, or would result from, such Investment and (iii) after giving *pro forma* effect thereto (including any incurrence and/or repayment of Indebtedness in connection therewith), the Consolidated Total Net Leverage Ratio is less than or equal to 3.00 to 1.00 at the time of such Investment;

(j) other Investments in Unrestricted Subsidiaries, the amount of which at any time outstanding shall not exceed \$100,000,000;

(k) Investments (i) in Equity Interests received as consideration in a sale or other Disposition of property pursuant to Section 7.05, subject to the limitation on the amount of non-cash consideration that may be received in connection with such sale as set forth therein and (ii) consisting of seller notes, Equity Interests or other similar Investments received as non-cash consideration in a Specified Disposition permitted by Section 7.05(k);

(l) Investments in the business and operations of Holdings and any Subsidiaries in the People's Republic of China not to exceed, together with Indebtedness permitted under Section 7.02(s), \$12,000,000;

(m) Investments to the extent made with the Available Amount, so long as no Default or Event of Default has occurred and is continuing at the time of, or would result from, such Investment; and

(n) the acquisition by Holdings or its Restricted Subsidiaries of the remaining 25% of the outstanding equity interests in Hyster-Yale Maximal Forklift (Zhejiang) Co., Ltd. that are not currently owned by Holdings and its Restricted Subsidiaries.

VII.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, consummate a Division as the dividing Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(a) any Restricted Subsidiary may merge with (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Restricted Subsidiaries, provided that (without limiting the preceding clause (i)) (A) when any Loan Party is merging with another Restricted Subsidiary, such Loan Party shall be the continuing or surviving Person and (B) when any wholly-owned Restricted Subsidiary is merged with any non-wholly owned Restricted Subsidiary, the wholly-owned Restricted Subsidiary shall be the continuing or surviving Person;

(b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or dissolution, by Division or otherwise) to the Borrower or to another Loan Party;

(c) any Restricted Subsidiary that is not a Loan Party may Dispose of all or substantially all its assets (upon voluntary liquidation or dissolution, by Division or otherwise) to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party;

(d) so long as no Default has occurred and is continuing or would result therefrom, each of Holdings and any of its Restricted Subsidiaries may merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such transaction to which the Borrower is a party, the Borrower is the surviving Person, (ii) in the case of any such transaction to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving Person (provided that in no event shall any other Loan Party merge or consolidate with Holdings) and (iii) in the case of any wholly-owned Restricted Subsidiary merging or consolidating with a Person that is not a wholly-owned Restricted Subsidiary, the wholly-owned Restricted Subsidiary shall be the surviving Person;

(e) any Restricted Subsidiary (other than the Borrower) may merge or consolidate with another Person or liquidate, consummate a Division as the dividing Person in order to effect a Disposition (whether in one transaction or in a series of transactions) or transfer all or substantially all of its assets to another Person to effect a Disposition permitted under Section 7.05 (other than Section 7.05(e)); and

(f) any merger subsidiary may merge into a target in connection with a Permitted Acquisition.

VII.05 Dispositions. Make any Disposition, except:

- (a) Dispositions of obsolete, damaged or worn out property or property that is no longer used or useful in the conduct of the business of Holdings and its Restricted Subsidiaries, whether now owned or hereafter acquired, in each case, in the ordinary course of business;
- (b) Dispositions of inventory and other assets in the ordinary course of business;
- (c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;
- (d) Dispositions of property by any Loan Party or Restricted Subsidiary to any Loan Party or Restricted Subsidiary;
- (e) Dispositions permitted by Section 7.04;
- (f) termination of a lease of real or personal property that is not necessary for the Ordinary Course of Business, could not reasonably be expected to have a Material Adverse Effect and does not result from a Loan Party's default;
- (g) Investments and Dispositions of Investments in cash and Cash Equivalents;
- (h) (i) the sale of accounts receivable and related assets under any receivables factoring, discounting facility or receivables assignment facility by any Restricted Subsidiary that is a Foreign Subsidiary in an aggregate amount not to exceed \$10,000,000 outstanding at any time and (ii) the sale of accounts receivable on a non-recourse basis arising from sales of inventory financed under any Approved Floorplan and Factoring Facility by any Restricted Subsidiary that is a Foreign Subsidiary;
- (i) the sale of accounts receivable and related assets owing by a customer on a non-recourse basis as part of a supply chain finance program offered by such customer;
- (j) Dispositions of property in connection with any sale-leaseback transaction not to exceed \$80,000,000 (less any Indebtedness outstanding under Section 7.02(i)) in the aggregate during the term of this Agreement;
- (k) Dispositions by Holdings and its Restricted Subsidiaries not otherwise permitted under this Section 7.05; provided that (i) at the time of such Disposition, no Default shall exist or would result from such Disposition, (ii) not less than 75% of the consideration paid by the buyer in connection with the Disposition of such asset shall be paid to Holdings or such Restricted Subsidiary in cash or Cash Equivalents; provided that, for purposes of this clause (ii), Deemed Non-Cash Consideration will be deemed to be cash, (iii) the consideration paid by the buyer in connection with the Disposition shall be the fair market value of such asset and (iv) any Disposition pursuant to this clause (k) is made in compliance with the mandatory prepayment provisions of Section 2.03(b) hereto; provided that subclauses (ii) and (iv) of this clause (k) shall not apply to any Specified Disposition;

(l) Dispositions of assets or Equity Interests in any Subsidiary that is engaged solely in retail operations so long as such Subsidiary is not a Material Domestic Subsidiary;

(m) Dispositions set forth on Schedule 7.05; and

(n) Dispositions of assets in any single or series of related transactions with a fair market value not to exceed \$10,000,000 (measured at the time of such Disposition).

VII.06 Restricted Payments. Declare or make any Restricted Payment, except that:

(a) (i) the Borrower may make Restricted Payments to Holdings and (ii) each Restricted Subsidiary may make Restricted Payments to the Borrower, any Subsidiaries of the Borrower that are Guarantors and any other Person that owns a direct Equity Interest in such Restricted Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) Holdings, the Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) Holdings, the Borrower and each Restricted Subsidiary may purchase, redeem or otherwise acquire its common Equity Interests with the proceeds received from the substantially concurrent issue of new common Equity Interests;

(d) Holdings may make Restricted Payments constituting regularly scheduled cash dividends so long as (i) no Default shall have occurred and be continuing or would result therefrom (which may, at the option of the Borrower, be determined on the date of declaration of such Restricted Payment) and (ii) the aggregate amount of such Restricted Payments paid or made in any fiscal year would not exceed \$50,000,000;

(e) Holdings, the Borrower and each Restricted Subsidiary may make any other Restricted Payment so long as (i) no Default shall have occurred and be continuing or would result therefrom and (ii) after giving pro forma effect thereto for the most recently ended Measurement Period (including any incurrence and/or repayment of Indebtedness in connection therewith), the Consolidated Total Net Leverage Ratio does not exceed 2.50 to 1.00 at the time of such Restricted Payment; provided that, at the option of the Borrower, satisfaction of each of clauses (i) and (ii) may be determined on the date of declaration of such Restricted Payment; and

(f) Holdings may make Restricted Payments to the extent the same are made with the Available Amount, so long as at the time of, and after giving effect to such Restricted Payment on a *pro forma basis*, no Default or Event of Default shall have occurred and be continuing or result therefrom.

VII.7 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by Holdings and its Restricted

Subsidiaries on the date hereof or any business or activities complementary, ancillary, incidental or related thereto, or a reasonable extension thereof.

VII.8 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of Holdings, whether or not in the ordinary course of business, other than (a) transactions expressly permitted by the Loan Documents, (b) payment of reasonable compensation to officers and employees for services actually rendered, and payment of customary directors' fees and indemnities, (c) transactions with Affiliates consummated prior to the Restatement Effective Date or (d) on fair and reasonable terms substantially as favorable to Holdings or such Restricted Subsidiary as would be obtainable by Holdings or such Restricted Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate; provided that the foregoing restriction shall not apply to transactions between or among the Loan Parties and the Restricted Subsidiaries.

VII.9 [Reserved].

VII.10 Use of Proceeds. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

VII.11 Amendments of Organization Documents. Amend any of its Organization Documents, except amendments, modifications or changes that would not reasonably be expected to be material and adverse to the interests of the Lenders.

VII.12 Prepayments, Etc. of Subordinated Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any subordinated Indebtedness.

VII.13 Amendment, Etc. of Subordinated Indebtedness. Amend, modify or change in any manner any term or condition of any subordinated Indebtedness in any respect which would materially and adversely affect the rights or interests of the Administrative Agent and Lenders hereunder or would violate the subordination terms thereof.

VII.14 Sanctions. Directly or indirectly, use the proceeds of any Loan, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as Lender, Arrangers, Administrative Agent, or otherwise) of Sanctions.

VII.15 Anti-Corruption Laws. Directly or indirectly use the proceeds of any Loan for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption law in other jurisdictions.

Article VIII

EVENTS OF DEFAULT AND REMEDIES

VIII.01 Events of Default. Any of the following shall constitute an Event of Default:

- (a) Non-Payment. The Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan, or (ii) pay within three Business Days after the same becomes due, any interest on any Loan, or any fee due hereunder, or (iii) pay within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or
- (b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.05, 6.10, or Article VII; or
- (c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after a Responsible Officer has knowledge thereof or receives notice thereof from the Administrative Agent; or
- (d) Representations and Warranties. Any representation, warranty, certification or statement of fact made by or on behalf of Holdings, the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made; or
- (e) Cross-Default. (i) Any Loan Party or any Restricted Subsidiary thereof (A) fails to make any payment when due after any applicable grace period (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such

Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; provided that no such event under the ABL Facility shall constitute an Event of Default under this clause (e) (other than an event of default thereunder which constitutes an independent Event of Default under this Agreement without regard to the provisions of the ABL Facility) until the earlier to occur of (x) 30 days after such event of default, if such event of default is not cured or waived prior to the expiration of such 30 day period and (y) the acceleration of the Indebtedness and/or the termination of the commitments under the ABL Facility; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Restricted Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Restricted Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Restricted Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in any manner the validity or enforceability of any provision of

any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.12 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected Lien with the priority required by the applicable Collateral Document and the Intercreditor Agreement on any material portion of the Collateral purported to be covered thereby; or

(m) Subordination. (i) The subordination provisions of the documents evidencing or governing any subordinated Indebtedness in excess of the Threshold Amount (the "Subordinated Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable subordinated Indebtedness; or (ii) the Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordinated Provisions, (B) that the Subordinated Provisions exist for the benefit of the Administrative Agent and the Lenders or (C) that all payments of principal of or premium and interest on the applicable subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordinated Provisions.

VIII.02 Remedies upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

VIII.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the

proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Section 2.15, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest and obligations under Secured Cash Management Agreements and Secured Hedge Agreements) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations arising under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements and all other Obligations then owing, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to the Credit Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a “Lender” party hereto.

Article IX

ADMINISTRATIVE AGENT

IX.01 Appointment and Authority. Each of the Lenders hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or

thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the “Collateral Agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “Collateral Agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

IX.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

IX.03 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(d) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or prospective Lender is a Disqualified Institution or (y) have any liability

with respect to or arising out of any assignment of Loans, or disclosure of confidential information, to any Disqualified Institution.

IX.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. 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.

IX.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any subagents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

IX.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower (absent an Event of Default then existing), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above, provided that in no event shall any such successor Administrative Agent be a Defaulting Lender or Disqualified

Institution. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (a) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (b) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

IX.7 Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as

it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, 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 the Loan Parties. Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

IX.8 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or any other agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

IX.9 Administrative Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.07 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the

Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.07 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (j) of Section 11.01 of this Agreement, (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall

automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

IX.10 Collateral and Guaranty Matters. Without limiting the provision of Section 9.09, the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document to a Person that is not a Loan Party, (iii) if approved, authorized or ratified in writing in accordance with Section 11.01 or (iv) as provided in the Intercreditor Agreement;

(b) to release any Guarantor from its obligations under the Guaranty if such Person becomes an Unrestricted Subsidiary or Excluded Subsidiary as a result of a transaction permitted under the Loan Documents or ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents;

(c) to release Nuvera Fuel Cells, LLC from its obligations under the Guaranty if it becomes a non-wholly owned Restricted Subsidiary after the Restatement Effective Date as a result of a transaction permitted under the Loan Documents; and

(d) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(g).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the

Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

IX.11 Secured Cash Management Agreements and Secured Hedge Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements).

IX.12 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments

and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84- 14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

IX.13 Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender (the "Credit Party"), whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Credit Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount.

Article X

CONTINUING GUARANTY

X.1 Guaranty. Holdings hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt

payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrower to the Secured Parties, and whether arising hereunder or under any other Loan Document, any Secured Cash Management Agreement or any Secured Hedge Agreement (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof). Without limiting the generality of the foregoing, the Obligations shall include any such indebtedness, obligations, and liabilities, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against Holdings or the Borrower under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon Holdings, and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of Holdings under this Guaranty, and Holdings hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

X.2 Rights of Lenders. Holdings consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, Holdings consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of Holdings under this Guaranty or which, but for this provision, might operate as a discharge of Holdings.

X.3 Certain Waivers. Holdings waives (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower; (b) any defense based on any claim that Holdings' obligations exceed or are more burdensome than those of the Borrower; (c) the benefit of any statute of limitations affecting Holdings' liability hereunder; (d) any right to proceed against the Borrower, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability

of or exonerating guarantors or sureties. Holdings expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations.

X.4 Obligations Independent. The obligations of Holdings hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against Holdings to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

X.5 Subrogation. Holdings shall not exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Commitments and the Facility are terminated. If any amounts are paid to Holdings in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

X.6 Termination; Reinstatement. This Guaranty is a continuing and irrevocable guaranty of all Obligations now or hereafter existing and shall remain in full force and effect until all Obligations and any other amounts payable under this Guaranty are indefeasibly paid in full in cash and the Commitments and the Facility with respect to the Obligations are terminated. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or Holdings is made, or any of the Secured Parties exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of Holdings under this paragraph shall survive termination of this Guaranty.

X.7 Subordination. Holdings hereby subordinates the payment of all obligations and indebtedness of the Borrower owing to Holdings, whether now existing or hereafter arising, including but not limited to any obligation of the Borrower to Holdings as subrogee of the Secured Parties or resulting from Holdings' performance under this Guaranty, to the indefeasible payment in full in cash of all Obligations. If the Secured Parties so request, any such obligation or indebtedness of the Borrower to Holdings shall be enforced and performance received by Holdings as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Obligations, but without reducing or affecting in any manner the liability of Holdings under this Guaranty.

X.8 Stay of Acceleration. If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against Holdings or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by Holdings immediately upon demand by the Secured Parties.

X.9 Condition of Borrower. Holdings acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as Holdings requires, and that none of the Secured Parties has any duty, and Holdings is not relying on the Secured Parties at any time, to disclose to Holdings any information relating to the business, operations or financial condition of the Borrower or any other guarantor (Holdings waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

X.10 Keepwell. Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of the security interest under the Loan Documents, in each case, by any Specified Loan Party, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under its Guaranty and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article X voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

Article XI

MISCELLANEOUS

XI.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or the Administrative Agent with the consent of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01 (other than Section 4.01(h)(i) or (i)) without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment (it being understood that the waiver or delay of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest, and that any such waiver or delay shall require only the consent of the Required Lenders);

(d) reduce the principal of, or the rate of interest specified herein on, any Loan, or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate;

(e) change Section 8.03 in any manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(f) change any provision of this Section 11.01 or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(g) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(h) release all or substantially all of the value of the Guaranties, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone); or

(i) subordinate (x) the Liens securing any of the Loans on all or substantially all of the Collateral to the Liens securing any other Indebtedness (it being understood and agreed that the Liens securing the Loans may be junior in respect of the ABL Priority Collateral) or (y) any Loans in contractual right of payment to any other Indebtedness, in each case, without the written consent of each Lender directly and adversely affected thereby (other than a Defaulting Lender);

and provided, further, that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders),

except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender. Notwithstanding anything to the contrary herein, (x) no Lender consent is required to effect a Term Loan Increase or Refinancing Amendment (except as expressly provided in Section 2.13 or 2.14, as applicable), (y) in connection with an Extension Amendment, only the consent of the Lenders that will continue as a Lender in respect of the Extended Loans subject to such Extension Amendment as provided under Section 2.16 shall be required for such Extension Amendment, and (z) the Administrative Agent and the Borrower may amend any Loan Document to correct any errors, mistakes, omissions, defects or inconsistencies, or to effect administrative changes that are not adverse to any Lender, and such amendment shall become effective without any further consent of any other party to such Loan Document other than the Administrative Agent and the Borrower.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace such Non-Consenting Lender in accordance with Section 11.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

XI.02 Notices; Effectiveness; Electronic Communications. Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

- (i) if to Holdings, the Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and
- (ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other

communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender 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 each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to Holdings, the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of Holdings, the Borrower and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by

notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices and Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

XI.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.11), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on

its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.11, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

XI.04 Expenses; Indemnity; Damage Waiver. Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, disbursements and other charges of one primary counsel for the Arrangers and the Administrative Agent, of one firm of special regulatory counsel retained by the Arrangers or the Administrative Agent in each applicable specialty, and of one firm of local counsel retained by the Arrangers or the Administrative Agent in each applicable jurisdiction), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of (A) one primary counsel for the Administrative Agent, the Arrangers and the Lenders (taken as a whole), (B) one local counsel in each relevant jurisdiction, (C) one special counsel in each relevant specialty and (D) in the case of any actual or perceived conflict of interest with respect to any of the counsel identified in clauses (A) through (C) above, one additional counsel to each group of affected Persons similarly situated, taken as a whole (which in the case of clause (B) shall allow for up to one additional counsel in each relevant jurisdiction)), in connection with the enforcement or protection of its rights (1) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (2) in connection with Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), 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 and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee; provided that such legal expenses shall be limited to the reasonable fees, disbursements and other charges of one primary counsel, one local counsel in each relevant jurisdiction, to the extent reasonably necessary, one specialty counsel for each relevant specialty and one additional counsel to each group of affected Persons similarly situated if one or more conflicts of interest, or perceived conflicts of interest, arise), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or

thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials at, on, under or emanating from any property owned, leased or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee, (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for material breach of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) result from claims among Indemnitees not involving an act or omission by the Loan Parties or their Subsidiaries or Affiliates and other than any such losses, claims, costs, expenses, damages or liabilities against any Indemnitee solely in its capacity or in fulfilling its role as an agent, arranger, Administrative Agent, Arranger or similar role. Without limiting or expanding the provisions of Section 3.01, this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such subagent) or such Related Party, as the case may be, such Lender's Applicable Percentage of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), provided, further that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.10(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, neither Holdings nor the Borrower shall assert, and each hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or

actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by others of any information or other materials distributed to such party by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provision of Section 11.02(e) shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

XI.05 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

XI.06 Successors and Assigns. Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related

Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) In the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such Assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$1,000,000 unless each of the Administrative Agent and, so long as no Specified Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) a Specified Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a

Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to any Loan Party or any Loan Party's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon). Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 (subject to the requirements and limitations therein, including the requirements under

Section 3.01(e) with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of (and stated interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender (with respect to its interest), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (subject to

the requirements and limitations therein, including the requirements under Section 3.01(e) (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) shall be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation shall, at the Borrower's request and expense, use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant shall be subject to Section 2.11 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Disqualified Institutions. No assignment or shall be made to any Person that was a Disqualified Institution as of the date (the "Trade Date") on which the applicable Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment as otherwise contemplated by this Section 11.06, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Institution after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice

period referred to in, the definition of “Disqualified Institution”), (x) such assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Assumption with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Institution. Any assignment in violation of this clause (f) (i) shall not be void, but the other provisions of this clause (f) shall apply.

(ii) If any assignment is made to any Disqualified Institution without the Borrower’s prior consent in violation of clause (i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) prepay such Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and under the other Loan Documents and/or (B) require such Disqualified Institution to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in this Section 11.06), all of its interest, rights and obligations under this Agreement and related Loan Documents to an Eligible Assignee that shall assume such obligations at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and other the other Loan Documents; provided that (i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in 11.06(b) and (ii) such assignment does not conflict with applicable Laws.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws (“Plan of Reorganization”), each Disqualified Institution party hereto hereby agrees (1) not to vote on such Plan of Reorganization, (2) if such Disqualified Institution does vote on such Plan of Reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of

the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Institutions provided by the Borrower and any updates thereto from time to time (collectively, the “DQ List”) on the Platform, including that portion of the Platform that is designated for “public side” Lenders or (B) provide the DQ List to each Lender requesting the same.

XI.7 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.13 or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder (it being understood that the DQ List may be disclosed to any assignee, or prospective assignee, in reliance on this clause (f) (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section, “Information” means all information received from any Loan Party or any Subsidiary relating to any Loan Party or any Subsidiary or any of their

respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning Holdings or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

XI.8 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates 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.

XI.9 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or,

if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

XI.10 Counterparts; Integration; Effectiveness. This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “Communication”), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on each of the Loan Parties to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of each of the Loan Parties enforceable against such in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent and each of the Secured Parties of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Secured Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”), which shall be deemed created in the ordinary course of the such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Secured Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

XI.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof

and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

XI.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

XI.13 Replacement of Lenders. If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender or if any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);
- (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;
- (d) such assignment does not conflict with applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

XI.14 Governing Law; Jurisdiction; Etc. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(a) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY OTHER PARTY HERETO IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR

RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

XI.15 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

XI.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers, and the Lenders are arm's-length commercial transactions between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers, and the Lenders, on the other hand, (B) each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and Holdings is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Arrangers and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, the Arrangers nor any Lender has any obligation to the Borrower, Holdings or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan

Documents; and (iii) the Administrative Agent, the Arrangers the Lenders, and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings and their respective Affiliates, and neither the Administrative Agent, the Arrangers, nor any Lender has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Administrative Agent, the Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

XI.17 Reserved.

XI.18 USA PATRIOT Act. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act and Beneficial Ownership Regulation. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” an anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

XI.19 Acknowledgment and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any 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 party hereto 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.

XI.20 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 11.20, the following terms have the following meanings:

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

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

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

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

XI.21 ENTIRE AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW.]

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

HYSTER-YALE GROUP, INC.

By: /s/ Suzanne S. Taylor

Name: Suzanne S. Taylor

Title: Senior Vice President, General
Counsel and Secretary

HYSTER-YALE MATERIALS HANDLING, INC.

By: /s/ Suzanne S. Taylor

Name: Suzanne S. Taylor

Title: Senior Vice President, General
Counsel and Secretary

Hyster-Yale Group, Inc.
Term Loan Credit Agreement

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

By: /s/ Gerund Diamond

Name: Gerund Diamond

Title: Vice President

Hyster-Yale Group, Inc.
Term Loan Credit Agreement

BANK OF AMERICA, N.A., as Additional Restatement Effective Date Lender

By: /s/ Mike Roane

Name: Mike Roane

Title: Director

Hyster-Yale Group, Inc.
Term Loan Credit Agreement

[Cashless roll signatures on file with Administrative Agent]

SECOND AMENDED AND RESTATED LOAN, SECURITY AND GUARANTY AGREEMENT

dated as of

June 24, 2021

among

HYSTER-YALE MATERIALS HANDLING, INC.,
BOLZONI AURAMO, INC
and
HYSTER-YALE GROUP, INC.,
as U.S. Borrowers,

HYSTER-YALE NEDERLAND B.V.,
as a Dutch Borrower,

HYSTER-YALE UK LIMITED,
as a UK Borrower,

any other Borrowers party hereto from time to time,
certain Persons party hereto from time to time as Guarantors,

CERTAIN FINANCIAL INSTITUTIONS,
as Lenders,

BANK OF AMERICA, N.A.,
as Administrative Agent and Security Trustee,

BOFA SECURITIES, INC.
and
CITIBANK, N.A.,
as Joint Lead Arrangers and Joint Book Managers

and

CITIBANK, N.A.,
as Syndication Agent

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SECOND AMENDED AND RESTATED LOAN, SECURITY AND GUARANTY AGREEMENT

THIS SECOND AMENDED AND RESTATED LOAN, SECURITY AND GUARANTY AGREEMENT is dated as of June 24, 2021, among HYSTER-YALE MATERIALS HANDLING, INC., a Delaware corporation (“**Parent**”), HYSTER-YALE GROUP, INC., a Delaware corporation (“**HYG**”), BOLZONI AURAMO, INC, a South Carolina corporation (“**Bolzoni US**”), HYSTER-YALE NEDERLAND B.V., a private company with limited liability incorporated under the laws of the Netherlands having its corporate seat in Nijmegen (“**HYN BV**”), HYSTER-YALE UK LIMITED, a company incorporated in England and Wales with company number 02636775 (“**HY UK**”, and together with Parent, HYG, Bolzoni US and HYN BV, the “**Initial Borrowers**” and each, an “**Initial Borrower**”), the Persons party to this Agreement from time to time as Guarantors (as defined herein), the financial institutions party to this Agreement from time to time as lenders (collectively, “**Lenders**”), and BANK OF AMERICA, N.A., a national banking association, in its capacity as administrative agent and security trustee for itself and the other Secured Parties (as defined herein) (together with any successor agent appointed pursuant to **Section 12.10**, the “**Agent**”).

RECITALS:

Initial Borrowers, Agent, the other borrowers party thereto, the Persons party from time to time thereto as guarantors and each lender from time to time party thereto have previously entered into that certain Amended and Restated Loan, Security and Guaranty Agreement dated as of April 28, 2016 (as amended, modified, or supplemented prior to the date hereof, the “**Existing Loan Agreement**”), pursuant to which such lenders have made certain loans to and issued certain letters of credit for the benefit of the borrowers party to the Existing Loan Agreement.

Initial Borrowers have requested an increase to the existing revolving commitments, an extension of the current maturity date and certain other modifications to the Existing Loan Agreement, and Agent and the Lenders have indicated their willingness to amend and restate the Existing Loan Agreement on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for valuable consideration hereby acknowledged, the parties agree to amend and restate the Existing Loan Agreement in its entirety as follows:

1. DEFINITIONS; RULES OF CONSTRUCTION

1.1 Definitions. As used herein, the following terms have the meanings set forth below:

ABL Facility Priority Collateral: as defined in the Intercreditor Agreement.

Accommodation Obligation: any Contractual Obligation, contingent or otherwise, of one Person with respect to any Debt, obligation or liability of another, if the primary purpose or intent thereof by the Person incurring the Accommodation Obligation is to provide assurance to the obligee of such Debts, obligation or liability of another that such Debt, obligation or liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders thereof will be protected (in whole or in part) against loss in respect thereof including, without limitation, direct and indirect guarantees, endorsements (except for collection or deposit in the ordinary course of business), notes co-made or discounted, recourse agreements, take-or-pay agreements, keep well agreements, agreements to purchase or repurchase such Debt, obligation or liability or any security therefor or to provide funds for the payment or discharge thereof, agreements to maintain solvency, assets, level of income, or other financial condition, and agreements to make payment other than for value received. The amount of any

Accommodation Obligation shall be equal to the lesser of (a) the principal amount payable under such Accommodation Obligation (if quantifiable) and (b) the portion of the obligation so guaranteed or otherwise supported.

Account: as defined in the UCC or the Australian PPSA, as applicable, including all rights to payment for goods sold or leased, or for services rendered, whether or not they have been earned by performance.

Account Debtor: a Person obligated under an Account, Chattel Paper or General Intangible.

Accounting Changes: with respect to any Person, changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion of the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or any successor thereto or any agency with similar functions).

Acquisition: with respect to any Person, any acquisition, whether by purchase, merger, amalgamation or otherwise, by such Person of (a) Equity Interests of any other Person if, after giving effect to the acquisition of such Equity Interests, such other Person would be a Subsidiary of such Person, (b) all or substantially all of the assets of any other Person or (c) assets constituting one or more business units, lines of business or division of any other Person.

Additional Foreign Facility Loan Party: as defined in **Section 14.1.1**.

Affected Financial Institution: any EEA Financial Institution or any UK Financial Institution.

Affiliate: with respect to a specified Person, any branch of such Person or any other Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “**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, and in respect of any Person which is an Australian Domiciled Obligor, also has the meaning provided in section 50AA of the Australian Corporations Act. “**Controlling**” and “**Controlled**” have correlative meanings.

Agent: as defined in the preamble to this Agreement.

Agent Indemnitees: Agent and its officers, directors, employees, Affiliates, agents and attorneys, including, without limitation, Security Trustee.

Agent Professionals: attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Agent.

Agreement: this Second Amended and Restated Loan, Security and Guaranty Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

Agreed Currency: Dollars or any Alternative Currency, as applicable.

Agreement Currency: as defined in **Section 1.5.2**.

Allocable Amount: as defined in **Section 5.10.3(b)**.

Alternative Currency: each of the following currencies: Euros, Sterling and Australian Dollars.

Alternative Currency Conforming Changes: with respect to the use, administration of or any conventions associated with any Relevant Rate (other than LIBOR) or any proposed Alternative Currency Successor Rate for an Alternative Currency, any conforming changes to the definitions of “Foreign Base Rate”, “EURIBOR,” “SONIA,” “Australian Bank Bill Rate,” “Interest Period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of “Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by Agent in a manner substantially consistent with market practice for such Alternative Currency (or, if Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate for such Alternative Currency exists, in such other manner of administration as Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

Alternative Currency Successor Rate: as defined in **Section 3.6.3**.

AML Legislation: any applicable anti-money laundering, anti-terrorist financing, terrorism, economic or trade sanctions and “**know your client**” policies, regulations, laws or rules, including any guidelines or orders thereunder (including the Patriot Act).

Applicable Law: all laws, rules, regulations and governmental guidelines applicable to the Person, conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

Applicable Lenders: (a) with respect to Foreign Borrowers, the Foreign Lenders and (b) with respect to U.S. Borrowers, the U.S. Lenders.

Applicable Margin: with respect to any Loan and any other Obligations specified below, the respective margin set forth below, based on Borrowers’ average daily Total Excess Availability expressed as a percentage of the average daily Total Borrowing Base for the most recent Fiscal Quarter determined as of the most recent determination date:

Level	Total Excess Availability	Australian Bank Bill Rate Loans, Foreign Base Rate Loans and Interest Period Loans	U.S. Base Rate Loans
I	≤ 33%	1.75%	0.75%
II	> 33% ≤ 66%	1.50%	0.50%
III	> 66%	1.25%	0.25%

For the period from the Closing Date through June 30, 2021, the Applicable Margin shall be determined as if Level III were applicable. Thereafter, the Applicable Margin shall be subject to increase or decrease by Agent on the first day of the calendar month following each Fiscal Quarter end. If Agent is unable to calculate average daily Total Excess Availability for a Fiscal Quarter due to a Borrower Agent’s failure to deliver any Borrowing Base Certificate when required hereunder, then, at the option of Agent or Required

Lenders, the Applicable Margin shall be determined as if Level I were applicable until the first day of the calendar month following its receipt.

Appointee: as defined in **Section 12.2.3(a)**.

Approved Floorplan and Factoring Facilities: one or more floorplan and factoring facilities provided to certain Foreign Restricted Subsidiaries on terms and conditions reasonably acceptable to Agent.

Approved Intercreditor Agreement: (a) with respect to the Term Loan Documents, the Intercreditor Agreement, (b) with respect to an Approved Floorplan and Factoring Facility, an intercreditor agreement containing terms satisfactory to Agent, among Agent, on behalf of the Secured Parties, the applicable Obligors, and the creditors providing such Approved Floorplan and Factoring Facilities (or any agent or trustee acting on their behalf), and (c) with respect to a JV Financing Facility, that certain Intercreditor Agreement dated as of August 13, 2020, between Agent and HYGFS, as any of the foregoing may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

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

Asset Disposition: a sale, lease, license, consignment, transfer or other disposition of Property of an Obligor or Restricted Subsidiary, including (a) a disposition of Property in connection with a sale-leaseback transaction or synthetic lease and (b) any issuance of any additional Equity Interests by an Obligor or any of its Restricted Subsidiaries (other than issuances (i) by Parent, (ii) to such Obligor's or Restricted Subsidiary's existing parent, (iii) of directors' qualifying shares and (iv) to another Obligor or Restricted Subsidiary).

Assignment and Acceptance: an assignment agreement between a Lender and Eligible Assignee, in the form of **Exhibit A** or otherwise satisfactory to Agent.

Australia: the Commonwealth of Australia.

Australian Bank Bill Rate: a rate per annum equal to the Bank Bill Swap Reference Bid Rate ("**BBSY**"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period; provided, that in no event shall the Australian Bank Bill Rate be less than zero.

Australian Bank Bill Rate Loan: a Foreign Loan, or portion thereof, funded in Australian Dollars to an Australian Borrower and bearing interest calculated by reference to the Australian Bank Bill Rate.

Australian Base Rate: for any day, a per annum rate of interest equal to the "cash rate", or comparable or successor rate approved by Agent, determined by it at or about 10:30 a.m. (Sydney time) on such day, as published on the applicable Reuters screen page (or other commercially available source designated by Agent from time to time); provided, that in no event shall the Australian Base Rate be less than zero. Any change in such rate shall take effect at the opening of business on the applicable Business Day.

Australian Borrowers: each Foreign Restricted Subsidiary organized under the laws of Australia or any state or territory thereof that, after the date hereof, has executed a supplement or joinder to this Agreement in accordance with **Section 10.1.9(a)** or **Section 10.1.9(c)**, as applicable, and has satisfied the other requirements set forth in **Section 10.1.9(a)** or **Section 10.1.9(c)**, as applicable, in order to become an Australian Borrower.

Australian Borrower Activation Date: the first date on which a Foreign Restricted Subsidiary organized under the laws of Australia or any state or territory thereof becomes an Australian Borrower hereunder in accordance with **Section 10.1.9(c)**.

Australian Corporations Act: the *Corporations Act 2001* (Cth) of Australia.

Australian Credit Facility: that certain Guaranteed Multi Option Facility, dated August 15, 2000, among Hyster-Yale Asia-Pacific Pty Ltd. ACN 000 297 914, any other Australia Subsidiary from time to time party thereto, Citibank, N.A. and Citibank Limited, as amended, restated, supplemented or otherwise modified from time to time or as the same may be refinanced or replaced; **provided** that such refinancing or replacement, taken as a whole, is on terms no less favorable to such Australian Subsidiaries than the terms of the existing Australian Credit Facility prior to such refinancing or replacement; **provided, further**, that such refinancing or replacement shall not be in an aggregate principal amount greater than the commitments under the Australian Credit Facility on the Closing Date (plus unpaid accrued interest and premiums thereon and other fees and expenses reasonably incurred, in connection with such refinancing or replacement).

Australian Dollars: the lawful currency of Australia.

Australian Domiciled Obligor: (a) each Australian Borrower and (b) each Australian Guarantor, and “**Australian Domiciled Obligors**” means all such Persons, collectively.

Australian Double Tax Treaty: as defined in **Section 5.8.9(a)**.

Australian Guarantor: each Foreign Restricted Subsidiary organized under the laws of Australia or any state or territory thereof that has executed a supplement or joinder to this Agreement or otherwise entered into a guaranty in order to become an Obligor, other than the Australian Borrowers.

Australian Loans: each of the Australian Bank Bill Rate Loans, the Interest Period Loans and the Foreign Base Rate Loans funded to Australian Borrowers.

Australian Pension Plan: a superannuation, retirement benefit or pension fund (whether established by deed or under any statute of Australia or any state or territory of Australia) contributed to by, or to which there is or may be an obligation to contribute by, any Obligor in respect of its Australian employees and officers or former employees and officers.

Australian PPSA: the *Personal Property Security Act 2009* (Cth) of Australia and the regulations made thereunder.

Australian Security Agreements: (a) each specific security agreement among any Australian Domiciled Obligor and the Australian Security Trustee, (b) each featherweight general security agreement among any Australian Domiciled Obligor and the Australian Security Trustee, (c) any Deposit Account Control Agreements among any Australian Domiciled Obligor and the Australian Security Trustee, and

(d) any Securities Account Control Agreements among any Australian Domiciled Obligor and the Australian Security Trustee.

Australian Security Trust: the trust established under the Australian Security Trust Deed.

Australian Security Trust Deed: (a) any security trust deed entered into among the Australian Domiciled Obligors, Agent, the Australian Security Trustee and the Foreign Facility Secured Parties in accordance with **Section 12.3** of this Agreement, and (b) any accession deed entered into among an Australian Domiciled Obligor or a Foreign Facility Secured Party and the Australian Security Trustee from time to time thereto.

Australian Security Trustee: Bank of America (Australia) or any successor security trustee appointed under the Australian Security Trust Deed.

Australian Subsidiaries: any Foreign Restricted Subsidiaries organized under the laws of Australia or any state or territory thereof from time to time.

Available Tenor: as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

Availability: Foreign Excess Availability and/or U.S. Excess Availability, as the context may require.

Availability Reserve: the Foreign Availability Reserve and/or the U.S. Availability Reserve, as the context may require.

Bail-In Action: 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: (a) with respect to any EEA Member Country implementing *Article 55* of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the *United Kingdom Banking Act 2009* (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

Bank of America: Bank of America, N.A., a national banking association, and its successors and assigns.

Bank of America (Australia): Bank of America, National Association, ARBN 064 874 531 (acting through its Australia branch).

Bank of America (London): Bank of America (acting through its London branch).

Bank of America Indemnitees: Bank of America, Bank of America (Australia), Bank of America (London) and their respective officers, directors, employees, Affiliates, agents and attorneys.

Bank Product: any of the following products, services or facilities extended to any Borrower or Subsidiary of a Borrower by a Lender or any of its Affiliates: (a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card and merchant card services; (d) prior to the Australian Borrower Activation Date, (i) working capital credit facilities extended by Citibank, N.A. or its Affiliates to Parent's Subsidiaries in Australia and China and (ii) letters of credit issued by Citibank, N.A. or its Affiliates to Parent's Subsidiaries in Australia and China, in an aggregate amount for this **clause (d)** not to exceed \$10,000,000 at any time, (e) any line of credit supported by a Foreign Working Capital Guaranty and (f) other banking products or services, other than Letters of Credit.

Bankruptcy Code: Title 11 of the United States Code.

Base Rate: Foreign Base Rate and/or U.S. Base Rate, as the context requires.

Base Rate Loan: a Foreign Base Rate Loan and/or U.S. Base Rate Loan, as the context requires.

Benchmark: initially, LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to **Section 3.6.2** then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

Benchmark Replacement:

(a) for purposes of **Section 3.6.2(a)**, the first alternative set forth below that can be determined by Agent:

(i) the sum of: (x) Term SOFR and (y) 0.11448% (11.448 basis points) for an Available Tenor of one-month's duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months' duration, 0.42826% (42.826 basis points) for an Available Tenor of six-months' duration, and 0.71513% (71.513 basis points) for an Available Tenor of twelve-months' duration; or

(ii) the sum of: (x) Daily Simple SOFR and (y) 0.11448% (11.448 basis points);

provided that, if initially LIBOR is replaced with the rate contained in **clause (a)(ii)** above (Daily Simple SOFR plus the applicable spread adjustment) and subsequent to such replacement, Agent determines that Term SOFR has become available and is administratively feasible for Agent in its sole discretion, and Agent notifies Borrower Agents and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than 30 days after the date of such notice, the Benchmark Replacement shall be as set forth in **clause (a)(i)** above;

(b) for purposes of **Section 3.6.2(b)**, the sum of (i) the alternate benchmark rate and (ii) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by Agent and Borrower Agents as the replacement Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by a Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

provided that, if the Benchmark Replacement would be less than zero the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

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

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

Benchmark Transition Event: with respect to any then-current Benchmark other than LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark or a Governmental Authority with jurisdiction over such administrator announcing or stating that all Available Tenors are or will no longer be representative, or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, provided that, at the time of such statement or publication, there is no successor administrator that is satisfactory to Agent, that will continue to provide any representative tenors of such Benchmark after such specific date.

Beneficial Ownership Certification: a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

Beneficial Ownership Regulation: 31 C.F.R. §1010.230.

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

BHC Act Affiliate: an “affiliate”, as defined in and interpreted in accordance with 12 U.S.C. §1841(k).

Board of Directors: with respect to any Person, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such Board.

Board of Governors: the Board of Governors of the Federal Reserve System.

Bolzoni Entities: (a) Bolzoni Holding S.p.A., a corporation organized under the laws of Italy, and (b) Bolzoni S.p.A., a corporation organized under the laws of Italy, and (c) each of their respective Subsidiaries.

Bolzoni US: as defined in the preamble to this Agreement.

Borrowed Money: with respect to any Obligor and its Restricted Subsidiaries, without duplication, its (a) Debt that (i) arises from the lending of money by any Person to such Obligor or such Restricted Subsidiary, (ii) is evidenced by notes, drafts, bonds, debentures, credit documents or similar instruments, or (iii) accrues interest or is a type upon which interest charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business); (b) Capital Leases; (c) unreimbursed amounts with respect to letters of credit; and (d) guaranties of any Debt of the foregoing types owing by another Person.

Borrower: each Foreign Borrower and each U.S. Borrower and, collectively, Borrowers.

Borrower Agent and Borrower Agents: as defined in **Section 4.4(b)**.

Borrower Group: Foreign Borrowers or U.S. Borrowers, as the context may require.

Borrower Group Commitment: with respect to the commitment of (a) a Foreign Lender, its Foreign Revolver Commitment and (b) a U.S. Lender, its U.S. Revolver Commitment. The term “**Borrower Group Commitments**” means (i) the Borrower Group Commitment of all Foreign Lenders or (ii) the Borrower Group Commitment of all U.S. Lenders, as the context requires. To the extent any Lender has more than one Borrower Group Commitment, each such Commitment shall be considered as a separate Commitment for purposes of this definition.

Borrower Materials: Borrowing Base Certificates, Compliance Certificates and other information, reports, financial statements and other materials delivered by Borrowers hereunder, as well as other Reports and information provided by Agent to Lenders.

Borrowing: a group of Loans that are made or converted together on the same day and have the same interest option and, if applicable, Interest Period.

Borrowing Base: the Foreign Borrowing Base and/or the U.S. Borrowing Base, as the context requires.

Borrowing Base Certificate: a certificate, in form and substance satisfactory to Agent, by which U.S. Borrower Agent certifies the Total Borrowing Base and each individual Borrowing Base.

Business Activity Report: to the extent required, notice of a business activity or other report from the appropriate Governmental Authority in the jurisdiction in which an obligor of Collateral is located to enforce rights in or against Collateral or such obligor.

Business Day: any day excluding Saturday, Sunday and any other day that is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are closed; and when used with reference to (a) an Interest Period Loan, the term shall also exclude any day on which banks are not open for the transaction of banking business in London, England, (b) a Foreign Loan, shall also exclude any day (i) on which banks are not open for the transaction of banking business in London, England and (ii) in respect of any such Loan denominated in Euros, any day that is not a TARGET Day and (c) an Australian Loan, shall also exclude any day on which banks are not open for the transaction of banking business in Sydney, New South Wales, Australia.

CAM Exchange: the exchange of the U.S. Lenders' interests and the Foreign Lenders' interests provided for in **Section 13.5**.

CAM Exchange Date: the date which Agent in its discretion designates as the "CAM Exchange Date" by notice to the Lenders as a result of the occurrence of (a) any Event of Default under **Section 11.1(h)** or (b) an acceleration of Loans and termination of the Commitments pursuant to **Section 11.2**.

CAM Percentage: as to each Lender, a fraction (expressed as a percentage), (a) the numerator of which shall be the aggregate amount of such Lender's Commitment immediately prior to the CAM Exchange Date, and (b) the denominator of which shall be the aggregate amount of the Commitments of all the Lenders immediately prior to the CAM Exchange Date.

Capital Expenditures: all liabilities incurred or expenditures made by Parent or any Restricted Subsidiary (whether payable in cash or other Property or accrued as a liability (but without duplication)) during such period that, in conformity with GAAP, are required to be classified as capital expenditures but excluding (a) interest capitalized relating to and during construction of Property, (b) expenditures made in connection with the replacement or restoration of Property to the extent reimbursed or financed from insurance or condemnation proceeds not constituting net cash proceeds of sale of such Property and (c) expenditures made with the proceeds from the sales of similar Property to the extent such sales and reinvestments are otherwise permitted under this Agreement.

Capital Lease: any lease that is required to be capitalized or constitutes a financing lease for financial reporting purposes in accordance with GAAP, subject to **Section 1.2**.

Cash Collateral: cash, and any interest or other income earned thereon, that is delivered to Agent or Security Trustee to Cash Collateralize any Obligations.

Cash Collateral Account: the Foreign Cash Collateral Account and/or U.S. Cash Collateral Account, as the context may require.

Cash Collateralize: the delivery of cash to Agent or Security Trustee, as security for the payment of Obligations, in an amount equal to (a) with respect to LC Obligations, 105% of the aggregate LC Obligations, and (b) with respect to any inchoate, contingent or other Obligations (including Secured Bank Product Obligations), Agent's good faith estimate of the amount due or to become due, including fees, expenses and indemnification hereunder. "**Cash Collateralization**" has a correlative meaning.

Cash Dominion Event: the occurrence of any one of the following events: (a) Total Excess Availability is less than the greater of (x) 10% of the Total Borrowing Base and (y) \$20,000,000 at any time, or (b)(i) an Event of Default under **Section 11.1(a)** or **11.1(h)** shall have occurred and be continuing or (ii) any other Event of Default shall have occurred and be continuing and Agent shall have determined, in its sole discretion or at the direction of the Required Lenders, to effect a Cash Dominion Event as a result of such Event of Default; provided that, (A) to the extent that the Cash Dominion Event has occurred due to (1) **clause (a)** of this definition, if Total Excess Availability shall have exceeded the greater of (x) 10% of the Total Borrowing Base and (y) \$20,000,000, and (2) **clause (b)** of this definition, if the Event of Default shall have been cured or waived to Agent's satisfaction and no other Event of Default has occurred and is continuing, in each case for **subclauses (1)** and **(2)**, for at least thirty (30) consecutive days, and (B) if no more than three Cash Dominion Events have previously been cured, then the Cash Dominion Event shall cease to exist; provided, further, that, Borrowers may consent to cash sweeps and other transfers implemented pursuant to **Section 5.6** as a result of any notice or direction

given by Agent during the existence of a Cash Dominion Event remaining in effect after a Cash Dominion Event has ceased to exist and, if no such consent is granted, Agent shall have a reasonable period of time (not to exceed five (5) Business Days) following the end of a Cash Dominion Event to terminate the cash sweeps and other transfers existing pursuant to **Section 5.6** as a result of any notice or direction given by Agent during the existence of a Cash Dominion Event.

Cash Equivalents: (a) marketable direct obligations issued or unconditionally guaranteed by the U.S. government and backed by the full faith and credit of the U.S. government; (b) repurchase agreements on obligations of the type specified in **clause (a)** above with respect to which, at the time of acquisition, the senior long-term debt of the party agreeing to repurchase such obligations is rated AAA (or better) by S&P or Aaa (or better) by Moody's; (c) domestic and eurodollar certificates of deposit and time deposits, bankers' acceptances and floating rate certificates of deposit issued by any commercial bank organized under the laws of the U.S., any state thereof, the District of Columbia, any foreign bank, or its branches or agencies (fully protected against currency fluctuations), which, at the time of acquisition, are rated A-1 (or better) by S&P or P-1 (or better) by Moody's; (d) commercial paper of U.S. and foreign banks and bank holding companies and their subsidiaries and U.S. and foreign finance, commercial industrial or utility companies which, at the time of acquisition, are rated A-1 (or better) by S&P or P-1 (or better) by Moody's; (e) marketable direct obligations of any state of the U.S. or any political subdivision of any such state given on the date of such investment the highest credit rating by Moody's and S&P; or (f) securities of money market funds rated Am (or better) by S&P or A (or better) by Moody's; provided, that the maturities of any such Cash Equivalents referred to in **clauses (a), (c), (d)** and **(e)** shall not exceed 270 days.

Cash Management Services: services relating to operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

CERCLA: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 *et seq.*).

CERCLIS: as defined in **Section 9.1.13(e)**.

1 **CFC:** an entity that is a "controlled foreign corporation" within the meaning of Section 957 of the Code.

2 **CFC Holdco:** a Domestic Subsidiary substantially all of the assets of which consist of Equity Interests of CFCs or other CFC Holdcos and with no material business activities other than the ownership of the Equity Interests of CFCs or other CFC Holdcos.

Change in Law: the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, however, that "Change in Law" shall include, regardless of the date enacted, adopted or issued, all requests, rules, guidelines, requirements or directives (i) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) promulgated pursuant to Basel III by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any other Governmental Authority.

Change of Control: the occurrence of any of the following:

(a) any Person or group of Persons (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act) other than one or more Permitted Holders, is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 promulgated by the Commission under said Act), either directly or indirectly, of 33% or more of the total voting power of the outstanding Voting Stock of Parent; provided, however, that the Permitted Holders beneficially own (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act), directly or indirectly, in the aggregate a lesser percentage of the total voting power of the Voting Stock of Parent than such other Person and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors of Parent; or

(b) 100% of the Equity Interests of any Borrower (other than Parent) ceasing to be owned (directly or indirectly) by Parent.

Claims: all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable attorneys’ fees and Extraordinary Expenses) at any time (including after Full Payment of the Obligations or replacement of Agent or any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Obligor or other Person, in any way relating to (a) any Loans, Letters of Credit, Loan Documents, Borrower Materials, or the use thereof or transactions relating thereto, (b) any action taken or omitted in connection with any Loan Documents (including action taken under or in relation to the Australian PPSA, including any registration or any response to an amendment demand or a request under section 275 of the Australian PPSA), (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or Applicable Law, (e) failure by any Obligor to perform or observe any terms of any Loan Document or (f) reliance by any Indemnitee on a Communication executed using an Electronic Signature or in the form of an Electronic Record, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

Closing Date: as defined in **Section 6.1**.

Code: the Internal Revenue Code of 1986, as amended from time to time (except as otherwise provided herein).

Collateral: all Property described in **Section 7.1**, all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

Commodity Exchange Act: the Commodity Exchange Act (7 U.S.C. §1 *et seq.*).

Communication: any notice, request, election, representation, certificate, report, disclosure, authorization, or other information or statement relating hereto, including any Loan Document or Borrower Materials.

Commitment: for any Lender, the aggregate amount of such Lender’s Borrower Group Commitments. “**Commitments**” means the aggregate amount of all Borrower Group Commitments (not to exceed the Maximum Facility Amount), which amount shall as of the Closing Date be equal to

\$300,000,000 consisting of (a) \$90,000,000 in respect of the Foreign Revolver Commitments and (b) \$210,000,000 in respect of the U.S. Revolver Commitments.

Commitment Termination Date: the Foreign Revolver Commitment Termination Date and/or the U.S. Revolver Commitment Termination Date, as the context may require.

Compliance Certificate: a certificate, in the form of **Exhibit E**, by which U.S. Borrower Agent certifies, among other things, certain matters in **Section 10.1.2** and compliance, when a Trigger Period is in effect, with the financial covenant set forth in **Section 10.3** (provided that the financial covenant will be calculated thereon whether or not a Trigger Period is in effect; provided further that, notwithstanding whether Parent has any Unrestricted Subsidiaries, the financial covenant calculation set forth in each Compliance Certificate will reflect such calculations for Parent and its Restricted Subsidiaries only and will show the adjustments necessary to eliminate the results of Unrestricted Subsidiaries (if any) from such calculations).

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

Consolidated EBITDA: for any period, (a) Consolidated Net Income for such period plus (b) to the extent deducted in determining Consolidated Net Income for such period, but without duplication, the aggregate amount of (i) non-cash expense relating to stock compensation, (ii) depreciation and amortization expense, (iii) Consolidated Interest Expense, (iv) foreign, federal, state and local income taxes, (v) extraordinary losses, (vi) equity in losses of unconsolidated Restricted Subsidiaries and Affiliates, (vii) accruals for long-term deferred compensation (net of cash payments of deferred compensation accrued in prior periods), (viii) losses from minority interests in Affiliates, (ix) non-cash charges and expenses incurred outside of the Ordinary Course of Business (including the cumulative effect of any Accounting Changes but excluding any non-cash charge that relates to the write-down or write-off of Accounts or Inventory), provided, that if any such non-cash charges or expenses represent(s) an accrual or reserve for potential cash items in any future period the cash payment thereof in such future period shall be subtracted from Consolidated EBITDA during such period, (x) non-cash expenses relating to the mark to market provision for derivative instruments, (xi) cash receipts related to the termination of any derivative instrument that, as of the end of the prior period, had a net gain since the inception of such derivative instrument, (xii) cash dividends or distributions received from joint ventures in which U.S. Borrowers directly or indirectly own a minority interest, (xiii) transaction costs and expenses associated with entering into this Agreement on the Closing Date and transaction costs and expenses associated with entering into the Term Loan Agreement, and (xiv) costs associated with any Permitted Acquisition or Permitted Investment (whether or not consummated) in an aggregate amount not to exceed \$10,000,000 in any four fiscal quarter period, minus (c) to the extent included in determining Consolidated Net Income for such period, but without duplication, (i) non-cash income relating to stock compensation, (ii) extraordinary gains, (iii) equity in earnings of Unrestricted Subsidiaries, unconsolidated Restricted Subsidiaries and Affiliates for such period, (iv) income from minority interests in Affiliates (other than cash dividends or distributions received from joint ventures in which Parent directly or indirectly owns a minority interest), (v) non-cash gains outside of the Ordinary Course of Business (including the cumulative effect of any Accounting Changes), (vi) non-cash income relating to the mark to market provision for derivative instruments, and (vii) cash payments related to the termination of any derivative instrument that, as of the end of the prior period, had a net loss since the inception of such derivative instrument.

Consolidated Interest Expense: for any period, all as determined in conformity with GAAP, (a) total interest expense, whether paid or accrued (without duplication) (including the interest component of Capital Lease obligations), of Parent and its Restricted Subsidiaries on a consolidated basis, including, without limitation, all recurring bank loan fees and commissions, discounts and other fees and charges owed with respect to letters of credit, but excluding, however, amortization of discount, interest paid in property other than cash or any other interest expense not payable in cash, plus (b) any net payments made during such period under Hedging Agreements providing interest rate protection, minus (c) any net payments received during such period under Hedging Agreements providing interest rate protection, plus (d) to the extent deducted in determining Consolidated Interest Expense, any interest income.

Consolidated Net Income: for any period, the net earnings (or loss) after taxes of Parent and its Restricted Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

Consolidated Total Assets: as of any date of determination, for Parent and its Restricted Subsidiaries on a consolidated basis, the sum of the total assets held by Parent and its Restricted Subsidiaries on that date.

Contaminant: any man-made or naturally occurring waste, pollutant, hazardous substance, radioactive substance or material, toxic substance, hazardous waste, radioactive waste, special waste, petroleum or petroleum-derived substance or waste, mold, asbestos in any form or condition, polychlorinated biphenyls, or any hazardous or toxic constituent thereof and includes, but is not limited to, these terms as defined in Environmental, Health or Safety Applicable Law.

Contractual Obligation: as applied to any Person, any provision of any security issued by that Person or any indenture, mortgage, deed of trust, security agreement, pledge agreement, guaranty, contract, undertaking, agreement or instrument to which that Person is a party or by which it or any of its Property is bound, or to which it or any of its Property is subject.

Contribution Notice: a contribution notice issued by the Pensions Regulator in the UK under section 38 or section 47 of the Pensions Act 2004 (UK).

Controller: the meaning given to it in section 9 of the Australian Corporations Act.

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

Covered Party: as defined in **Section 14.21**.

Credit and Collection Policies: the credit and collection policy of each Borrower, each in form and substance reasonably satisfactory to Agent.

CTA: the Corporation Tax Act 2009 (United Kingdom).

Customary Permitted Liens: each of the following:

(a) Liens (other than Liens in favor of the PBGC) with respect to the payment of taxes, assessments or governmental charges in all cases which are not yet due or which are not required to be paid pursuant to **Section 10.1.6**;

(b) statutory Liens of landlords and Liens of mechanics, carriers, materialmen, consignors, warehousemen, or workmen and other Liens imposed by law created in the Ordinary Course of Business in each case for amounts not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained in accordance with GAAP, provided that the foregoing shall not include statutory or contractual rights of title retention on Inventory;

(c) Liens (other than any Lien in favor of the PBGC) incurred or deposits made in the Ordinary Course of Business in connection with worker's compensation, unemployment insurance or other types of social security benefits or to secure the performance of bids, tenders, surety, appeal and performance bonds, trade contracts (not constituting Debt), regulatory or statutory obligations, government contracts or other obligations of a like nature provided in the Ordinary Course of Business; provided that all such Liens do not in the aggregate detract from the value of Parent's or any of its Restricted Subsidiaries' assets or Property or impair the use thereof in the operation of their respective businesses; and

(d) Liens arising with respect to zoning restrictions, easements, licenses, reservations, covenants, rights-of-way, utility easements, building restrictions and other similar charges or encumbrances on the use of Real Estate which do not interfere with the ordinary conduct of the business of Parent or any of its Restricted Subsidiaries.

CWA: the Clean Water Act (33 U.S.C. §§1251 *et seq.*).

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

Debt: as applied to any Person, at any time, without duplication, (a) all indebtedness, obligations or other liabilities of such Person (i) for Borrowed Money or evidenced by debt securities, debentures, acceptances, notes or other similar instruments, (ii) in respect of Disqualified Equity Interests, (iii) with respect to letters of credit issued for such Person's account (contingent or otherwise), (iv) to pay the deferred purchase price of property or services, except accounts payable and accrued expenses arising in the ordinary course of business and earnouts or similar obligations unless and until such amounts are earned, (v) in respect of Capital Leases, or (vi) under conditional sale or other title retention agreements relating to property purchased by such Person; (b) Accommodation Obligations in respect of any Debt described in **clause (a)**; (c) all indebtedness, obligations or other liabilities of such Person or others secured by a Lien on any property of such Person, whether or not such indebtedness, obligations or liabilities are assumed by such Person, all as of such time; and (d) all indebtedness, obligations or other liabilities of such Person in respect of Hedging Agreements, such indebtedness, obligations and other liabilities deemed to be equal to the fair market value thereof, as determined in accordance with GAAP, net of liabilities owed to such Person by the counterparties thereon. The Debt of a Person shall include any Debt of any partnership or unincorporated joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, unless such Debt is non-recourse to such Person.

Deemed Non-Cash Consideration: (a) any liabilities, as shown on the most recent consolidated balance sheet of Parent or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Obligations), or any Accommodation Obligations in respect of Debt

of Persons other than Parent or its Restricted Subsidiaries, that are assumed (contractually or otherwise) by the person acquiring such assets to the extent that Parent and its Restricted Subsidiaries have no further liability with respect to such liabilities; (b) any securities, notes or other obligations received by Parent or any such Restricted Subsidiary from such transferee that are converted by Parent or such Restricted Subsidiary into cash within 180 days of their receipt to the extent of the cash received in that conversion; and (c) any Designated Noncash Consideration received by Parent or its Restricted Subsidiary in any Asset Disposition having an aggregate fair market value, taken together with all other Designated Noncash Consideration received pursuant to this clause (c) that is at that time outstanding in the aggregate, not to exceed \$15,000,000, in each case at the time of the receipt of such Designated Noncash Consideration, with the fair market value of each item of Designated Noncash Consideration measured at the time received and without giving effect to subsequent changes in value.

Default: an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default.

Default Rate: for any Obligation (including, to the extent permitted by law, interest not paid when due), 2% plus the interest rate (including margin) otherwise applicable thereto.

Default Right: has the meaning assigned in and interpreted in accordance with 12 C.F.R. §§252.81, 47.2 or 382.1, as applicable.

Defaulting Lender: any Lender that (a) has failed to comply with its funding obligations hereunder, and such failure is not cured within two Business Days; (b) has notified Agent or any Borrower that such Lender does not intend to comply with its funding obligations hereunder or under any other credit facility, or has made a public statement to that effect; (c) has failed, within three Business Days following request by Agent or any Borrower, to confirm in a manner satisfactory to Agent and Borrowers that such Lender will comply with its funding obligations hereunder; (d) has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding (including reorganization, liquidation, or appointment of a receiver, custodian, administrator or similar Person by the Federal Deposit Insurance Corporation or any other regulatory authority) or (e) has become the subject of a Bail-in Action; provided, however, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of an equity interest in such Lender or parent company unless the ownership provides immunity for such Lender from jurisdiction of courts within the U.S. or from enforcement of judgments or writs of attachment on its assets, or permits such Lender or Governmental Authority to repudiate or otherwise to reject such Lender's agreements.

Deposit Account: (a) any "deposit account" as such term is defined in Article 9 of the UCC and in any event shall include all accounts and sub-accounts relating to any of the foregoing, (b) any "ADI account" as such term is defined in the Australian PPSA and in any event shall include all accounts and sub-accounts relating to any of the foregoing, and (c) with respect to any such Deposit Account located outside of the U.S. and Australia, any bank account with a deposit function.

Deposit Account Control Agreement: control agreement reasonably satisfactory to Agent executed by an institution maintaining a Deposit Account for an Obligor, to perfect Agent's Lien or otherwise grant control to Agent on such account.

Designated Jurisdiction: any country or territory that is the subject of any Sanction.

Designated Non-cash Consideration: the fair market value of non-cash consideration received by Parent or any of its Restricted Subsidiaries in connection with an Asset Disposition made pursuant to

Section 10.2.5(l) that is designated as “Designated Non-cash Consideration” on the date received pursuant to a certificate of a responsible officer of Parent, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

Designated Obligations: all Obligations of Borrowers with respect to (a) principal and interest under the Loans, (b) unreimbursed drawings under Letters of Credit and interest hereon, and (c) fees under **Section 3.2**.

Dilution Percent: the percent, determined for U.S. Borrowers’ or Foreign Borrowers’ (as applicable) most recent trailing 12-month period, equal to (a) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos and other dilutive items with respect to Accounts of such Persons, divided by (b) gross sales of such Persons.

Direction: as defined in **Section 5.8.8**.

Disqualified Equity Interests: any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Maturity Date.

Disqualified Institution: on any date, any Person that is a competitor of Parent or any of its Subsidiaries, or an Affiliate of a competitor, which Person has been designated by U.S. Borrower Agent as a “Disqualified Institution” by written notice to Agent and the Lenders not less than 2 Business Days prior to such date (or, in the case of any Affiliate, is clearly identifiable as an Affiliate based solely by similarity of such Affiliate’s name to the name of a competitor on such list); provided that (x) “Disqualified Institutions” shall exclude any Person that U.S. Borrower Agent has designated as no longer being a “Disqualified Institution” by written notice delivered to Agent and the Lenders from time to time and (y) notwithstanding the foregoing, in no event shall any bona fide fixed income investors or debt funds that are Affiliates of competitors be “Disqualified Institutions.”

Distribution: any distribution or dividend with respect to any Equity Interest (other than payment-in-kind); or purchase, redemption, or other acquisition or retirement for value of any Equity Interest.

Document: as defined in the UCC (and/or with respect to any Document of an Australian Domiciled Obligor, a “document of title” as defined in the Australian PPSA) or any other Applicable Law, as applicable.

Dollar Equivalent: on any date, with respect to any amount denominated in Dollars, such amount in Dollars, and with respect to any stated amount in a currency other than Dollars, the amount of Dollars that Agent determines (which determination shall be conclusive and binding absent manifest error) would be necessary to be sold on such date at the applicable Spot Rate to obtain the stated amount of the other currency.

Dollars: lawful money of the U.S.

Domestic Restricted Subsidiary: each Restricted Subsidiary of Parent organized in the U.S., any state thereof or the District of Columbia.

Domestic Subsidiary: each Subsidiary of Parent organized in the U.S., any state thereof or the District of Columbia.

Dominion Account: with respect to (a) the Foreign Domiciled Obligors, each Foreign Dominion Account and (b) the U.S. Domiciled Obligors, each U.S. Dominion Account.

Dutch Borrowers: (a) HYN BV and (b) each other Foreign Restricted Subsidiary organized under the laws of the Netherlands that, after the date hereof, has executed a supplement or joinder to this Agreement in accordance with **Section 10.1.9(a)** and has satisfied the other requirements set forth in **Section 10.1.9(a)** in order to become a Dutch Borrower.

Dutch Domiciled Obligor: each (a) Dutch Borrower, and (b) each Dutch Guarantor, and “**Dutch Domiciled Obligors**” means all such Persons, collectively.

Dutch Guarantors: each Foreign Restricted Subsidiary organized under the laws of the Netherlands that has executed a supplement or joinder to this Agreement or otherwise entered into a guaranty in order to become an Obligor, other than the Dutch Borrowers. As of the Closing Date, the Dutch Guarantors are Hyster-Yale Holding B.V. and HY International.

Dutch Security Agreements: each pledge (including, without limitation, each pledge over movable assets (undisclosed and non-possessory) and each pledge of receivables) or security agreement among any Dutch Domiciled Obligor and Agent or the European Security Trustee.

Dutch VAT Recipient: as defined in **Section 5.8.7(c)(ii)**.

Early Opt-in Effective Date: with respect to any Early Opt-in Election, the 6th Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as Agent has not received, by 5:00 p.m. (New York City time) on the 5th Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

Early Opt-in Election: the occurrence of:

(a) a determination by Agent, or a notification by Borrower Agents to Agent that Borrower Agents have made a determination, that U.S. dollar-denominated syndicated credit facilities currently being executed, or that include language similar to that contained in **Section 3.6.2**, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, and

(b) the joint election by Agent and Borrower Agents to replace LIBOR with a Benchmark Replacement and the provision by Agent of written notice of such election to the Lenders.

EEA Financial Institution: (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity

established in an EEA Member Country which is a parent of an institution described in **clause (a)** of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in **clauses (a) or (b)** of this definition and is subject to consolidated supervision with its parent.

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

EEA Resolution Authority: 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.

Electronic Copy: as defined in **Section 14.8**.

Electronic Record and **Electronic Signature:** as defined in 15 U.S.C. §7006.

Eligible Accounts: the Eligible Foreign Accounts and/or Eligible U.S. Accounts, as the context may require.

Eligible Account Debtor Jurisdiction: (a) Australia, the United Kingdom, the Netherlands and the U.S., (b) so long as Total Excess Availability is greater than the greater of (x) 20% of the Total Borrowing Base and (y) \$40,000,000, any other country that is a member of the Organization for Economic Cooperation and Development and approved from time to time by Agent in its Permitted Discretion (unless disapproved from time to time by Agent), which shall initially include Austria, Belgium, Denmark, Finland, France, Germany, Ireland, the Republic of Italy, Japan, Luxembourg, New Zealand, Norway, Portugal, Spain, Sweden and Switzerland (together, in each case, with any state, province or territory thereof, as applicable), provided, however, if at any time Total Excess Availability is less than the greater of (x) 20% of the Total Borrowing Base and (y) \$40,000,000, any such jurisdiction may cease, upon notice to Foreign Borrower Agent by Agent, to be an Eligible Account Debtor Jurisdiction solely to the extent that Agent determines, in its Permitted Discretion, that Agent or a Security Trustee does not have a duly perfected and enforceable Lien in the Accounts of Accounts Debtors organized or located in such jurisdiction under the Applicable Law of such jurisdiction and (c) additional jurisdictions as may be approved by Agent in its Permitted Discretion in connection with the joinder of any Additional Foreign Facility Loan Parties.

Eligible Assignee: subject to the requirements of **Section 13.3.3**, a Person that is (a) a Lender, an Affiliate of a Lender or an Approved Fund; (b) any other financial institution approved by Agent (which approval by Agent shall not be unreasonably withheld or delayed) and U.S. Borrower Agent (which approval by U.S. Borrower Agent shall not be unreasonably withheld or delayed, and shall be deemed given if no objection is made within five Business Days after notice of the proposed assignment) that extends revolving credit facilities of this type in its Ordinary Course of Business; and (c) during any Event of Default under Section 11.1(a) or 11.1(h), any Person acceptable to Agent in its discretion; provided that, in no event shall a Disqualified Institution be an Eligible Assignee.

Eligible Foreign Account: any Account of a Foreign Borrower: (a) the Account Debtor of which is not domiciled in a country (i) the national governmental authority of which is in default of its foreign debts or has prohibited the sale of foreign exchange or is in debt moratorium, or shall have ceased to be a member of the International Monetary Fund, or (ii) which is subject to Sanctions; (b)(i) the Account Debtor of which is located in an Eligible Account Debtor Jurisdiction, (ii) which is an Eligible L/C Backed Foreign Account or (iii) which is an Eligible Supported Foreign Account; (c) the Account Debtor

of which is not an Affiliate of any Borrower or a Governmental Authority, except as otherwise approved by Agent; (d)(i) with respect to Accounts purchased by HY UK pursuant to a Receivables Sale Agreement, true sale opinions with respect to such transfers have been delivered to the satisfaction of Agent and the representations and warranties set forth in **Section 9.1.28** are true and correct in all respects, and (ii) with respect to any Accounts purchased by HY UK pursuant to a Receivables Sale Agreement described under **clause (b)** of the definition thereof, HY UK and the originator of such Accounts shall have provided such documentation and satisfied such conditions as Agent may require (including that the originator of such Accounts become a Guarantor); (e) to the extent all Accounts owing by the Account Debtor thereof to Foreign Borrowers do not exceed a credit limit determined by Agent; (f) with respect to which less than 50% of all Accounts of a Foreign Borrower owing by the Account Debtor thereof are ineligible for any reason other than a failure to satisfy **clause (e)** above; (g) the Account Debtor of which has not suffered a bankruptcy, insolvency or similar event, or had an administrator or analogous officer appointed, and the terms of which have not been re-written, extended or restructured due to such Account Debtor's inability to pay; (h) the payment term of which is not longer than 90 days unless otherwise permitted by Agent in its Permitted Discretion; (i) which does not remain unpaid for more than 60 days from the due date or 90 days from the invoice date thereof, unless otherwise permitted by Agent in its Permitted Discretion; (j) which, pursuant to the applicable Foreign Borrower's Credit and Collection Policy, has not been or should not have been written off as uncollectible; (k) which arises out of a sale of goods (or rendering of services) by a Foreign Borrower made in the Ordinary Course of Business; (l) which is in conformity with the representations, warranties and covenants in the Loan Documents; (m) which does not contravene any laws, rules or regulations applicable thereto and with respect to which no party to the contract related thereto is in violation of any such law, rule or regulation (including doing business and local licensing requirements); (n)(i) which is not subject to any right of setoff, offset, rescission, recoupment, counterclaim or defense or any dispute by the Account Debtor thereof (provided that only 125.0% of the amount subject to setoff, offset, rescission, recoupment, counterclaim, defense or dispute shall be deemed ineligible) and (ii) if the Account Debtor or any of its Affiliates is also such Foreign Borrower's supplier or creditor and such Account is or may become subject to any right of setoff by the Account Debtor, such Account Debtor has entered into an agreement with Agent with respect to the waiver of rights of setoff; (o) which was originated (or, solely with respect to purchases by HY UK in accordance with **clause (d)** above, originated by a Dutch Borrower or other Obligor) in accordance with all applicable requirements of the applicable Foreign Borrower's Credit and Collection Policies; (p) that represents the lawful, valid and binding obligation of the Account Debtor thereunder enforceable in accordance with its terms; (q) the sale of which is not on a "shipped not billed", bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or any other repurchase or return basis; (r) the goods, the delivery of which has given rise to such Account, have been delivered to and have not been rejected by the Account Debtor thereunder, or the services, the performance of which has given rise to such Account, have been performed and have not been rejected by the Account Debtor thereunder; (s) in which Agent has a valid and perfected first priority Lien, first fixed charge or similar non-possessory interest (subject, in each case, only to Customary Permitted Liens described in **clause (a)** of the definition thereof); (t) such Foreign Borrower (or if such Accounts are originated by an Obligor party to a Receivables Sale Agreement, such originator) has filed and maintained effective a current Business Activity Report with the appropriate Governmental Authority in the jurisdiction in which the Account Debtor is located to the extent such jurisdiction requires such filing in order to enforce rights in or against Collateral or obligors of Collateral located in such jurisdiction (except in the case such Foreign Borrower is qualified to transact business in such jurisdiction as a foreign corporation); (u) which does not arise out of or in connection with a retainage or similar arrangement; (v) which does not arise out of or in connection with a transaction described in **clause (b)(iii)** of the defined term "Financing Guarantee"; (w) which is not evidenced by an instrument; (x) if the sale of Inventory giving rise to such Account is through an agent of a UK Borrower (including, without limitation, an Affiliate acting as agent for a UK

Borrower), the agency agreement applicable thereto (i) shall be in form and substance reasonably satisfactory to Agent, (ii) shall be enforceable and in full force and effect under all applicable laws, and (iii) shall have been collaterally assigned to Agent pursuant to documentation in form and substance reasonably satisfactory to Agent (and, as to the matters described in **clauses (ii)** and **(iii)** above, Agent has received such opinions of counsel as Agent may reasonably request); and (y) which is not otherwise deemed ineligible by Agent in its Permitted Discretion.

Eligible Foreign Inventory: Inventory owned by a Foreign Borrower: (a) with respect to which Agent or a Security Trustee has a valid and perfected first priority Lien, first floating charge or similar non-possessory interest (subject, in each case, only to Customary Permitted Liens described in **clause (a)** of the definition thereof), (b) with respect to which no representation, warranty or covenant contained in any Loan Document has been breached, (c) which is not in, Agent's Permitted Discretion, obsolete, unmerchantable or subject to any statutory, contractual or other title retention or similar agreement or arrangement, (d)(i) located on the premises of a UK Borrower in England and Wales or Northern Ireland, a Dutch Borrower in the Netherlands or an Australian Borrower in Australia (as applicable) or (ii) in transit from the premises or warehouses of any U.S. Borrower to the premises of any Foreign Borrower or in transit from the premises of any Foreign Borrower to the premises of such or any other Foreign Borrower and as to which the issuer of the related bill of lading (or other applicable document issued by a transporter under applicable law with respect to Inventory in transit) and the agent at the destination named in such bill of lading (or other applicable document issued by a transporter under applicable law with respect to Inventory in transit) have executed a Lien Waiver, and (iii) as to which the related bill of lading (or other applicable document issued by a transporter under applicable law with respect to Inventory in transit) is not a negotiable bill of lading (or negotiable document), and (e) which Agent deems to be Eligible Foreign Inventory, based on such credit and collateral considerations as Agent deems appropriate in its Permitted Discretion. Agent reserves the right to create, from time to time, additional categories of ineligible Inventory; provided, that any additional category or standard of eligibility established or modified shall have a reasonable relationship to circumstances, conditions, events or contingencies which are the basis for such standard of eligibility, as determined, without duplication, by Agent in its Permitted Discretion. Except as otherwise agreed to by Agent, no Inventory of any Foreign Borrower shall be Eligible Foreign Inventory if such Inventory is located, stored, used or held at leased premises or the premises of a third party unless either (x) such Person shall have executed a Lien Waiver or other appropriate action reasonably satisfactory to Agent shall have been taken to make the rights of Agent in such Inventory effective against third parties, with respect to such location or (y) Agent shall have implemented a Foreign Rent and Charges Reserve in respect of such location.

Eligible Inventory: the Eligible Foreign Inventory and/or Eligible U.S. Inventory, as the context may require.

Eligible L/C Backed Foreign Account: an Eligible Foreign Account of a Foreign Borrower which arises with respect to a sale to an Account Debtor located in any country (other than an approved country specified or referred to in **clause (b)(i)** of the defined term "Eligible Foreign Account") and with respect to which the Account Debtor's obligations (or that portion of such obligations which is acceptable to Agent in its Permitted Discretion) are secured by a letter of credit, guaranty or eligible bankers' acceptance having terms, and from such issuers and confirmation banks, as are acceptable to Agent in its Permitted Discretion (which letter of credit, guaranty or acceptance is subject to the valid legal or equitable first priority Lien (other than Customary Permitted Liens described in **clause (a)** of the definition thereof) under the Foreign Security Documents in a manner satisfactory to Agent in its Permitted Discretion).

Eligible L/C Backed U.S. Account: an Eligible U.S. Account of a U.S. Borrower the Account Debtor of which does not meet the criteria set forth in **clause (a)(i)** of the definition of “Eligible U.S. Account”, is not an Affiliate of such U.S. Borrower, and with respect to which the Account Debtor’s obligations (or that portion of such obligations which is acceptable to Agent in its Permitted Discretion) are secured by a letter of credit, guaranty or eligible bankers’ acceptance having terms, and from such issuers and confirmation banks, as are acceptable to Agent in its Permitted Discretion (which letter of credit, guaranty or acceptance is subject to the first priority Lien of Agent (other than Customary Permitted Liens described in **clause (a)** of the definition thereof) under this Agreement in a manner satisfactory to Agent in its Permitted Discretion).

Eligible Supported Foreign Account: an Eligible Foreign Account of a Foreign Borrower which arises with respect to sales to Account Debtors in any country (other than an approved country specified or referred to in **clause (b)(i)** of the defined term “**Eligible Foreign Account**”), and which is fully supported by credit insurance (subject to the policy percentage and deductible) payable to such Foreign Borrower on terms and conditions and from a financial institution satisfactory to Agent in its Permitted Discretion; provided that such credit insurance (a) shall be in full force and effect and not in dispute and (b) shall have been collaterally assigned to Agent pursuant to documentation in form and substance satisfactory to Agent in its Permitted Discretion.

Eligible Supported U.S. Account: an Eligible U.S. Account of a U.S. Borrower the Account Debtor of which does not meet the criteria set forth in **clause (a)(i)** of the definition of “**Eligible U.S. Account**”, and which is fully supported by credit insurance (subject to the policy percentage and deductible) payable to such U.S. Borrower on terms and conditions and from a financial institution satisfactory to Agent in its Permitted Discretion; provided that such credit insurance (a) shall be in full force and effect and not in dispute and (b) shall have been collaterally assigned to Agent pursuant to documentation in form and substance satisfactory to Agent in its Permitted Discretion.

Eligible U.S. Account: an Account owned by a U.S. Borrower: (a)(i) the Account Debtor of which is located in the U.S. or Canada, is not an Affiliate of any U.S. Borrower (other than a Financing Affiliate as provided in **clause (iv)** below), and is not a Governmental Authority, except as otherwise approved by Agent, (ii) is an Eligible L/C Backed U.S. Account, (iii) is an Eligible Supported U.S. Account, or (iv) the Account Debtor of which is a Financing Affiliate and the Financing Agreement with respect thereto is in full force and effect; (b) to the extent the aggregate amount of all Accounts owing by the Account Debtor thereof to U.S. Borrowers do not exceed a credit limit determined by Agent in its Permitted Discretion; (c) with respect to which less than 50% of all Accounts owing by the Account Debtor thereof to U.S. Borrowers are ineligible for any reason other than a failure to satisfy **clause (b)** above; (d) the Account Debtor of which has not suffered a bankruptcy, insolvency or similar event and the terms of which have not been re-written, extended or restructured due to such Account Debtor’s inability to pay; (e) the payment term of which is not longer than 90 days unless otherwise permitted by Agent in its Permitted Discretion; (f) which does not remain unpaid for more than 60 days from the due date or 90 days from the invoice date thereof, unless otherwise permitted by Agent in its Permitted Discretion; (g) which, pursuant to the applicable U.S. Borrower’s Credit and Collection Policy, has not been or should not have been written off as uncollectible; (h) which arises out of (i) a sale of goods (or rendering of services) or (ii) a rental by such U.S. Borrower as the lessor of goods owned by such U.S. Borrower for periods of time less than or equal to 90 days (but only to the extent of unpaid invoices for rent in arrears), and, in each case, is made in the Ordinary Course of Business; (i) which is in conformity with the representations, warranties and covenants in the Loan Documents; (j) which does not contravene any laws, rules or regulations applicable thereto and with respect to which no party to the contract related thereto is in violation of any such law, rule or regulation (including doing business and local licensing)

requirements); (k)(i) which is not subject to any right of setoff, offset, rescission, recoupment, counterclaim or defense or any dispute by the Account Debtor thereof (provided that only 125.0% of the amount subject to setoff, offset, rescission, recoupment, counterclaim, defense or dispute shall be deemed ineligible) and (ii) if the Account Debtor or any of its Affiliates is also such U.S. Borrower's supplier or creditor and such Account is or may become subject to any right of setoff by the Account Debtor, such Account Debtor has entered into an agreement with Agent with respect to the waiver of rights of setoff; (l) which was originated in accordance with all applicable requirements of the applicable U.S. Borrower's Credit and Collection Policies; (m) that represents the genuine, legal, valid and binding obligation of the Account Debtor thereunder enforceable in accordance with its terms; (n) the sale of which is not on a "shipped not billed", bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or any other repurchase or return basis; (o) the goods, the delivery of which has given rise to such Account, have been delivered to and not rejected by the Account Debtor thereunder, or the services, the performance of which has given rise to such Account, have been performed and have not been rejected by the Account Debtor thereunder; (p) in which Agent has a valid and perfected first priority security interest and which is free and clear of any other Liens (other than Customary Permitted Liens described in **clause (a)** of the definition thereof and Liens permitted by **Section 10.2.2(k)**), and, if such Account constitutes "chattel paper" within the meaning of the UCC, such U.S. Borrower has complied with **Section 7.4.2**; (q) such U.S. Borrower has filed and maintained effective a current Business Activity Report with the appropriate Governmental Authority in the jurisdiction in which the Account Debtor is located to the extent such jurisdiction requires such filing in order to enforce rights in or against Collateral or obligors of Collateral located in such jurisdiction (except in the case such U.S. Borrower is qualified to transact business in such jurisdiction as a foreign corporation); (r) which does not arise out of or in connection with a retainage or similar arrangement; (s) which does not arise out of or in connection with a transaction described in **clause (b)(iii)** of the defined term "Financing Guarantee"; (t) which is not evidenced by an instrument; and (u) which is not otherwise deemed ineligible by Agent in its Permitted Discretion.

Eligible U.S. Inventory: Inventory owned by a U.S. Borrower: (a) with respect to which Agent has a valid and perfected first priority Lien (subject, in each case, only to Customary Permitted Liens described in **clause (a)** of the definition thereof), (b) with respect to which no representation, warranty or covenant contained in any of the Loan Documents has been breached, (c) which is not, in Agent's Permitted Discretion, obsolete, unmerchantable or subject to any statutory, contractual or other title retention or similar agreement or arrangement, (d) (i) located in the U.S. or (ii) in transit to the U.S. from a Foreign Borrower and as to which the issuer of the related bill of lading and the agent at the destination named in such bill of lading have executed a Lien Waiver, and (e) which Agent deems to be Eligible U.S. Inventory, based on such credit and collateral considerations as Agent deems appropriate in its Permitted Discretion. Agent reserves the right to create, from time to time, additional categories of ineligible Inventory; provided, that any additional category or standard of eligibility established or modified shall have a reasonable relationship to circumstances, conditions, events or contingencies which are the basis for such standard of eligibility, as determined, without duplication, by Agent in its Permitted Discretion. Except as otherwise agreed to by Agent, no Inventory of any U.S. Borrower shall be Eligible U.S. Inventory if such Inventory is located, stored, used or held at leased premises or the premises of a bailee unless (i) the Value of Inventory at such location does not exceed \$1,000,000, (ii) Agent shall have received a Lien Waiver from such third party or, in the case of Inventory which is located, stored, used or held outside the U.S. (including its territories and possessions), other appropriate action reasonably satisfactory to Agent shall have been taken to make the rights of Agent in such Inventory effective against third parties, with respect to such location or (iii) Agent shall have implemented a U.S. Rent and Charges Reserve in respect of such location.

Enforcement Action: any action to enforce any Obligations (other than Secured Bank Product Obligations) or Loan Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of Account Debtors, setoff or recoupment, credit bid, action in an Obligor’s Insolvency Proceeding or otherwise).

Environmental, Health or Safety Applicable Law: all Applicable Law derived from or relating to federal, state, local and foreign laws, regulations, orders, ordinances, rules, permits, licenses or other binding determination of any Governmental Authority relating to or addressing the indoor or outdoor environment, public or worker health or safety, including but not limited to CERCLA, any other law, regulation, or order relating to the use, Release, handling, or disposal of any Contaminant, any law, regulation, or order relating to Remedial Action and any law, regulation, or order relating to workplace or worker safety and health, and such Applicable Laws as are promulgated by the specifically authorized agent or agents responsible for administering such Applicable Law.

Environmental Lien: a Lien in favor of any Governmental Authority for any (a) liabilities under any Environmental, Health or Safety Applicable Law, or (b) damages arising from, or costs incurred by such Governmental Authority in response to, a Release or threatened Release of a Contaminant into the environment.

Environmental Notice: a notice (whether written or oral) from any Governmental Authority or other Person of any possible noncompliance with, investigation of a possible violation of, litigation relating to, or potential fine or liability under any Environmental, Health or Safety Applicable Law, or with respect to any Release, environmental pollution or hazardous materials, including any complaint, summons, citation, order, claim, demand or request for correction, remediation or otherwise.

Environmental Property Transfer Acts: any Applicable Law that conditions, restricts, prohibits or requires any notification or disclosure triggered by the closure of any Property or the transfer, sale or lease of any Property or deed or title for any Property for environmental reasons, including, but not limited to, any so-called “Environmental Cleanup Responsibility Act”, “Responsible Transfer Act”, or “Industrial Site Recovery Act”.

Equity Interest: the interest of any (a) shareholder in a corporation; (b) partner in a partnership (whether general, limited, limited liability or joint venture); (c) member in a limited liability company; or (d) other Person having any other form of equity security or ownership interest.

ERISA: the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

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

ERISA Event: (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Obligor or ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA; (d) the provision of a notice of intent to terminate a Pension Plan under Section 4041(c) of ERISA, the termination of a Multiemployer Plan under Section 4041A of ERISA, or the commencement of proceedings by the PBGC

to terminate a Pension Plan or Multiemployer Plan; (e) the determination that any Pension Plan or Multiemployer Plan is considered an at risk plan or that any Multiemployer Plan in critical or endangered status under the Code, ERISA or the Pension Protection Act of 2006; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (g) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or ERISA Affiliate.

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

EURIBOR: the rate per annum equal to the Euro Interbank Offered Rate, as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by Agent from time to time) on the day that is two TARGET Days preceding the first day of the applicable Interest Period with a term equivalent to such Interest Period; provided that in no event shall EURIBOR be less than zero.

EURIBOR Loan: a Loan that bears interest based on EURIBOR.

Euro: the “euro”, the official monetary unit of the member nations of European Monetary Union.

Eurocurrency Rate: (a) with respect to Dollars, LIBOR or (b) with respect to Euros, EURIBOR.

European Security Agreements: the Dutch Security Agreements and the UK Security Agreements.

European Security Trustee: Bank of America (London) or any successor security trustee appointed in accordance with **Section 12.2.14.**

Event of Default: as defined in **Section 11.1.**

Excluded Assets: (a) leasehold interests in real property, (b) owned real property, (c) Equity Interests (i) in any Immaterial Subsidiary (including any Subsidiary of Parent that is engaged solely in retail operations to the extent such Subsidiary is not a Material Subsidiary) to the extent a security interest therein cannot be perfected by filing of a UCC-1 financing statement, (ii) in any Unrestricted Subsidiary, (iii) in any Person (other than Borrowers and Wholly Owned Restricted Subsidiaries of Borrowers) to the extent and for so long as the pledge thereof in favor of Agent or the Security Trustee is not permitted by the terms of such Person’s joint venture agreement or other applicable Organic Documents; *provided* that such prohibition exists on Closing Date or at the time such Equity Interests are acquired (so long as such prohibition did not arise in contemplation of the Closing Date or such acquisition) other than to the extent rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other Applicable Law or principles of equity, or (iv) constituting voting Equity Interests in excess of (x) 65% of the total outstanding voting Equity Interests of CFCs, CFC Holdcos and Bolzoni Holdings LLC and (y), for the avoidance of doubt, 0% of the Equity Interests in HY International, (d) any Excluded Deposit Account, (e) any asset if and only for so long as the grant of a security interest or Lien under this Agreement is prohibited or restricted by Applicable Law or would constitute or result in the abandonment, invalidation or unenforceability of any right, title or interest of such Obligor therein pursuant to Applicable Law other than to the extent rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other Applicable Law or principles of equity, (f) any lease, license, contract or agreement or any rights or interests

thereunder, or property subject to a purchase money security interest, Capital Lease or similar arrangement permitted to be incurred under this Agreement, if and only for so long as the grant of a security interest or Lien under this Agreement would constitute or result in a breach, termination or default under, or create a right of termination in favor of any other party (other than an Obligor) to, any such lease, license, contract or agreement or purchase money arrangement, Capital Lease or similar arrangement (in each case other than to the extent rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other Applicable Law or principles of equity), (g) “intent-to-use” trademark applications prior to the filing of a “Statement of Use” or “Amendment to Allege Use” filing to the extent, if any, that and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under federal law, (h) accounts receivable and related assets sold pursuant to any receivables factoring, discounting facility, receivables assignment facility or other supply chain finance arrangement permitted hereunder, and (i) assets to the extent a security interest in such assets would result in material adverse tax consequences (including, without limitation, as a result of the operation of Section 956 of the Code or any similar law or regulation in any applicable jurisdiction), or material adverse regulatory consequences, in each case, as reasonably determined by Parent and notified to Agent; provided that such asset will be an Excluded Asset only to the extent and for so long as the consequences specified above will result and will cease to be an Excluded Asset and will become Collateral, immediately and automatically, at such time and for so long as such consequences will no longer result; provided, further, that “Excluded Assets” shall not include any proceeds, products, substitutions or replacements of Excluded Assets, including monies due or to become due to an Obligor (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Assets); provided, further, that no asset shall be an “Excluded Asset” unless it does not constitute collateral security granted by Obligors or their Restricted Subsidiaries (other than a CFC Holdco or any direct or indirect Subsidiary of a Subsidiary that is a CFC) in respect of the Term Loan Documents.

Excluded Deposit Accounts: any Deposit Account exclusively used for payroll, payroll taxes or employee benefits; and trust or escrow accounts to the extent maintained solely for the benefit of unaffiliated third parties that are not Obligors.

Excluded Subsidiary: (a) any Subsidiary that is not, directly or indirectly, a Wholly Owned Subsidiary of an Obligor, (b) any Unrestricted Subsidiary, (c) any Immaterial Subsidiary, (d) any Subsidiary that is prohibited by Applicable Law, or is prohibited by applicable Contractual Obligation existing at the time of (and not entered into in contemplation of this provision) the formation or acquisition by an Obligor, from providing a guaranty for so long as such prohibition exists, or if such guaranty would require governmental (including regulatory) consent, approval, license or authorization unless such consent, approval, license or authorization has been received, (e) any other Subsidiary with respect to which, in the reasonable judgment of Agent and the applicable Borrower Agent, the cost or other consequences (including any adverse tax consequences) of providing the guaranty shall be excessive in view of the benefits to be obtained by the Lenders therefrom and (f) the Bolzoni Entities; provided that any Subsidiary (other than a CFC Holdco or any direct or indirect Subsidiary of a Subsidiary that is a CFC) that is a borrower or guarantor in respect of the Term Loan Documents shall not be an “Excluded Subsidiary.”

Excluded Swap Obligation: with respect to an Obligor, each Swap Obligation as to which, and only to the extent that, such Obligor’s guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because an Obligor does not constitute an “eligible contract participant” as defined in the act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Obligor and all guarantees of Swap Obligations by

other Obligor) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a Hedging Agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Obligor.

Excluded Taxes: any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by a Recipient's net income (however denominated), franchise Taxes and branch profits Taxes (i) as a result of such Recipient being organized under the laws of, or having its principal office or applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) constituting Other Connection Taxes; (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender with respect to its interest in a Loan or Commitment pursuant to a law in effect when the Lender acquires such interest (except pursuant to an assignment request by Borrower Agent under **Section 13.4**) or changes its Lending Office, unless the Taxes were payable to its assignor immediately prior to such assignment or to the Lender immediately prior to its change in Lending Office; (c) Taxes attributable to a Recipient's failure to comply with **Section 5.9**; and (d) Taxes imposed pursuant to FATCA.

Existing Foreign Letters of Credit: each of the letters of credit issued for the account of any Foreign Borrower outstanding immediately prior to the Closing Date and listed on **Schedule 1.1(e)**.

Existing Letters of Credit: the Existing Foreign Letters of Credit and/or the Existing U.S. Letters of Credit, as the context may require.

Existing Loan Agreement: as defined in the recitals to this Agreement.

Existing U.S. Letters of Credit: each of the letters of credit issued for the account of any U.S. Borrower outstanding under the Existing Loan Agreement immediately prior to the Closing Date and listed on **Schedule 1.1(f)**.

Exiting Lender: as defined in **Section 14.22**.

Extraordinary Expenses: all costs, expenses or advances that Agent may incur during a Default or Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Agent's Liens with respect to any Collateral), Loan Documents, Letters of Credit or Obligations, including any lender liability or other Claims; (c) the exercise of any rights or remedies of Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; and (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' and auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses.

FATCA: 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 official practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

FCPA: as defined in **Section 9.1.30**.

Federal Funds Rate: for any day, the per annum rate calculated by Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next Business Day by Federal Reserve Bank of New York as the federal funds effective rate; provided, that in no event shall the Federal Funds Rate be less than zero.

Fee Letter: the fee letter agreement among Agent, BofA Securities, Inc. and HYG dated as of May 12, 2021.

FILO Loan: a loan made by the participating Lenders to one or more of Borrowers pursuant to **Section 2.1.7(b)**.

Financial Institution: (a) any Financing Affiliate, (b) any financial institution listed on **Schedule 1.1(c)** and (c) any financial institution from time to time approved by Agent (such approval not to be unreasonably withheld).

Financial Officer: the chief financial officer, treasurer or controller of U.S. Borrower Agent.

Financial Support Direction: a financial support direction issued by the Pensions Regulator in the UK under Section 43 of the Pensions Act 2004.

Financing Affiliate: HYGFS or any other Affiliate of Borrowers party to a Financing Agreement.

Financing Agreements: (a) the Third Amended and Restated Joint Venture and Shareholders Agreement, dated September 17, 2018, as amended, restated, supplemented or otherwise modified from time to time, between HYG and Wells Fargo Financial Leasing, Inc. and (b) any agreement or program entered into with a Financial Institution on substantially the same terms, or for substantially the same purpose, as the agreements referred to in clause (a) above (including, without limitation, the agreements listed on Part A of **Schedule 10.2.1**) or otherwise as consented to by Agent, such consent not to be unreasonably withheld, as any of the same may be amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time on terms, taken as a whole, not materially less favorable to Borrowers as reasonably determined by Borrowers.

Financing Guarantee: (a) guarantees or repurchase or recourse obligations of Parent or a Subsidiary, incurred in the Ordinary Course of Business consistent with past practice, of Debt incurred by a customer, dealer, or customer of a dealer, for the purchase or lease of property substantially all of which is manufactured or sold by Parent or such Subsidiary, the proceeds of which Debt are used by such customer, dealer, or customer of a dealer primarily to pay the purchase or lease price of such property and any related reasonable fees and expenses (including financing fees); (b) a lease finance transaction under which (i) Parent or any Subsidiary sells property to a Financial Institution, (ii) such Financial Institution,

as lessor, enters into an Operating Lease with respect to such property with Parent or such Subsidiary, as lessee, and (iii) Parent or such Subsidiary, as the case may be, as lessor, enters into an Operating Lease with respect to such property with a customer, as lessee; or (c) any agreement or program entered into with a Financial Institution on substantially the same terms, or for substantially the same purpose, as the agreements referred to in clause (a) and (b) above or otherwise as consented to by Agent, such consent not to be unreasonably withheld, as any of the same may be amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time on terms, taken as a whole, not materially less favorable to Borrowers as reasonably determined by Borrowers.

Fiscal Quarter: each period of three months, commencing on the first day of a Fiscal Year.

Fiscal Year: the fiscal year of Parent and its Subsidiaries for accounting and tax purposes, ending on December 31st of each year.

Fixed Charge Coverage Ratio: the ratio, determined on a consolidated basis for Parent and its Restricted Subsidiaries for the most recent four Fiscal Quarters, of (a) Consolidated EBITDA minus Capital Expenditures (except those financed with Borrowed Money other than Loans) to (b) Fixed Charges.

Fixed Charges: the sum of (a) cash Consolidated Interest Expense, (b) scheduled principal payments made on Borrowed Money (including the principal component of Capital Lease obligations) and payments in respect of Debt described in **Section 10.2.1(s)**, (c) all foreign, federal, state and local income taxes and all franchise taxes that are calculated based on net income paid in cash during such period (net of any cash tax refunds received during such period but not less than \$0) and (d) Distributions made in cash.

FLSA: the Fair Labor Standards Act of 1938.

Foreign Allocated U.S. Availability: U.S. Excess Availability (determined for purposes of this definition without regard to **clause (a)** of the definition of the U.S. Borrowing Base) designated by U.S. Borrower Agent in a Borrowing Base Certificate or otherwise in accordance with **Section 8.1** for application to **clause (c)** of the Foreign Borrowing Base.

Foreign Allocated U.S. Availability Reserve: the aggregate amount of the U.S. Borrowing Base allocated by U.S. Borrower Agent in a Borrowing Base Certificate or otherwise in accordance with **Section 8.1** for inclusion by Foreign Borrowers in the Foreign Borrowing Base.

Foreign Availability Reserves: the sum (without duplication) of (a) the Foreign Inventory Reserve; (b) the Foreign Dilution Reserve; (c) the Foreign Rent and Charges Reserve; (d) the Foreign Bank Product Reserve; (e) the U.S. Allocated Foreign Availability Reserve; (f) the Foreign Priority Payables Reserve; (g) the Foreign Credit Insurance Reserve; and (h) such additional reserves, in such amounts and with respect to such matters, as Agent may establish in its Permitted Discretion.

Foreign Bank Product Reserve: the aggregate amount of reserves established by Agent from time to time in its Permitted Discretion in respect of Secured Bank Product Obligations of the Foreign Domiciled Obligors.

Foreign Base Rate: (a) with respect to Loans denominated in Euros and Dollars that are funded outside the U.S., the Eurocurrency Rate for such currency for a 30 day interest period as in effect on the first Business Day of the current calendar month, (b) with respect to Loans denominated in Sterling, the

SONIA Daily Rate and (c) with respect to Loans denominated in Australian Dollars, the Australian Base Rate; provided, that in no event shall the Foreign Base Rate be less than zero.

Foreign Base Rate Loan: a Foreign Loan, or portion thereof, funded in Sterling, Dollars, Australian Dollars or Euros and bearing interest calculated by reference to the Foreign Base Rate.

Foreign Borrower: any of the Australian Borrowers, the Dutch Borrowers, the UK Borrowers and any other Foreign Subsidiary organized under the laws of England and Wales, the Netherlands or Australia or any Additional Foreign Facility Loan Party that joins this Agreement as a Borrower hereunder.

Foreign Borrower Agent: as defined in **Section 4.4(a)**.

Foreign Borrowing Base: on any date of determination, an amount equal to the lesser of (a) the Foreign Revolver Commitments; or (b) the sum, without duplication, of the following (expressed in Dollars based on the Dollar Equivalent thereof):

- (i) 90% of the Value of Eligible Foreign Accounts, plus
- (ii) the lesser of (x) 75% of the Value of Eligible Foreign Inventory and (y) 85% of the NOLV Percentage of Eligible Foreign Inventory, plus
- (iii) Foreign Allocated U.S. Availability for Foreign Borrowers, minus
- (iv) the Foreign Availability Reserves;

provided, that following a Permitted Acquisition, the Foreign Borrowing Base may include up to 60% of the Value of Eligible Foreign Accounts and 50% of the NOLV Percentage of Eligible Foreign Inventory acquired in such Permitted Acquisition so long as such acquired Eligible Foreign Accounts and Eligible Foreign Inventory shall not exceed 10% of the Foreign Borrowing Base in the aggregate (without giving effect to such acquired Accounts and Inventory); provided, further, no such acquired Eligible Foreign Accounts or Eligible Foreign Inventory shall be included in the Foreign Borrowing Base after the date that is 90 days following the consummation of such Permitted Acquisition if a field exam on such Eligible Foreign Accounts, or an appraisal of such Eligible Foreign Inventory, as applicable, has not been completed within such time.

Foreign Cash Collateral Account: a demand deposit, money market or other account established by Agent at Bank of America (London), Bank of America (Australia) or such other financial institution as Agent may select in its discretion, which account shall be subject to Agent's or Security Trustee's Liens and under the sole control of Agent or Security Trustee.

Foreign Credit Insurance Reserve: an amount equal to the deductible and/or policy percentage for all credit insurance in respect of all Eligible Supported Foreign Accounts.

Foreign Dilution Reserve: the aggregate amount of reserves, as established by Agent from time to time in its Permitted Discretion, in an amount equal to the Value of the Eligible Foreign Accounts multiplied by 1.0% for each percentage point (or portion thereof) that Foreign Borrowers' Dilution Percent exceeds 2.5%.

Foreign Domiciled Obligor: each of the Australian Domiciled Obligors, the Dutch Domiciled Obligors, the UK Domiciled Obligors and the Additional Foreign Facility Loan Parties and “**Foreign Domiciled Obligors**” means all such Persons, collectively.

Foreign Dominion Account: each Deposit Account established by the Foreign Domiciled Obligors at Bank of America, Bank of America (London), Bank of America (Australia) or another bank acceptable to Agent or Security Trustee, over which Agent or Security Trustee has exclusive or springing control pursuant to a Deposit Account Control Agreement; provided that such Deposit Account is a collection account and not also an operating or disbursement account.

Foreign Excess Availability: the Foreign Borrowing Base minus Foreign Revolver Usage.

Foreign Facility Collateral: Collateral that now or hereafter secures (or is intended to secure) any of the Foreign Facility Obligations, including Property of the Guarantors pledged to secure the Foreign Facility Obligations under their guarantee of the Foreign Facility Obligations; provided that, with respect to the Specified Foreign Domiciled Obligors, the Foreign Facility Collateral shall not secure the U.S. Facility Obligations.

Foreign Facility Guarantor: each U.S. Facility Guarantor, each Foreign Domiciled Obligor and each other Foreign Restricted Subsidiary that guarantees payment and performance of any Foreign Facility Obligations.

Foreign Facility Obligations: all Obligations of the Foreign Domiciled Obligors (including, for the avoidance of doubt, the Obligations of the Foreign Domiciled Obligors as guarantors of the U.S. Facility Obligations); provided that, with respect to the Specified Foreign Domiciled Obligors, the U.S. Facility Obligations shall not constitute Foreign Facility Obligations.

Foreign Facility Secured Parties: Agent, Security Trustees, Foreign Issuing Bank, Foreign Lenders and Secured Bank Product Providers of Bank Products to Foreign Domiciled Obligors.

Foreign Inventory Reserve: reserves established by Agent to reflect factors that may negatively impact the Value of Inventory of Foreign Borrowers, including change in salability, obsolescence, seasonality, theft, shrinkage, imbalance, change in composition or mix, markdowns and vendor chargebacks.

Foreign Issuing Bank: (a) Bank of America (London) or any Affiliate of Bank of America (London), (b) Bank of America (Australia) or any Affiliate of Bank of America (Australia), (c) any Foreign Lender or Affiliate thereof as issuer of the Existing Foreign Letters of Credit, (d) if selected by Foreign Borrower Agent, any other Foreign Lender or Affiliate thereof that agrees to issue Foreign Letters of Credit, or (e) any replacement issuer appointed pursuant to **Section 2.4**.

Foreign Issuing Bank Indemnitees: Foreign Issuing Bank and its officers, directors, employees, Affiliates, agents and attorneys.

Foreign LC Application: an application by Foreign Borrower Agent to the Foreign Issuing Bank for issuance of a Foreign Letter of Credit, in form and substance satisfactory to the Foreign Issuing Bank and Agent.

Foreign LC Conditions: the following conditions necessary for issuance of a Foreign Letter of Credit: (a) each of the conditions set forth in **Section 6.2** being satisfied or waived; (b) after giving effect

to such issuance, the aggregate Foreign LC Obligations do not exceed the Foreign Letter of Credit Sublimit, no Foreign Overadvance exists and Foreign Revolver Usage does not exceed the Foreign Borrowing Base; (c) the Foreign Letter of Credit and payments thereunder are denominated in Euros, Sterling, Australian Dollars, Dollars or other currency satisfactory to Agent and the Foreign Issuing Bank; and (d) the purpose and form of the proposed Foreign Letter of Credit are satisfactory to Agent and the Foreign Issuing Bank in their discretion.

Foreign LC Documents: all documents, instruments and agreements (including Foreign LC Requests and Foreign LC Applications) delivered by Foreign Borrowers or any other Foreign Domiciled Obligor to Foreign Issuing Bank or Agent in connection with any Foreign Letter of Credit.

Foreign LC Obligations: the Dollar Equivalent of the sum (without duplication) of (a) all amounts owing by Foreign Borrowers for drawings under Foreign Letters of Credit; and (b) the Stated Amount of all outstanding Foreign Letters of Credit.

Foreign LC Request: a request for issuance of a Foreign Letter of Credit, to be provided by Foreign Borrower Agent to the Foreign Issuing Bank, in form satisfactory to Agent and the Foreign Issuing Bank.

Foreign Lender: each Lender that has a Foreign Revolver Commitment or, if the Foreign Revolver Commitments have been terminated, that has a Foreign Loan or a participation in any Foreign LC Obligation.

Foreign Letter of Credit: any standby or documentary letter of credit, bank guaranty, documentary bankers' acceptance or similar instrument issued by Foreign Issuing Bank for the account of a Foreign Borrower or another Foreign Domiciled Obligor, including the Existing Foreign Letters of Credit.

Foreign Letter of Credit Sublimit: \$20,000,000.

Foreign Loan: a Loan made by Foreign Lenders to Foreign Borrowers pursuant to **Section 2.1.1(b)**, which Loan shall be denominated in Sterling, Dollars, Australian Dollars or Euros and either an Interest Period Loan, a Foreign Base Rate Loan or, with respect to Loans denominated in Australian Dollars only, an Australian Bank Bill Rate Loan, and including any Foreign Swingline Loan, Foreign Overadvance Loan, Foreign Protective Advance and deemed Loan advanced under **Section 2.3.2(a)**.

Foreign Overadvance: as defined in **Section 2.1.5**.

Foreign Overadvance Loan: a Foreign Base Rate Loan made to a Foreign Borrower when a Foreign Overadvance exists or is caused by the funding thereof.

Foreign Plan: any employee benefit plan or arrangement other than a UK Pension Plan (a) maintained or contributed to by any Obligor or Subsidiary that is not subject to the laws of the U.S.; or (b) mandated by a government other than the U.S. for employees of any Obligor or Subsidiary.

Foreign Priority Payables Reserve: on any date of determination, a reserve in such amount as Agent may determine in its Permitted Discretion which reflects the full amount of any liabilities or amounts which (by virtue of any Liens, choate or inchoate, or any statutory provision) rank or are capable of ranking in priority to Agent's and/or Security Trustee's Liens and/or for amounts which may represent

costs relating to the enforcement of such Liens including, without limitation, (a) amounts due to employees in respect of unpaid wages, long service leave, retrenchment, payment in lieu of notice and holiday pay (including in all respects amounts protected by or payable pursuant to the *Fair Work Act 2009* (Cth) of Australia), (b) the “prescribed part” of floating charge realisations held for unsecured creditors, (c) the expenses and liabilities incurred by any administrator (or other insolvency officer) and any remuneration of such administrator (or other insolvency officer), (d) the amounts in the future, currently or past due and not contributed, remitted or paid in respect of any occupational pension schemes and state scheme premiums, including any Australian Pension Plan, together with any charges which may be levied by a Governmental Authority as a result of any default in payment obligations in respect of any Australian Pension Plan, and (e) any preferential claims as set out in the Australian Corporations Act, amounts due and not paid under any legislation relating to workers’ compensation or to employment insurance and all amounts deducted or withheld and not paid and remitted when due under the *Taxation Administration Act 1953* (Cth) of Australia (but excluding Pay as You Go income withholding tax).

Foreign Protective Advances: as defined in **Section 2.1.6**.

Foreign Reimbursement Date: as defined in **Section 2.3.2(a)**.

Foreign Rent and Charges Reserve: the aggregate of (a) all past due rent and other amounts owing by a Foreign Domiciled Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any Collateral or could assert a Lien on any Collateral; and (b) a reserve at least equal to three months’ rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

Foreign Restricted Subsidiary: any Restricted Subsidiary of Parent that is not a Domestic Restricted Subsidiary.

Foreign Revolver Commitment: for any Foreign Lender, its obligation to make Foreign Loans and to issue Foreign Letters of Credit, in the case of Foreign Issuing Bank, or participate in Foreign LC Obligations, in the case of the other Foreign Lenders, to Foreign Borrowers up to the maximum principal amount shown on **Schedule 1.1(a)**, as hereafter modified pursuant to **Section 2.1.4**, **Section 2.1.7** or **Section 2.1.8** or an Assignment and Acceptance to which it is a party. “**Foreign Revolver Commitments**” means the aggregate amount of such commitments of all Foreign Lenders. As of the Closing Date, the Foreign Revolver Commitments are \$90,000,000.

Foreign Revolver Commitment Increase: as defined in **Section 2.1.7(a)**.

Foreign Revolver Commitment Termination Date: the earliest to occur of (a) the U.S. Revolver Commitment Termination Date (without regard to the reason therefor); (b) the date on which Foreign Borrower Agent terminates the Foreign Revolver Commitments pursuant to **Section 2.1.4**; or (c) the date on which the Foreign Revolver Commitments are terminated pursuant to **Section 11.2**.

Foreign Revolver Usage: the Dollar Equivalent of an amount equal to (a) the aggregate principal amount of outstanding Foreign Loans; plus (b) the aggregate Stated Amount of outstanding Foreign Letters of Credit, except to the extent Cash Collateralized by Foreign Borrowers.

Foreign Security Documents: the Australian Security Agreements, the Dutch Security Agreements, the UK Security Agreements and each other pledge agreement (including, without limitation, each pledge over movable assets (undisclosed and non-possessory) and each pledge of

receivables), debenture or security agreement between any Foreign Domiciled Obligor and Agent or Security Trustee.

Foreign Subsidiary: a Subsidiary of Parent that is not a Domestic Subsidiary.

Foreign Swingline Lender: (a) Bank of America (London) or an Affiliate of Bank of America (London) or (b) with respect to Australian Borrowers, Bank of America (Australia) or any Affiliate of Bank of America (Australia).

Foreign Swingline Loan: any Borrowing of Foreign Base Rate Loans funded with Foreign Swingline Lender's funds, until such Borrowing is settled among Foreign Lenders or repaid by Foreign Borrowers.

Foreign Swingline Sublimit: \$20,000,000.

Foreign Unused Line Fee Rate: at any time, a per annum rate equal to 0.250%.

Foreign Working Capital Guaranty: (a) the Amended and Restated Guaranty dated as of June 30, 2010 duly executed and delivered to Citibank, N.A. by Borrowers (other than Parent), as the same may be amended, supplemented or otherwise modified from time to time and (b) any other guaranty in connection with any line of credit extended to a Foreign Subsidiary that is not an Obligor executed by Parent or any other Obligor in favor of any Lender.

Fronting Exposure: a Defaulting Lender's interest in LC Obligations, Swingline Loans and Protective Advances, except to the extent Cash Collateralized by the Defaulting Lender or allocated to other Lenders hereunder.

Full Payment or Payment in Full: with respect to any Obligations, (a) the full cash payment thereof, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); and (b) if such Obligations are LC Obligations or inchoate or contingent in nature, Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Agent in its discretion, in the amount of required Cash Collateral). No Loans shall be deemed to have been paid in full unless all Commitments related to such Loans have terminated.

Fund: any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans of the type contemplated by this Agreement and similar extensions of credit in the ordinary course of its business.

GAAP: generally accepted accounting principles (in the U.S. except as otherwise specified in this Agreement) set forth in the opinions and pronouncements of the Accounting Principles Board, the American Institute of Certified Public Accountants and the Financial Accounting Standards Board or in such other statements by such other entity as may be in general use by significant segments of the accounting profession as in effect from time to time subject to **Section 1.2**.

General Intangibles: as defined in the UCC (and/or with respect to any General Intangible of an Australian Domiciled Obligor, "intangible property" as defined in the Australian PPSA) or any other Applicable Law, as applicable.

Governmental Approvals: all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

Governmental Authority: any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, central bank, or other entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions for any governmental, judicial, investigative, regulatory or self-regulatory authority (including any supra-national bodies such as the European Union or European Central Bank), in each case whether it is or is not associated with Australia, the Netherlands, the United Kingdom, the U.S. or any state, province, district or territory thereof, or any other foreign entity or government.

GST: as defined in **Section 5.8.9(a)**.

GST Act: *A New Tax System (Goods and Services Tax) Act 1999* (Cth) of Australia.

GST Group: has the meaning given to it in the GST Act.

Guarantor Payment: as defined in **Section 5.10.3(b)**.

Guarantors: Foreign Facility Guarantors, U.S. Facility Guarantors, and each other Person who guarantees payment or performance of any Obligations.

Guaranty: each guaranty agreement (including this Agreement) executed by a Guarantor in favor of Agent.

Hedging Agreement: any “swap agreement” as defined in Section 101(53B)(A) of the Bankruptcy Code, including any agreement relating to any swap, cap, floor, collar, option or forward, or combination thereof or similar transaction, with respect to interest rate, foreign exchange, currency, commodity, credit or equity risk.

HMRC Transfer Date: as defined in **Section 5.8.8(e)**.

HMT: Her Majesty’s Treasury.

HY International: Hyster-Yale International B.V., a private company with limited liability incorporated under the laws of the Netherlands having its corporate seat in Nijmegen.

HY UK: as defined in the preamble to this Agreement.

HYG: as defined in the preamble to this Agreement.

HYGFS: HYG Financial Services, Inc., a Delaware corporation in which HYG holds a minority interest.

HYN BV: as defined in the preamble to this Agreement.

Immaterial Subsidiary: each Subsidiary that individually represents less than either (a) five percent (5%) of Consolidated Total Assets or (b) five percent (5%) of Consolidated EBITDA; **provided** that in the event that Parent and the Subsidiaries that do not constitute Immaterial Subsidiaries on a combined basis do not represent at least ninety percent (90%) of Consolidated Total Assets and Consolidated EBITDA on a consolidated basis as of the end of the most recently ended fiscal year of Parent, then in such case Parent shall identify Subsidiaries which shall no longer constitute Immaterial Subsidiaries such that each of the foregoing ninety percent (90%) tests is satisfied.

Incremental Facility Amount: as defined in **Section 2.1.7(a)**.

Indemnified Party: as defined in **Section 12.2.7**.

Indemnified Taxes: (a) Taxes, other than Excluded Taxes and, with respect to the Foreign Loans, Taxes explicitly excluded from the gross-up or indemnity provisions of **Sections 5.8.7, 5.8.8 and 5.8.9**, imposed on or relating to any payment of an Obligation; and (b) to the extent not otherwise described in **clause (a)**, Other Taxes.

Indemnitees: Agent Indemnitees, Lender Indemnitees, Issuing Bank Indemnitees and Bank of America Indemnitees.

Information: as defined in **Section 14.12**.

Initial Borrower and Initial Borrowers: as defined in the preamble to this Agreement.

Initial U.S. Borrowers: Parent, HYG and Bolzoni US.

Insolvency Proceeding: (a) any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (i) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (ii) the appointment of a receiver, receiver and manager, trustee, liquidator, administrator, conservator, Controller or other custodian for such Person or any part of its Property or (iii) an assignment or trust mortgage for the benefit of creditors; (b) in the case of a UK Domiciled Obligor, any corporate action, legal proceedings or other procedure commenced or other step taken (including the making of an application, the presentation of a petition, the filing or service of a notice or the passing of a resolution) in relation to (i) such UK Domiciled Obligor being adjudicated or found insolvent, (ii) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise) of such UK Domiciled Obligor other than a solvent liquidation or reorganization of such UK Domiciled Obligor permitted by **Section 10.2.7**, (iii) a composition, assignment or arrangement with any class of creditors of such UK Domiciled Obligor or (iv) the appointment of a liquidator, supervisor, receiver, administrator, administrative receiver, compulsory manager, trustee or other similar officer in respect of such UK Domiciled Obligor or any of its assets; provided that **clause (b)** shall not apply to any winding-up petition which is frivolous or vexatious or which is being contested in good faith and, in each case, is discharged, stayed or dismissed within 21 days of commencement; and (c) in the case of an Australian Domiciled Obligor, any writ of execution, garnishee order, notice under section 120 of the Australian PPSA, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against it or its assets, or such other step is taken in relation to it being adjudicated or found unable to pay its debts when they fall due or it is (or states that it is) an “insolvent under administration” or “insolvent” (each as defined in the Australian Corporations Act).

Intellectual Property: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

Intellectual Property Claim: any claim or assertion (whether in writing, by suit or otherwise) that a Borrower’s or Restricted Subsidiary’s ownership, use, marketing, sale or distribution of any

Inventory, Equipment, Intellectual Property or other Property violates another Person's Intellectual Property.

Intercreditor Agreement: that certain Intercreditor Agreement dated as of May 30, 2017, between Agent and the Term Loan Agent, as amended, modified, or supplemented from time to time.

Interest Period: as defined in **Section 3.1.4**.

Interest Period Loan: a LIBOR Loan or EURIBOR Loan.

Inventory: as defined in the UCC, the Australian PPSA or in any similar statute of England and Wales, Scotland, Northern Ireland or any other relevant jurisdiction, and for the Netherlands qualifying as 'roerende zaken', including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in a Person's business (but excluding Equipment).

Investment: an Acquisition, an acquisition of record or beneficial ownership of any Equity Interests of a Person, an Accommodation Obligation in respect of a Person or a loan, advance or capital contribution to or other investment in a Person.

Investment Condition: either (a) each of the following is satisfied: (i) average pro forma Total Excess Availability is greater than the greater of (x) 12.5% of the Total Borrowing Base and (y) \$25,000,000 for the Pro Forma Period and (ii) Borrowers are in compliance with **Section 10.3** (computed on a pro forma basis for the most recent four fiscal quarter period for which financials are required to be delivered), whether or not a Trigger Period is in effect, or (b) average pro forma Total Excess Availability is greater than the greater of (x) 20% of the Total Borrowing Base and (y) \$40,000,000 for the Pro Forma Period.

IP Assignment: a collateral assignment or security agreement pursuant to which an Obligor grants a Lien on its Intellectual Property to Agent or Security Trustee, as security for its Obligations.

IRS: the U.S. Internal Revenue Service.

Issuing Bank Indemnitees: Foreign Issuing Bank Indemnitees and/or U.S. Issuing Bank Indemnitees, as the context requires.

Issuing Banks: Foreign Issuing Bank and/or U.S. Issuing Bank, as the context requires.

ITA: the Income Tax Act 2007 (United Kingdom).

ITSA: an agreement between the members of a GST Group which takes effect as an indirect tax sharing agreement under section 444-90 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) of Australia and complies with the *Taxation Administration Act 1953* (Cth) of Australia and the GST Act as well as any applicable law, official directive, request, guideline or policy (whether or not having the force of law) issued in connection with the *Taxation Administration Act 1953* (Cth) of Australia.

Judgment Currency: as defined in **Section 1.5.2**.

JV Financing Facility: an Inventory financing facility provided by HYGFS to a U.S. Domiciled Obligor during the period that such Inventory is being shipped to certain customers and until such customers' acceptance of such Inventory, at which time such Inventory is sold by the U.S. Domiciled Obligor to HYGFS for ultimate lease to such customers.

LC Conditions: Foreign LC Conditions and/or U.S. LC Conditions, as the context requires.

LC Document: a Foreign LC Document and/or U.S. LC Document, as the context requires.

LC Obligations: Foreign LC Obligations and/or U.S. LC Obligations, as the context requires.

Lender Indemnitees: Lenders and Secured Bank Product Providers, and their officers, directors, employees, Affiliates, agents and attorneys.

Lender Recipient Parties: collectively, the Lenders, the Swingline Lenders and the Issuing Banks.

Lenders: as defined in the preamble to this Agreement, including Bank of America and its Affiliates in their respective capacities as Foreign Swingline Lender and U.S. Swingline Lender, the Foreign Lenders, the U.S. Lenders and their respective permitted successors and assigns and, where applicable, any Issuing Bank, and any other Person who hereafter becomes a "**Lender**" pursuant to an Assignment and Acceptance.

Lending Office: the office designated as such by the applicable Lender at the time it becomes party to this Agreement or thereafter by notice to Agent and the relevant Borrower Agent.

Letters of Credit: the Foreign Letters of Credit and/or U.S. Letters of Credit, as the context requires.

LIBOR: the per annum rate of interest determined by Agent at or about 11:00 a.m. (London time) two Business Days prior to an Interest Period for a term equivalent to such period, equal to the London Interbank Offered Rate, or comparable or successor rate approved by Agent, as published on the applicable Reuters screen page (or other commercially available source designated by Agent from time to time); **provided**, that any comparable or successor rate shall be applied by Agent, if administratively feasible, in a manner consistent with market practice; **provided further**, that in no event shall LIBOR be less than zero.

LIBOR Loan: a Loan that bears interest based on LIBOR.

License: any license or agreement under which an Obligor is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Licensor: any Person from whom an Obligor obtains the right to use any Intellectual Property.

Lien: a Person's interest in Property securing an obligation owed to, or a claim by, such Person, including any lien, security interest, pledge, hypothecation, retention of title, assignment, trust, reservation, encroachment, easement, right-of-way, covenant, condition, restriction, leases, or other title exception or encumbrance and, with respect to any Australian Domiciled Obligor, also includes any 'security interest' as defined in sections 12(1) and 12(2) of the Australian PPSA.

Lien Waiver: an agreement, in form and substance reasonably satisfactory to Agent, by which (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit Agent (or Security Trustee) to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for Agent, and agrees to deliver the Collateral to Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Agent upon request; and (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to Agent the right, vis-à-vis such Licensor, to enforce Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

Loan: a Foreign Loan and/or U.S. Loan, as the context requires.

Loan Documents: this Agreement, any supplement or joinder to this Agreement, Other Agreements and Security Documents.

Local Time: with respect to (a) U.S. Loans, Eastern time in the U.S., (b) Foreign Loans (other than as provided in **clause (c)**), prevailing time in London, England and (c) Australian Loans, prevailing time in Sydney, Australia.

Margin Stock: as defined in Regulation U of the Board of Governors.

Material Adverse Effect: a material adverse effect upon (a) the financial condition, performance or properties of any Borrower, or Parent and its Subsidiaries taken as a whole, (b) the ability of any of the Obligors to perform their respective obligations under the Loan Documents, (c) the ability of the Lenders, the Foreign Issuing Bank, the U.S. Issuing Bank, Agent or Security Trustee to enforce any of the Loan Documents, taken as a whole, or (d) a material portion of the Collateral or the validity or priority of Agent's or Security Trustee's Liens thereon or the ability of Agent or Security Trustee to realize upon a material portion of the Collateral.

Material Contract: any agreement or arrangement to which Parent or a Restricted Subsidiary is party (other than the Loan Documents) (a) that is deemed to be a material contract under any securities law applicable to such Person, including the Securities Act of 1933; (b) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (c) that relates to Debt (including Subordinated Debt) in an aggregate principal amount of \$15,000,000 or more.

Material Subsidiary: any Subsidiary that is not an Immaterial Subsidiary.

Maturity Date: June 24, 2026.

Maximum Facility Amount: \$400,000,000.

Maximum Rate: as defined in **Section 3.10**.

Moody's: Moody's Investors Service, Inc., and its successors.

Multiemployer Plan: any employee benefit plan of the type described in Section 4001(a)(3) of ERISA that is subject to Title IV of ERISA, to which any Obligor or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

Net Proceeds: with respect to an Asset Disposition, proceeds (including, when received, any deferred or escrowed payments) received by Parent or any Restricted Subsidiary in cash from such disposition, net of (a) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (b) amounts applied to repayment of Debt secured by a Permitted Lien senior to Agent's Liens on Collateral sold; (c) Taxes paid or reasonably estimated to be payable as a result thereof (taking into account any available Tax credits or deductions); and (d) reserves for indemnities, until such reserves are no longer needed.

Netherlands: the Kingdom of the Netherlands.

New Lender: each Lender that becomes a party to this Agreement after the Closing Date.

NOLV Percentage: the net orderly liquidation value of Inventory, expressed as a percentage, expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of the applicable Foreign Borrower's or U.S. Borrowers' Inventory performed by an appraiser and on terms satisfactory to Agent.

Non-Domiciled Lender: (a) with respect to each U.S. Borrower, each Lender or Issuing Bank that is not a U.S. Person, and (b) with respect to each Foreign Borrower, each Lender or Issuing Bank that is resident or organized under the laws of a jurisdiction other than that in which such Foreign Borrower is resident for Tax purposes.

Notice of Borrowing: a Notice of Foreign Borrowing and/or a Notice of U.S. Borrowing, as the context requires.

Notice of Conversion/Continuation: a Notice of Foreign Conversion/Continuation and/or a Notice of U.S. Conversion/Continuation, as the context requires.

Notice of Foreign Borrowing: a Notice of Borrowing to be provided by Foreign Borrower Agent to request a Borrowing of Foreign Loans, in the form attached hereto as **Exhibit D**, or otherwise in form satisfactory to Agent.

Notice of Foreign Conversion/Continuation: a Notice of Foreign Conversion/Continuation to be provided by Foreign Borrower Agent to request a conversion or continuation of any Foreign Loans as Interest Period Loans or Australian Bank Bill Rate Loans, in the form attached hereto as **Exhibit E**, or otherwise in form satisfactory to Agent.

Notice of U.S. Borrowing: a Notice of Borrowing to be provided by U.S. Borrower Agent to request a Borrowing of U.S. Loans, in form satisfactory to Agent.

Notice of U.S. Conversion/Continuation: a Notice of U.S. Conversion/Continuation to be provided by U.S. Borrower Agent to request a conversion or continuation of any U.S. Loans as Interest Period Loans, in form satisfactory to Agent.

NPL: as defined in **Section 9.1.13(e)**.

Obligations: all (a) principal of and premium, if any, on the Loans, (b) LC Obligations and other obligations of Obligors with respect to Letters of Credit, (c) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Obligors under Loan Documents, (d) Secured Bank Product Obligations, and (e) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several; provided, that Obligations of an Obligor shall not include its Excluded Swap Obligations.

Obligors: the Foreign Domiciled Obligors and the U.S. Domiciled Obligors, collectively; and Obligor means any of Obligors, individually.

OFAC: Office of Foreign Assets Control of the U.S. Treasury Department.

Operating Lease: as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee which is not a Capital Lease, subject to **Section 1.2**.

Ordinary Course of Business: the ordinary course of business of any Borrower or Restricted Subsidiary, undertaken in good faith and consistent with Applicable Law and past practices.

Organic Documents: with respect to any Person, its charter, certificate or articles of incorporation, continuation or amalgamation, bylaws, articles of organization, coordinated articles of association, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, memorandum or articles of association, constitution, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person.

Original Obligation and Original Obligations: as defined in **Section 12.2.16**.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Agreement: each LC Document, fee letter (including the Fee Letter), Lien Waiver, Borrowing Base Certificate, Compliance Certificate, Borrower Materials, or other note, document, instrument or agreement (other than this Agreement or a Security Document) now or hereafter delivered by an Obligor or other Person to Agent, Security Trustee or a Lender in connection with any transactions relating hereto.

Other Connection Taxes: Taxes imposed on a Recipient due to a present or former connection between it and the taxing jurisdiction (other than connections arising from the Recipient having executed, delivered, become party to, performed obligations or received payments under, received or perfected a Lien or engaged in any other transaction pursuant to, enforced, or sold or assigned an interest in, any Loan or Loan Document).

Other Rate Early Opt-in: Agent and the Borrower Agents have elected to replace LIBOR with a Benchmark Replacement other than a SOFR-based rate pursuant to (a) an Early Opt-in Election and (b) **Section 3.6.2(b)** and **clause (b)** of the definition of “**Benchmark Replacement**”.

Other Taxes: all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a Lien under, or otherwise with respect to, any Loan Document, except Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 13.4(c)**).

Overadvance: a Foreign Overadvance and/or a U.S. Overadvance, as the context requires.

Overadvance Loan: a Foreign Overadvance Loan and/or a U.S. Overadvance Loan, as the context requires.

Parallel Debt Obligation and Parallel Debt Obligations: as defined in **Section 12.2.16**.

Parent: as defined in the preamble to this Agreement.

Participant: as defined in **Section 13.2.1**.

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

Patriot Act: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment Item: each check, draft or other item of payment payable to an Obligor, including those constituting proceeds of any Collateral.

PBGC: the Pension Benefit Guaranty Corporation.

Pension Plan: any employee pension benefit plan (as defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Obligor or ERISA Affiliate or to which an Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

Pensions Regulator: the body corporate in the UK called the Pensions Regulator established under Part I of the Pensions Act 2004 (UK).

Permits: any permit, approval, authorization, license, variance, exemption, no-action letter or permission required from a Governmental Authority under an Applicable Law.

Permitted Accommodation Obligation: the following Accommodation Obligations:

- (a) recourse obligations resulting from endorsement of negotiable instruments for collection in the ordinary course of its business;
- (b) those Accommodation Obligations of Parent and its Restricted Subsidiaries identified as such on **Schedule 1.1(g)** and any extensions, renewals, refinancings or replacements thereof, provided that (x) the aggregate Debt, if any, under any such extension, renewal or replacement is not greater than the Debt under the Accommodation Obligation so extended,

renewed, refinanced or replaced, and (y) such extension, renewal, refinancing or replacement shall be on terms, taken as a whole, no less favorable to Parent or any of its Restricted Subsidiaries, as applicable, than the terms of the Accommodation Obligation so extended, renewed, refinanced or replaced;

(c) Accommodation Obligations evidenced by Financing Agreements;

(d) Accommodation Obligations with respect to Financing Guarantees; and

(e) Accommodation Obligations constituting guarantees of trade payables of Parent and its Restricted Subsidiaries in the Ordinary Course of Business.

Permitted Acquisition: as defined in **Section 10.2.4(f)**.

Permitted Asset Disposition: an Asset Disposition permitted under **Section 10.2.5**.

Permitted Discretion: a determination made in the exercise, in good faith, of reasonable business judgment (from the perspective of a secured, asset-based lender).

Permitted Existing Debt: Debt of Parent and its Restricted Subsidiaries identified as such on **Schedule 10.2.1**.

Permitted Holders: the “Participating Stockholders” existing and as defined on the Closing Date in the Stockholders’ Agreement dated as of September 28, 2012, by and among Parent, as depository, Parent and the Participating Stockholders, as amended through, and in effect on, the Closing Date.

Permitted Investment: any Investment permitted by **Section 10.2.4**.

Permitted Liens: as defined in **Section 10.2.2**.

Permitted Refinancing: with respect to any Person, any modification, refinancing, refunding, renewal, replacement, exchange or extension of any Debt, in whole or in part, of such Person; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Debt so modified, refinanced, refunded, renewed, replaced, exchanged or extended except by an amount equal to unpaid accrued interest and premium thereon, plus fees and expenses reasonably incurred (including original issue discount and upfront fees) in connection with such modification, refinancing, refunding, renewal, replacement, exchange or extension and by an amount equal to any existing commitments unutilized thereunder, (b) such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a weighted average life to maturity equal to or longer than the weighted average life to maturity of, the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended, (c) no Event of Default shall have occurred and be continuing on the date of incurrence of such Debt after giving effect to the incurrence thereof, (d) if such Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement, exchange or extension is subordinated in right of payment to the Obligations on terms, taken as a whole, at least as favorable in all material respects to the Lenders as those contained in the documentation governing the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended, taken as a whole, (e) if such Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended is secured, the terms and conditions relating to collateral (to the extent any such collateral constitutes Collateral) of any such modified,

refinanced, refunded, renewed, replaced, exchanged or extended Debt, taken as a whole, are not more favorable to the Persons providing such Debt than those applicable to the Lenders with respect to the Collateral for the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended (and the Liens on any Collateral securing any such modified, refinanced, refunded, renewed, replaced, exchanged or extended Debt shall have the same (or lesser) priority relative to the Liens on the Collateral securing the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended), (f) the terms and conditions (including, if applicable, as to collateral but excluding as to pricing, premiums and optional prepayment or redemption provisions) of any such modified, refinanced, refunded, renewed, replaced, exchanged or extended Debt, taken as a whole, are not materially less favorable to Obligors or the Lenders than the terms and conditions of the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended, taken as a whole, except to the extent such terms (x) take effect after the Maturity Date or (y) are incorporated into this Agreement and the other Loan Documents for the benefit of all existing Lenders (it being understood and agreed that Borrowers and Agent may amend the Loan Documents to reflect such changes without the consent of any other Person); provided that a certificate of the applicable Borrower Agent delivered to Agent at least five Business Days prior to the incurrence of such Debt, together with a reasonably detailed description of the material terms and conditions of such Debt or drafts of the documentation relating thereto, stating that the applicable Borrower Agent has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless Agent notifies the applicable Borrower Agent within such five Business Day period that it disagrees with such determination (including a description of the basis upon which it disagrees) and (g) such modification, refinancing, refunding, renewal or extension is incurred by the Person (or Persons) who is the obligor of the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended and no additional obligors become liable for such Debt.

Permitted Term Debt: as defined in **Section 10.2.1(m)**.

Person: any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization, Governmental Authority or other entity.

Plan: any employee benefit plan (as defined in Section 3(3) of ERISA) established by an Obligor or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, an ERISA Affiliate.

Platform: as defined in **Section 14.3.3**.

Pledged Collateral: as defined in **Section 7.3.1**.

Pledged Debt: as defined in **Section 7.3.1**.

Pledged Equity Interests: as defined in **Section 7.3.1**.

Prime Rate: the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate”. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

Pro Forma Period: the period commencing 30 days prior to the date of a proposed transaction through the date of such transaction.

Pro Rata: (a) when used with reference to a Lender's (i) share on any date of the total Borrower Group Commitments to a Borrower Group, (ii) participating interest in LC Obligations (if applicable) to the members of such Borrower Group, (iii) share of payments made by the members of such Borrower Group with respect to such Borrower Group's Obligations, (iv) increases or reductions to the Borrower Group Commitments pursuant to **Section 2.1.4** or **2.1.7**, and (v) obligation to pay or reimburse Agent for Extraordinary Expenses owed by or in respect of such Borrower Group or to indemnify any Indemnitees for Claims relating to such Borrower Group, a percentage (expressed as a decimal, rounded to the ninth decimal place) derived by dividing the amount of the Borrower Group Commitment of such Lender to such Borrower Group on such date by the aggregate amount of the Borrower Group Commitments of all Lenders to such Borrower Group on such date (or if such Borrower Group Commitments have been terminated, by reference to the respective Borrower Group Commitments as in effect immediately prior to the termination thereof) or (b) when used for any other reason, a percentage (expressed as a decimal, rounded to the ninth decimal place) derived by dividing the aggregate amount of the Lender's Commitments on such date by the aggregate amount of the Commitments of all Lenders on such date (or if any such Commitments have been terminated, such Commitments as in effect immediately prior to the termination thereof).

Process Agent: as defined in **Section 14.15.2**.

Properly Contested: with respect to any obligation of an Obligor, (a) the obligation is subject to a bona fide dispute regarding amount or an Obligor's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not reasonably be expected to have a Material Adverse Effect, nor reasonably be expected to result in forfeiture or sale of any Collateral of an Obligor; (e) no Lien (other than any Lien, excluding any Lien in favor of the PBGC, with respect to the payment of taxes, assessments or governmental charges in all cases which are not yet due) is imposed on Collateral of an Obligor, unless bonded and stayed to the satisfaction of Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

Property: any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including Equity Interests.

Protective Advances: Foreign Protective Advances and/or U.S. Protective Advances, as the context requires.

Purchase Money Debt: (a) Debt (other than the Obligations but including Capital Leases) for the acquisition, lease, construction, repair, replacement or improvement of fixed or capital assets (other than, for the avoidance of doubt, ABL Facility Priority Collateral); (b) Debt (other than the Obligations) incurred within 90 days before or after the acquisition, lease, construction, repair, replacement or improvement of fixed or capital assets (other than, for the avoidance of doubt, ABL Facility Priority Collateral), for the purpose of financing such acquisition, lease, construction, repair, replacement or improvement; and (c) any renewals, extensions or refinancings (but not increases) thereof.

Purchase Money Lien: a Lien that secures Purchase Money Debt; provided that such Lien extends only to the fixed or capital assets (other than, for the avoidance of doubt, ABL Facility Priority

Collateral) the acquisition, lease, construction, repair, replacement or improvement of which is financed thereby and any replacements, additions and accessions thereto and any income or profits thereof and customary security deposits related thereto; provided further that individual financings provided by a lender may be cross collateralized to other financings provided by such lender or its affiliates.

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

QFC: a “**qualified financial contract**”, as defined in and interpreted in accordance with 12 U.S.C. §5390(c)(8)(D).

QFC Credit Support: as defined in **Section 14.21**.

Qualified ECP: an Obligor with total assets exceeding \$10,000,000, or that constitutes an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” under Section 1a(18)(A)(v)(II) of such act.

Qualified Secured Bank Product Obligations: Secured Bank Product Obligations arising under (a) any Hedging Agreement that a Borrower Agent designates to Agent as qualified for pari passu treatment with principal for purposes of **Section 5.5** and (b) the Bank Products described in **clauses (d)** and **(e)** of the definition therefor.

Qualifying Lender: as defined, in relation to United Kingdom Tax matters in **Section 5.8.8** and, in relation to Australian Tax matters, in **Section 5.8.9(a)**.

Rate Determination Date: two (2) Business Days prior to the commencement of the applicable Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by Agent; provided that, to the extent such market practice is not administratively feasible for Agent, then “Rate Determination Date” means such other day as otherwise reasonably determined by Agent).

RCRA: the Resource Conservation and Recovery Act (42 U.S.C. §§6991-6991i).

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon.

Reallocation: as defined in **Section 2.1.8(a)**.

Reallocation Consent: as defined in **Section 2.1.8(b)**.

Reallocation Date: as defined in **Section 2.1.8(a)**.

Receivables Sale Agreements: (a) the Receivables Assignment Agreement dated as of December 1, 1995, between HYN BV and the HY UK providing for the daily sale and assignment of all Accounts originated by HYN BV to HY UK, as may be further amended, restated, supplemented or otherwise modified from time to time in form and substance satisfactory to Agent, and (b) any other receivables assignment agreements between any Foreign Domiciled Obligor and HY UK providing for the daily sale and assignment of all Accounts originated by such Foreign Domiciled Obligor to HY UK, in each case, in form and substance satisfactory to Agent (it being agreed that the form of Receivables Sale Agreement in **clause (a)** is in form and substance satisfactory to Agent).

Recipient: Agent, Issuing Bank, Security Trustee or any Lender, as applicable.

Regulation: as defined in Section 9.1.25.

Release: any active or passive release, spill, emission, leaking, pumping, injection, deposit, disposal, pouring, dumping, abandonment, discards of barrels, containers or other receptacles, including the active or passive discharge, dispersal, leaching or migration of Contaminants into the indoor or outdoor environment or into or out of any Property.

Relevant Borrower: as defined, in relation to Dutch Tax matters, in Section 5.8.7, in relation to United Kingdom Tax matters, in Section 5.8.8 and, in relation to Australian Tax matters, in Section 5.8.9.

Relevant Governmental Body: (a) with respect to Loans denominated in Dollars, the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto, (b) with respect to Loans denominated in 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 Loans denominated in 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 Loans denominated in any other Relevant Rate, (i) the central bank for the currency in which such Loan is denominated or any central bank or other supervisor which is responsible for supervising either such Alternative Currency Successor Rate or the administrator of such Alternative Currency Successor Rate or (ii) any working group or committee officially endorsed or convened by the central bank for the currency in which such Successor Rate is denominated, any central bank or other supervisor that is responsible for supervising either such Alternative Currency Successor Rate or the administrator of such Alternative Currency Successor Rate, a group of those central banks or other supervisors or the Financial Stability Board or any part thereof.

Relevant Party: as defined in Section 5.8.7(c)(ii).

Relevant Rate: with respect to any Loans in (a) Dollars, LIBOR, (b) Sterling, SONIA, (c) Euros, EURIBOR, and (d) Australian Dollars, the Australian Bank Bill Rate, as applicable.

Relevant Rate Loans: Loans whose interest is determined by reference to a Relevant Rate

Remedial Action: actions required to (a) clean up, remove, treat or in any other way address Contaminants in the indoor or outdoor environment; (b) prevent the Release or threat of Release or minimize the further Release of Contaminants; or (c) investigate and determine if a remedial or other response is needed and to design such a response and post-remedial investigation, monitoring, operation and maintenance and care.

Report: as defined in Section 12.4.3.

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

Required Borrower Group Lenders: at any date of determination thereof, Secured Parties holding Borrower Group Commitments to a Borrower Group representing more than 50% of (a) the aggregate Borrower Group Commitments to such Borrower Group; or (b) following termination of such Borrower Group Commitments, the aggregate outstanding Loans and LC Obligations owing by such

Borrower Group or, if all Loans and LC Obligations have been Paid in Full, the aggregate remaining Obligations of such Borrower Group; provided, however, that Commitments, Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation, but any related Fronting Exposure shall be deemed held as a Loan or LC Obligation by the Secured Party that funded the applicable Loan or issued the applicable Letter of Credit.

Required Lenders: Secured Parties holding more than 50% of (a) the aggregate outstanding Commitments; or (b) following termination of the Commitments, the aggregate outstanding Loans and LC Obligations or, if all Loans and LC Obligations have been Paid in Full, the aggregate remaining Obligations; provided, however, that Commitments, Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation, but any related Fronting Exposure shall be deemed held as a Loan or LC Obligation by the Secured Party that funded the applicable Loan or issued the applicable Letter of Credit.

Rescindable Amount: as defined in Section 12.12.3(b).

Resolution Authority: an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

Reserves: Foreign Availability Reserves and/or U.S. Availability Reserves, as the context requires.

Restricted Subsidiary: any Subsidiary that is not an Unrestricted Subsidiary.

Restrictive Agreement: an agreement (other than a Loan Document) that conditions or restricts the right of any Borrower, Restricted Subsidiary or other Obligor to incur or repay the Obligations, to grant Liens on any of their respective assets in favor of Agent or Security Trustee, to declare or make Distributions, to modify, extend or renew any agreement evidencing the Obligations, or to repay any intercompany Debt.

Revolver Commitment Increase: as defined in Section 2.1.7(a).

Revolver Commitment Termination Date: the Foreign Revolver Commitment Termination Date and/or the U.S. Revolver Commitment Termination Date, as the context requires.

Revolver Facilities: the facilities established pursuant to this Agreement under the Foreign Revolver Commitments and the U.S. Revolver Commitments, and “**Revolver Facility**” means any one of such Revolver Facilities.

Revolver Usage: Foreign Revolver Usage and/or U.S. Revolver Usage, as the context requires.

S&P: Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw Hill Companies, Inc. and any successor thereto.

Sanction: any sanction administered or enforced by the U.S. Government (including OFAC), the United Nations Security Council, the European Union, HMT or other sanctions authority.

Scheduled Unavailability Date: as defined in Section 3.6.3.

SEC: the U.S. Securities and Exchange Commission or any successor thereto.

Secured Bank Product Obligations: Debt, obligations and other liabilities with respect to Bank Products owing by an Obligor or Subsidiary of an Obligor to a Secured Bank Product Provider; provided, that Secured Bank Product Obligations of an Obligor shall not include its Excluded Swap Obligations.

Secured Bank Product Provider: (a) Bank of America or any of its Affiliates; and (b) any other Lender or Affiliate of a Lender that is providing a Bank Product, provided such provider delivers written notice to Agent, within 10 days following the later of the Closing Date or creation of the Bank Product (provided, that Citibank, N.A. is not required to resubmit the notice on file with Agent delivered in connection with the Existing Loan Agreement), (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by **Section 12.15**.

Secured Parties: Foreign Facility Secured Parties, U.S. Facility Secured Parties and Secured Bank Product Providers.

Securities Accounts: any present and future “securities account” (as defined in Article 8 of the UCC or in section 15 of the Australian PPSA, as applicable), including all monies, “uncertificated securities,” “securities entitlements” and other “financial assets” (as defined in Article 8 of the UCC) and all “intermediated security” and “financial product” (as defined in section 10 of the Australian PPSA), contained therein.

Securities Account Control Agreement: a control agreement, or in respect of any Securities Accounts located in Australia, a sponsorship agreement, satisfactory to Agent executed by an institution maintaining a Securities Account for an Obligor, to perfect Agent’s or Security Trustee’s Lien or otherwise grant control to Agent or Security Trustee on such account.

Securities Exchange Act: the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

Security Documents: this Agreement, the Guarantees, the Foreign Security Documents, Australian Security Trust Deed, IP Assignments, Deposit Account Control Agreements, the Securities Account Control Agreements and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Security Trustee: the Australian Security Trustee, the European Security Trustee and/or any other security trustee appointed by Agent and/or the Secured Parties from time to time, as the context requires.

Senior Officer: the chairman of the board, president, chief executive officer, chief financial officer, vice president and general counsel, vice president and deputy general counsel, vice president and treasurer or vice president and controller of a Borrower or, if the context requires, an Obligor, or in the case of a Foreign Domiciled Obligor, a director.

Settlement Report: a report summarizing Loans and participations in LC Obligations outstanding as of a given settlement date, allocated to Lenders on a Pro Rata basis in accordance with their Commitments.

SOFR: as defined in the definition of “**Daily Simple SOFR**”.

SOFR Early Opt-in: Agent and the applicable Borrower Agent have elected to replace LIBOR pursuant to (a) an Early Opt-in Election and (b) **Section 3.6.2(b)** and **clause (a)** of the definition of “Benchmark Replacement”.

Solvent: (a) as to any Person (other than a Person incorporated or organized under the laws of Australia or any state or territory of Australia), such Person (i) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (ii) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (iii) is able to pay all of its debts as they mature; (iv) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (v) is not “insolvent” within the meaning of Section 101(32) of the Bankruptcy Code; and (vi) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates, (b) as to any Person incorporated, registered or organized in the UK (in addition to the foregoing under **clause (a)** above), such Person is able or does not admit its inability to pay its debts as they fall due, does not suspend or threaten to suspend making payments on any of its indebtedness, does not by reason of actual or anticipated financial difficulties, commence negotiations with its creditors with a view of rescheduling its indebtedness and no moratorium is declared in respect of its indebtedness and (c) as to any Person incorporated, registered or organized under the laws of Australia or any state or territory thereof, such Person (i) does not become, does not admit in writing that it is, is not declared to be, or is not deemed under any Applicable Law to be, insolvent; (ii) is able to pay its debts (as and when they become due and payable) and does not stop payments of its debts generally; and (iii) is not found or declared by a court to be insolvent, does not become insolvent within the meaning of section 95A(2) of the Australian Corporations Act or otherwise found or deemed to be insolvent by law or a court.” Fair salable value” means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

SONIA: with respect to any applicable determination date the Sterling Overnight Index Average Reference Rate published on such date on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by Agent from time to time); provided however that if such determination date is not a Business Day, SONIA means such rate that applied on the first Business Day immediately prior thereto.

SONIA Adjustment: with respect to SONIA, 0.05% per annum.

SONIA Daily Rate: for any date, the rate per annum equal to SONIA determined pursuant to the definition thereof, plus the SONIA Adjustment; provided that such rate shall not be less than zero. Any change in the SONIA Daily Rate shall be effective from and including such date of change without further notice.

Specified Foreign Domiciled Obligors: collectively, each Foreign Domiciled Obligor other than a Foreign Borrower. As of the Closing Date, the Specified Foreign Domiciled Obligors are Hyster-Yale Holding B.V., HY International and Hyster-Yale Group Limited.

Specified Obligor: an Obligor that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to **Section 5.10**).

Spot Rate: the exchange rate, as determined by Agent, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source designated by Agent) as of the end of the preceding business day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding business day in Agent's principal foreign exchange trading office for the first currency.

Stated Amount: the outstanding amount of a Letter of Credit, including any automatic increase or tolerance, whether or not then effective, that is provided by the terms of the Letter of Credit or related LC Documents.

Sterling: the lawful currency of the United Kingdom.

Subordinated Debt: Debt incurred by an Obligor that is expressly subordinate and junior in right of payment to Full Payment of all Obligations on subordination terms reasonably satisfactory to Agent.

Subsidiary: any entity more than 50% of whose voting securities or Equity Interests is owned by Parent or a combination of Obligors (including indirect ownership through other entities in which Obligors directly or indirectly own more than 50% of the voting securities or Equity Interests).

Super-Majority Lenders: Secured Parties holding more than 66 2/3% of (a) the aggregate outstanding Commitments; or (b) following termination of the Commitments, the aggregate outstanding Loans and LC Obligations or, if all Loans and LC Obligations have been Paid in Full, the aggregate remaining Obligations; provided, however, that Commitments, Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation, but any related Fronting Exposure shall be deemed held as a Loan or LC Obligation by the Secured Party that funded the applicable Loan or issued the applicable Letter of Credit.

Supported OFC: as defined in **Section 14.21**.

Supplier: as defined in **Section 5.8.7(c)(ii)**.

Swap: has the meaning assigned in Section 1a(47) of the Commodity Exchange Act.

Swap Obligations: with respect to an Obligor, its obligations under a Hedging Agreement that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

Swingline Loan: a Foreign Swingline Loan and/or U.S. Swingline Loan, as the context requires.

TARGET Day: any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET2) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by Agent to be a suitable replacement) is open for the settlement of payments in Euro.

Tax Confirmation: as defined in **Section 5.8.8**.

Tax Consolidated Group: a Consolidated Group or a MEC Group as defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth) of Australia.

Tax Credit: a credit against, relief or remission for, or refund or repayment of, any Taxes by the jurisdiction imposing such Taxes.

Tax Deduction: a deduction or withholding for or on account of Taxes from a payment under any Loan Document.

Tax Sharing Agreement: an agreement between the members of a Tax Consolidated Group which takes effect as a tax sharing agreement under section 721-25 of the *Income Tax Assessment Act 1997* (Cth) of Australia and complies with the Income Tax Assessment Act 1997 and any law, official directive, request, guideline or policy (whether or not having the force of law) issued in connection with the *Income Tax Assessment Act 1997* (Cth) of Australia.

Tax Payment: the increase in a payment made by a Relevant Borrower under **Section 5.8.1(c)**, **5.8.7(a)**, **5.8.8(a)** or **5.8.9(b)**, as applicable.

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

Term Loan Agent: Bank of America, N.A., as administrative agent and collateral agent under the Term Loan Documents, together with its successors in such capacity.

Term Loan Agreement: that certain Amended and Restated Term Loan Credit Agreement dated as of May 28, 2021 among Parent, as holdings, HYG, as borrower, the Term Loan Agent, and the lenders from time to time party thereto, as may be further amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part pursuant to a Permitted Refinancing from time to time (whether with the original administrative agent and lenders or other agents and lenders or otherwise and whether provided under the original Term Loan Agreement or another credit agreement, indenture, instrument, other document or otherwise, unless such credit agreement, indenture, instrument or document expressly provides that it is not a Term Loan Agreement), in each case as and to the extent permitted by this Agreement and the Intercreditor Agreement.

Term Loan Documents: the Term Loan Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, pursuant to a Permitted Refinancing from time to time, in each case as and to the extent permitted by this Agreement and the Intercreditor Agreement.

Term SOFR: for the applicable corresponding tenor (or if any Available Tenor of a Benchmark does not correspond to an Available Tenor for the applicable Benchmark Replacement, the closest corresponding Available Tenor and if such Available Tenor corresponds equally to two Available Tenors of the applicable Benchmark Replacement, the corresponding tenor of the shorter duration shall be applied), the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

Total Borrowing Base: on any date of determination, an amount equal to the lesser of (a) the Commitments; or (b) the sum, without duplication, of **clause (b)** of the definition of U.S. Borrowing Base **plus clause (b)** of the definition of Foreign Borrowing Base; **provided** that no more than 50% of the Total Borrowing Base may be comprised of the Foreign Borrowing Base; it being understood that, solely for purposes of this limitation, U.S. Allocated Foreign Availability that is actually allocated to the U.S.

Borrowing Base in an amount up to \$20,000,000 shall be deemed part of the U.S. Borrowing Base and any amount in excess of such \$20,000,000 of U.S. Allocated Foreign Availability shall be deemed part of the Foreign Borrowing Base.

Total Excess Availability: as of any date of determination, the Total Borrowing Base minus the Revolver Usage.

Total Revolver Usage: as of any date of determination, the sum of the Foreign Revolver Usage and the U.S. Revolver Usage on such date of determination.

Transferee: any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

Treaty: as defined, in relation to United Kingdom Tax matters, in **Section 5.8.8** and, in relation to Australian Tax matters, in **Section 5.8.9(a)**.

Treaty Lender: as defined in **Section 5.8.8**.

Treaty State: as defined, in relation to United Kingdom Tax matters, in **Section 5.8.8** and, in relation to Australian Tax matters, in **Section 5.8.9(a)**.

Trigger Period: the period (a) commencing on the day that Total Excess Availability is less than the greater of (x) 10% of the Total Borrowing Base and (y) \$20,000,000 at any time; and (b) continuing until, during each of the preceding 30 consecutive days, Total Excess Availability has been greater than the greater of (x) 10% of the Total Borrowing Base and (y) \$20,000,000 at all times.

UCC: the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

UK or United Kingdom: the United Kingdom of Great Britain and Northern Ireland.

UK AR Deed of Release: the English law deed of release dated as of April 3, 2019, executed by the European Security Trustee in favor of the UK Domiciled Obligors pursuant to which any accounts receivable sold in accordance with **Section 10.2.5(l)** are released from the scope of any fixed charge under the UK Security Agreements.

UK Borrowers: (a) HY UK and (b) each other Foreign Restricted Subsidiary organized under the laws of England and Wales that, after the date hereof, has executed a supplement or joinder to this Agreement in accordance with **Section 10.1.9(a)** and has satisfied the other requirements set forth in **Section 10.1.9(a)** in order to become a UK Borrower.

UK Debentures: (i) that certain Debenture dated as of December 18, 2013 among the UK Borrowers and the European Security Trustee, as amended, restated, supplemented or otherwise modified from time to time and (ii) that certain Debenture dated on or about the Closing Date among the UK Domiciled Obligors and the European Security Trustee.

UK Domiciled Obligor: each (a) UK Borrower and (b) each UK Guarantor, and “**UK Domiciled Obligors**” means all such Persons, collectively.

UK Financial Institution: 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 Guarantors: each Foreign Restricted Subsidiary organized under the laws of England and Wales that has executed a supplement or joinder to this Agreement or otherwise entered into a guaranty in order to become an Obligor, other than the UK Borrowers. As of the Closing Date, the UK Guarantor is Hyster-Yale Group Limited.

UK Non-Bank Lender: as defined in **Section 5.8.8**.

UK Pension Plan: an occupational pension scheme which is not a money purchase scheme (each as defined in Section 181 of the Pension Schemes Act 1993 (UK)) and any other pension plan maintained or contributed to by, or to which there is or may be an obligation to contribute by any Obligor in respect of its UK employees or former employees.

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

UK Security Agreements: (a) the UK Debentures and (b) the UK Share Mortgages and each other debenture or security agreement governed by English law.

UK Share Mortgages: any share mortgages entered into from time to time by an Obligor under English law in favor of the European Security Trustee in respect of such Obligor's Equity Interests in any of its Subsidiaries.

Unfunded Pension Liability: the excess of a Pension Plan's benefit liabilities over the value of that Pension Plan's assets. For this purpose, the benefit liabilities of a Pension Plan for a plan year shall be the Pension Plan's "funding target" determined under Section 430(d) (1) of the Code (without regard to Section 430(i)(1) of the Code) for the plan year, and the value of the Pension Plan's assets for such plan year shall be such value as is used pursuant to Section 430 of the Code for purposes of determining the annual contribution requirements with respect to the Pension Plan for such plan year.

Unrestricted Subsidiary: means any Subsidiary that has been designated as an "**Unrestricted Subsidiary**" pursuant to **Section 2.6** hereof and has not been re-designated as a Restricted Subsidiary in accordance with such **Section 2.6**.

Upstream Payment: a Distribution by any Restricted Subsidiary to (a) Parent, any Borrower, any Restricted Subsidiary that is an Obligor (other than any Specified Foreign Domiciled Obligor; provided that any Upstream Payment to a Specified Foreign Domiciled Obligor which is distributed, on a substantially contemporaneous basis, directly or indirectly, by such Specified Foreign Domiciled Obligor to an Obligor that is not a Specified Foreign Domiciled Obligor shall be deemed made to such Obligor), and (b) any other Person that owns a direct Equity Interest in such Restricted Subsidiary, ratably according to their respective holdings of the Equity Interest in respect of which such Distribution is being made.

U.S.: the United States of America.

U.S. Allocated Foreign Availability: Foreign Excess Availability (determined for purposes of this definition without regard to **clause (a)** of the definition of the Foreign Borrowing Base) designated by Foreign Borrower Agent in a Borrowing Base Certificate or otherwise in accordance with **Section 8.1** for application to **clause (iii)** of the U.S. Borrowing Base.

U.S. Allocated Foreign Availability Reserve: the aggregate amount of the Foreign Borrowing Base allocated by Foreign Borrower Agent in a Borrowing Base Certificate or otherwise in accordance with **Section 8.1** for inclusion by U.S. Borrowers in the U.S. Borrowing Base.

U.S. Availability Reserves: the sum (without duplication) of (a) the U.S. Inventory Reserve; (b) the U.S. Dilution Reserve; (c) the U.S. Rent and Charges Reserve; (d) the U.S. Bank Product Reserve; (e) the Foreign Allocated U.S. Availability Reserve; (f) the aggregate amount of liabilities secured by Liens upon ABL Facility Priority Collateral that are senior to Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (g) the U.S. Credit Insurance Reserve; and (h) such additional reserves, in such amounts and with respect to such matters, as Agent in its Permitted Discretion may elect to impose from time to time.

U.S. Bank Product Reserve: the aggregate amount of reserves established by Agent from time to time in its Permitted Discretion in respect of Secured Bank Product Obligations of the U.S. Domiciled Obligors. Any reserves for Bank Products described in **clause (d)** of the definition therefor (a) shall not exceed \$10,000,000 in the aggregate and (b) shall be adjusted from time to time (not to exceed once per calendar month) based upon the outstandings under such Bank Products as last notified by Citibank, N.A. to Agent in a form satisfactory to Agent (provided, that such reserve may not be increased if an Event of Default exists or an Overadvance would result therefrom).

U.S. Base Rate: for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the Prime Rate and (c) LIBOR for an Interest Period of 30 days plus 1.00%. If the U.S. Base Rate is being used as an alternate rate of interest pursuant to **Section 3.6.2** hereof, then the U.S. Base Rate shall be the greater of **clauses (a)** and **(b)** above and shall be determined without reference to **clause (c)** above.

U.S. Base Rate Loan: any Loan that bears interest based on the U.S. Base Rate.

U.S. Borrower Agent: as defined in **Section 4.4(b)**.

U.S. Borrowers: (a) the Initial U.S. Borrowers and (b) each other Domestic Subsidiary that, after the date hereof, has executed a supplement or joinder to this Agreement in accordance with **Section 10.1.9(b)** and has satisfied the other requirements set forth in **Section 10.1.9(b)** in order to become a U.S. Borrower.

U.S. Borrowing Base: on any date of determination, an amount equal to the lesser of (a) the U.S. Revolver Commitments; or (b) the sum of, without duplication of the following:

- (i) 90% of the Value of Eligible U.S. Accounts, plus
- (ii) the lesser of (x) 75% of the Value of Eligible U.S. Inventory and (y) 85% of the NOLV Percentage of Eligible U.S. Inventory, plus

(iii) U.S. Allocated Foreign Availability for U.S. Borrowers; provided that this **clause (iii)** shall not exceed 50% of the U.S. Borrowing Base (calculated for purposes of this limitation, by excluding up to \$20,000,000 of U.S. Allocated Foreign Availability), minus

(iv) the U.S. Availability Reserves;

provided, that following a Permitted Acquisition, the U.S. Borrowing Base may include up to 60% of the Value of Eligible U.S. Accounts and 50% of the NOLV Percentage of Eligible U.S. Inventory acquired in such Permitted Acquisition so long as such acquired Eligible U.S. Accounts and Eligible U.S. Inventory shall not exceed 10% of the U.S. Borrowing Base in the aggregate (without giving effect to such acquired Accounts and Inventory); provided, further, no such acquired Eligible U.S. Accounts or Eligible U.S. Inventory shall be included in the U.S. Borrowing Base after the date that is 90 days following the consummation of such Permitted Acquisition if a field exam on such Eligible U.S. Accounts, or an appraisal of such Eligible U.S. Inventory, as applicable, has not been completed within such time.

U.S. Cash Collateral Account: a demand deposit, money market or other account established by Agent at Bank of America or such other financial institution as Agent may select in its discretion, which account shall be subject to a Lien in favor of, and under the sole control of, Agent.

U.S. Credit Insurance Reserve: an amount equal to the deductible and/or policy percentage for all credit insurance in respect of all Eligible Supported U.S. Accounts.

U.S. Dilution Reserve: the aggregate amount of reserves, as established by Agent from time to time in its Permitted Discretion, in an amount equal to the Value of the Eligible U.S. Accounts multiplied by 1.0% for each percentage point (or portion thereof) that U.S. Borrowers' Dilution Percent exceeds 2.5%.

U.S. Domiciled Obligors: (a) each U.S. Borrower, and (b) each U.S. Guarantor, and "**U.S. Domiciled Obligors**" means all such Persons, collectively.

U.S. Dominion Account: each Deposit Account established by U.S. Domiciled Obligors at Bank of America or another bank reasonably acceptable to Agent, over which Agent has exclusive or springing control pursuant to a Deposit Account Control Agreement; provided that such Deposit Account is a collection account and not also an operating or disbursement account.

U.S. Excess Availability: as of any date of determination, an amount equal to the U.S. Borrowing Base, minus the U.S. Revolver Usage.

U.S. Facility Collateral: Collateral that now or hereafter secures (or is intended to secure) any of the U.S. Facility Obligations, including Property of the Guarantors pledged to secure the U.S. Facility Obligations under their guarantee of the U.S. Facility Obligations.

U.S. Facility Guarantor: Parent, each U.S. Borrower, each Foreign Borrower and each Domestic Restricted Subsidiary (other than any CFC Holdco or any direct or indirect Subsidiary of a Subsidiary that is a CFC) or other Person that guarantees payment and performance of any U.S. Facility Obligations.

U.S. Facility Obligations: all Obligations of the U.S. Domiciled Obligors (including, for the avoidance of doubt, the Obligations of the U.S. Domiciled Obligors as guarantors of the Foreign Facility Obligations).

U.S. Facility Secured Parties: Agent, any U.S. Issuing Bank, U.S. Lenders and Secured Bank Product Providers of Bank Products to U.S. Domiciled Obligors.

U.S. Guarantors: each Domestic Restricted Subsidiary that has executed a supplement or joinder to this Agreement or otherwise entered into a guaranty in order to become an Obligor, other than the U.S. Borrowers. As of the Closing Date, the U.S. Guarantors are Hyster Overseas Capital Corporation, LLC, Bolzoni Holdings, LLC and Nuvera Fuel Cells, LLC.

U.S. Inventory Reserve: reserves established by Agent to reflect factors that may negatively impact the Value of Inventory of U.S. Borrowers, including change in salability, obsolescence, seasonality, theft, shrinkage, imbalance, change in composition or mix, markdowns and vendor chargebacks.

U.S. Issuing Bank: (a) Bank of America or any Affiliate of Bank of America, (b) any U.S. Lender or Affiliate thereof as issuer of the Existing U.S. Letters of Credit, (c) if selected by U.S. Borrower Agent, any other U.S. Lender or Affiliate thereof that agrees to issue U.S. Letters of Credit, or (d) any replacement issuer appointed pursuant to **Section 2.4**.

U.S. Issuing Bank Indemnitees: U.S. Issuing Bank and its officers, directors, employees, Affiliates, agents and attorneys.

U.S. LC Application: an application by any U.S. Borrower or U.S. Borrower Agent to the U.S. Issuing Bank for issuance of a U.S. Letter of Credit, in form and substance satisfactory to the U.S. Issuing Bank and Agent.

U.S. LC Conditions: the following conditions necessary for issuance of a U.S. Letter of Credit: (a) each of the conditions set forth in **Section 6.2** being satisfied or waived; (b) after giving effect to such issuance, the aggregate U.S. LC Obligations do not exceed the U.S. Letter of Credit Sublimit, no U.S. Overadvance exists and U.S. Revolver Usage does not exceed the U.S. Borrowing Base; (c) the U.S. Letter of Credit and payments thereunder are denominated in Dollars or other currency satisfactory to Agent and the U.S. Issuing Bank; and (d) the purpose and form of the proposed U.S. Letter of Credit are satisfactory to Agent and the U.S. Issuing Bank in their discretion.

U.S. LC Documents: all documents, instruments and agreements (including U.S. LC Requests and U.S. LC Applications) delivered by U.S. Borrowers or any other U.S. Domiciled Obligor to U.S. Issuing Bank or Agent in connection with any U.S. Letter of Credit.

U.S. LC Obligations: the sum (without duplication) of (a) all amounts owing by U.S. Borrowers for drawings under U.S. Letters of Credit; and (b) the Stated Amount of all outstanding U.S. Letters of Credit.

U.S. LC Request: a request for issuance of a U.S. Letter of Credit, to be provided by any U.S. Borrower or U.S. Borrower Agent to the U.S. Issuing Bank, in form satisfactory to Agent and the U.S. Issuing Bank.

U.S. Lender: each Lender that has a U.S. Revolver Commitment or, if the U.S. Revolver Commitments have been terminated, that has a U.S. Loan or a participation in any U.S. LC Obligation.

U.S. Letter of Credit: any standby or documentary letter of credit or similar instrument issued by U.S. Issuing Bank for the account of a U.S. Borrower or another U.S. Domiciled Obligor, including the Existing U.S. Letters of Credit.

U.S. Letter of Credit Sublimit: \$25,000,000.

U.S. Loan: a Loan made by U.S. Lenders to a U.S. Borrower pursuant to **Section 2.1.1(a)**, which Loan shall be denominated in Dollars or, if available to all U.S. Lenders, Euros, and shall be either a U.S. Base Rate Loan or an Interest Period Loan and including any U.S. Swingline Loan, U.S. Overadvance Loan, U.S. Protective Advance and deemed Loan advanced under **Section 2.2.2(a)**.

U.S. Overadvance: as defined in **Section 2.1.5**.

U.S. Overadvance Loan: a U.S. Base Rate Loan made to a U.S. Borrower when a U.S. Overadvance exists or is caused by the funding thereof.

U.S. Person: “United States Person” as defined in Section 7701(a)(30) of the Code.

U.S. Protective Advances: as defined in **Section 2.1.6**.

U.S. Special Resolution Regimes: as defined in **Section 14.21**.

U.S. Reimbursement Date: as defined in **Section 2.2.2(a)**.

U.S. Rent and Charges Reserve: the aggregate of (a) all past due rent and other amounts owing by a U.S. Domiciled Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any Collateral or could assert a Lien on any Collateral; and (b) a reserve at least equal to three months’ rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

U.S. Revolver Commitment: for any U.S. Lender, its obligation to make U.S. Loans and to issue U.S. Letters of Credit, in the case of U.S. Issuing Bank, or participate in U.S. LC Obligations, in the case of the other U.S. Lenders, to U.S. Borrowers up to the maximum principal amount shown on Schedule 1.1(b), as hereafter modified pursuant to **Section 2.1.4**, **Section 2.1.7** or **Section 2.1.8** or an Assignment and Acceptance to which it is a party. “**U.S. Revolver Commitments**” means the aggregate amount of such commitments of all U.S. Lenders.

U.S. Revolver Commitment Increase: as defined in **Section 2.1.7(a)**.

U.S. Revolver Commitment Termination Date: the earliest of (a) the Maturity Date, (b) the date on which U.S. Borrower Agent terminates the U.S. Revolver Commitments pursuant to **Section 2.1.4**, and (c) the date on which the U.S. Revolver Commitments are terminated pursuant to **Section 11.2**.

U.S. Revolver Usage: the Dollar Equivalent of an amount equal to (a) the aggregate principal amount of outstanding U.S. Loans; plus (b) the aggregate Stated Amount of outstanding U.S. Letters of Credit, except to the extent Cash Collateralized by U.S. Borrowers.

U.S. Swingline Lender: Bank of America or an Affiliate of Bank of America.

U.S. Swingline Loan: any Borrowing of U.S. Base Rate Loans funded with U.S. Swingline Lender's funds, until such Borrowing is settled among U.S. Lenders or repaid by U.S. Borrowers.

U.S. Swingline Sublimit: \$25,000,000.

U.S. Tax Compliance Certificate: as defined in **Section 5.9.2(b)(iii)**.

U.S. Unused Line Fee Rate: at any time, a per annum rate equal to 0.250%.

Value: (a) for Inventory, its value determined on the basis of the lower of cost or market, calculated on a first-in, first out basis, and excluding any portion of cost attributable to intercompany profit among Borrowers and their Affiliates; and (b) for an Account, its face amount, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could be claimed by the Account Debtor or any other Person.

VAT:

(a) any tax imposed in compliance with the Council Directive of 28 November 2006 or the common system of value added tax (EC Directive 2006/112); and

(b) any other tax of a similar nature, that is either (i) imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in **paragraph (a)** above, or (ii) imposed elsewhere.

VAT Recipient: as defined in **Section 5.8.8(g)(ii)**.

VAT Relevant Party: as defined in **Section 5.8.8(g)(ii)**.

VAT Supplier: as defined in **Section 5.8.8(g)(ii)**.

Voting Stock: with respect to any Person, Equity Interests of such Person entitling any holder thereof (whether at all times or only so long as no senior class of Equity Interest has voting power by reason of any contingency) (a) in the case of a corporation (or equivalent organization), to vote in the election of members of the board of directors (or the equivalent thereof) of such Person, (b) in the case of a limited liability company, to vote in the election of managers of such Person or to bind or otherwise act as member or agent for such Person, (c) in the case of a limited partnership, to vote on the admission of the general partner of such Person or to bind or otherwise act as agent for such Person or (d) in the case of a general partnership, to bind or otherwise act as agent for such Person.

Wholly Owned: with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director's qualifying shares and (y) nominal shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

Write-Down and Conversion Powers: (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which

that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 Accounting Terms. Under the Loan Documents (except as otherwise specified therein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of Parent and its Subsidiaries delivered to Agent before the Closing Date and using the same inventory valuation method as used in such financial statements. In the event that any Accounting Changes shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then at U.S. Borrower Agent's or Agent's request, Agent, the Lenders and Obligors shall enter into negotiations in order to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the financial condition of Obligors shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by Obligors, Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. Notwithstanding anything to the contrary, for all purposes under the Loan Documents, including financial covenants and component definitions, GAAP will be deemed to treat operating leases and capital leases in a manner consistent with their treatment under GAAP as in effect on December 31, 2018, notwithstanding any modifications or interpretive changes thereto that may occur thereafter. All accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared without giving effect to any election under *FASB Accounting Standards Codification Topic 825, Financial Instruments*, or any successor thereto (including pursuant to the Accounting Standards Codification), to value any Debt of Parent or any Subsidiary at "fair value", as defined therein.

1.3 Uniform Commercial Code/Australian PPSA. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: "Chattel Paper," "Commercial Tort Claim," "Commodity Account," "Equipment," "Goods," "Instrument," "Investment Property," "Letter-of-Credit Right" and "Supporting Obligation"; provided, that as such terms relate to any such Property of any Australian Domiciled Obligor, "Chattel Paper," shall refer to chattel paper as that term is defined in the Australian PPSA, "Equipment" shall refer to "goods" (other than goods that are "consumer property" or "inventory") as those terms are defined in the Australian PPSA, "Instrument" shall refer to "negotiable instrument" as that term is defined in the Australian PPSA and "Investment Property" shall refer to "investment instrument" and "intermediated security" as those terms are defined in the Australian PPSA to the extent applicable. In addition, other terms relating to Collateral used and not otherwise defined herein that are defined in the UCC and/or the Australian PPSA shall have the meanings set forth in the UCC and/or the Australian PPSA, as applicable and as the context requires.

1.4 Certain Matters of Construction. The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, "from" means "from and including," and "to" and "until" each mean "to but excluding." The terms "including" and "include" shall mean "including, without limitation" and, for purposes of each Loan Document, the parties agree that the rule of ejusdem generis shall not be applicable to limit any provision. Section titles appear as a matter of convenience only

and shall not affect the interpretation of any Loan Document. All references to (a) laws include all related regulations, interpretations, supplements, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Loan Documents); (c) any section mean, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and assigns; (f) unless otherwise specified, time of day mean time of day at Agent's notice address under **Section 14.3.1**; or (g) discretion of Agent, Security Trustee, Issuing Bank or any Lender mean the sole and absolute discretion of such Person. All determinations (including calculations of Borrowing Base and financial covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise satisfactory to Agent (and not necessarily calculated in accordance with GAAP). Borrowers shall have the burden of establishing any alleged negligence, misconduct or lack of good faith by Agent, Security Trustee, Issuing Bank or any Lender under any Loan Documents. No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Reference to an Obligor's "knowledge" or similar concept means actual knowledge of a Senior Officer, or knowledge that a Senior Officer would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter.

1.5 Currency Equivalents.

1.5.1 Calculations. All references in the Loan Documents to Loans, Letters of Credit, Obligations, Borrowing Base components and other amounts shall be denominated in Dollars, unless expressly provided otherwise. The Dollar Equivalent of any amounts denominated or reported under a Loan Document in a currency other than Dollars shall be determined by Agent on a daily basis based on the current Spot Rate. Borrowers shall report Value and other Borrowing Base components to Agent in the currency invoiced by Borrowers or shown in Borrowers' financial records, and unless expressly provided otherwise, the Borrower Agents shall deliver financial statements and calculate financial covenants in Dollars. Notwithstanding anything herein to the contrary, if any Obligation is funded and expressly denominated in a currency other than Dollars, Obligors shall repay such Obligation in such other currency.

1.5.2 Judgments. If, for purposes of obtaining judgment in any court, it is necessary to convert a sum from the currency provided under a Loan Document ("**Agreement Currency**") into another currency, the Spot Rate shall be used as the rate of exchange. Notwithstanding any judgment in a currency ("**Judgment Currency**") other than the Agreement Currency, an Obligor shall discharge its obligation in respect of any sum due under a Loan Document only if, on the Business Day following receipt by Agent of payment in the Judgment Currency, Agent can use the amount paid to purchase the sum originally due in the Agreement Currency. If the purchased amount is less than the sum originally due, such Obligor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Agent and Lenders against such loss. If the purchased amount is greater than the sum originally due, Agent shall return the excess amount to such Obligor (or to the Person legally entitled thereto).

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.

2. CREDIT FACILITIES.

2.1 Revolver Commitment.

2.1.1 Loans.

(a) U.S. Loans to U.S. Borrowers. Each U.S. Lender agrees, severally on a Pro Rata basis up to its U.S. Revolver Commitment, on the terms set forth herein, to make U.S. Loans in Dollars (and, if available to all U.S. Lenders, in Euros) to U.S. Borrowers from time to time through the U.S. Revolver Commitment Termination Date. The U.S. Loans may be repaid and reborrowed as provided herein. In no event shall U.S. Lenders have any obligation to honor a request for a U.S. Loan if the U.S. Revolver Usage at such time plus the Dollar Equivalent of the requested U.S. Loan would exceed the U.S. Borrowing Base.

(b) Foreign Loans to Foreign Borrowers. Each Foreign Lender agrees, severally on a Pro Rata basis up to its Foreign Revolver Commitment, on the terms set forth herein, to make Foreign Loans in Dollars, Euros, Sterling and, with respect to Australian Borrowers only, Australian Dollars to Foreign Borrowers from time to time through the Foreign Revolver Commitment Termination Date. The Foreign Loans may be repaid and reborrowed as provided herein. In no event shall Foreign Lenders have any obligation to honor a request for a Foreign Loan if the Foreign Revolver Usage at such time plus the Dollar Equivalent of the requested Foreign Loan would exceed the Foreign Borrowing Base.

(c) Cap on Total Revolver Usage. Notwithstanding anything to the contrary contained in this **Section 2.1.1**, in no event shall any Borrower be entitled to receive a Loan if at the time of the proposed funding of such Loan (and after giving effect thereto and all pending requests for Loans), the Total Revolver Usage exceeds (or would exceed) the Commitments.

2.1.2 Notes. Loans and interest accruing thereon shall be evidenced by the records of Agent and the applicable Lender. At the request of a Lender, Borrowers within the Borrower Group to which such Lender has extended Commitments shall deliver promissory note(s) to such Lender in the amount of such Lender's Borrower Group Commitment to such Borrower Group.

2.1.3 Use of Proceeds. The proceeds of Loans shall be used by Borrowers solely (a) to continue any loans outstanding under the Existing Loan Agreement; (b) to pay Obligations in accordance with this Agreement; (c) to pay fees and transaction expenses associated with the closing of this second amended and restated credit facility and (d) for lawful corporate purposes of Borrowers, including working capital. Borrowers shall not, directly or indirectly, use any Letter of Credit or the proceeds of any Loan, nor use, lend, contribute or otherwise make available any Letter of Credit or proceeds of any Loan to any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of issuance of the Letter of Credit or funding of the Loan, is the subject of Sanctions; or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as underwriter, advisor, investor, or otherwise).

2.1.4 Voluntary Reduction or Termination of Commitments.

(a) The U.S. Revolver Commitments shall terminate on the U.S. Revolver Commitment Termination Date and the Foreign Revolver Commitments shall terminate on the Foreign Revolver Commitment Termination Date, in each case, unless sooner terminated in accordance with this Agreement. Upon at least five Business Days prior written notice to Agent from the applicable Borrower Agent, (i) U.S. Borrowers may, at their option, terminate the U.S. Revolver Commitments and/or (ii) Foreign Borrowers may, at their option, terminate the Foreign Revolver Commitments. If U.S. Borrowers elect to reduce to zero or terminate the U.S. Revolver Commitments pursuant to this Section, the Foreign Revolver Commitments shall automatically terminate concurrently with the termination of the U.S. Revolver Commitments. Any notice of termination given by a Borrower Agent shall specify the date of effectiveness of the termination and shall be irrevocable; provided that a notice of termination of the U.S. Revolver Commitments or the Foreign Revolver Commitments may state that such notice is conditioned upon the occurrence or non-occurrence of any event specified therein (including the effectiveness of other credit facilities), in which case such notice may be revoked or delayed by the applicable Borrower Agent (by notice to Agent on or prior to the specified effective date) if such condition is not satisfied or delayed. On the U.S. Revolver Commitment Termination Date, the U.S. Borrowers shall make Full Payment of all U.S. Facility Obligations. On the Foreign Revolver Commitment Termination Date, the Foreign Borrowers shall make Full Payment of all Foreign Facility Obligations.

(b) U.S. Borrowers may permanently reduce the U.S. Revolver Commitments, on a ratable basis for all U.S. Lenders, and Foreign Borrowers may permanently reduce the Foreign Revolver Commitments, on a ratable basis for all Foreign Lenders, in each case, so long as (i) no Overadvance would result therefrom, (ii) no such permanent reduction of the U.S. Revolver Commitments would result in the Foreign Revolver Commitments exceeding 50% of the Commitments and (iii) Agent receives at least five Business Days prior written notice, which notice shall specify the date of effectiveness of the reduction and the amount of the reduction and shall be irrevocable once given. Each reduction shall be in a minimum amount of \$5,000,000 or an increment of \$1,000,000 in excess thereof.

2.1.5 Overadvances. If (i) the U.S. Revolver Usage exceeds the U.S. Borrowing Base (a “**U.S. Overadvance**”) or (ii) the Foreign Revolver Usage exceeds the Foreign Borrowing Base (a “**Foreign Overadvance**”) at any time, the excess amount shall be payable by U.S. Borrowers or Foreign Borrowers, as applicable, on demand by Agent. Agent may require Applicable Lenders to honor requests for Overadvance Loans and to forbear from requiring the applicable Borrower(s) to cure an Overadvance, whether or not the conditions in **Section 6.2** are satisfied, as long as (a) such Overadvance does not continue for more than 30 consecutive days (and no Overadvance may exist for at least five consecutive days thereafter before further Overadvance Loans are required), (b) the aggregate amount of Overadvances existing at any time does not exceed 7.5% of the Commitments then in effect and (c) the aggregate amount of the Overadvances existing at any time, together with the Protective Advances outstanding at any time pursuant to **Section 2.1.6** below, do not exceed 12.5% of the Commitments then in effect. In no event shall Overadvance Loans be required that would cause (i) the Foreign Revolver Usage to exceed the aggregate Foreign Revolver Commitments or (ii) the U.S. Revolver Usage to exceed the aggregate U.S. Revolver Commitments. All Foreign Overadvance Loans shall constitute Foreign Facility Obligations secured by the Foreign Facility Collateral and shall be entitled to all benefits of the Loan Documents. All U.S. Overadvance Loans shall constitute U.S. Facility Obligations secured by the U.S. Facility Collateral and shall be entitled to all benefits of the Loan Documents. Any funding of an

Overadvance Loan or sufferance of an Overadvance shall not constitute a waiver by Agent or Lenders of the Event of Default caused thereby. In no event shall any Borrower or other Obligor be deemed a beneficiary of this Section nor authorized to enforce any of its terms. Required Borrower Group Lenders may at any time revoke Agent's authority to make further Overadvances to Borrowers of the applicable Borrower Group by written notice to Agent.

2.1.6 Protective Advances. Agent shall be authorized, in its discretion, at any time that any conditions in **Section 6.2** are not satisfied, to make U.S. Base Rate Loans to U.S. Borrowers on behalf of the U.S. Lenders ("**U.S. Protective Advances**") and Foreign Base Rate Loans to Foreign Borrowers on behalf of the Foreign Lenders ("**Foreign Protective Advances**") (a) if Agent deems such Loans necessary or desirable to preserve or protect Collateral, or to enhance the collectability or repayment of Obligations, as long as no U.S. Protective Advance shall cause the U.S. Revolver Usage to exceed the U.S. Revolver Commitments and no Foreign Protective Advance shall cause the Foreign Revolver Usage to exceed the Foreign Revolver Commitments; or (b) to pay any other amounts chargeable to Obligors under any Loan Documents, including interest, costs, fees and expenses. The aggregate amount of Protective Advances outstanding at any time pursuant to this **Section 2.1.6**, together with the aggregate amount of Overadvances existing at any time pursuant to **Section 2.1.5** above, shall not exceed 12.5% of the Commitments then in effect. Each Applicable Lender shall participate in each Protective Advance on a Pro Rata basis. Required Borrower Group Lenders may at any time revoke Agent's authority to make further Protective Advances to Borrowers of the applicable Borrower Group by written notice to Agent. Absent such revocation, Agent's determination that funding of a Protective Advance is appropriate shall be conclusive.

2.1.7 Increase in Commitments; FILO.

(a) U.S. Borrower Agent may request an increase in U.S. Revolver Commitments (a "**U.S. Revolver Commitment Increase**") and Foreign Borrower Agent may request an increase in Foreign Revolver Commitments (a "**Foreign Revolver Commitment Increase**"), and together with a U.S. Revolver Commitment Increase, each, a "**Revolver Commitment Increase**") from time to time upon notice to Agent as long as (i) the requested Revolver Commitment Increase is in a minimum amount of \$10,000,000 and, except as provided in **Section 2.1.7(b)** or in **Section 14.1** with respect to any Additional Foreign Facility Loan Party, is offered on the same terms as the existing U.S. Revolver Commitments or Foreign Revolver Commitments, as applicable, except for any fees agreed to by the applicable Borrower Agent and the Persons providing the Revolver Commitment Increase, (ii) the Revolver Commitment Increases under this Section do not exceed \$100,000,000 (the "**Incremental Facility Amount**") in the aggregate, (iii) no Lender shall be obligated to increase its Commitment, (iv) no Default or Event of Default shall have occurred and be continuing both immediately before and after giving effect thereto, (v) the Revolver Commitment Increase will be allocated between the U.S. Revolver Commitments and the Foreign Revolver Commitments as designated by the applicable Borrower Agent and the Persons providing the Revolver Commitment Increase, subject to the consent of Agent and provided that the amount of the Foreign Revolver Commitments may not exceed the amount of the U.S. Revolver Commitments, (vi) Borrowers shall deliver or cause to be delivered any officers' certificates, board resolutions, legal opinions or other documents reasonably requested by Agent in connection with the Revolver Commitment Increase, (vii) Borrowers within the applicable Borrower Group shall pay all of Agent's out-of-pocket costs and expenses in connection with the Revolver Commitment Increase, any payments required pursuant to **Section 3.9** in connection with the Revolver Commitment Increase and any upfront fees agreed to by the applicable Borrower Agent and the Persons providing the Revolver Commitment Increase

and (viii) Agent shall have received certification from a Senior Officer of Parent, or other evidence reasonably satisfactory to Agent, that such increase is permitted under any Permitted Term Debt and related intercreditor agreement. Provided the conditions set forth in **Section 6.2** are satisfied, the applicable Borrower Group Commitments shall be increased by the requested amount on a date agreed upon by Agent and the applicable Borrower Agent, but no later than 45 days following the applicable Borrower Agent's Revolver Commitment Increase request. Agent, the applicable Borrower Agent, Borrowers within the applicable Borrower Group, and new and existing Applicable Lenders shall execute and deliver such documents and agreements as Agent deems reasonably appropriate to evidence the Revolver Commitment Increase in and allocations of the applicable Borrower Group Commitments (including joinder agreements for any New Lenders). On the effective date of an increase, the applicable Revolver Usage and other exposures under the applicable Borrower Group Commitments shall be reallocated among Applicable Lenders, and settled by Agent if necessary, in accordance with Applicable Lenders' adjusted shares of such Borrower Group Commitments.

(b) Borrowers may, at their election, use up to \$25,000,000 of the Incremental Facility Amount to implement a first in, last out loan on terms and conditions agreed upon by Agent, participating Lenders and Borrowers, and such Persons may enter into an amendment to this Agreement in order to effectuate the foregoing, provided that advance rate calculations set forth in any Borrowing Base shall not exceed 100% for any component of such Borrowing Base after giving effect to any FILO Loan.

2.1.8 Reallocation Mechanism.

(a) Subject to the terms and conditions of this **Section 2.1.8**, U.S. Borrower Agent may request that the Lenders to the Borrower Groups (and such Lenders in their individual sole discretion may agree to) change the then current allocation of each such Lender's (and, if applicable, its Affiliate's) Commitment among the Borrower Group Commitments in order to effect an increase or decrease in particular Borrower Group Commitments, with any such increase or decrease in a Borrower Group Commitment to be accompanied by a concurrent and equal decrease or increase, respectively, in the other Borrower Group Commitment (each, a "**Reallocation**"). In addition to the conditions set forth in **Section 2.1.8(b)**, any such Reallocation shall be subject to the following conditions: (i) U.S. Borrower Agent shall have provided to Agent a written request (in reasonable detail) at least fifteen Business Days prior to the requested effective date therefor (which effective date must be a Business Day) (the "**Reallocation Date**") setting forth the proposed Reallocation Date and the amounts of the proposed Borrower Group Commitment reallocations to be effected, (ii) Agent shall have consented to such Reallocation, (iii) any such Reallocation shall increase or decrease the applicable Borrower Group Commitments in an amount equal to \$10,000,000 and in increments of \$1,000,000 in excess thereof, (iv) Agent shall have received Reallocation Consents from Lenders having applicable Borrower Group Commitments sufficient to effectuate such requested Reallocation, (v) no more than two (2) Reallocations may be requested in any Fiscal Year, (vi) no Default or Event of Default shall have occurred and be continuing either as of the date of such request or on the Reallocation Date (both immediately before and after giving effect to such Reallocation), (vii) any increase in a Borrower Group Commitment shall result in a dollar-for-dollar decrease in the other Borrower Group Commitment, (viii) in no event shall the sum of the reallocated Borrower Group Commitments exceed the aggregate amount of the Commitments then in effect, (ix) after giving effect to such Reallocation, no Overadvance would exist or would result therefrom, (x) such increase shall be permitted under any Permitted Term Debt, (xi) no more than

50% of the Commitments may be allocated to the Foreign Revolver Commitments, and (xii) at least three Business Days prior to the proposed Reallocation Date, a Senior Officer of U.S. Borrower Agent shall have delivered to Agent a certificate certifying as to compliance with preceding clauses (vi) and (x), which certificate shall be deemed recertified to Agent by a Senior Officer of U.S. Borrower Agent on and as of the Reallocation Date.

(b) Agent shall promptly inform the Lenders of any request for a Reallocation. Each Lender electing to reallocate its Borrower Group Commitments shall notify Agent within five Business Days after its receipt of such notice of its election and the maximum amount of the respective Borrower Group Commitment reallocations to which it would agree (each, a “**Reallocation Consent**”), it being agreed that any such reallocation may be consummated, as to any Lender, by an Affiliate of such Lender providing a Borrower Group Commitment of the applicable class (whether or not such Affiliate already has a Borrower Group Commitment of such class) provided such Affiliate provides to Agent any documents requested by Agent in connection with its Borrower Group Commitment, each in form and substance reasonably satisfactory to Agent. Notwithstanding the foregoing, (i) no Lender shall be obligated to agree to any such Reallocation of its Commitment (and no consent by any Lender to any Reallocation on one occasion shall be deemed consent to any future Reallocation by such Lender), (ii) other than the Lenders consenting to such Reallocation and Agent’s consent, no consent of any other Lender shall be required, and (iii) the failure of any Lender to affirmatively consent to participate in any such Reallocation on or prior to the fifth Business Day after its receipt of notice thereof shall be deemed to constitute an election by such Lender not to participate in such Reallocation. If, at the end of such five Business Day period, Agent receives Reallocation Consents from Lenders in an aggregate amount greater than the required reallocation amounts, each such consenting Lender’s affected Borrower Group Commitments shall be increased or decreased on a pro rata basis based on the Borrower Group Commitments of the participating Lenders offered to be reallocated. If the conditions set forth in this Section, including, without limitation, the receipt of sufficient Reallocation Consents within the time period set forth above, are not satisfied on the applicable Reallocation Date (or, to the extent such conditions relate to an earlier date, such earlier date), Agent shall notify U.S. Borrower Agent in writing that the requested Reallocation will not be effectuated; provided that (A) Agent shall in all cases be entitled to rely (without liability) on the certificate delivered by U.S. Borrower Agent pursuant to **Section 2.1.8(a)(xii)** in making its determination as to the satisfaction of the conditions set forth in **Section 2.1.8(a)(vi)** and **(x)** and (B) if the proposed Reallocation cannot be effected because sufficient Reallocation Consents were not received, then U.S. Borrower Agent may elect to consummate such Reallocation in the lesser amount of the Reallocation Consents that were received. On each Reallocation Date, Agent shall notify the Lenders and U.S. Borrower Agent, on or before 3:00 p.m. by facsimile, e-mail or other electronic means, of the occurrence of the Reallocation to be effected on such Reallocation Date, the amount of the Loans held by each such Lender (or an Affiliate thereof) as a result thereof and the amount of the Borrower Group Commitments of each such Lender as a result thereof. To the extent necessary where a Lender in one Borrower Group and its separate affiliate that is a Lender in the other Borrower Group are participating in a Reallocation, the Reallocation among such Persons shall be deemed to have been consummated pursuant to an Assignment and Acceptance. The respective Pro Rata shares of the Lenders shall thereafter, to the extent applicable, be determined based on such reallocated amounts (subject to any subsequent changes thereto), and Agent and the affected Lenders shall make such adjustments as Agent shall deem reasonably necessary so that the outstanding Loans and LC Obligations of each Lender equals its Pro Rata share thereof after giving effect to the Reallocation.

2.1.9 Booking of Loans. Each Foreign Lender may, at its option, make any Foreign Loan available to any Foreign Borrower by causing any foreign or domestic branch or Affiliate of such Lender to make such Loan; provided, that (a) any exercise of such option shall not affect the obligation of such Foreign Borrower to repay such Loan in accordance with the terms of this Agreement and (b) for the avoidance of doubt, any such advance shall constitute a Foreign Loan and Obligations entitled to the benefits of the Loan Documents and the Collateral. Each U.S. Lender may, at its option, make any U.S. Loan denominated in Euros available to any U.S. Borrower by causing any foreign or domestic branch or Affiliate of such Lender to make such Loan; provided, that (i) any exercise of such option shall not affect the obligation of such U.S. Borrower to repay such Loan in accordance with the terms of this Agreement and (ii) for the avoidance of doubt, any such advance shall constitute a U.S. Loan and Obligations entitled to the benefits of the Loan Documents and the Collateral.

2.2 U.S. Letter of Credit Facility.

2.2.1 Issuance of U.S. Letters of Credit. U.S. Issuing Bank shall issue U.S. Letters of Credit for the account of any U.S. Domiciled Obligor or its Restricted Subsidiaries (provided that each U.S. Domiciled Obligor agrees that it is jointly and severally liable with respect to, and guarantees payment under **Section 5.10.1** with respect to, any U.S. Letter of Credit issued for the account of a Restricted Subsidiary that is not a U.S. Domiciled Obligor) from time to time until 30 days prior to the Maturity Date (or until the U.S. Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(a) Each U.S. Borrower acknowledges that U.S. Issuing Bank's issuance of any U.S. Letter of Credit is conditioned upon U.S. Issuing Bank's receipt of a U.S. LC Application with respect to the requested U.S. Letter of Credit, as well as such other instruments and agreements as U.S. Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. U.S. Issuing Bank shall have no obligation to issue any U.S. Letter of Credit unless (i) Agent and U.S. Issuing Bank receive a U.S. LC Request and U.S. LC Application at least three Business Days prior to the requested date of issuance; (ii) each U.S. LC Condition is satisfied; and (iii) if a Defaulting Lender that is a U.S. Lender exists, such Lender or U.S. Borrowers have entered into arrangements satisfactory to Agent and U.S. Issuing Bank to eliminate any Fronting Exposure associated with such U.S. Lender. If, in sufficient time to act, U.S. Issuing Bank receives written notice from Agent or Required Borrower Group Lenders that a U.S. LC Condition has not been satisfied, U.S. Issuing Bank shall not issue the requested U.S. Letter of Credit. Prior to receipt of any such notice, U.S. Issuing Bank shall not be deemed to have knowledge of any failure of U.S. LC Conditions. All Existing U.S. Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(b) U.S. Letters of Credit may be requested by a U.S. Borrower or U.S. Borrower Agent to support obligations of Parent and its Restricted Subsidiaries, or as otherwise approved by Agent. Increase, renewal or extension of a U.S. Letter of Credit shall be treated as issuance of a new U.S. Letter of Credit, except that U.S. Issuing Bank may require a new U.S. LC Application in its discretion.

(c) U.S. Borrowers assume all risks of the acts, omissions or misuses of any U.S. Letter of Credit by the beneficiary. In connection with issuance of any U.S. Letter of Credit, none of Agent, U.S. Issuing Bank or any U.S. Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented

by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a U.S. Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and an Obligor; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any U.S. Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of U.S. Issuing Bank, Agent or any U.S. Lender, including any act or omission of a Governmental Authority. The rights and remedies of U.S. Issuing Bank under the Loan Documents shall be cumulative. U.S. Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims are discharged with proceeds of any U.S. Letter of Credit issued by U.S. Issuing Bank.

(d) In connection with its administration of and enforcement of rights or remedies under any U.S. Letters of Credit or U.S. LC Documents, U.S. Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by U.S. Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. U.S. Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. U.S. Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to U.S. Letters of Credit or U.S. LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

2.2.2 U.S. Letters of Credit Reimbursement; U.S. Letters of Credit Participations.

(a) If U.S. Issuing Bank honors any request for payment under a U.S. Letter of Credit, U.S. Borrowers shall pay to U.S. Issuing Bank, within one Business Day of receipt of notice of such drawing (“**U.S. Reimbursement Date**”), the amount paid by U.S. Issuing Bank under such U.S. Letter of Credit, together with interest at the interest rate for U.S. Base Rate Loans from the draw date until payment by U.S. Borrowers. The obligation of U.S. Borrowers to reimburse U.S. Issuing Bank for any payment made under a U.S. Letter of Credit issued by U.S. Issuing Bank shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any U.S. Letter of Credit or the existence of any claim, setoff, defense or other right that U.S. Borrowers or Obligors may have at any time against the beneficiary. Whether or not U.S. Borrower Agent submits a Notice of U.S. Borrowing, U.S. Borrowers shall be deemed to have requested a Borrowing of U.S. Base Rate Loans in an amount necessary to pay all amounts due to a U.S. Issuing Bank on any U.S. Reimbursement Date and each U.S. Lender shall fund its Pro Rata share of such Borrowing whether or not the Commitments have terminated, an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied.

(b) Upon issuance of a U.S. Letter of Credit, each U.S. Lender shall be deemed to have irrevocably and unconditionally purchased from U.S. Issuing Bank, without recourse or

warranty, an undivided Pro Rata participation in all U.S. LC Obligations relating to the U.S. Letter of Credit outstanding from time to time. U.S. Issuing Bank will issue any U.S. Letters of Credit in reliance upon this participation. If U.S. Borrowers do not make a payment to U.S. Issuing Bank when due hereunder, Agent shall promptly notify the U.S. Lenders and each U.S. Lender shall within one Business Day after such notice pay to Agent in Dollars, for the benefit of U.S. Issuing Bank, the U.S. Lender's Pro Rata share of such payment. Upon request by a U.S. Lender, U.S. Issuing Bank shall provide copies of any U.S. Letters of Credit and U.S. LC Documents in its possession at such time.

(c) The obligation of each U.S. Lender to make payments to Agent for the account of U.S. Issuing Bank in connection with U.S. Issuing Bank's payment under a U.S. Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a U.S. Letter of Credit having been determined to be forged, fraudulent, noncompliant, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; any waiver by U.S. Issuing Bank of a requirement that exists for its protection (and not a U.S. Borrower's protection) or that does not materially prejudice a U.S. Borrower; any honor of an electronic demand for payment even if a draft is required; any payment of an item presented after a U.S. Letter of Credit's expiration date if authorized by the UCC or applicable customs or practices; or any setoff or defense that an Obligor may have with respect to any Obligations. U.S. Issuing Bank assumes no responsibility for any failure or delay in performance or any breach by any U.S. Borrower or other Person of any obligations under any U.S. LC Documents. U.S. Issuing Bank makes to U.S. Lenders no express or implied warranty, representation or guaranty with respect to any U.S. Letter of Credit, Collateral, U.S. LC Document or any U.S. Domiciled Obligor. U.S. Issuing Bank shall not be responsible to any U.S. Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any U.S. LC Documents; the validity, genuineness, enforceability, collectability, value or sufficiency of any U.S. Facility Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No U.S. Issuing Bank Indemnitee shall be liable to any U.S. Lender or other Person for any action taken or omitted to be taken in connection with any U.S. Letter of Credit or U.S. LC Document except as a result of its bad faith, gross negligence or willful misconduct. U.S. Issuing Bank may refrain from taking any action with respect to a U.S. Letter of Credit until it receives written instructions (and in its discretion, appropriate assurances) from the Required Borrower Group Lenders with respect to U.S. Borrowers.

2.2.3 U.S. Letters of Credit Cash Collateral. Subject to **Section 2.1.5**, if at any time (a) an Event of Default exists, (b) the U.S. Revolver Commitment Termination Date has occurred, or (c) the Maturity Date is scheduled to occur within 10 Business Days, then U.S. Borrowers shall, at U.S. Issuing Bank's or Agent's request, Cash Collateralize all outstanding U.S. Letters of Credit. U.S. Borrowers shall, at U.S. Issuing Bank's or Agent's request at any time, Cash Collateralize the Fronting Exposure of any Defaulting Lender that is a U.S. Lender. If U.S. Borrowers fail to provide any Cash Collateral as required hereunder, U.S. Lenders may (and shall upon direction of Agent) advance, as U.S. Loans, the amount of Cash Collateral required (whether or not the U.S. Revolver Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied; provided, that any such

advance may not cause the U.S. Loans to exceed the U.S. Revolver Commitments (without giving effect to any termination thereof)).

2.3 Foreign Letter of Credit Facility.

2.3.1 Issuance of Foreign Letters of Credit. Foreign Issuing Bank shall issue Foreign Letters of Credit for the account of any Foreign Borrower or its Restricted Subsidiaries that are not Domestic Subsidiaries (provided that each Foreign Domiciled Obligor agrees that it is jointly and severally liable with respect to, and guarantees payment under Section 5.10.1 with respect to, any Foreign Letter of Credit issued for the account of a Restricted Subsidiary that is not a Foreign Domiciled Obligor) from time to time until 30 days prior to the Maturity Date (or until the Foreign Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(a) Foreign Borrowers acknowledge that Foreign Issuing Bank's issuance of any Foreign Letter of Credit is conditioned upon Foreign Issuing Bank's receipt of a Foreign LC Application with respect to the requested Foreign Letter of Credit, as well as such other instruments and agreements as Foreign Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. Foreign Issuing Bank shall not have any obligation to issue any Foreign Letter of Credit unless (i) Agent and Foreign Issuing Bank receive a Foreign LC Request and Foreign LC Application at least three Business Days prior to the requested date of issuance; (ii) each Foreign LC Condition is satisfied; and (iii) if a Defaulting Lender that is a Foreign Lender exists, such Lender or Foreign Borrowers have entered into arrangements satisfactory to Agent and Foreign Issuing Bank to eliminate any Fronting Exposure associated with such Foreign Lender. If, in sufficient time to act, Foreign Issuing Bank receives written notice from Agent or Required Borrower Group Lenders that a Foreign LC Condition has not been satisfied, Foreign Issuing Bank shall not issue the requested Foreign Letter of Credit. Prior to receipt of any such notice, Foreign Issuing Bank shall not be deemed to have knowledge of any failure of Foreign LC Conditions. All Existing Foreign Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(b) Foreign Letters of Credit may be requested by Foreign Borrower Agent to support obligations of Foreign Domiciled Obligors, or as otherwise approved by Agent. Increase, renewal or extension of a Foreign Letter of Credit shall be treated as issuance of a new Foreign Letter of Credit, except that Foreign Issuing Bank may require a new Foreign LC Application in its discretion.

(c) Foreign Borrowers assume all risks of the acts, omissions or misuses of any Foreign Letter of Credit by the beneficiary. In connection with issuance of any Foreign Letter of Credit, none of Agent, Foreign Issuing Bank or any Foreign Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Foreign Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and an Obligor; errors, omissions, interruptions or delays in

transmission or delivery of any messages, by mail, cable, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Foreign Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Foreign Issuing Bank, Agent or any Foreign Lender, including any act or omission of a Governmental Authority. The rights and remedies of Foreign Issuing Bank under the Loan Documents shall be cumulative. Foreign Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims are discharged with proceeds of any Foreign Letter of Credit issued by Foreign Issuing Bank.

(d) In connection with its administration of and enforcement of rights or remedies under any Foreign Letters of Credit or Foreign LC Documents, Foreign Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by Foreign Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. Foreign Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. Foreign Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to Foreign Letters of Credit or Foreign LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

2.3.2 Foreign Letters of Credit Reimbursement; Foreign Letters of Credit Participations.

(a) If Foreign Issuing Bank honors any request for payment under a Foreign Letter of Credit, Foreign Borrowers shall pay to Foreign Issuing Bank, within one Business Day of receipt of notice of such drawing (“**Foreign Reimbursement Date**”), the amount paid by Foreign Issuing Bank under such Foreign Letter of Credit, together with interest at the interest rate for Foreign Base Rate Loans, in each case, from the draw date until payment by Foreign Borrower. The obligation of Foreign Borrowers to reimburse Foreign Issuing Bank for any payment made under a Foreign Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any Foreign Letter of Credit or the existence of any claim, setoff, defense or other right that any Foreign Domiciled Obligor or any other Obligor may have at any time against the beneficiary. Whether or not Foreign Borrower Agent submits a Notice of Foreign Borrowing, Foreign Borrowers shall be deemed to have requested a Borrowing of Foreign Base Rate Loans, as applicable, in an amount necessary to pay all amounts due to Foreign Issuing Bank in the currency in which the underlying Foreign Letter of Credit was issued on any Foreign Reimbursement Date and each Foreign Lender shall fund its Pro Rata share of such Borrowing whether or not the Commitments have terminated, an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied.

(b) Upon issuance of a Foreign Letter of Credit, each Foreign Lender shall be deemed to have irrevocably and unconditionally purchased from Foreign Issuing Bank, without recourse or warranty, an undivided Pro Rata participation in all Foreign LC Obligations relating to the Foreign Letter of Credit outstanding from time to time. Foreign Issuing Bank will issue any Foreign Letters of Credit in reliance upon this participation. If Foreign Borrowers do not make a payment to Foreign Issuing Bank when due hereunder, Agent shall promptly notify the Foreign Lenders and each Foreign Lender shall within one Business Day after such notice pay to Agent,

for the benefit of Foreign Issuing Bank, the Foreign Lender's Pro Rata share of such payment. Upon request by a Foreign Lender, Foreign Issuing Bank shall provide copies of Foreign Letters of Credit and Foreign LC Documents in its possession at such time.

(c) The obligation of each Foreign Lender to make payments to Agent for the account of Foreign Issuing Bank in connection with Foreign Issuing Bank's payment under a Foreign Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a Foreign Letter of Credit having been determined to be forged, fraudulent, noncompliant, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; any waiver by Foreign Issuing Bank of a requirement that exists for its protection (and not Foreign Borrowers' protection) or that does not materially prejudice Foreign Borrowers; any honor of an electronic demand for payment even if a draft is required; any payment of an item presented after a Foreign Letter of Credit's expiration date if authorized by the UCC or applicable customs or practices; or any setoff or defense that an Obligor may have with respect to any Obligations. Foreign Issuing Bank assumes no responsibility for any failure or delay in performance or any breach by Foreign Borrowers or other Person of any obligations under any Foreign LC Documents. Foreign Issuing Bank makes to Foreign Lenders no express or implied warranty, representation or guaranty with respect to any Foreign Letter of Credit, Collateral, Foreign LC Document or Obligor. Foreign Issuing Bank shall not be responsible to any Foreign Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any Foreign LC Documents; the validity, genuineness, enforceability, collectability, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Foreign Issuing Bank Indemnitee shall be liable to any Foreign Lender or other Person for any action taken or omitted to be taken in connection with any Foreign Letter of Credit or Foreign LC Document except as a result of its gross negligence or willful misconduct. Foreign Issuing Bank may refrain from taking any action with respect to a Foreign Letter of Credit until it receives written instructions (and in its discretion, appropriate assurances) from the Required Borrower Group Lenders with respect to Foreign Borrowers.

2.3.3 Foreign Letters of Credit Cash Collateral. Subject to **Section 2.1.5**, if at any time (a) an Event of Default exists, (b) the Foreign Revolver Commitment Termination Date has occurred, or (c) the Maturity Date is scheduled to occur within 10 Business Days, then Foreign Borrowers shall, at Foreign Issuing Bank's or Agent's request, Cash Collateralize all outstanding Foreign Letters of Credit. Foreign Borrowers shall, at Foreign Issuing Bank's or Agent's request at any time, Cash Collateralize the Fronting Exposure of any Defaulting Lender that is a Foreign Lender. If Foreign Borrowers fail to provide any Cash Collateral as required hereunder, Foreign Lenders may (and shall upon direction of Agent) advance, as Foreign Loans, the amount of Cash Collateral required (whether or not the Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied; provided, that any such advance may not cause the Foreign Loans to exceed the Foreign Revolver Commitments (without giving effect to any termination thereof)).

2.4 Resignation of Issuing Bank. Any Issuing Bank may resign at any time upon notice to Agent and the applicable Borrower Agent. From the effective date of such resignation, such Issuing Bank

shall have no obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and other obligations of an Issuing Bank hereunder relating to any Letter of Credit issued by it prior to such date. Agent shall promptly appoint a replacement Issuing Bank, which, as long as no Event of Default under **Section 11.1(a)** or **11.1(h)** exists, shall be reasonably acceptable to the applicable Borrower Agent.

2.5 **Interest Rate Fluctuations.** If as a result of fluctuations in exchange rates or otherwise the Foreign LC Obligations exceed the Foreign Letter of Credit Sublimit, Foreign Borrowers shall Cash Collateralize the Foreign Letters of Credit to the extent necessary to eliminate such excess amount within three Business Days following demand by Agent.

2.6 **Designation of Unrestricted and Restricted Subsidiaries.**

(a) At any time after the Closing Date, upon written notice to Agent (which written notice shall contain a certification as to the matters set forth in this **clause (a)**), a Borrower Agent may designate any Restricted Subsidiary of Parent (along with all Subsidiaries of such Restricted Subsidiary, but in each case, excluding any Borrower and any direct or indirect parent of a Borrower) as an “Unrestricted Subsidiary”; **provided** that (i) both before and after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing, (ii) the Investment in such Unrestricted Subsidiary must be permitted at such time under **Section 10.2.4(e)** (with the amount of such Investment being deemed to be the fair market value of the net assets of such Subsidiary at the time such Subsidiary is designated an Unrestricted Subsidiary (or, with respect to any such Subsidiary that is not a Wholly Owned Subsidiary, the percentage of such fair market value of the net assets that is equal to the percentage ownership of the Equity Interests held by Parent or a Restricted Subsidiary) by Parent or a Restricted Subsidiary therein at the time such Subsidiary is designated an Unrestricted Subsidiary), (iii) once designated as an Unrestricted Subsidiary, a Borrower Agent may re-designate such Subsidiary as a “Restricted Subsidiary” pursuant to **Section 2.6(b)**, but, thereafter, such Borrower Agent shall not re-designate such Subsidiary as an “Unrestricted Subsidiary” pursuant to this **Section 2.6(a)**, and (iv) no Subsidiary may be designated as an Unrestricted Subsidiary or continue as an Unrestricted Subsidiary (A) if it is a borrower or guarantor under the Term Loan Agreement or (B) unless each of its direct and indirect Subsidiaries is also designated an Unrestricted Subsidiary pursuant to this **Section 2.6(a)**.

(b) At any time after the Closing Date and upon written notice to Agent, a Borrower Agent may re-designate any Unrestricted Subsidiary as a “Restricted Subsidiary”; **provided** that (i) no Subsidiary holding or owning Equity Interests in such re-designated Restricted Subsidiary shall be an Unrestricted Subsidiary (unless also being re-designated at such time) and (ii) both before and after giving effect to such designation, no Event of Default shall have occurred and be continuing. The re-designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such re-designated Restricted Subsidiary existing at such time and (ii) a return on any Investment by Parent or the applicable Restricted Subsidiary in such re-designated Restricted Subsidiary in an amount equal to the fair market value at the date of such designation of the applicable Borrower’s or its Restricted Subsidiary’s (as applicable) Investment in such re-designated Restricted Subsidiary.

(c) Any designation of a Subsidiary as an Unrestricted Subsidiary or a Restricted Subsidiary shall be deemed a representation and warranty by Borrowers that each of the requirements in **Section 2.6(a)** or **Section 2.6(b)**, as applicable, are satisfied in all respects.

(d) As of the Closing Date, the Subsidiaries listed on **Schedule 2.6** are Unrestricted Subsidiaries.

3. INTEREST, FEES AND CHARGES.

3.1 Interest.

3.1.1 Rates and Payment of Interest.

(a) The Obligations shall bear interest (i) if a U.S. Base Rate Loan, at the U.S. Base Rate in effect from time to time, plus the Applicable Margin; (ii) if an Interest Period Loan, at the applicable Eurocurrency Rate for the applicable Interest Period, plus the Applicable Margin; (iii) if a Foreign Base Rate Loan, at the Foreign Base Rate in effect from time to time, plus the Applicable Margin; (iv) if an Australian Bank Bill Rate Loan, at the Australian Bank Bill Rate in effect from time to time, plus the Applicable Margin; (v) if any other U.S. Facility Obligation (except as provided in **Section 3.2.2(a)** but including, to the extent permitted by law, interest not paid when due), at the U.S. Base Rate in effect from time to time, plus the Applicable Margin for U.S. Base Rate Loans; and (vi) if any other Foreign Facility Obligation (except as provided in **Section 3.2.2(b)** but including, to the extent permitted by law, interest not paid when due), at the Foreign Base Rate in effect from time to time, plus the Applicable Margin for Foreign Base Rate Loans. Interest on the Loans shall be payable in the currency (i.e., Dollars, Euros, Australian Dollars or Sterling, as the case may be) of the underlying Loan.

(b) During any Event of Default under **Section 11.1(a)** or **11.1(h)**, or during any other Event of Default if Agent or Required Lenders in their discretion so elect after written notice to Borrowers Agents, the Obligations shall bear interest at the Default Rate (whether before or after any judgment). Each Borrower acknowledges that the cost and expense to Agent and Lenders due to an Event of Default are difficult to ascertain and that the Default Rate is fair and reasonable compensation for this.

(c) Interest shall accrue from the date a Loan is advanced or Obligation is incurred or payable, until paid in full by the applicable Borrowers. If a Loan is repaid on the same day made, one day's interest shall accrue. Interest accrued on the Loans shall be due and payable in arrears, (i) for any Base Rate Loan, on the first day of each month; (ii) for any Australian Bank Bill Rate Loan or Interest Period Loan, on the last day of its Interest Period; and (iii) on any date of prepayment, with respect to the principal amount of Loans being prepaid. In addition, interest accrued on the Foreign Loans shall be due and payable on the Foreign Revolver Commitment Termination Date, and interest accrued on the U.S. Loans shall be due and payable on the U.S. Revolver Commitment Termination Date. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents and, if no payment date is specified, shall be due and payable on demand. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable on demand.

3.1.2 Application of Eurocurrency Rate to Outstanding Loans.

(a) U.S. Borrower Agent may on any Business Day, subject to delivery of a Notice of U.S. Conversion/Continuation, elect to convert any portion of the U.S. Base Rate Loans to, or to continue any U.S. Loan that is an Interest Period Loan at the end of its Interest Period as an Interest Period Loan. Foreign Borrower Agent may on any Business Day, subject to delivery of a Notice of Foreign Conversion/Continuation, elect to convert any portion of the Foreign Base Rate Loans to, or to continue any Foreign Loan that is an Interest Period Loan at the end of its Interest Period as an Interest Period Loan. During any Event of Default, at the direction of Required Borrower Group Lenders of the applicable Borrower Group, Agent may declare that no Loan may be made, converted or continued as an Interest Period Loan.

(b) Whenever Borrowers within a Borrower Group desire to convert or continue Loans as Interest Period Loans, the applicable Borrower Agent shall give Agent and in the case of any such request by Foreign Borrowers, Bank of America (London), a Notice of Conversion/Continuation, no later than 12:00 p.m. (Local Time) at least three Business Days before the requested conversion or continuation date. Promptly after receiving any such notice, Agent shall notify each Applicable Lender thereof. Except as provided for in **Section 3.6**, each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be 30 days if not specified). If, upon the expiration of any Interest Period in respect of any Interest Period Loans, Borrower Agent shall have failed to deliver a Notice of Conversion/Continuation, the applicable Borrowers shall be deemed to have elected to continue such Loans as Interest Period Loans with an Interest Period of 30 days.

3.1.3 Application of Australian Bank Bill Rate to Outstanding Loans.

(a) Foreign Borrower Agent may on any Business Day, subject to delivery of a Notice of Foreign Conversion/Continuation, elect to continue any Australian Bank Bill Rate Loan at the end of its Interest Period as an Australian Bank Bill Rate Loan. During any Default or Event of Default, Agent, at the direction of Required Borrower Group Lenders of the applicable Borrower Group, may declare that no Loan may be made or continued as an Australian Bank Bill Rate Loan.

(b) Whenever Foreign Borrowers desire to continue Loans as Australian Bank Bill Rate Loans, Foreign Borrower Agent shall give Agent, Bank of America (Australia) and Bank of America (London), a Notice of Foreign Conversion/Continuation, no later than 12:00 p.m. (Local Time) at least three Business Days before the requested continuation date. Promptly after receiving any such notice, Agent shall notify each Foreign Lender thereof. Except as provided for in **Section 3.6**, each Notice of Foreign Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be continued and the continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be 30 days if not specified). If, upon the expiration of any Interest Period in respect of any Australian Bank Bill Rate Loans, Foreign Borrower Agent shall have failed to deliver a Notice of Foreign Conversion/Continuation, the applicable Foreign Borrowers shall be deemed to have elected to convert such Loans into Foreign Base Rate Loans.

3.1.4 Interest Periods. In connection with the making, conversion or continuation of any Australian Bank Bill Rate Loans or Interest Period Loans, the applicable Borrower Agent, on behalf of the applicable Borrower(s), shall select an interest period (“**Interest Period**”) to apply, which interest period shall be seven (if available to all Lenders, and other than for Australian Bank Bill Rate Loans), 30, 60 (if available to all Lenders), 90 or, if available to all Lenders, 180 days; provided, however, that:

(a) the Interest Period shall begin on the date the Loan is made or continued as, or converted into, an Australian Bank Bill Rate Loan or an Interest Period Loan, as applicable, and shall expire on the numerically corresponding day in the calendar month at its end;

(b) if any Interest Period begins on a day for which there is no corresponding day in the calendar month at its end or if such corresponding day falls after the last Business Day of such month, then the Interest Period shall expire on the last Business Day of such month; and if any Interest Period would otherwise expire on a day that is not a Business Day, the period shall expire on the next Business Day; and

(c) no Interest Period shall extend beyond the Maturity Date (or, if earlier in the case of any U.S. Loan, the U.S. Revolver Commitment Termination Date, or, if earlier in the case of any Foreign Loan, the Foreign Revolver Commitment Termination Date).

3.2 Fees.

3.2.1 Unused Line Fee.

(a) U.S. Borrowers shall pay to Agent, for the Pro Rata benefit of U.S. Lenders, a fee equal to the U.S. Unused Line Fee Rate times the amount by which the U.S. Revolver Commitments exceed the average daily U.S. Revolver Usage during any month. Such fee shall be payable in arrears, on the first day of each month and on the U.S. Revolver Commitment Termination Date.

(b) Foreign Borrowers shall pay to Agent, for the Pro Rata benefit of Foreign Lenders, a fee equal to the Foreign Unused Line Fee Rate times the amount by which the Foreign Revolver Commitments exceed the average daily Foreign Revolver Usage during any month. Such fee shall be payable in arrears, on the first day of each month and on the Foreign Revolver Commitment Termination Date.

3.2.2 LC Facility Fees.

(a) U.S. Borrowers shall pay (i) to Agent, for the Pro Rata benefit of U.S. Lenders, a fee equal to the Applicable Margin in effect for Interest Period Loans times the average daily Stated Amount of U.S. Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (ii) to each U.S. Issuing Bank, for its own account, a fronting fee equal to 0.125% per annum on the Stated Amount of each U.S. Letter of Credit issued by such U.S. Issuing Bank, which fee shall be payable monthly in arrears, on the first day of each month; and (iii) to each U.S. Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of U.S. Letters of Credit issued by such U.S. Issuing Bank, which charges shall be paid as and when incurred. If during an Event of Default the Default Rate applies to U.S. Loans, the fee payable under **clause (i)** shall be increased by 2% per annum.

(b) Foreign Borrowers shall pay (i) to Agent, for the Pro Rata benefit of Foreign Lenders, a fee equal to the Applicable Margin in effect for Interest Period Loans times the average daily Stated Amount of Foreign Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (ii) to Foreign Issuing Bank, for its own account, a fronting fee equal to 0.125% per annum on the Stated Amount of each Foreign Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (iii) to Foreign Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of Foreign Letters of Credit, which charges shall be paid as and when incurred. If during an Event of Default the Default Rate applies to Foreign Loans, the fee payable under **clause (i)** shall be increased by 2% per annum.

3.2.3 Fee Letter. Borrowers shall pay all fees set forth in the Fee Letter.

3.3 Computation of Interest, Fees, Yield Protection. All interest, as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed, based on a year of 360 days, provided that in the case of interest on Loans computed by reference to the U.S. Base Rate at times when the U.S. Base Rate is based on the Prime Rate, interest will be determined on the basis of a year of 365 days (or 366 days in a leap year) and provided further that in the case of interest on Foreign Loans funded in Sterling, interest will be determined on the basis of a year of 365 days. Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by Borrowers under **Section 3.4, 3.6, 3.7, 3.9** or **5.8**, submitted to a Borrower Agent by Agent or the affected Lender shall be final, conclusive and binding for all purposes, absent manifest error, and Borrowers shall pay such amounts to the appropriate party within 10 days following receipt of the certificate.

3.4 Reimbursement Obligations. Borrowers shall pay all Extraordinary Expenses promptly upon request. Borrowers shall also reimburse Agent and Security Trustee for all reasonable and documented out of pocket legal, accounting, appraisal, consulting, and other fees, costs and expenses incurred by it (limited to the reasonable fees, disbursements and other charges of one primary counsel for Agent, one firm of special regulatory counsel retained by Agent in each applicable specialty, and one firm of local counsel retained by Agent in each applicable jurisdiction) in connection with (a) negotiation and preparation of any Loan Documents, including any amendment or other modification thereof; (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral; and (c) subject to the limits of **Section 10.1.1(b)**, each inspection, audit or appraisal with respect to any Obligor or Collateral, whether prepared by Agent's personnel or a third party. If, for any reason (including inaccurate reporting in any Borrower Materials), it is determined that a higher Applicable Margin should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and Borrowers shall pay to Agent, for the ratable benefit of Lenders, upon written notice of such determination provided by Agent to Borrowers, an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid. All amounts payable by Borrowers under this Section shall be due on demand.

3.5 Illegality. If any Lender determines that any Applicable 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 a Relevant Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to determine or charge interest rates based on a Relevant Rate or to purchase or sell, or take deposits of, any Agreed Currency in the applicable intrabank market, then, on notice thereof by such Lender to Agent, any obligation of such Lender to make or continue such Relevant Rate Loans or to convert Base Rate Loans to Relevant Rate Loans shall be suspended until such Lender notifies Agent that the circumstances giving rise to such determination no longer exist. Upon delivery of such notice, (a) U.S. Borrowers shall, in the case of all U.S. Loans bearing interest based on the Relevant Rate, prepay or, if applicable, convert all such Relevant Rate Loans of such Lender to U.S. Base Rate Loans, in each case, immediately, or on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Relevant Rate Loans to such day, and (b) Foreign Borrowers shall, in the case of all Foreign Loans bearing interest based on a Relevant Rate, prepay all such Relevant Rate Loans, in each case, immediately or on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Relevant Rate Loans to such day. Upon any such prepayment or conversion, Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.6 Inability to Determine Rates; Replacement of LIBOR; Replacement of Other Relevant Rates.

3.6.1 Inability to Determine LIBOR Rate. Agent will promptly notify Borrower Agents and Lenders if, in connection with a Borrowing of, conversion to or continuation of a LIBOR Loan, (a) Agent determines that (i) deposits are not being offered with respect to LIBOR to banks in the London interbank market for the applicable Loan amount or Interest Period, or (ii) adequate and reasonable means do not exist for determining LIBOR for the applicable Interest Period; or (b) Agent or Required Lenders determine for any reason that LIBOR for the Interest Period does not adequately and fairly reflect the cost to Lenders of funding or maintaining the Loan. Thereafter, Lenders' obligations to make or maintain affected LIBOR Loans and utilization of the LIBOR component (if affected) in determining U.S. Base Rate shall be suspended until Agent determines (or is instructed by Required Lenders) to withdraw the notice. Upon receipt of such notice, Borrower Agents may revoke any pending request for a Borrowing, conversion or continuation of a Loan bearing interest based on LIBOR and denominated in Dollars or, failing that, will be deemed to have submitted a request for a Base Rate Loan (or in the case of a LIBOR Loan to Foreign Borrowers, shall no longer be available).

3.6.2 Replacement of LIBOR. Notwithstanding anything to the contrary in any Loan Document:

(a) On March 5, 2021 the Financial Conduct Authority ("**FCA**"), the regulatory supervisor of LIBOR's administrator ("**IBA**"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12-month U.S. dollar LIBOR tenor settings. On the earliest of (A) the date that all Available Tenors of U.S. dollar LIBOR have permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023 and (C) the Early Opt-in Effective Date in respect of a SOFR Early Opt-in, if the then-current Benchmark is LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(b) (x) Upon (A) the occurrence of a Benchmark Transition Event or (B) a determination by Agent that neither of the alternatives under clause (a) of the definition of Benchmark Replacement are available, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the 5th Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders (and any such objection shall be conclusive and binding absent manifest error); provided that solely in the event that the then-current Benchmark at the time of such Benchmark Transition Event is not a SOFR-based rate, the Benchmark Replacement therefor shall be determined in accordance with clause (a) of the definition of Benchmark Replacement unless Agent determines that neither of such alternative rates is available.

(y) On the Early Opt-in Effective Date in respect of an Other Rate Early Opt-in, the Benchmark Replacement will replace LIBOR for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document.

(c) At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower Agents may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower Agents' receipt of notice from Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the applicable Borrower Agent will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.

(d) In connection with the implementation and administration of a Benchmark Replacement, Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other 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.

(e) Agent will promptly notify the applicable Borrower Agent and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by Agent pursuant to this Section 3.6.2, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.6.2.

(f) At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or LIBOR), then Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B) Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

3.6.3 Inability to Determine Other Relevant Rate; Replacement of Other Relevant Rate. For purposes of this **Section 3.6.3**, the term “Relevant Rate Loan” shall exclude a LIBOR Loan (with LIBOR replacement determined in accordance with **Section 3.6.2** above).

(a) If in connection with any request for a Relevant Rate Loan or a conversion of Foreign Base Rate Loans to Relevant Rate Loans or a continuation of any of such Loans, as applicable, (i) Agent determines (which determination shall be conclusive absent manifest error) that (A) no Alternative Currency Successor Rate for the Relevant Rate for the applicable Alternative Currency has been determined in accordance with **Section 3.6.3(b)** and the circumstances under **clause (i)** of **Section 3.6.3(b)** or the Scheduled Unavailability Date has occurred with respect to such Relevant Rate (as applicable), or (B) adequate and reasonable means do not otherwise exist for determining the Relevant Rate for the applicable Alternative Currency for any determination date(s) or requested Interest Period, as applicable, with respect to a proposed Relevant Rate Loan or in connection with an existing or proposed Foreign Base Rate Loan, or (ii) Agent or the Required Lenders determine that for any reason that the Relevant Rate with respect to a proposed Loan denominated in an Alternative Currency for any requested Interest Period or determination date(s) does not adequately and fairly reflect the cost to such Lenders of funding such Loan, Agent will promptly so notify the applicable Borrower Agent and each Lender.

Thereafter, (x) the obligation of the Lenders to make or maintain such Loans in the affected currencies, as applicable, or to convert Foreign Base Rate Loans to Relevant Rate Loans in the affected currency, shall be suspended in each case to the extent of the affected Relevant Rate Loans or Interest Period or determination date(s), as applicable, and (y) in the event of a determination described in the preceding sentence with respect to any component of the Foreign Base Rate, the utilization of such component in determining the Foreign Base Rate shall be suspended, in each case until Agent (or, in the case of a determination by the Required Lenders described in **clause (ii)** of this **Section 3.6.3(a)**, until Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (i) the applicable Borrower Agent may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Loans or Foreign Base Rate Loans, as applicable, in the applicable currency (to the extent of the affected LIBOR Loans or Foreign Base Rate Loans, as applicable, or Interest Periods) or, failing that, in the case of a Borrowing denominated in U.S. Dollars, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein, and in the case of a Borrowing denominated in an Alternative Currency, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (y)) denominated in U.S. Dollars in the Dollar Equivalent of the amount specified therein and (ii) (A) any outstanding affected LIBOR Loans denominated in U.S. Dollars will be deemed to have been converted into U.S. Base Rate Loans at the end of the applicable Interest Period, (B) any outstanding affected Foreign Base Rate Loans denominated in

U.S. Dollars will be deemed to have been converted into U.S. Base Rate Loans on the date of such notice and (C) any outstanding affected LIBOR Loans or Foreign Base Rate Loans denominated in an Alternative Currency at applicable Borrower Agent's election, shall either (1) be converted into a Borrowing of U.S. Base Rate Loans (subject to the foregoing clause (y)) denominated in U.S. Dollars in the Dollar Equivalent of the amount of such outstanding (A) LIBOR Loan at the end of the applicable Interest Period in the case of LIBOR Loans or (B) Foreign Base Rate Loans on the date of such notice, or (2) be prepaid in full at the end of the applicable Interest Period in the case of LIBOR Loans or as of the date of such notice in the case of Foreign Base Rate Loans; provided that in the case of LIBOR Loans, if no election is made by applicable Borrower Agent by the earlier of (x) the date that is three Business Days after receipt by the applicable Borrower Agent of such notice and (y) the last day of the current Interest Period for the applicable LIBOR Loan, the applicable Borrower Agent shall be deemed to have elected clause (1) above or in the case of Foreign Base Rate Loans, if no election is made or prepayment received by the date that is three Business Days after receipt by the applicable Borrower Agent of such notice, applicable Borrower Agent shall be deemed to have elected clause (1) above effective as of the date of such notice.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if Agent determines (which determination shall be conclusive absent manifest error), or the applicable Borrower Agent or Required Lenders notify Agent (with, in the case of the Required Lenders, a copy to the applicable Borrower Agent) that the applicable Borrower Agent or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining the Relevant Rate for an Alternative Currency because none of the tenors of such Relevant Rate (including any forward-looking term rate thereof) is available or published on a current basis and such circumstances are unlikely to be temporary;

(ii) the applicable administrator for the Relevant Rate for such Alternative Currency has made a public statement identifying a specific date after which all tenors of the Relevant Rate for an Alternative Currency (including any forward-looking term rate thereof) shall or will no longer be representative or made available, or used for determining the interest rate of loans denominated in such Alternative Currency, or shall or will otherwise cease, provided that, in each case, at the time of such statement, there is no successor administrator that is satisfactory to Agent that will continue to provide such representative tenor(s) of the Relevant Rate for such Alternative Currency (the latest date on which all tenors of the Relevant Rate for such Alternative Currency (including any forward-looking term rate thereof) are no longer representative or available permanently or indefinitely, the "**Scheduled Unavailability Date**"); or

(iii) syndicated loans currently being executed and agented in the U.S., are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the Relevant Rate for an Alternative Currency;

or if the events or circumstances of the type described in **Section 3.6.3(b)(i), (ii) or (iii)** have occurred with respect to the Alternative Currency Successor Rate then in effect, then, Agent and the applicable Borrower Agent may amend this Agreement solely for the purpose of replacing the Relevant Rate for an Alternative Currency or any then current Alternative Currency Successor Rate for an Alternative Currency in accordance with this **Section 3.6.3** with an

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

Agent will promptly (in one or more notices) notify the applicable Borrower Agent and each Lender of the implementation of any Alternative Currency Successor Rate.

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

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

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

3.7 Increased Costs; Capital Adequacy.

3.7.1 Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, liquidity, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any such reserve requirement that is already reflected in the Australian Bank Bill Rate or the Eurocurrency Rate) or Issuing Bank;

(b) subject any Recipient to Taxes (other than (i) Indemnified Taxes, including, for the avoidance of doubt, Taxes indemnified pursuant to **Sections 5.8.7, 5.8.8 and 5.8.9**, (ii) Taxes described in **clauses (b), (c) or (d)** of the definition of Excluded Taxes, (iii) Connection Income Taxes or (iv) with respect to the Foreign Loans, any Taxes explicitly excluded from the gross-up

or indemnity provisions of **Sections 5.8.7, 5.8.8 and 5.8.9**) with respect to any Loan, Letter of Credit, Commitment or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(c) impose on any Lender, Issuing Bank or interbank market any other condition, cost or expense (other than Taxes) affecting any Loan, Letter of Credit, participation in LC Obligations, Commitment or Loan Document;

and the result thereof shall be to increase the cost to a Lender of making or maintaining any Loan or Commitment, or converting to or continuing any interest option for a Loan, or to increase the cost to a Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by a Lender or Issuing Bank hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or Issuing Bank, the Borrower Group to which such Lender or Issuing Bank has a Commitment will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered.

3.7.2 **Capital Requirements.** If a Lender or Issuing Bank determines that a Change in Law affecting such Lender or Issuing Bank or any Lending Office of such Lender or such Lender's or Issuing Bank's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's, Issuing Bank's or holding company's capital as a consequence of this Agreement, or such Lender's or Issuing Bank's Commitments, Loans, Letters of Credit or participations in LC Obligations or Loans, to a level below that which such Lender, Issuing Bank or holding company could have achieved but for such Change in Law (taking into consideration its policies with respect to capital adequacy), then from time to time the Borrower Group to which such Lender or Issuing Bank has a Commitment shall pay to such Lender or Issuing Bank, as the case may be, such additional amounts as will compensate it or its holding company for the reduction suffered.

3.7.3 **Additional Reserve Costs.**

(a) If any Lender is required by the Federal Reserve System or other authority to maintain reserves with respect to liabilities or assets consisting of or including funds or deposits, Borrowers shall pay additional interest to such Lender on each Interest Period Loan equal to the costs of such reserves allocated to the Loan by the Lender (as determined by it in good faith, which determination shall be conclusive). The additional interest shall be due and payable on each interest payment date for the Loan; provided, however, that if the Lender notifies Borrowers (with a copy to Agent) of the additional interest less than 10 days prior to the interest payment date, then the additional interest shall be payable 10 days after Borrowers' receipt of the notice. If and so long as any Lender is required by the Bank of England, the European Central Bank or the Financial Conduct Authority or any other monetary or other authority of the UK to make special deposits, to maintain reserve asset ratios or to pay fees, in each case in respect of such Lender's Interest Period Loans, such Lender may require the Borrower in respect of such Loans to pay, contemporaneously with each payment of interest on each of such Loans, additional interest on such Loan at a rate per annum equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive).

(b) Any additional cost owed pursuant to **Section 3.7.3(a)** above shall be payable to Agent by the applicable Borrower for the account of such Lender on each date on which interest is payable for such Loan.

3.7.4 **Compensation.** Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this **Section 3.7** shall not constitute a waiver of its right to demand such compensation, but Borrowers of a Borrower Group shall not be required to compensate a Lender to such Borrower Group or Issuing Bank for any increased costs or reductions suffered more than nine months (plus any period of retroactivity of the Change in Law giving rise to the demand) prior to the date that the Lender or Issuing Bank notifies a Borrower Agent of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor.

3.8 **Mitigation.** If any Lender gives a notice under **Section 3.5** or requests compensation under **Section 3.7**, or if Borrowers are required to pay any Indemnified Taxes, including, for the avoidance of doubt, Taxes indemnified pursuant to **Sections 5.8.7, 5.8.8** and **5.8.9**, or additional amounts with respect to a Lender under **Section 5.8**, then at the request of the applicable Borrower Agent, such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to it or unlawful. Borrowers of the affected Borrower Group shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

3.9 **Funding Losses.** If for any reason (a) any Borrowing of, or conversion to or continuation of, an Australian Bank Bill Rate Loan or an Interest Period Loan does not occur on the date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation (whether or not withdrawn), (b) any repayment or conversion of an Australian Bank Bill Rate Loan or an Interest Period Loan occurs on a day other than the end of its Interest Period, (c) Borrowers fail to repay an Australian Bank Bill Rate Loan or an Interest Period Loan when required hereunder, or (d) a Lender (other than a Defaulting Lender) is required to assign an Australian Bank Bill Rate Loan or an Interest Period Loan prior to the end of its Interest Period pursuant to **Section 13.4**, then Borrowers within the applicable Borrower Group shall pay to Agent its customary administrative charge and to each Lender all resulting losses and expenses, including loss of anticipated profits and any loss, expense or fee arising from redeployment of funds or termination of match funding. For purposes of calculating amounts payable under this Section, each Lender shall be deemed to have funded an Australian Bank Bill Rate Loan or an Interest Period Loan, as applicable, by a matching deposit or other borrowing in the applicable market for a comparable amount and period, whether or not the Loan was in fact so funded.

3.10 **Maximum Interest.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law ("**Maximum Rate**"). If Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Obligations of the Borrower Group to which such excess interest relates or, if it exceeds such unpaid principal, refunded to such Borrower Group. In determining whether the interest contracted for, charged or received by Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest; (b) exclude voluntary prepayments and the effects

thereof; and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

4. LOAN ADMINISTRATION.

4.1 Manner of Borrowing and Funding Loans.

4.1.1 Notice of Borrowing.

(a) U.S. Loans. Whenever any U.S. Borrower desires funding of a Borrowing of U.S. Loans, U.S. Borrower Agent shall give Agent a Notice of U.S. Borrowing. Such notice must be received by Agent by 12:00 p.m. (Local Time) (i) on the requested funding date, in the case of U.S. Base Rate Loans and (ii) at least three Business Days prior to the requested funding date, in the case of Interest Period Loans. Notices received after such time shall be deemed received on the next Business Day. Each Notice of U.S. Borrowing shall be irrevocable and shall specify (A) the amount of the Borrowing, (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a U.S. Base Rate Loan, in the case of a Borrowing by a U.S. Borrower in Dollars, or an Interest Period Loan, (D) in the case of an Interest Period Loan, the applicable Interest Period (which shall be deemed to be 30 days if not specified), (E) the name of the relevant U.S. Borrower and (F) whether such Loan is to be denominated in Dollars or Euros (which in the case of Euros must be approved by all U.S. Lenders). Borrowings by U.S. Borrowers in currencies other than Dollars shall only be available on a Eurocurrency Rate basis.

(b) Foreign Loans. Whenever any Foreign Borrower desires funding of a Borrowing of Foreign Loans, Foreign Borrower Agent shall give Agent a Notice of Foreign Borrowing. Such notice must be received by Agent and Bank of America (London) and, with respect to any Australian Loan, Bank of America (Australia), by 11:00 a.m. (Local Time) (i) on the requested funding date, in the case of Foreign Base Rate Loans (other than any Foreign Base Rate Loans that are Australian Loans), (ii) at least one Business Day prior to the requested funding date, in the case of any Foreign Base Rate Loans that are Australian Loans, and (iii) at least three Business Days prior to the requested funding date, in the case of Australian Bank Bill Rate Loans and Interest Period Loans. Notices received after such time shall be deemed received on the next Business Day. Each Notice of Foreign Borrowing shall be irrevocable and shall specify (A) the amount of the Borrowing, (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a Foreign Base Rate Loan, an Australian Bank Bill Rate Loan or an Interest Period Loan, (D) in the case of Australian Bank Bill Rate Loans and Interest Period Loans, the applicable Interest Period (which shall be deemed to be 30 days if not specified), (E) the name of the relevant Foreign Borrower and (F) whether such Loan is to be denominated in Dollars, Euros, Australian Dollars or Sterling.

(c) Unless payment is otherwise timely made by Borrowers within a Borrower Group, the becoming due of any Obligations of the Borrower Group to which such Borrower belongs (whether principal, interest, fees or other charges, including Extraordinary Expenses, Foreign LC Obligations, U.S. LC Obligations, Cash Collateral and Secured Bank Product Obligations) shall be deemed to be a request for a Loan by the related Borrower Group on the due date, in the amount due and shall bear interest at the per annum rate applicable hereunder to U.S. Base Rate Loans, in the case of such Obligations owing by any U.S. Domiciled Obligor, or to Foreign Base Rate Loans, in the case of such Obligations owing by a Foreign Domiciled Obligor.

The proceeds of such Loan shall be disbursed as direct payment of the relevant Obligation. In addition, Agent may, at its option, charge such amount against any operating, investment or other account of a Borrower within the applicable Borrower Group maintained with Agent or any of its Affiliates.

(d) If a Borrower within a Borrower Group maintains a disbursement account with Agent or any of its Affiliates, then presentation for payment in the account of a Payment Item when there are insufficient funds to cover it shall be deemed to be a request for a Base Rate Loan by such Borrower Group on the presentation date, in the amount of the Payment Item. Proceeds of the Loan may be disbursed directly to the disbursement account.

4.1.2 Fundings by Lenders. Each Applicable Lender shall timely honor its Borrower Group Commitment by funding its Pro Rata share of each Borrowing of Loans under such Borrower Group Commitment that is properly requested hereunder. Except for Borrowings to be made as Swingline Loans, Agent shall endeavor to notify the Applicable Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by (a) 1:00 p.m. (Local Time) on the proposed funding date for a U.S. Base Rate Loan, (b) 1:00 p.m. (Local Time) at least two Business Days before a proposed funding date for a Foreign Base Rate Loan, or (c) 3:00 p.m. (Local Time) at least three Business Days before a proposed funding of an Australian Bank Bill Rate Loan or an Interest Period Loan. Each Applicable Lender shall fund its Pro Rata share of a Borrowing to the account specified by Agent in immediately available funds not later than 2:00 p.m. (Local Time) or, in the case of a U.S. Base Rate Loan 2:30 p.m. (Local Time), on the requested funding date, unless Agent's notice is received after the times provided above, in which case each Applicable Lender shall fund its Pro Rata share by 11:00 a.m. (Local Time) on the next Business Day. Subject to its receipt of such amounts from the Applicable Lenders, Agent shall disburse the Borrowing proceeds as directed by the applicable Borrower Agent. Unless Agent shall have received (in sufficient time to act) written notice from an Applicable Lender that it does not intend to fund its Pro Rata share of a Borrowing, Agent may assume that such Applicable Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to the Borrower or Borrowers within such Borrower Group. If an Applicable Lender's share of a Borrowing or of a settlement under Section 4.1.3(b) is not received by Agent, then the Borrower or Borrowers within the Borrower Group agree to repay to Agent on demand the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to the Borrowing.

4.1.3 Swingline Loans; Settlement.

(a) (i) (x) To fulfill any request for a Foreign Base Rate Loan hereunder, or (y) upon request by Foreign Borrower Agent, Foreign Swingline Lender may in its discretion advance Foreign Swingline Loans to the requesting Foreign Borrower up to an aggregate outstanding amount not to exceed the Foreign Swingline Sublimit and (ii) (x) to fulfill any request for a U.S. Base Rate Loan hereunder, or (y) upon request by U.S. Borrower Agent, U.S. Swingline Lender may in its discretion advance U.S. Swingline Loans to the requesting U.S. Borrower up to an aggregate outstanding amount not to exceed the U.S. Swingline Sublimit. Swingline Loans shall constitute Loans for all purposes, except that payments thereon shall be made to Swingline Lender, for its own account until Applicable Lenders have funded their participations therein as provided below.

(b) Settlement of (i) Foreign Loans, including Foreign Swingline Loans, among the Foreign Lenders and Agent shall take place on a date determined from time to time by Agent (but at least twice per month), and (ii) U.S. Loans, including U.S. Swingline Loans, among the U.S.

Lenders and Agent shall take place on a date determined from time to time by Agent (but at least weekly), in each case, on a Pro Rata basis in accordance with the Settlement Report delivered by Agent to the Applicable Lenders. Agent shall endeavor to notify the U.S. Lenders of each settlement date for U.S. Swingline Loans by 1:00 p.m. (Local Time) on the proposed settlement date. Agent shall endeavor to notify the Foreign Lenders of each settlement date for Foreign Swingline Loans by 1:00 p.m. (Local Time) at least two Business Days prior to the proposed settlement date. Each Applicable Lender shall fund its Pro Rata share of the settlement to the account specified by Agent in immediately available funds not later than 3:00 p.m. (Local Time) on the proposed settlement date, unless Agent's notice is received after the time provided above, in which case each Applicable Lender shall fund its Pro Rata share by 11:00 a.m. (Local Time) on the next Business Day. Borrowers authorize Agent to settle Swingline Loans into Base Rate Loans. Between settlement dates, Agent may in its discretion apply payments on Loans to Swingline Loans, regardless of any designation by any Borrower Agent or any Borrower or any provision herein to the contrary. Each Applicable Lender hereby purchases, without recourse or warranty, an undivided Pro Rata participation in all U.S. Swingline Loans or Foreign Swingline Loans, as applicable, outstanding from time to time until settled. If a Swingline Loan cannot be settled among Applicable Lenders, whether due to an Obligor's Insolvency Proceeding or for any other reason, each Applicable Lender shall pay the amount of its participation in the U.S. Swingline Loan or Foreign Swingline Loan, as applicable, to Agent, in immediately available funds, within one Business Day after Agent's request therefor. Lenders' obligations to make settlements and to fund participations are absolute, irrevocable and unconditional, without offset, counterclaim or other defense, and whether or not the Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied.

4.1.4 Notices. Borrowers may request, convert or continue Loans, select interest rates and transfer funds based on instructions delivered by the applicable Borrower Agent to Agent via e-mail, teletype or other electronic means approved by Agent. Borrower Agents shall confirm each such request by prompt delivery to Agent of a Notice of Borrowing or Notice of Conversion/Continuation, if applicable, but if it differs materially from the action taken by Agent or Lenders, the records of Agent and Lenders shall govern. Neither Agent nor any Lender shall have any liability for any loss suffered by a Borrower as a result of Agent or any Lender acting upon its understanding of instructions delivered via e-mail, teletype or other electronic means approved by Agent from a person believed in good faith by Agent or any Lender to be a person authorized to give such instructions on Borrower's behalf.

4.2 Defaulting Lender. Notwithstanding anything herein to the contrary:

4.2.1 Reallocation of Pro Rata Share; Amendments. For purposes of determining Lenders' obligations or rights to fund, participate in or receive collections with respect to Loans and Letters of Credit (including existing Swingline Loans, Protective Advances and LC Obligations), Agent may in its discretion reallocate Pro Rata shares by excluding the Commitments and Loans of a Defaulting Lender from the calculation of such shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in **Section 14.1.1(c)**.

4.2.2 Payments; Fees. Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Loan Documents, and a Defaulting Lender shall be deemed to have assigned to Agent such amounts until all Obligations owing to Agent, non-Defaulting Lenders and other Secured Parties have been paid in full. Agent may use such amounts to cover the Defaulting Lender's defaulted obligations, to Cash Collateralize such Lender's Fronting Exposure, to readvance the amounts to Borrowers or to repay Obligations. A Lender shall not be entitled to receive any fees accruing

hereunder during the period in which it is a Defaulting Lender, and the unfunded portion of its Commitment shall be disregarded for purposes of calculating the unused line fee under **Section 3.2.1**. If any LC Obligations owing to a Defaulted Lender are reallocated to other Lenders, fees attributable to such LC Obligations under **Section 3.2.2** shall be paid to such Lenders. Agent shall be paid all fees attributable to LC Obligations that are not reallocated.

4.2.3 Status; Cure. Agent may determine in its discretion that a Lender constitutes a Defaulting Lender and the effective date of such status shall be conclusive and binding on all parties, absent manifest error. Borrower Agents, Agent and each Issuing Bank may agree in writing that a Lender has ceased to be a Defaulting Lender, whereupon Pro Rata shares shall be reallocated without exclusion of the reinstated Lender's Commitments and Loans, and the Revolver Usage and other exposures under the Commitments shall be reallocated among Lenders and settled by Agent (with appropriate payments by the reinstated Lender, including payment of any breakage costs for reallocated Australian Bank Bill Rate Loans and Interest Period Loans) in accordance with the readjusted Pro Rata shares. Unless expressly agreed by Borrowers, Agent and each Issuing Bank, no reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform obligations hereunder shall not relieve any other Lender of its obligations under any Loan Document, and no Lender shall be responsible for default by another Lender.

4.3 Number and Amount of Australian Bank Bill Rate Loans and Interest Period Loans; Determination of Rate. Each Borrowing of Australian Bank Bill Rate Loans and Interest Period Loans when made shall be in a minimum amount of \$1,000,000, plus an increment of \$100,000 in excess thereof. No more than six (6) Borrowings of Interest Period Loans may be outstanding to U.S. Borrowers at any time. No more than six (6) Borrowings of Australian Bank Bill Rate Loans and Interest Period Loans in the aggregate may be outstanding to Foreign Borrowers at any time. All Australian Bank Bill Rate Loans or Interest Period Loans to a Borrower Group having the same length and beginning date of their Interest Periods and the same currency shall be aggregated together and considered one Borrowing for this purpose, and such Loans shall be allocated among the Applicable Lenders on a Pro Rata basis. Upon determining the Australian Bank Bill Rate or the Eurocurrency Rate for any Interest Period requested by Borrowers within a Borrower Group, Agent shall promptly notify the applicable Borrower Agent thereof electronically.

4.4 Borrower Agents.

(a) Foreign Borrower Agent. Each Foreign Domiciled Obligor hereby designates HY UK ("**Foreign Borrower Agent**") as its representative and agent for all purposes under the Loan Documents, including requests for Foreign Loans and Foreign Letters of Credit, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrower Materials, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent, Foreign Issuing Bank or any Foreign Lender. Foreign Borrower Agent hereby accepts such appointment. Agent and Foreign Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Foreign Borrower Agent on behalf of any Foreign Borrower. Agent and Foreign Lenders may give any notice or communication with a Foreign Domiciled Obligor hereunder to Foreign Borrower Agent on behalf of such Foreign Domiciled Obligor. Each of Agent, Foreign Issuing Bank and Foreign Lenders shall have the right, in its discretion, to deal exclusively with Foreign Borrower Agent for any or all purposes

under the Loan Documents. Each Foreign Domiciled Obligor agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by Foreign Borrower Agent shall be binding upon and enforceable against it.

(b) U.S. Borrower Agent. Each U.S. Domiciled Obligor hereby designates Parent (“**U.S. Borrower Agent**”, and together with Foreign Borrower Agent, the “**Borrower Agents**” and each, a “**Borrower Agent**”) as its representative and agent for all purposes under the Loan Documents, including requests for U.S. Loans and U.S. Letters of Credit, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrower Materials, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent, U.S. Issuing Bank or any U.S. Lender. U.S. Borrower Agent hereby accepts such appointment. Agent and U.S. Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by U.S. Borrower Agent on behalf of any U.S. Borrower. Agent and U.S. Lenders may give any notice or communication with a U.S. Domiciled Obligor hereunder to U.S. Borrower Agent on behalf of such U.S. Domiciled Obligor. Each of Agent, U.S. Issuing Bank and U.S. Lenders shall have the right, in its discretion, to deal exclusively with U.S. Borrower Agent for any or all purposes under the Loan Documents. Each U.S. Domiciled Obligor agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by U.S. Borrower Agent shall be binding upon and enforceable against it.

4.5 One Obligation. Without in any way limiting any guaranty of the Obligations, the U.S. Facility Obligations owing by each U.S. Domiciled Obligor shall constitute one general obligation of the U.S. Domiciled Obligors and (unless otherwise expressly provided in any Loan Document) shall be secured by Agent’s Lien upon all Collateral of each U.S. Domiciled Obligor, provided that Agent, each U.S. Lender and each U.S. Issuing Bank shall be deemed to be a creditor of, and the holder of a separate claim against, each U.S. Domiciled Obligor to the extent of any U.S. Facility Obligations owed by such U.S. Domiciled Obligor to such Person. The Foreign Facility Obligations owing by each Foreign Domiciled Obligor shall constitute one general obligation of the Foreign Domiciled Obligors and (unless otherwise expressly provided in any Loan Document) shall be secured by Agent’s and Security Trustee’s Lien upon all Collateral of each Foreign Domiciled Obligor, provided that Agent, each Foreign Lender and Foreign Issuing Bank shall be deemed to be a creditor of, and the holder of a separate claim against, each Foreign Domiciled Obligor to the extent of any Foreign Facility Obligations owed by such Foreign Domiciled Obligor to such Person.

4.6 Effect of Termination. On the effective date of the termination of all Commitments, the Obligations shall be immediately due and payable, and each Secured Bank Product Provider may terminate its Bank Products. Until Full Payment of the Obligations, all undertakings of Obligors contained in the Loan Documents shall continue, and Agent and Security Trustee shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents. In case of dishonor or return of any Payment Item previously applied to the Obligations following Full Payment of the Obligations, Borrowers shall reimburse and pay to Agent, promptly after Agent’s demand therefor, in immediately available funds, the amount of any such Payment Item that is dishonored or returned to Agent or remains unpaid for any reason plus any bank charges and other reasonable costs incurred by Agent as a result of such dishonor or return. **Sections 2.2, 2.3, 2.4, 2.5, 3.4, 3.6, 3.7, 3.9, 5.4, 5.8, 5.9, 12, 14.2**, this Section, and each indemnity or waiver given by an Obligor or Lender in any Loan Document, shall survive Full Payment of the Obligations.

5. PAYMENTS.

5.1 General Payment Provisions. All payments of Obligations shall be made without offset, counterclaim or defense of any kind, free and clear of (and without deduction for) any Taxes (subject to Section 5.8), and in immediately available funds, not later than 12:00 noon (Local Time) on the due date. Any payment after such time shall be deemed made on the next Business Day. Any payment of an Australian Bank Bill Rate Loan or an Interest Period Loan to a Borrower Group prior to the end of its Interest Period shall be accompanied by all amounts due under Section 3.9. All payments shall be made in the currency of the underlying Obligation.

5.2 Repayment of Loans. All Foreign Loans shall be immediately due and payable in full on the Foreign Revolver Commitment Termination Date, and all U.S. Loans shall be immediately due and payable in full on the U.S. Revolver Commitment Termination Date, in each case, unless payment of such Obligations is sooner required hereunder. Loans may be prepaid from time to time, without penalty or premium, subject to, in the case of Australian Bank Bill Rate Loans and Interest Period Loans, the payment of costs set forth in Section 3.9. Subject to Section 2.1.5, if an Overadvance exists at any time (whether as a result of exchange rate fluctuations or otherwise), Borrowers of the Borrower Group owing such Overadvance shall, on the sooner of Agent's demand or the first Business Day after any Borrower of such Borrower Group has knowledge thereof, repay Loans or Cash Collateralize Letters of Credit in an amount sufficient to reduce Revolver Usage to the Borrowing Base. If any Asset Disposition (other than Asset Dispositions permitted under Section 10.2.5(a) through (c), (g), and (i) through (k)) includes the disposition of ABL Facility Priority Collateral when a Cash Dominion Event or an Overadvance exists (or would result from such Asset Disposition), the applicable Borrowers of the relevant Borrower Group shall apply an amount to repay Loans equal to the greater of (i) the amount of the Net Proceeds of such Asset Disposition or (ii) the reduction in the Borrowing Base resulting from the disposition.

5.3 Payment of Other Obligations. Obligations other than Loans, including LC Obligations and Extraordinary Expenses, shall be paid by Borrowers as provided in the Loan Documents or, if no payment date is specified, on demand.

5.4 Marshaling; Payments Set Aside. None of Agent, Security Trustee or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Borrowers is made to Agent, Security Trustee, Foreign Issuing Bank, U.S. Issuing Bank or any Lender, or if Agent, Security Trustee, Foreign Issuing Bank, U.S. Issuing Bank or any Lender exercises a right of setoff, and any of such payment or setoff is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent, Security Trustee, Foreign Issuing Bank, U.S. Issuing Bank or a Lender in its discretion) to be repaid to a trustee, receiver or any other Person, then the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment or setoff had not occurred (except, in the case of any such settlement, to the extent otherwise agreed in such settlement).

5.5 Application and Allocation of Payments.

5.5.1 Application. Payments made by Borrowers hereunder shall be applied (a) first, (x) in the case of any voluntary prepayment, as specified by Borrowers, or (y) in the case of any other payment, as specifically required hereby; (b) second, to Obligations then due and owing by the applicable Borrower making such payment; (c) third, to other Obligations specified by Borrowers; and (d) fourth, as determined by Agent in its discretion.

5.5.2 Post-Default Allocation. Notwithstanding anything in any Loan Document to the contrary (but subject to **Section 4.2.2**), during an Event of Default monies to be applied to the Obligations, whether arising from payments by Obligor, realization on Collateral, setoff or otherwise, shall be allocated as follows:

(a) with respect to monies, payments or Collateral of or from any U.S. Domiciled Obligor, together with any allocations pursuant to **subclause (xii)** of **clause (b)** below:

(i) first, to all fees, indemnification, costs and expenses, including Extraordinary Expenses, owing to Agent, to the extent owing by any U.S. Domiciled Obligor;

(ii) second, to all amounts owing to U.S. Swingline Lender on U.S. Swingline Loans, Agent on U.S. Protective Advances, and Agent on U.S. Loans and participations that a Defaulting Lender has failed to settle or fund;

(iii) third, to all amounts owing to U.S. Issuing Bank on U.S. LC Obligations;

(iv) fourth, to all U.S. Facility Obligations (other than Secured Bank Product Obligations) constituting fees, indemnification, costs or expenses owing to U.S. Lenders (exclusive of any Foreign Facility Obligations which are guaranteed by the U.S. Domiciled Obligor);

(v) fifth, to all U.S. Facility Obligations (other than Secured Bank Product Obligations) constituting interest (exclusive of any Foreign Facility Obligations which are guaranteed by the U.S. Domiciled Obligor);

(vi) sixth, to Cash Collateralize all U.S. LC Obligations;

(vii) seventh, to all U.S. Loans, and to Qualified Secured Bank Product Obligations (including Cash Collateralization thereof) owing by the U.S. Domiciled Obligor (exclusive of any Foreign Facility Obligations which are guaranteed by the U.S. Domiciled Obligor) up to the amount of the U.S. Availability Reserves existing therefor;

(viii) eighth, to all interest on FILO Loans owing by U.S. Borrowers to U.S. Lenders;

(ix) ninth, to all principal on FILO Loans owing by U.S. Borrowers to U.S. Lenders;

(x) tenth, to all other Secured Bank Product Obligations owing by the U.S. Domiciled Obligor (exclusive of any Foreign Facility Obligations which are guaranteed by the U.S. Domiciled Obligor);

(xi) eleventh, to all remaining U.S. Facility Obligations (exclusive of any Foreign Facility Obligations which are guaranteed by the U.S. Domiciled Obligor); and

(xii) twelfth, to be applied in accordance with **clause (b)** below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by the Foreign Domiciled Obligor.

(b) with respect to monies, payments or Collateral of or from any Foreign Domiciled Obligor, together with any allocations pursuant to **subclause (xii)** of **clause (a)** above:

- (i) first, to all fees, indemnification, costs and expenses, including Extraordinary Expenses, owing to Agent, to the extent owing by any Foreign Domiciled Obligor;
- (ii) second, to all amounts owing to Foreign Swingline Lender on Foreign Swingline Loans, Agent on Foreign Protective Advances, and Agent on Foreign Loans and participations that a Defaulting Lender has failed to settle or fund;
- (iii) third, to all amounts owing to Foreign Issuing Bank on Foreign LC Obligations;
- (iv) fourth, to all Foreign Facility Obligations (other than Secured Bank Product Obligations) constituting fees, indemnification, costs or expenses owing to Foreign Lenders (exclusive of any U.S. Facility Obligations which are guaranteed by the Foreign Domiciled Obligors);
- (v) fifth, to all Foreign Facility Obligations (other than Secured Bank Product Obligations) constituting interest (exclusive of any U.S. Facility Obligations which are guaranteed by the Foreign Domiciled Obligors);
- (vi) sixth, to Cash Collateralize all Foreign LC Obligations;
- (vii) seventh, to all Foreign Loans, and to Qualified Secured Bank Product Obligations (including Cash Collateralization thereof) owing by Foreign Domiciled Obligors (exclusive of any U.S. Facility Obligations which are guaranteed by the Foreign Domiciled Obligors) up to the amount of Foreign Availability Reserves existing therefor;
- (viii) eighth, to all interest on FILO Loans owing by Foreign Borrowers to Foreign Lenders;
- (ix) ninth, to all principal on FILO Loans owing by Foreign Borrowers to Foreign Lenders;
- (x) tenth, to all other Secured Bank Product Obligations owing by Foreign Domiciled Obligors (exclusive of any U.S. Facility Obligations which are guaranteed by the Foreign Domiciled Obligors);
- (xi) eleventh, to all remaining Foreign Facility Obligations (exclusive of any U.S. Facility Obligations which are guaranteed by the Foreign Domiciled Obligors); and
- (xii) twelfth, to be applied in accordance with **clause (b)** above, to the extent there are insufficient funds for the Full Payment of all Obligations owing by the U.S. Domiciled Obligors.

Amounts shall be applied to payment of each category of Obligations set forth within **subsections (a)** and **(b)** above only after Full Payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding

Obligations in the category. Monies and proceeds obtained from an Obligor shall not be applied to its Excluded Swap Obligations, but appropriate adjustments shall be made with respect to amounts obtained from other Obligors to preserve the allocations in any applicable category. Agent shall have no obligation to calculate the amount of any Secured Bank Product Obligation and may request a reasonably detailed calculation thereof from a Secured Bank Product Provider. If the Secured Bank Product Provider fails to deliver the calculation within five days following request, Agent may assume the amount is zero. The allocations set forth in this Section are solely to determine the rights and priorities among Secured Parties as among themselves, and any allocation within **subsections (a) and (b)**, and may be changed by agreement of the affected Secured Parties, without the consent of any Obligor. This Section is not for the benefit of or enforceable by any Obligor, and each Obligor irrevocably waives the right to direct the application of any payments or Collateral proceeds subject to this Section.

5.5.3 Erroneous Application. Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Secured Party or other Person to which such amount should have been made shall be to recover the amount from the Person that actually received it (and, if such amount was received by a Secured Party, the Secured Party agrees to return it).

5.6 Dominion Account. The ledger balance in the Dominion Account of (a) each U.S. Borrower as of the end of a Business Day shall be applied to the U.S. Facility Obligations at the beginning of the next Business Day during any Cash Dominion Event, (b) each UK Borrower as of the end of a Business Day may be applied to the Foreign Facility Obligations at the beginning of the next Business Day at any time (whether or not a Cash Dominion Event exists) and (c) each Australian Borrower and each Dutch Borrower as of the end of a Business Day shall be applied to the Foreign Facility Obligations at the beginning of the next Business Day during any Cash Dominion Event. If a credit balance results from such application, it shall not accrue interest in favor of Borrowers and shall be made available to Borrowers of the applicable Borrower Group as long as no Default or Event of Default exists.

5.7 Account Stated. Agent shall maintain, in accordance with its customary practices, loan account(s) (including, for the avoidance of doubt, the register maintained pursuant to **Section 13.3.4**) evidencing the Debt of Borrowers within each Borrower Group hereunder. Any failure of Agent to record anything in a loan account, or any error in doing so, shall not limit or otherwise affect the obligation of Borrowers to pay any amount owing hereunder. Entries made in a loan account shall constitute presumptive evidence of the information contained therein. If any information contained in a loan account is provided to or inspected by any Person, the information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Agent in writing within 30 days after receipt or inspection that specific information is subject to dispute.

5.8 Taxes.

5.8.1 Payments Free of Taxes; Obligation to Withhold; Tax Payment.

(a) All payments of Obligations by Obligors shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If Applicable Law (as determined by the applicable withholding agent in its reasonable discretion) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding.

(b) If a withholding agent is required by the Code to withhold or deduct Taxes, including backup withholding and withholding taxes, from any payment, then (i) the applicable withholding agent shall pay the full amount that it determines is to be withheld or deducted to the relevant Governmental Authority pursuant to the Code, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(c) If a withholding agent is required by any Applicable Law other than the Code to withhold or deduct Taxes from any payment, then (i) the applicable withholding agent, to the extent required by Applicable Law, shall timely pay the full amount to be withheld or deducted to the relevant Governmental Authority, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

5.8.2 Payment of Other Taxes. Without limiting the foregoing, Borrowers shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at Agent's option, timely reimburse Agent for payment of, any Other Taxes.

5.8.3 Tax Indemnification.

(a) Each U.S. Domiciled Obligor shall indemnify and hold harmless, on a joint and several basis, each Recipient against any Indemnified Taxes (including those imposed or asserted on or attributable to amounts payable under this Section) payable or paid by a Recipient or required to be withheld or deducted from a payment to a Recipient, and any penalties, interest and reasonable expenses (other than any penalties and interest incurred as a result of the gross negligence or willful misconduct of such Recipient) arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each U.S. Domiciled Obligor shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to U.S. Borrower Agent by an Applicable Lender or an Issuing Bank (with a copy to Agent), or by Agent on its own behalf or on behalf of any Recipient, shall be conclusive absent manifest error.

(b) Each Lender and Issuing Bank shall indemnify and hold harmless, on a several basis, (i) Agent against any Indemnified Taxes attributable to such Lender or Issuing Bank (but only to the extent Borrowers have not already paid or reimbursed Agent therefor and without limiting Borrowers' obligation to do so), (ii) Agent and Obligors, as applicable, against any Taxes attributable to such Lender's failure to maintain a Participant register as required under Section 13.2.3, and (iii) Agent and Obligors, as applicable, against any Excluded Taxes attributable to such Lender or Issuing Bank, in each case, that are payable or paid by Agent or an Obligor in connection with any Obligations, 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. Each Lender and Issuing Bank shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to any Lender or Issuing Bank by Agent shall be conclusive absent manifest error.

5.8.4 Evidence of Payments. If Agent or an Obligor pays any Taxes pursuant to this Section, then upon request, Agent shall deliver to Borrower Agent or Borrower Agent shall deliver to Agent, respectively, a copy of a receipt issued by the appropriate Governmental Authority evidencing the payment, a copy of any return required by Applicable Law to report the payment, or other evidence of payment reasonably satisfactory to Agent or Borrower Agent, as applicable.

5.8.5 Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall Agent have any obligation to file for or otherwise pursue on behalf of a Lender or Issuing Bank, nor have any obligation to pay to any Lender or Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of a Lender or Issuing Bank. If a Recipient determines in its sole discretion exercised in good faith that it has received a refund of any Taxes as to which it has been indemnified by Borrowers or with respect to which a Borrower has paid additional amounts pursuant to this Section, it shall pay Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrowers with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Borrowers agree, upon request by the Recipient, to repay the amount paid over to Borrowers pursuant to this **Section 5.8.5** (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient if the Recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything in this **Section 5.8.5** to the contrary, no Recipient shall be required to pay any amount to Borrowers if such payment would place the Recipient in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. In no event shall Agent or any Recipient be required to make its tax returns (or any other information relating to its taxes that it deems confidential) available to any Obligor or other Person.

5.8.6 Survival. Each party's obligations under **Sections 5.8** and **5.9** shall survive the resignation or replacement of Agent or any assignment of rights by or replacement of a Lender or Issuing Bank, the termination of the Commitments, and the repayment, satisfaction, discharge or Full Payment of any Obligations.

5.8.7 Dutch Tax Matters. Instead of **Sections 5.8.3** and **5.8.5**, and in addition to **Sections 5.8.1** and **5.8.2**, the provisions of this **Section 5.8.7** shall apply to any advance under any Loan Document to any Dutch Borrower or any other Borrower that is required to make a Tax Deduction in accordance with the relevant provisions of Dutch law (each a "**Relevant Borrower**" for the purposes of this **Section 5.8.7**).

(a) Tax Indemnity.

(i) The Relevant Borrowers shall (within ten Business Days of demand by Agent) pay to a Lender an amount equal to the loss, liability or cost which that Lender determines will be or has been (directly or indirectly) suffered for or on account of Taxes by that Lender in respect of a Loan Document.

(ii) **Clause (a)(i)** above shall not apply:

(A) if such Taxes are Excluded Taxes (other than U.S. federal withholding Taxes imposed pursuant to FATCA) or Dutch withholding taxes

imposed on amounts payable to or for the account of a Lender with respect to its interest in a Loan or Commitment pursuant to a law in effect when the Lender acquires such interest (except pursuant to an assignment request by Borrower Agent under **Section 13.4**) or changes its Lending Office, unless the Taxes were payable to its assignor immediately prior to such assignment or the Lender immediately prior to its change in Lending Office; or

(B) to the extent a loss, liability or cost is compensated for by an increased payment under **Section 5.8.1**.

(iii) A Lender making, or intending to make a claim under **Section 5.8.7(a)(i)** above shall promptly notify Agent of the event which will give, or has given, rise to the claim, following which Agent shall notify Borrowers.

(iv) A Lender shall, on receiving a payment from the Relevant Borrowers under this **Section 5.8.7(a)**, notify Agent.

(b) **Tax Credit.** If a Relevant Borrower makes a Tax Payment and the relevant Lender determines that:

(i) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

(ii) that Lender has obtained and utilized that Tax Credit, the Lender shall promptly following receipt of such Tax Credit pay an amount to the Relevant Borrower which that Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Relevant Borrower.

(c) **Value Added Tax.**

(i) All amounts set out or expressed in a Loan Document to be payable by any party to any Lender which (in whole or in part) constitute the consideration for a supply or supplies for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply or supplies, and accordingly, subject to **clause (ii)** below, if VAT is or becomes chargeable on any such supply made by any Lender to any party under a Loan Document, that party shall pay to the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of such VAT (subject to provision by such Lender of a valid VAT invoice).

(ii) If VAT is or becomes chargeable on any supply made by any Lender (the “**Supplier**”) to any other Lender (the “**Dutch VAT Recipient**”) under a Loan Document, and any party other than the Dutch VAT Recipient (the “**Relevant Party**”) is required by the terms of any Loan Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Dutch VAT Recipient in respect of that consideration),

(A) (where the Supplier is the person required to account to the relevant tax authority for the VAT), the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to

the amount of VAT; the Dutch VAT Recipient must (where this **subsection (ii)(A)** applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Dutch VAT Recipient receives from the relevant tax authority which the Dutch VAT Recipient reasonably determines relates to the VAT chargeable on that supply; and

(B) (where the Dutch VAT Recipient is the person required to account to the relevant tax authority for the VAT), the Relevant Party must promptly, following demand from the Dutch VAT Recipient, pay to the Dutch VAT Recipient an amount equal to the VAT chargeable on that supply. The Dutch VAT Recipient must (where this **subsection (ii)(B)** applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Dutch VAT Recipient receives from the relevant tax authority which the Dutch VAT Recipient reasonably determines relates to the VAT chargeable on that supply.

(iii) Where a Loan Document requires any party to reimburse or indemnify a Lender for any cost or expense incurred in connection with such Loan Document, the reimbursement or indemnity (as the case may be) shall be for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority, provided that any VAT which is subsequently received by the party being reimbursed (by way of credit or repayment) in excess of the amount assumed to be reasonable for the purpose of this clause shall be repayable to the reimbursing party on demand.

(iv) Any reference in this **Section 5.8.7** to any party shall, at any time when such party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time.

(v) In relation to any supply made by a Lender to any party under a Loan Document, if reasonably requested by such Lender, that party must as promptly as reasonably practicable provide such Lender with details of that party's VAT registration and such other information as is reasonably requested in connection with such Lender's VAT reporting requirements in relation to such supply.

(vi) Except as otherwise expressly provided in **Section 5.8.7**, a reference to "determines" or "determined" in connection with tax provisions contained in **Section 5.8.7** means a determination made in the absolute discretion of the person making the determination, acting reasonably and in good faith.

5.8.8 United Kingdom Tax Matters. Instead of **Sections 5.8.1, 5.8.2, 5.8.3** and **5.8.5**, the provisions of this **Section 5.8.8** shall apply to any advance under any Loan Document to any UK Borrower (each a "**Relevant Borrower**" for the purposes of this **Section 5.8.8**):

Solely for the purposes of this **Section 5.8.8**, the following terms shall have the following meanings:

“Qualifying Lender” means:

(a) a Lender (other than a Lender within **clause (b)** of the definition of Qualifying Lender) which is beneficially entitled to interest payable to that Lender in respect of an advance under a Loan Document and is:

(i) a Lender;

(A) that is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Loan Document; or

(B) in respect of an advance under a Loan Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that such advance under a Loan Document was made,

and, in each case, which is within the charge to United Kingdom corporation Tax with respect to any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from Section 18A of the CTA; or

(ii) a Lender which is:

(A) a company resident in the United Kingdom for United Kingdom Tax purposes;

(B) a partnership, each member of which is:

(1) A company so resident in the United Kingdom; or

(2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

(3) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or

(iii) a Treaty Lender; or

(b) a building society (as defined for the purposes of section 880 of the ITA) making an advance.

“**Tax Confirmation**” means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Loan Document is either:

- (a) a company resident in the United Kingdom for United Kingdom Tax purposes; or
- (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.

“**Treaty Lender**” means a Lender which

- (a) is treated as a resident of a Treaty State for the purposes of the relevant Treaty;
- (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender’s participation in any advance is effectively connected; and
- (c) satisfies all conditions (other than the completion of any procedural formalities) under the relevant double taxation agreement to obtain full exemption from Tax imposed by the United Kingdom on interest.

“**Treaty State**” means a jurisdiction having a double taxation agreement (a “**Treaty**”) with the United Kingdom which makes provision for full exemption from Tax imposed by the United Kingdom on interest.

“**UK Non-Bank Lender**” means:

- (a) a Lender (which falls within **clause (a)(ii)** of the definition of Qualifying Lender) which is a party to this Agreement and which has provided a Tax Confirmation to Agent; and
- (b) where a Lender becomes a party after the Closing Date, an Assignee which gives a Tax Confirmation in the Assignment and Acceptance Agreement which it executes on becoming a party hereunder.
- (c) Tax Gross-up.
 - (i) Each Relevant Borrower shall make all payments to be made by it under any Loan Document without any Tax Deduction unless a Tax Deduction is required by law.

(ii) A Relevant Borrower shall, promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify Agent accordingly. Similarly, a Lender shall notify Agent on becoming so aware in respect of a payment payable to that Lender. If Agent receives such notification from a Lender it shall notify the Relevant Borrower.

(iii) If a Tax Deduction is required by law to be made by a Relevant Borrower, the amount of the payment due from that Relevant Borrower to a Lender shall be increased to an amount which (after making any Tax Deduction) is equal to the payment which would have been due to such Lender if no Tax Deduction had been required.

(iv) A payment shall not be increased under **clause (iii)** above by reason of a Tax Deduction on account of Taxes imposed by the United Kingdom if, on the date on which the payment falls due:

(A) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the published interpretation, administration, or application by any taxing authority of) any law or treaty or any published practice or published concession of any relevant taxing authority; or

(B) the relevant Lender is a Qualifying Lender solely by virtue of **clause (a)(ii)** of the definition of Qualifying Lender, and:

(1) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "**Direction**") under section 931 of the ITA which relates to the payment and that Lender has received from the Relevant Borrower making the payment a certified copy of that Direction; and

(2) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or

(C) the relevant Lender is a Qualifying Lender solely by virtue of clause (a)(ii) of the definition of Qualifying Lender and:

(1) the relevant Lender has not given a Tax Confirmation to the Relevant Borrower; and

(2) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Relevant Borrower, on the basis that the Tax Confirmation would have enabled the Relevant Borrower to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or

(D) the relevant Lender is a Treaty Lender and the Relevant Borrower making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under **clause (a)(vii)** below; or

(E) U.K. withholding Taxes imposed on amounts payable to or for the account of a Lender with respect to its interest in a Loan or Commitment pursuant to a law in effect when the Lender acquires such interest (except pursuant to an assignment request by Borrower Agent under **Section 13.4**) or changes its Lending Office, unless the Taxes were imposed on amounts payable to or for the account of its assignor immediately prior to such assignment or to the Lender immediately prior to its change in Lending Office.

(v) If a Relevant Borrower is required to make a Tax Deduction, that Relevant Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(vi) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Relevant Borrower making that Tax Deduction shall deliver to Agent for the benefit of the Lender entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

(vii) A Treaty Lender and each Relevant Borrower which makes a payment to which that Treaty Lender is entitled shall co-operate in promptly completing any procedural formalities (including in respect of the HMRC DT Treaty Passport Scheme) necessary for that Relevant Borrower to obtain authorization to make that payment without a Tax Deduction.

(viii) Nothing in **clause (a)(vii)** above shall require a Treaty Lender to:

(A) register under the HMRC DT Treaty Passport scheme;

(B) apply the HMRC DT Treaty Passport scheme to any advance if it has so registered; or

(C) file Treaty forms if it has included an indication to the effect that it wishes the HMRC DT Treaty Passport Scheme to apply to this Agreement in accordance with **subsections (a)(xi)** or **(e)(i)** (HMRC DT Treaty Passport scheme confirmation) and the Relevant Borrower making that payment has not complied with its obligations under **subsections (a)(xii)** or **(e)(ii)** (HMRC DT Treaty Passport scheme confirmation).

(ix) A UK Non-Bank Lender which becomes a party on the day on which this Agreement is entered into gives a Tax Confirmation to Agent by entering into this Agreement.

(x) A UK Non-Bank Lender shall promptly notify Agent if there is any change in the position from that set out in the Tax Confirmation.

(xi) A Treaty Lender which becomes a party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of Agent and without liability to any Relevant Borrower) by notifying Agent of its scheme reference number and its jurisdiction of Tax residence. Agent shall notify each Relevant Borrower of such scheme reference number and jurisdiction of Tax residence.

(xii) Where a Lender notifies Agent as described in **clause (a)(xi)** above each Relevant Borrower shall file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of the date of this Agreement and shall promptly provide the Lender with a copy of that filing. Any Borrower's failure to file the form DTTP2 with regard to a particular Lender shall not negate any Borrower obligations with regard to the UK tax gross up or indemnity provisions contained in this Section.

(xiii) If a Lender has not included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with **clause (a)(xi)** above or **clause (e)(i)** (HMRC DT Treaty Passport scheme confirmation), no Relevant Borrower shall file any form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's advance or its participation in any advance.

(d) Tax Indemnity.

(i) The Relevant Borrowers shall (within ten Business Days of demand by Agent) pay to a Lender an amount equal to the loss, liability or cost which that Lender determines will be or has been (directly or indirectly) suffered for or on account of Taxes by that Lender in respect of a Loan Document.

(ii) **Clause (b)(i)** above shall not apply:

(A) with respect to any Taxes assessed on a Lender:

(1) under the law of the jurisdiction in which such Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which such Lender is treated as resident for Tax purposes; or

(2) under the law of the jurisdiction in which such Lender's Lending Office is located in respect of amounts received or receivable in such jurisdiction,

if such Taxes are imposed on or calculated by reference to the net income, profits or gains received or receivable (but not any sum deemed to be received or receivable) by such Lender;

(B) to the extent a loss, liability or cost:

- (1) is compensated for by an increased payment under **Section 5.8.8(a)(iii)** (Tax Gross-up); or
- (2) would have been compensated for by an increased payment under **Section 5.8.8(a)(iii)** (Tax Gross-up) but was not so compensated solely because one of the exclusions in **Section 5.8.8(a)(iv)** (Tax Gross-up) applied; or
- (C) if such Taxes are Excluded Taxes (other than U.S. federal withholding Taxes imposed pursuant to FATCA).

(iii) A Lender making, or intending to make a claim under **Section 5.8.8(b)(i)** above shall promptly notify Agent of the event which will give, or has given, rise to the claim, following which Agent shall notify Borrowers.

(iv) A Lender shall, on receiving a payment from the Relevant Borrowers under this **Section 5.8.8(b)**, notify Agent.

(e) **Tax Credit**. If a Relevant Borrower makes a Tax Payment and the relevant Lender determines that:

(i) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

(ii) that Lender has obtained and utilized that Tax Credit,

the Lender shall as soon as reasonably practicable following receipt of such Tax Credit pay an amount to the Relevant Borrower which that Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Relevant Borrower.

(f) **Lender Status Confirmation**. Each New Lender shall indicate, in the Assignment and Acceptance which it executes on becoming a party, and for the benefit of Agent and without liability to any Relevant Borrower, which of the following categories it falls within:

- (i) not a Qualifying Lender;
- (ii) a Qualifying Lender (other than a Treaty Lender); or
- (iii) a Treaty Lender.

If a New Lender fails to indicate its status in accordance with this **Section 5.8.8(d)**, then such New Lender or Lender (as appropriate) shall be treated for the purposes of this Agreement (including by each Relevant Borrower) as if it is not a Qualifying Lender until such time as it notifies Agent which category of Qualifying Lender applies (and Agent, upon receipt of such notification, shall inform the Relevant Borrower). For the avoidance of doubt, an Assignment and Acceptance shall not be invalidated by any failure of a New Lender to comply with this **Section 5.8.8(d)**.

(g) HMRC DT Treaty Passport Scheme Confirmation.

(i) A New Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of Agent and without liability to any Relevant Borrower) in the Assignment and Acceptance which it executes by including its scheme reference number and its jurisdiction of Tax residence in that Assignment and Acceptance.

(ii) Where an Assignment and Acceptance includes the indication described in **clause (e)(i)** above in the relevant Assignment and Acceptance, each Relevant Borrower which is a party as a Borrower as at the date that the relevant Assignment and Acceptance Agreement is executed (the "**HMRC Transfer Date**") shall file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of that HMRC Transfer Date and shall promptly provide the Lender with a copy of that filing.

(h) United Kingdom Stamp Taxes. The Relevant Borrowers shall pay and, within ten Business Days of demand, indemnify each Lender against any cost, loss or liability that Lender incurs in relation to all stamp duties, registration or other similar Taxes payable in respect of any Loan Document.

(i) Value Added Tax.

(i) All amounts set out or expressed in a Loan Document to be payable by any party to any Lender which (in whole or in part) constitute the consideration for a supply or supplies for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply or supplies, and accordingly, subject to clause (ii) below, if VAT is or becomes chargeable on any supply made by any Lender to any party under a Loan Document, that party shall pay to the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of such VAT (subject to provision by such Lender of a valid VAT invoice).

(ii) If VAT is or becomes chargeable on any supply made by any Lender (the "**VAT Supplier**") to any other Lender (the "**VAT Recipient**") under a Loan Document, and any party other than the VAT Recipient (the "**VAT Relevant Party**") is required by the terms of any Loan Document to pay an amount equal to the consideration for that supply to the VAT Supplier (rather than being required to reimburse or indemnify the VAT Recipient in respect of that consideration),

(A) (where the VAT Supplier is the person required to account to the relevant tax authority for the VAT) the VAT Relevant Party must also pay to the VAT Supplier (at the same time as paying that amount) an additional amount equal to the amount of VAT. The VAT Recipient must (where this **subsection (ii)(A)** applies) promptly pay to the VAT Relevant Party an amount equal to any credit or repayment the VAT Recipient receives from the relevant tax authority which the VAT Recipient reasonably determines relates to the VAT chargeable on that supply; and

(B) (where the VAT Recipient is the person required to account to the relevant tax authority for the VAT), the VAT Relevant Party must promptly, following demand from the VAT Recipient, pay to the VAT Recipient an amount equal to the VAT chargeable on that supply. The VAT Recipient must (where this **subsection (ii)(B)** applies) promptly pay to the VAT Relevant Party an amount equal to any credit or repayment the VAT Recipient receives from the relevant tax authority which the VAT Recipient reasonably determines relates to the VAT chargeable on that supply.

(iii) Where a Loan Document requires any party to reimburse or indemnify a Lender for any cost or expense in connection with such Loan Document, the reimbursement or indemnity (as the case may be) shall be for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority) provided that (i) any VAT which is subsequently received by the party being reimbursed (by way of credit or repayment) in excess of the amount assumed to be reasonable for the purpose of this clause shall be repayable to the reimbursing party on demand and (ii) that such Lender is placed, after reimbursement or indemnification and after such payment or reimbursements of VAT, in the same positions it was in before the need to reimburse or indemnify that Lender arose.

(iv) Any reference in this **Section 5.8.8** to any party shall, at any time when such party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term “representative member” to have the same meaning as in the United Kingdom Value Added Tax Act 1994).

(v) In relation to any supply made by a Lender to any party under a Loan Document, if reasonably requested by such Lender, that party must as promptly as reasonably practicable provide such Lender with details of that party’s VAT registration and such other information as is reasonably requested in connection with such Lender’s VAT reporting requirements in relation to such supply.

Except as otherwise expressly provided in this **Section 5.8.8**, a reference to “**determines**” or “**determined**” in connection with Tax provisions contained in **Section 5.8.8** means a determination made in the absolute discretion of the person making the determination, acting reasonably and in good faith.

5.8.9 Australia Tax Matters. Instead of **Sections 5.8.1(c), 5.8.3** and **5.8.5**, and in addition to **Sections 5.8.1(a), 5.8.1(b)** and **5.8.2**, the provisions of this **Section 5.8.9** shall apply to any advance under any Loan Document to any Australian Borrower or any other Borrower that is required to make a Tax Deduction in accordance with the relevant provisions of Australian law (each a “**Relevant Borrower**” for the purposes of this **Section 5.8.9**).

(a) **Definitions.** Solely for purposes of this **Section 5.8.9**, the following terms shall have the following meanings:

“**Australian Double Tax Treaty**” means an ‘international tax agreement’ as defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth) of Australia.

“**GST**” has the meaning given to it in the GST Act.

“Qualifying Lender” means, in relation to a Relevant Borrower:

- (a) a Foreign Lender which:
 - (i) is treated as a resident of a Treaty State for the purposes of the relevant Australian Double Tax Treaty;
 - (ii) does not perform its role as a Foreign Lender at or through a permanent establishment in Australia; and
 - (iii) fulfills all conditions which must be fulfilled under the relevant Australian Double Tax Treaty by residents of the Treaty State and qualifies for a full exemption from taxation imposed in Australia in respect of the relevant payment; or
- (b) a Foreign Lender which receives all payments of interest in respect of a Loan either:
 - (i) as a resident of Australia (and not in the course of carrying on a business at or through a permanent establishment outside Australia); or
 - (ii) as a non-resident of Australia in the course of carrying on a business at or through a permanent establishment in Australia.

“Treaty State” means a jurisdiction having an Australian Double Tax Treaty with Australia.

(a) Tax Gross-up. Save to the extent required under any applicable law, all payments to be made by a Relevant Borrower to any Foreign Lender hereunder or under any Loan Document shall be made free and clear of and without deduction or withholding for or on account of Taxes. If a Relevant Borrower is required, as a consequence of the application of section 128B(2) of the Income Tax Assessment Act 1936 (Cth) of Australia, in conjunction with section 12-245 of Schedule 1 to the Taxation Administration Act 1953 (Cth) of Australia, to deduct or withhold any Taxes, or an amount for or on account of any Taxes from any payment made hereunder or under the Loan Documents to any Foreign Lender, the sum payable by such Relevant Borrower (in respect of which such deduction or withholding is required to be made) shall be increased to the extent necessary to ensure that such Foreign Lender receives a sum equal to the sum that such Foreign Lender would have received if no such deduction or withholding had been made; provided, that this **Section 5.8.9(b)** shall not apply (1) to the extent that such deduction or withholding is made on account of Excluded Taxes, (2) to Australian withholding taxes imposed on amounts payable to or for the account of a Lender with respect to its interest in a Loan or Commitment pursuant to a law in effect when the Lender acquires such interest (except pursuant to an assignment request by Borrower Agent under **Section 13.4**) or changes its Lending Office, unless the Taxes were payable to its assignor immediately prior to such assignment or the Lender immediately prior to its change in Lending Office, or (3) to the extent that such deduction or withholding would not have arisen if the relevant Foreign Lender had complied with its obligations under **Section 5.8.9(e)** (Foreign Lender’s Status), or **Section 5.8.9(f)** (Double Taxation Relief) or Subdivision 12-E of Schedule 1 to the *Taxation Administration Act 1953* (Cth) of Australia to the extent the Foreign Lender is required to have an Australian tax file number or an Australian business number under Australian law, as the case may be.

(b) Tax Indemnity.

(i) of demand by Agent) pay to a Lender an amount equal to the loss, liability or cost which that Lender determines will be or has been (directly or indirectly) suffered for or on account of Taxes by that Lender in respect of a Loan Document.

(ii) **Clause (b)(i)** above shall not apply:

(A) with respect to any Taxes assessed on a Lender:

(1) under the law of the jurisdiction in which such Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which such Lender is treated as resident for tax purposes; or

(2) under the law of the jurisdiction in which such Lender's Lending Office is located in respect of amounts received or receivable in such jurisdiction,

if such Taxes are imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by such Lender; or

(B) to the extent a loss, liability or cost:

(1) is compensated for by an increased payment under **Section 5.8.9(b)** (Tax Gross-up); or

(2) would have been compensated for by an increased payment under **Section 5.8.9(b)** (Tax Gross-up) but was not so compensated solely because one of the exclusions in that **Section 5.8.9(b)** (Tax Gross-up) applied.

(iii) A Lender making, or intending to make a claim under **Section 5.8.9(c)(i)** above shall promptly notify Agent of the event which will give, or has given, rise to the claim, following which Agent shall notify Borrowers.

(iv) A Lender shall, on receiving a payment from the Relevant Borrowers under this **Section 5.8.9(c)**, notify Agent.

(c) Tax Credit. If a Relevant Borrower makes a Tax Payment and the relevant Lender determines that:

(i) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

(ii) that Lender has obtained, utilized and retained that Tax Credit.

the Lender shall as soon as reasonably practicable following receipt of such Tax Credit pay an amount to the Relevant Borrower which that Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Relevant Borrower.

(d) Foreign Lender's Status. Each Foreign Lender certifies to Agent and the Relevant Borrowers (on the date hereof or, in the case of a Foreign Lender which becomes a party hereto pursuant to a transfer or assignment, on the date on which the relevant transfer or assignment becomes effective) that it is a Qualifying Lender and each Foreign Lender shall promptly notify Agent if there is any change in its position from that set out above. Upon receipt of any such notification from a Foreign Lender, Agent shall promptly notify the Relevant Borrowers thereof. If any Foreign Lender is not or ceases to be a Qualifying Lender or does not comply with or perform the formalities required to be a Qualifying Lender (except by reason of any Change in Tax Law after the date the Foreign Lender becomes a party to this agreement) the Relevant Borrower shall not be liable pursuant to this **Section 5.8.9** to pay with respect to the Foreign Lender any amount greater than the amount which the Relevant Borrower would have been liable to pay pursuant to this **Section 5.8.9** with respect to that Foreign Lender if that Foreign Lender had been, or had not ceased to be on that date, a Qualifying Lender and had complied with or had performed the formalities required to be a Qualifying Lender.

(e) Double Taxation Relief. If, and to the extent that, the effect of **Section 5.8.9(b)** (Tax Gross-up) or **Section 5.8.9(c)** (Tax Indemnity) can be mitigated by virtue of the provisions of any applicable double taxation agreement or any applicable tax law (whether by a claim to repayment of any taxes referred to in **Section 5.8.9(b)** (Tax Gross-up) or **Section 5.8.9(c)** (Tax Indemnity) or otherwise) the relevant Foreign Lender shall co-operate with the Relevant Borrower with a view to ensuring the application of such double taxation agreement or applicable tax law so far as relevant.

(f) Notification of Requirement to Deduct Tax. If, at any time, a Relevant Borrower is required by law to make any deduction or withholding from any sum payable by it hereunder or under the other Loan Documents (or if thereafter there is any change in the rates at which or the manner in which such deductions or withholdings are calculated), such Relevant Borrower shall promptly notify Agent.

(g) Evidence of Payment of Tax. If a Relevant Borrower makes any payment hereunder or under the other Loan Documents in respect of which it is required to make any deduction or withholding, it shall pay the full amount required to be deducted or withheld to the relevant taxation or other authority within the time allowed for such payment under applicable law and shall, as promptly as reasonably practicable thereafter, deliver to Agent on behalf of the Foreign Lenders to which such payment was made evidence of payment as is reasonably satisfactory to Agent.

(h) Goods and Services Tax.

(i) All amounts set out or expressed in a Loan Document to be payable by any party to any Lender which (in whole or in part) constitute the consideration for a taxable supply or taxable supplies for GST purposes shall be deemed to be exclusive of GST and the party liable to make that payment shall pay to the Lender (in addition to and at the same time as paying any consideration for such supply) an amount equal to the GST payable on that supply, subject to receiving a valid tax invoice, complying with the relevant GST legislation, from the supplier of that supply.

(ii) Where a Loan Document requires any party to reimburse or indemnify a Lender for any loss, cost or expense incurred by that lender, the reimbursement or

indemnity (as the case may be) shall be reduced by the amount of any input tax credit that the Lender (or representative member of the GST Group of which the Lender is a member) is entitled to.

(i) Stamp Taxes. The Australian Borrowers shall:

(i) pay all stamp duty, registration and other similar Taxes payable in respect of any Loan Document; and

(ii) within three Business Days of demand, indemnify each Lender against any cost, loss or liability that Lender incurs in relation to any stamp duty, registration or other similar Tax paid or payable in respect of any Loan Document.

Except as otherwise expressly provided in this Section 5.8.9, a reference to “determines” or “determined” in connection with Tax provisions contained in Section 5.8.9 means a determination made in the absolute discretion of the person making the determination, acting reasonably and in good faith.

5.9 Lender Tax Information.

5.9.1 Status of Lenders. Any Lender and, if requested by a Borrower or Agent, a Security Trustee, that is entitled to an exemption from or reduction of withholding Tax with respect to payments of Obligations shall deliver to the relevant Borrower Agent and Agent, at the time or times reasonably requested by the relevant Borrower Agent or Agent, properly completed and executed documentation reasonably requested by the relevant Borrower Agent or Agent as will permit such payments to be made without or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the relevant Borrower Agent or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower Agent or Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding the foregoing, such documentation (other than (a) documentation with respect to the U.S. Loans described in Sections 5.9.2(a), (b) and (d) and (b) documentation with respect to the Foreign Loans described in Sections 5.8.7, 5.8.8 and 5.8.9) shall not be required if a Lender or Security Trustee reasonably believes delivery of the documentation would subject it to any material unreimbursed cost or expense or would materially prejudice its legal or commercial position.

5.9.2 Documentation. Without limiting the generality of the foregoing, with respect to a Borrower that is a U.S. Person,

(a) Any Lender that is a U.S. Person shall deliver to U.S. Borrower Agent and Agent on or prior to the date on which such Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of U.S. Borrower Agent or Agent), executed originals of IRS Form W-9, certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(b) Any Non-Domiciled Lender shall, to the extent it is legally entitled to do so, deliver to U.S. Borrower Agent and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Non-Domiciled Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of U.S. Borrower Agent or Agent), whichever of the following is applicable:

(i) in the case of a Non-Domiciled Lender claiming the benefits of an income tax treaty to which the U.S. is a party, (x) with respect to payments of interest

under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty, and (y) with respect to other payments under the Loan Documents, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(ii) executed originals of IRS Form W-8ECI;

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

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

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

(d) if payment of an Obligation to a Lender would be subject to U.S. federal withholding Tax imposed by FATCA if such Non-Domiciled 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), such Lender shall deliver to U.S. Borrower Agent and Agent at the time(s) prescribed by law and otherwise as reasonably requested by U.S. Borrower Agent or Agent such documentation prescribed by Applicable Law (including Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by U.S. Borrower Agent or Agent as may be necessary for them to comply with their obligations under FATCA and to determine that such Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this **clause (d)**, “FATCA” shall include any amendments made to FATCA after the date hereof.

5.9.3 Redelivery of Documentation. If any form or certification previously delivered by a Lender or Security Trustee pursuant to this Section expires or becomes obsolete or inaccurate in any respect, such Lender or Security Trustee shall promptly update the form or certification or notify the applicable Borrower Agent and Agent in writing of its legal inability to do so.

5.9.4 Defined Terms. For purposes of this **Section 5.9**, the term “Lender” includes any Issuing Bank and the term “Applicable Law” includes FATCA.

5.10 Guaranties.

5.10.1 Joint and Several Liability of Obligors.

(a) Subject in each case to any limitations imposed by Applicable Law, each Obligor (other than the Specified Foreign Domiciled Obligors) agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Agent and Lenders the prompt payment and performance of, all Obligations, except its Excluded Swap Obligations. Each Obligor (other than the Specified Foreign Domiciled Obligors) agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until Full Payment of the Obligations, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this **Section 5.10**) or any other Loan Document, or any waiver, consent or indulgence of any kind by Agent or any Lender with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for any Obligations or any action, or the absence of any action, by Agent or any Lender in respect thereof (including the release of any security or guaranty); (d) the insolvency of any Obligor; (e) any election by Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (f) any borrowing or grant of a Lien by any other Obligor, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (g) the disallowance of any claims of Agent or any Lender against any Obligor for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (h) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of the Obligations.

(b) Each Specified Foreign Domiciled Obligor agrees that it is jointly and severally liable for, and absolutely, irrevocably and unconditionally guarantees to Agent and Foreign Lenders the prompt payment and performance of, all Foreign Facility Obligations. Each Specified Foreign Domiciled Obligor agrees that its guaranty obligations as a Foreign Facility Guarantor hereunder constitute a continuing guaranty of payment and not of collection, that such guaranty obligations shall not be discharged until Full Payment of the Foreign Facility Obligations, and that such guaranty obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Foreign Facility Obligations or Loan Document, or any other document, instrument or agreement to which any Foreign Domiciled Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this **Section 5.10**) or any other Loan Document, or any waiver, consent or indulgence of any kind by Agent or any Foreign Lender with respect thereto; the existence, value or condition of, or failure to perfect, register, stamp or

terminate a Lien or to preserve rights against, any security or guaranty for any Foreign Facility Obligations or any action, or the absence of any action, by Agent or any Foreign Lender in respect thereof (including the release of any security or guaranty); the insolvency of any Foreign Domiciled Obligor; any election by Agent or any Foreign Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code (or the equivalent under any other debtor relief law); any borrowing or grant of a Lien by any other Foreign Domiciled Obligor, as debtor-in-possession under Section 364 of the Bankruptcy Code (or the equivalent under any other debtor relief law) or otherwise; the disallowance of any claims of Agent or any Lender against any Foreign Domiciled Obligor for the repayment of any Foreign Facility Obligations under Section 502 of the Bankruptcy Code (or the equivalent under any other debtor relief law) or otherwise; or any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of all Foreign Facility Obligations.

5.10.2 Waivers by Obligors.

(a) Each Obligor hereby expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent, Security Trustee or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Obligor. Each Obligor waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of Obligations and waives, to the maximum extent permitted by law, any right to revoke any guaranty of Obligations as long as it is an Obligor. It is agreed among each Obligor, Agent, Security Trustee and Lenders that the provisions of this **Section 5.10** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent, Security Trustee and Lenders would decline to make Loans and issue Letters of Credit. Each Obligor acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(b) Agent, Security Trustee and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this **Section 5.10**. If, in taking any action in connection with the exercise of any rights or remedies, Agent, Security Trustee or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Obligor or other Person, whether because of any Applicable Laws pertaining to “election of remedies” or otherwise, each Obligor consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Obligor might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent, Security Trustee or any Lender to seek a deficiency judgment against any Obligor shall not impair any other Obligor’s obligation to pay the full amount of the Obligations. Each Obligor waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for Obligations, even though that election of remedies destroys Obligor’s rights of subrogation against any other Person. Agent or Security Trustee may bid Obligations, in whole or part, at any foreclosure, trustee or other sale, including any private sale, and the amount of such bid need not be paid by Agent or Security Trustee but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent, Security Trustee or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and

the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this **Section 5.10**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Agent, Security Trustee or any Lender might otherwise be entitled but for such bidding at any such sale.

5.10.3 Extent of Liability of U.S. Domiciled Obligors; Contribution.

(a) Notwithstanding anything herein to the contrary, each U.S. Domiciled Obligor's liability under this **Section 5.10** shall not exceed the greater of (a) all amounts for which such U.S. Domiciled Obligor is primarily liable, as described in **clause (c)** below, and (b) such U.S. Domiciled Obligor's Allocable Amount.

(b) If any U.S. Domiciled Obligor makes a payment under this **Section 5.10** of any Obligations (other than amounts for which such U.S. Domiciled Obligor is primarily liable) (a "**Guarantor Payment**") that, taking into account all other Guarantor Payments previously or concurrently made by any other U.S. Domiciled Obligor, exceeds the amount that such U.S. Domiciled Obligor would otherwise have paid if each U.S. Domiciled Obligor had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such U.S. Domiciled Obligor's Allocable Amount bore to the total Allocable Amounts of all U.S. Domiciled Obligors, then such Obligor shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other U.S. Domiciled Obligor for the amount of such excess, ratably based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The "Allocable Amount" for any U.S. Domiciled Obligor shall be the maximum amount that could then be recovered from such U.S. Domiciled Obligor under this **Section 5.10** without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

(c) **Section 5.10.3(a)** shall not limit the liability of any U.S. Domiciled Obligor to pay or guarantee Loans made directly or indirectly to it (including Loans advanced hereunder to any other Person and then re-loaned or otherwise transferred to, or for the benefit of, such U.S. Domiciled Obligor), LC Obligations relating to Letters of Credit issued to support such U.S. Domiciled Obligor's business, Secured Bank Product Obligations incurred to support such U.S. Domiciled Obligor's business, and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such U.S. Domiciled Obligor shall be primarily liable for all purposes hereunder. Agent and Lenders shall have the right, at any time in their discretion, to condition Loans and Letters of Credit upon a separate calculation of borrowing availability for each Borrower and to restrict the disbursement and use of Loans and Letters of Credit to a Borrower based on that calculation.

(d) Each U.S. Domiciled Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this **Section 5.10** voidable under any applicable fraudulent transfer or conveyance act). The

obligations and undertakings of each U.S. Domiciled Obligor that is a Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each U.S. Domiciled Obligor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a “keepwell, support or other agreement” for the benefit of, each U.S. Domiciled Obligor for all purposes of the Commodity Exchange Act.

5.10.4 Joint Enterprise. Each Borrower has requested that Agent and Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Borrowers’ business most efficiently and economically. Borrowers’ business is a mutual and collective enterprise, and the successful operation of each Borrower is dependent upon the successful performance of the integrated group. Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the facility, all to their mutual advantage. Borrowers acknowledge that Agent’s and Lenders’ willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Borrowers and at Borrowers’ request.

5.10.5 Subordination. Each Obligor hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to the Full Payment of its Obligations.

5.11 Specified Foreign Domiciled Obligors; Pledges by Foreign Borrowers. For the avoidance of doubt, and notwithstanding anything herein or in the other Loan Documents to the contrary, (a) the Specified Foreign Domiciled Obligors shall only have liability for, and be obligated in connection with, the Foreign Loans and the other Foreign Facility Obligations and in any event shall not have any liability for or in connection with any of the U.S. Facility Obligations, in each case unless such Specified Foreign Domiciled Obligor has expressly guaranteed such U.S. Facility Obligations, and (b) pledges by any Foreign Borrower of its Equity Interest in any of its Subsidiaries shall only secure the Foreign Loans and the other Foreign Facility Obligations and in any event shall not secure any of the U.S. Facility Obligations.

6. CONDITIONS PRECEDENT.

6.1 Conditions Precedent to Restatement. In addition to the conditions set forth in **Section 6.2**, the amendment and restatement of the Existing Loan Agreement is conditioned upon, and Lenders and Issuing Banks shall not be required to fund any requested Loan, issue any Letter of Credit, or otherwise extend credit to Borrowers hereunder, until the date (“**Closing Date**”) that each of the following conditions has been satisfied (or waived by Agent with the consent of all Lenders):

(a) Each Loan Document required to be executed and delivered on or prior to the date hereof shall have been duly executed and delivered to Agent by each of the signatories thereto (including all Lenders under the Existing Loan Agreement consenting hereto).

(b) Except as provided on **Schedule 10.1.11**, Agent shall have received satisfactory evidence that Agent and/or Security Trustee has a valid and perfected first priority (except as otherwise permitted hereunder and under the other Loan Documents, including the Intercreditor Agreement) Lien in the Collateral (including acknowledgments of all filings or recordations necessary to perfect its Liens in the Collateral) and that all Liens on the Collateral other than Permitted Liens have been (or are being) terminated.

(c) Agent shall have received certificates, in form reasonably satisfactory to it, from a knowledgeable Senior Officer of each Borrower, or in the case of a Dutch borrower, a director, certifying that, after giving effect to the Loans and transactions hereunder, (i) such Borrower is Solvent; (ii) no Default or Event of Default exists; (iii) the representations and warranties set forth in **Section 9** are true and correct in all material respects (or, with respect to representations and warranties qualified by materiality, in all respects) (except for representations and warranties that expressly relate to an earlier date which shall be true and correct in all material respects or all respects, as applicable, as of such earlier date); and (iv) attached thereto are all governmental and third party consents and approvals as may be appropriate for any Obligor to obtain in connection with this Agreement (or a statement that no such consents or approvals are required).

(d) Agent shall have received a certificate of a duly authorized officer of each Obligor, certifying (i) that attached copies of such Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted and have not been amended, modified or revoked; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.

(e) Agent shall have received a written opinion of Jones Day, as UK counsel to the UK Domiciled Obligors, U.S. counsel to Obligors and as Dutch counsel to the Dutch Domiciled Obligors, Norton Rose Fulbright, as Dutch and UK counsel to Agent, as well as any other local counsel to Obligors or Agent, in form and substance reasonably satisfactory to Agent.

(f) Agent shall have received copies of the charter documents of each Obligor, certified by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization.

(g) Agent shall have received good standing certificates for each Obligor (to the extent applicable in an Obligor's jurisdiction of organization), issued by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization.

(h) No material adverse change in the financial condition of any Borrower or of Obligors, taken as a whole, shall have occurred since December 31, 2020.

(i) Borrowers shall have paid all fees and expenses to be paid to Agent and Lenders on the Closing Date to the extent such fees and expenses are invoiced at least two Business Days prior to the Closing Date, including all fees and expenses due under the Fee Letter.

(j) Upon giving effect to the initial funding of Loans and issuance of Letters of Credit, and the payment by Borrowers of all fees and expenses incurred in connection herewith, Total Excess Availability shall be at least \$100,000,000.

(k) There shall be no action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or governmental instrumentality that could reasonably be expected to have a Material Adverse Effect or adversely affect this Agreement or the transactions contemplated hereby.

(l) Agent shall have received financial projections of Parent through 2025.

(m) Agent shall have received UCC and Lien searches and other evidence satisfactory to Agent that its and/or Security Trustees' Liens are the only Liens upon the Collateral, except Permitted Liens.

(n) Agent shall have received a true, complete and correct copy of the Term Loan Agreement and each of the material Term Loan Documents, which shall be in full force and effect.

(o) Each Obligor shall have provided, in form and substance satisfactory to Agent and each Lender, all documentation and other information as Agent or any Lender deems appropriate in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the Patriot Act and Beneficial Ownership Regulation. If any Obligor qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, it shall have provided a Beneficial Ownership Certification to Agent and Lenders in relation to such Obligor.

For purposes of determining compliance with the conditions specified in this **Section 6.1**, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable to a Lender or Agent unless Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

6.2 Conditions Precedent to All Credit Extensions. Agent, Issuing Bank and Lenders shall not be required to fund any Loans, arrange for issuance of any Letters of Credit or otherwise extend credit to or for the benefit of Borrowers, unless the following conditions are satisfied:

(a) No Default or Event of Default shall exist at the time of, or result from, such funding, issuance or extension;

(b) The representations and warranties of each Obligor in the Loan Documents shall be true and correct in all material respects (or, with respect to representations and warranties qualified by materiality, in all respects) on the date of, and upon giving effect to, such funding, issuance or grant (except for representations and warranties that expressly relate to an earlier date which shall be true and correct in all material respects or all respects, as applicable, as of such earlier date);

(c) Availability of not less than the amount of the proposed Borrowing shall exist; and

(d) With respect to issuance of a Letter of Credit, the LC Conditions shall be satisfied.

Each request (or deemed request) by Borrowers for funding of a Loan, issuance of a Letter of Credit or extension of credit shall constitute a representation by Borrowers that the foregoing conditions are satisfied on the date of such request and on the date of such funding, issuance or grant.

7. COLLATERAL.

7.1 Grant of Security Interest. To secure the prompt payment and performance of all Obligations (including all Obligations of the Guarantors), each U.S. Domiciled Obligor hereby grants to Agent, for the benefit of the Secured Parties, or confirms that Agent already possesses, a continuing

security interest in and Lien upon all of the following Property of such Obligor, whether now owned or hereafter acquired, and wherever located:

- (a) all Accounts;
- (b) all Chattel Paper, including electronic chattel paper;
- (c) all Commercial Tort Claims;
- (d) all Deposit Accounts, Commodities Accounts and Securities Accounts, including all cash, marketable securities, securities entitlements, financial assets and other funds held in or on deposit in any of the foregoing;
- (e) all Documents and rental contracts;
- (f) all General Intangibles (including payment intangibles and Intellectual Property) and all rights under Hedging Agreements;
- (g) all Goods (including Inventory, Equipment and machinery);
- (h) all Instruments;
- (i) all Investment Property;
- (j) all Letter-of-Credit Rights;
- (k) all Supporting Obligations;
- (l) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender, including any Cash Collateral;
- (m) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and
- (n) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing.

Notwithstanding the foregoing, no security interest is being granted to Agent under this **Section 7.1** in any Excluded Asset; provided that Excluded Assets shall not include any proceeds, products, substitutions or replacements of Excluded Assets, including monies due or to become due to an Obligor (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Assets). Notwithstanding the foregoing, Agent may grant exceptions to the requirement for the creation or perfection of Liens in particular Property if, in the reasonable judgment of Agent, the costs or consequences of such creation or perfection will be excessive in view of the benefits to be obtained from the Secured Parties therefrom.

7.2 Lien on Deposit Accounts; Cash Collateral.

7.2.1 Deposit Accounts. To further secure the prompt payment and performance of its Obligations, each U.S. Domiciled Obligor hereby grants to Agent, or confirms that Agent already possesses, a continuing security interest in and Lien upon all amounts credited to any Deposit Account of such U.S. Domiciled Obligor, including sums in any blocked, lockbox, sweep or collection account. Each Obligor hereby authorizes and directs each bank or other depository to deliver to Agent, upon request, all balances in any Deposit Account maintained for such Obligor, without inquiry into the authority or right of Agent to make such request.

7.2.2 Cash Collateral. Any Cash Collateral may be invested, at Agent's discretion (and with the consent of the applicable Borrower Agent, as long as no Event of Default under **Section 11.1(a)** or **11.1(h)** exists), but Agent shall have no duty to do so, regardless of any agreement or course of dealing with any Obligor, and shall have no responsibility for any investment or loss. To further secure the prompt payment and performance of all Obligations, each U.S. Domiciled Obligor hereby grants to Agent, for the benefit of the Secured Parties, or confirms that Agent already possesses, a continuing security interest in and Lien upon all Cash Collateral of such U.S. Domiciled Obligor from time to time and all proceeds thereof, whether such Cash Collateral is held in a Cash Collateral Account or otherwise. The Foreign Domiciled Obligors shall grant Liens to Security Trustee on Cash Collateral pursuant to the relevant Security Documents. Agent and Security Trustee may apply Cash Collateral of an Obligor to the payment of any Obligations first to the Obligations for which such Cash Collateral Account was established or otherwise in accordance with **Section 5** hereof. Each Cash Collateral Account and all Cash Collateral shall be under the sole dominion and control of Agent and Security Trustee. No Obligor or other Person claiming through or on behalf of any Obligor shall have any right to any Cash Collateral, until Full Payment of all Obligations.

7.3 Pledged Collateral.

7.3.1 Pledged Equity Interests and Debt. As security for the payment or performance, as the case may be, in full of all Obligations, each U.S. Domiciled Obligor hereby assigns and pledges to Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to Agent, its successors and assigns, for the benefit of the Secured Parties, or confirms that Agent already possesses, a security interest in all of such U.S. Domiciled Obligor's right, title and interest in, to and under (i) the Equity Interests now owned or at any time hereafter acquired by such U.S. Domiciled Obligor (other than to the extent constituting an Excluded Asset), including the Equity Interests set forth on **Schedule 7.3**, and all certificates and other instruments representing such Equity Interests (collectively, the "**Pledged Equity Interests**"); (ii) the debt instruments now owned or at any time hereafter acquired by such U.S. Domiciled Obligor, including the debt instruments set forth on **Schedule 7.3**, and all promissory notes and other instruments evidencing such debt instruments (collectively, the "**Pledged Debt**"); (iii) all other Property that may be delivered to and held by Agent pursuant to the terms of this Section; (iv) subject to **Section 7.3.5**, all payments of principal or interest, dividends, cash, instruments and other Property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the Equity Interests and instruments referred to in **clauses (i), (ii) and (iii)** above; (v) subject to **Section 7.3.5**, all rights and privileges of such U.S. Domiciled Obligor with respect to the Equity Interests, instruments and other Property referred to in **clauses (i), (ii), (iii) and (iv)** above; and (vi) all proceeds of any and all of the foregoing (the items referred to in **clauses (i) through (vi)** above being collectively referred to as the "**Pledged Collateral**").

7.3.2 Delivery of the Pledged Collateral. Subject to the Intercreditor Agreement:

(a) Each of the U.S. Domiciled Obligors agrees to deliver or cause to be delivered to Agent any and all tangible Pledged Collateral constituting Pledged Equity at every time owned by such U.S. Domiciled Obligor promptly following its acquisition thereof.

(b) Each of the U.S. Domiciled Obligors will cause all Debt that, in each case, is owing to such Obligor and exceeds \$1,000,000 and which is evidenced by a promissory note, to be pledged and delivered to Agent pursuant to the terms hereof.

(c) Upon delivery to Agent, (s) any Pledged Equity Interests shall be accompanied by undated transfer powers duly executed by the applicable U.S. Domiciled Obligor in blank or other instruments of transfer satisfactory to Agent and by such other instruments and documents as Agent may reasonably request and (t) all other Property comprising part of the Pledged Collateral which is required to be delivered hereunder shall be accompanied by undated proper instruments of assignment duly executed by the applicable U.S. Domiciled Obligor in blank and by such other instruments and documents as Agent may reasonably request. Each delivery of Pledged Collateral after the date hereof shall be accompanied by a schedule describing the Pledged Collateral so delivered, which schedule shall be attached to **Schedule 7.3** and made a part hereof; provided that failure to attach any such schedule hereto or any error in a schedule so attached shall not affect the validity of the pledge of any Pledged Collateral.

7.3.3 Pledge Related Representations, Warranties and Covenants. Each of the U.S. Domiciled Obligors hereby represents, warrants and covenants to Agent and the Secured Parties that:

(a) **Schedule 7.3** sets forth a true and complete list, as of the Closing Date, of (i) all the Pledged Equity Interests owned by such U.S. Domiciled Obligor and the percentage of the issued and outstanding units of each class of the Equity Interests of the issuer thereof represented by the Pledged Equity Interests owned by such U.S. Domiciled Obligor and required to be pledged hereunder and (ii) all debt owned by such U.S. Domiciled Obligor in excess of \$1,000,000 to the extent evidenced by promissory notes or other instruments. **Schedule 7.3** sets forth, as of the Closing Date, all Equity Interests, debt and promissory notes required to be pledged hereunder.

(b) The Pledged Equity Interests and Pledged Debt have been duly and validly authorized and issued by the issuers thereof and (i) in the case of Pledged Equity Interests, are fully paid and nonassessable (to the extent such concepts are applicable) and (ii) in the case of Pledged Debt, are, to the knowledge of U.S. Domiciled Obligors, legal, valid and binding obligations of the issuers thereof, subject to applicable debtor relief laws and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law).

(c) Except for the security interests granted hereunder, such U.S. Domiciled Obligor (i) is, as of the Closing Date, the direct owner, beneficially and of record, of the Pledged Collateral listed on **Schedule 7.3** as being owned by it, (ii) holds the same free and clear of all Liens (other than Permitted Liens or transfers or dispositions permitted under this Agreement), (iii) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral (other than Permitted Liens or transfers or dispositions permitted under this Agreement) and (iv) will defend its title or interest

thereto or therein against any and all Liens (other than Permitted Liens or transfers or dispositions permitted under this Agreement), however arising, of all Persons whomsoever.

(d) Each of the U.S. Domiciled Obligors has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated.

(e) No Governmental Approval or any other action by any Governmental Authority and no consent or approval of any securities exchange or any other Person (including stockholders, partners, members or creditors of the applicable Obligor) is or will be required for the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect).

(f) By virtue of the execution and delivery by each U.S. Domiciled Obligor of this Agreement (or a supplement or joinder to this Agreement) or, when any Pledged Collateral of any such U.S. Domiciled Obligor is delivered to Agent (or its gratuitous bailee) in accordance with this Agreement, Agent will obtain a legal, valid and perfected lien upon and security interest in such Pledged Collateral as security for the payment and performance of the Obligations.

7.3.4 Registration in Nominee Name; Denominations. Agent shall have the right (in its sole and absolute discretion) to hold the Pledged Collateral in its own name as pledgee, in the name of its nominee (as pledgee or as sub-agent) or in the name of the applicable U.S. Domiciled Obligor, endorsed or assigned in blank or in favor of Agent. Agent shall at all times after the occurrence and during the continuance of an Event of Default, have the right to exchange the certificates representing Pledged Collateral for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

7.3.5 Voting Rights; Dividends and Interest.

(a) Unless and until an Event of Default shall have occurred and be continuing and Agent shall have notified U.S. Borrower Agent that the U.S. Domiciled Obligors' rights under this Section are being suspended:

(i) Each of the U.S. Domiciled Obligors shall be entitled to exercise any and all voting and other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement and the other Loan Documents; provided that such rights and powers shall not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral or the rights and remedies of Agent or any other Secured Party under this Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same.

(ii) Agent shall execute and deliver to each U.S. Domiciled Obligor, or cause to be executed and delivered to it, all such proxies, powers of attorney and other instruments as such U.S. Domiciled Obligor may reasonably request for the purpose of enabling such U.S. Domiciled Obligor to exercise the voting and other consensual rights and powers it is entitled to exercise pursuant to **paragraph (i)** above.

(iii) Each of the U.S. Domiciled Obligors shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of its Pledged Collateral to the extent and only to the extent that

such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of this Agreement, the other Loan Documents and Applicable Laws; provided that any noncash dividends, interest, principal or other distributions that would constitute Pledged Equity Interests or Pledged Debt, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Collateral or received in exchange for Pledged Collateral or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Pledged Collateral and, if received by such Obligor, shall be held in trust for the benefit of Agent, shall be segregated from other Property or funds of such Obligor and shall be forthwith delivered to Agent upon demand in the same form as so received (with any necessary endorsement).

(b) Upon the occurrence and during the continuance of an Event of Default, after Agent shall have notified U.S. Borrower Agent of the suspension of each of the U.S. Domiciled Obligors' rights under **paragraph (a)(iii)** of this Section, all rights of each of the U.S. Domiciled Obligors to dividends, interest, principal or other distributions that such U.S. Domiciled Obligor is authorized to receive pursuant to **paragraph (a)(iii)** of this Section shall cease, and all such rights shall thereupon become vested in Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions. All dividends, interest, principal or other distributions received by any U.S. Domiciled Obligor contrary to the provisions of this Section shall be held in trust for the benefit of Agent, shall be segregated from other Property or funds of such U.S. Domiciled Obligor and shall be forthwith delivered to Agent upon demand in the same form as so received (with any necessary endorsement). Any and all money and other Property paid over to or received by Agent pursuant to the provisions of this paragraph shall be retained by Agent in an account to be established by Agent upon receipt of such money or other Property, shall be held as security for Obligations and shall be applied in accordance with the provisions of **Section 5.5**.

(c) Upon the occurrence and during the continuance of an Event of Default, after Agent shall have notified U.S. Borrower Agent of the suspension of the U.S. Domiciled Obligors' rights under **paragraph (a)(i)** of this Section, all rights of each of the U.S. Domiciled Obligors to exercise the voting and other consensual rights and powers it is entitled to exercise pursuant to **paragraph (a)(i)** of this Section, and the obligations of Agent under **paragraph (a)(ii)** of this Section, shall cease, and all such rights shall thereupon become vested in Agent, which shall have the sole and exclusive right and authority to exercise such voting and other consensual rights and powers; provided that, unless otherwise directed by the Required Lenders, Agent shall have the right from time to, in its sole discretion, notwithstanding the continuance of an Event of Default, to permit such Obligor to exercise such rights and powers.

7.4 Other Collateral.

7.4.1 Commercial Tort Claims. U.S. Borrower Agent shall promptly notify Agent in writing if any U.S. Domiciled Obligor has a Commercial Tort Claim (other than, as long as no Default or Event of Default exists, a Commercial Tort Claim for less than \$2,500,000), and shall take such actions as Agent deems reasonably appropriate to subject such claim to a duly perfected, first priority Lien in favor of Agent.

7.4.2 Certain After-Acquired Collateral. The applicable Borrower Agent shall promptly notify Agent in writing if, after the Closing Date, any Obligor obtains any interest in any Collateral consisting of (a)(i) Deposit Accounts (other than Excluded Deposit Accounts), (ii) Securities Accounts, or (iii) Commodities Accounts, (b) Chattel Paper, Documents, Instruments, Investment Property, or Letter-of-Credit Rights with a value in excess of \$1,000,000, or (c) Intellectual Property (provided that U.S. Borrower Agent shall be deemed to have complied with this clause (c) to the extent that it has delivered notice of such interest in Intellectual Property as part of the Compliance Certificate delivered to Agent) and, upon Agent's or Security Trustee's request, shall promptly take such actions as Agent or Security Trustee deems reasonably appropriate to effect Agent's or Security Trustee's duly perfected Lien upon such Collateral, including obtaining any appropriate possession, control agreement or Lien Waiver.

7.5 Limitations. The Lien on Collateral granted hereunder is given as security only and shall not subject Agent, Security Trustee or any Lender to, or in any way modify, any obligation or liability of Obligor relating to any Collateral. In no event shall the grant of any Lien under any Loan Document secure an Excluded Swap Obligation of the granting Obligor.

7.6 Further Assurances. All Liens granted to Agent under the Loan Documents by Obligor are for the benefit of the Secured Parties subject, in the case of the Specified Foreign Domiciled Obligor and pledges of Equity Interests in Subsidiaries by Foreign Borrowers, to **Section 5.11**. Promptly upon request, Obligor shall deliver such instruments and agreements, and shall take such actions, as Agent or Security Trustee deems reasonably appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Obligor authorizes Agent to file any financing statement that describes the Collateral as "all assets" or "all personal property" of such Obligor, or words to similar effect, and ratifies any action taken by Agent or Security Trustee before the Closing Date to effect or perfect its Lien on any Collateral.

7.7 Excluded Creation and Perfection Actions. Notwithstanding anything to the contrary set forth herein or in any other Loan Document, no Property of any Specified Foreign Domiciled Obligor will secure the U.S. Facility Obligations (other than the Foreign Facility Obligations) unless such Specified Foreign Domiciled Obligor has expressly guaranteed the U.S. Facility Obligations. The creation or perfection of Liens in particular Property will not be required if, in the reasonable judgment of Agent, the costs or consequences of such creation or perfection will be excessive in view of the benefits to be obtained by the Secured Parties therefrom. In addition, Agent and Security Trustee shall not require local law security in jurisdictions in which no Obligor is incorporated, formed, organized or otherwise does business other than as may be required under **Section 8.2.4** or in respect of any Accounts pursuant to the definition of Eligible Account Debtor Jurisdiction.

7.8 Intercreditor. Notwithstanding the foregoing or anything contained herein or in any other Loan Document to the contrary, it is understood and agreed that to the extent that the Term Loan Agent is satisfied with or agrees to any deliveries in respect of any Collateral (other than ABL Facility Priority Collateral), Agent shall be deemed to be satisfied with such deliveries to the extent substantially the same as those delivered to the Term Loan Agent. So long as the Intercreditor Agreement is in effect, a U.S. Domiciled Obligor may satisfy its obligations hereunder and under the other Loan Documents to deliver Collateral that is not ABL Facility Priority Collateral to Agent by delivering such to the Term Loan Agent or its agent, designee or bailee.

8. COLLATERAL ADMINISTRATION.

8.1 Borrowing Base Certificates. By the second Wednesday of each calendar month, U.S. Borrower Agent shall deliver to Agent (and Agent shall promptly deliver same to Lenders) a Borrowing Base Certificate with respect to the Total Borrowing Base, the U.S. Borrowing Base and the Foreign Borrowing Base (including information regarding any retention of title from vendors to Foreign Borrowers), in each case, prepared as of the close of business of the previous month; provided that U.S. Borrower Agent will be required to furnish Borrowing Base Certificates by the Wednesday following the end of each calendar week prepared as of the end of such calendar week during which Total Excess Availability (with the Total Borrowing Base determined by reference to the most recently delivered Borrowing Base Certificate) is less than the greater of (x) 12.5% of the Total Borrowing Base and (y) \$25,000,000 at any time, and continuing until the calendar week following the date that, at all times for 30 consecutive days, Total Excess Availability has exceeded the threshold set forth above; provided, further, that U.S. Borrower Agent will be required to furnish pro forma Borrowing Base Certificates (i) concurrently with any Asset Disposition of ABL Facility Priority Collateral (other than Asset Dispositions permitted under **Section 10.2.5(a)** through **(c)**, **(g)**, and **(i)** through **(k)**) in excess of \$1,000,000 and (ii) within five Business Days following any casualty or condemnation relating to the loss of or destruction of Inventory in an amount equal to or exceeding \$10,000,000. In connection with the delivery of each Borrowing Base Certificate and at all other times that Agent or Security Trustee, in its sole discretion, requires, each Dutch Borrower owning receivables not yet subject to a Dutch Security Agreement in favor of Security Trustee shall execute a supplemental pledge in favor of Security Trustee of all such receivables, which supplemental pledge shall be submitted to the local Dutch tax office. U.S. Borrower Agent may deliver updates to the Foreign Allocated U.S. Availability component of the Foreign Borrowing Base (x) when no Cash Dominion Event is continuing, once per calendar week and (y) at such other times as Agent may agree in its discretion. Foreign Borrower Agent may deliver updates to the U.S. Allocated Foreign Availability component of the U.S. Borrowing Base (x) when no Cash Dominion Event is continuing, once per calendar week and (y) at such other times as Agent may agree in its discretion. The inclusion of Accounts and Inventory as eligible on any Borrowing Base Certificate shall constitute a representation and warranty by Borrowers that the eligibility criteria therefor are satisfied. All calculations of Total Excess Availability and Availability in any Borrowing Base Certificate shall originally be made by U.S. Borrower Agent and certified by a Senior Officer, provided that Agent may from time to time review and adjust any such calculation (a) to reflect its reasonable estimate of declines in value of any Collateral, due to collections received in the Dominion Account or otherwise; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting Collateral; and (c) to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Availability Reserve.

8.2 Administration of Accounts.

8.2.1 Records and Schedules of Accounts. Each Borrower shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to Agent sales, collection, reconciliation and other reports in form satisfactory to Agent, on such periodic basis as Agent may reasonably request (but not, so long as no Cash Dominion Event is continuing, more than once per calendar month). U.S. Borrower Agent shall provide to Agent, on or before the second Wednesday of each calendar month, a summary aged trial balance by Account Debtor of all Accounts of Borrowers as of the end of the preceding month. Promptly following Agent's request therefor, U.S. Borrower Agent shall also provide to Agent (a) proof of invoice delivery, copies of invoices and invoice registers, copies of related documents, repayment histories, status reports and other information as Agent may reasonably request and (b) a detailed aged trial balance by Account Debtor of all Accounts of

Borrowers as of the end of the preceding month, including each Account's Account Debtor name and address, amount, invoice date and due date and showing any discount, allowance, credit, authorized return or dispute. If Accounts in an aggregate face amount of \$2,000,000 or more cease to be Eligible Accounts, the applicable Borrower(s) or Borrower Agent shall notify Agent of such occurrence promptly (and in any event within one Business Day) after any Borrower has knowledge thereof.

8.2.2 Taxes. If an Account of any Borrower includes a charge for any Taxes, Agent is authorized, in its discretion if such Borrower has not paid such Taxes when due and an Event of Default or a Cash Dominion Event has occurred and is continuing, to pay the amount thereof to the proper taxing authority for the account of such Borrower and to charge such Borrower therefor; provided, however, that neither Agent nor Lenders shall be liable for any Taxes that may be due from Borrowers or with respect to any Collateral.

8.2.3 Account Verification. Whether or not a Default or Event of Default exists, Agent shall have the right at any time, in the name of Agent, any designee of Agent or any Obligor, to verify the validity, amount or any other matter relating to any Accounts of Obligors by mail, telephone or otherwise. Obligors shall cooperate fully with Agent in an effort to facilitate and promptly conclude any such verification process.

8.2.4 Maintenance of Dominion Accounts. Obligors shall maintain Dominion Accounts pursuant to lockbox or other arrangements acceptable to Agent. Obligors shall obtain an agreement (in form and substance satisfactory to Agent) from each lockbox servicer and Dominion Account bank, establishing Agent's or Security Trustee's control over and Lien in the lockbox or Dominion Account, requiring immediate deposit of all remittances received in the lockbox to a Dominion Account, and waiving offset rights of such servicer or bank, except for customary administrative charges; provided that, except as provided below with respect to UK Domiciled Obligors, Dominion Accounts will be subject to springing dominion and are not required to be subject to full dominion unless and until a Cash Dominion Event is in effect. Dominion Accounts for UK Domiciled Obligors shall be subject to a fixed charge and under the sole dominion and exclusive control of Agent (or European Security Trustee) whether or not a Cash Dominion Event exists; provided that collected funds will, in the discretion of Agent, either be disbursed from such Dominion Accounts to an operating account of one of such UK Domiciled Obligors or be applied to the Obligations of Foreign Domiciled Obligors. Each UK Domiciled Obligor and Dutch Domiciled Obligor shall continue to maintain Dominion Accounts (subject to (a) a fixed charge (in the case of each UK Domiciled Obligor) or (b) a floating charge (in the case of each Dutch Domiciled Obligor) in favor of Agent or European Security Trustee) at Bank of America (London) for collection of Accounts from its Account Debtors. If a Dominion Account for U.S. Domiciled Obligors is not maintained with Bank of America, Agent may, during the existence of any Cash Dominion Event, require such account to be subject to the exclusive control of Agent and immediate transfer of all cash receipts in such account to a Dominion Account maintained with Bank of America. If a Dominion Account for any of the Australian Domiciled Obligors is not maintained with Bank of America or Bank of America (Australia), Agent (or Australian Security Trustee) may, during the existence of any Cash Dominion Event, require such account to be subject to the exclusive control of Agent (or Australian Security Trustee) and immediate transfer of all cash receipts in such account to a Dominion Account maintained with Bank of America or Bank of America (Australia). Promptly upon request, Obligors shall deliver such instruments and agreements, and shall take such actions, as Agent or the applicable Security Trustee deems reasonably appropriate under Applicable Law to evidence or perfect its Lien on any collection accounts maintained outside of Australia, the Netherlands, the UK and the U.S., or otherwise to give effect to the intent of this Agreement. Agent, Security Trustee and Lenders assume no responsibility

to Obligor for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

8.2.5 Proceeds of Collateral; Cash Pooling. Obligor shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral (limited, in the case of U.S. Obligor, to ABL Facility Priority Collateral) are made directly to a Dominion Account (or a lockbox relating to a Dominion Account). If any Obligor receives cash or Payment Items with respect to any Collateral (limited, in the case of U.S. Obligor, to ABL Facility Priority Collateral), it shall hold same in trust for Agent or Security Trustee and promptly (not later than the next Business Day) deposit same into a Dominion Account. Cash pooling arrangements for Foreign Domiciled Obligor shall be structured and documented in a manner reasonably satisfactory to Agent and Security Trustee; provided that, in order for any Foreign Restricted Subsidiary to participate in any cash pooling arrangements, either (x) such Foreign Restricted Subsidiary must be a Foreign Facility Guarantor or (y) the debits and credits of such Foreign Restricted Subsidiary are readily identifiable, and any Investment therein is permitted by **Section 10.2.4**; provided, further, that Agent confirms (assuming compliance with the first proviso of this sentence) the cash pooling arrangements of the Foreign Domiciled Obligor as of the Closing Date are reasonably satisfactory to Agent and Security Trustee.

8.3 Administration of Inventory.

8.3.1 Records and Reports of Inventory. Each Obligor shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and shall submit to Agent inventory and reconciliation reports in form satisfactory to Agent, on such periodic basis as Agent may reasonably request (but not, so long as no Cash Dominion Event is continuing, more than once per calendar month). Each Obligor shall conduct periodic cycle counts consistent with historical practice, and shall provide to Agent such supporting information as Agent may request.

8.3.2 Returns of Inventory. No Obligor shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default, Event of Default or Overadvance exists or would result therefrom; (c) Agent is promptly notified if the aggregate Value of all Inventory returned in any month exceeds \$2,000,000; and (d) during a Cash Dominion Event, any payment received by an Obligor for a return is promptly remitted to Agent for application to the Obligations.

8.3.3 Acquisition, Sale and Maintenance. No Obligor shall acquire or accept any Inventory on consignment or approval, and shall take all steps to assure that all Inventory is produced in accordance with Applicable Law, including the FLSA. No Obligor shall sell any Inventory on consignment or approval or any other basis under which the customer may return or require an Obligor to repurchase such Inventory. Obligor shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all Applicable Law, and shall make current rent payments (within applicable grace periods provided for in leases) at all locations where any material portion of the Collateral constituting Inventory is located.

8.4 Administration of Deposit Accounts. **Schedule 8.5** sets forth, as of the Closing Date, all Deposit Accounts maintained by Obligor, including all Dominion Accounts. Each Obligor shall take all actions necessary to establish Agent's or Security Trustee's control of each such Deposit Account (other than an Excluded Deposit Account and any other Deposit Account with less than \$1,000,000 on deposit therein at all times since the Closing Date on an individual basis (but not to exceed \$5,000,000 on deposit therein for all such other Deposit Accounts at any time on an aggregate basis)). All Dominion Accounts

shall be subject to Agent's or Security Trustee's control pursuant to **Section 8.2.4**. Each Obligor shall be the sole account holder of each Deposit Account and shall not allow any other Person (other than Agent or Security Trustee) to have control over a Deposit Account or any Property deposited therein. Each Obligor shall promptly notify Agent of any opening or closing of a Deposit Account.

8.5 General Provisions.

8.5.1 Location of Collateral. All Inventory, other than Inventory (x) with a value of less than \$1,000,000, or (y) in transit, shall at all times be kept by Obligors at the business locations set forth in **Schedule 8.5.1**, except that Obligors may (a) make sales or other dispositions of Collateral in accordance with **Section 10.2.5**; (b) in the case of any U.S. Domiciled Obligor, move Collateral to another location in the U.S.; (c) in the case of any Dutch Domiciled Obligor, move Collateral to another location in the Netherlands; (d) in the case of any UK Domiciled Obligor, move Collateral to another location in England and Wales or Northern Ireland; and (e) in the case of any Australian Domiciled Obligor, move Collateral to another location in Australia; provided that in the case of **clauses (b), (c), (d) and (e)**, the applicable Borrower Agent (i) shall provide ten (10) days prior written notice to Agent of any new locations (or such lesser time as Agent may agree) and (ii) shall take such actions as may be reasonably requested by Agent to ensure that Agent or Security Trustee, as applicable, has a perfected first priority security interest in and Lien on such Collateral.

8.5.2 Insurance of Collateral; Condemnation Proceeds.

(a) Each Obligor shall maintain insurance as to the Collateral covering liabilities, losses or damage as customarily are insured against by other Persons engaged in the same or similar businesses. All such policies of insurance shall be with financially sound insurance companies (other than in respect of any self-insurance which Borrowers believe (in the good faith judgment of management of Borrowers) is reasonable and prudent in light of the size and nature of their business) and in such amounts (after giving effect to any self-insurance maintained consistent with the standards provided for herein) as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event, as to any ABL Facility Priority Collateral (or Collateral of the Foreign Domiciled Obligors in the nature of ABL Facility Priority Collateral), in amounts, adequacy and scope reasonably satisfactory to Agent (and Agent acknowledges that based on the information provided to it on or prior to the date hereof with respect thereto, as to insurance coverage for the ABL Facility Priority Collateral in effect on the date hereof, the amounts, adequacy and scope are reasonably satisfactory to it). From time to time upon request, Obligors shall deliver to Agent the originals or certified copies of its insurance policies and updated flood plain searches. Unless Agent shall agree otherwise (giving due consideration to what is commercially available in the insurance market), each policy shall include satisfactory endorsements (i) showing Agent as lender's loss payee with respect to any policies of property insurance; (ii) providing notice of cancellation; and (iii) specifying that the interest of Agent shall not be impaired or invalidated by any act or neglect of any Obligor or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. If any Obligor fails to provide and pay for any insurance, Agent may, at its option, but shall not be required to, procure the insurance and charge Obligors therefor. While no Event of Default exists, Obligors may settle, adjust or compromise any insurance claim. If an Event of Default exists, upon notice by Agent to Obligors that such rights are being suspended, only Agent shall be authorized to settle, adjust and compromise such claims.

(b) During the continuance of any Cash Dominion Event, any proceeds of insurance (other than proceeds from workers' compensation, fiduciary insurance or D&O insurance) and/or any awards arising from condemnation of any Collateral (or, in the case of U.S. Obligors, solely from any ABL Facility Priority Collateral) in excess of \$1,000,000 per occurrence shall be paid to Agent, and any such proceeds or awards that relate to Inventory or business interruption shall be applied to payment of the Loans and then to the other Obligations.

8.5.3 Protection of Collateral. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral of an Obligor, all Taxes payable with respect to any Collateral of an Obligor (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral of an Obligor, shall be borne and paid by Obligors (subject to **Section 5.11**). Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Obligors' sole risk.

8.5.4 Defense of Title. Each Obligor shall defend its title to Collateral and Agent's Liens therein against all Persons, claims and demands, except Permitted Liens.

8.6 Power of Attorney. Each Obligor hereby irrevocably (until Full Payment of the Obligations) constitutes and appoints Agent (and all Persons designated by Agent) as such Obligor's true and lawful attorney (and agent-in-fact) for the purposes provided in this Section. Agent, or Agent's designee, may, without notice and in either its or an Obligor's name, but at the cost and expense of Obligors (subject to **Section 5.11**):

(a) Endorse an Obligor's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent's possession or control; and

(b) During an Event of Default, (i) notify any Account Debtors of Obligors of the assignment of their Accounts, demand and enforce payment of Accounts of Obligors by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts of Obligors; (ii) settle, adjust, modify, compromise, discharge or release any Accounts of Obligors or other Collateral, or any legal proceedings brought to collect Accounts of Obligors or Collateral; (iii) sell or assign any Accounts of Obligors and other Collateral upon such terms, for such amounts and at such times as Agent deems advisable; (iv) collect, liquidate and receive balances in Deposit Accounts or Securities Accounts of Obligors, and take control, in any manner, of proceeds of Collateral; (v) prepare, file and sign an Obligor's name to a proof of claim or other document in a bankruptcy of an Account Debtor of such Obligor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to an Obligor, and notify postal authorities to deliver any such mail to an address designated by Agent; (vii) endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use an Obligor's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use information contained in any data processing, electronic or information systems relating to Collateral; (x) make and adjust claims under insurance policies; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which an Obligor is a beneficiary; and (xii) take all other actions as Agent deems appropriate to fulfill any Obligor's obligations under the Loan Documents.

9. REPRESENTATIONS AND WARRANTIES.

9.1 General Representations and Warranties. To induce Agent, the Lenders and the Issuing Banks to enter into this Agreement and to make available the Commitments, Loans and Letters of Credit, each Obligor represents and warrants that:

9.1.1 Organization and Qualification. Each of Parent and its Restricted Subsidiaries is duly organized or incorporated, validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation (to the extent such jurisdiction provides for the designation of entities organized or incorporated thereunder as existing in good standing). Each of Parent and its Restricted Subsidiaries is duly qualified, authorized to do business and in good standing as a foreign corporation in each jurisdiction where failure to be so qualified could reasonably be expected to have a Material Adverse Effect. U.S. Borrowers have filed and maintained effective (unless exempt from the requirements for filing) a current Business Activity Report with the appropriate Governmental Authority in such states that require such filings in order to enforce rights in or against Collateral or obligors of Collateral located in such jurisdictions. The information included in the Beneficial Ownership Certification most recently provided to Agent and the Lenders, if applicable, is true and correct in all respects as of the date of delivery thereof.

9.1.2 Power and Authority. Each Obligor is duly authorized to execute, deliver and perform its Loan Documents. The execution, delivery and performance of the Loan Documents have been duly authorized by all necessary action, and do not (a) require any consent or approval of any holders of Equity Interests of any Obligor, except those already obtained; (b) contravene the Organic Documents of any Obligor; (c) violate or cause a default under any Applicable Law or Material Contract; or (d) result in or require imposition of a Lien (other than Permitted Liens) on any Obligor's Property except, in the case of **clauses (c) and (d)**, as could not reasonably be expected to result in a Material Adverse Effect. In relation to the execution, delivery and performance of the Loan Documents by each Dutch Domiciled Obligor, any action required to comply with the Dutch Works Councils Act (*Wet op de ondernemingsraden*) has been duly undertaken and an unconditional positive advice (*advies*) from each competent works council has been obtained.

9.1.3 Enforceability. Each Loan Document is a legal, valid and binding obligation of each Obligor party thereto, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

9.1.4 Capital Structure. **Part (a)** of **Schedule 9.1.4** shows, as of the Closing Date, for each of Parent and each of its Subsidiaries, its name, jurisdiction of organization and holders of its Equity Interests. Each Obligor has good title to its Equity Interests in its Subsidiaries, subject only to Permitted Liens, and all such Equity Interests are duly issued, fully paid and non-assessable (to the extent such concepts are applicable). Except as disclosed on **Part (b)** of **Schedule 9.1.4**, there are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any of Parent's Restricted Subsidiaries.

9.1.5 Title to Properties; Priority of Liens. Each of Parent and each of its Restricted Subsidiaries has good and marketable title (except insofar as marketability may be limited by any laws or regulations of any Governmental Authority affecting such assets) to all of the Collateral and, with respect to its other assets and Property, as could not reasonably be expected to have a Material Adverse Effect, in each case free of Liens except Permitted Liens. All Liens of Agent in the Collateral are duly perfected,

first priority Liens, subject only to Permitted Liens that are expressly allowed to have priority over Agent's Liens.

9.1.6 Accounts. Agent may rely, in determining which Accounts are Eligible Accounts, on all statements and representations made by Borrowers with respect thereto. Borrowers warrant, with respect to each Account at the time it is shown as an Eligible Account in a Borrowing Base Certificate, that:

- (a) it is genuine and in all respects what it purports to be, and is not evidenced by a judgment;
- (b) it arises out of a completed, bona fide sale and delivery of goods or rendition of services in the Ordinary Course of Business, and substantially in accordance with any purchase order, contract or other document relating thereto;
- (c) it is for a sum certain, maturing as stated in the invoice covering such sale or rendition of services, a copy of which has been furnished or is available to Agent on request;
- (d) it is not subject to any offset, Lien (other than Agent's, Term Agent's or Security Trustee's Lien), deduction, defense, dispute, counterclaim or other adverse condition except as arising in the Ordinary Course of Business and disclosed to Agent; and it is absolutely owing by the Account Debtor, without contingency in any respect;
- (e) no purchase order, agreement, document or Applicable Law restricts assignment of the Account to Agent (regardless of whether, under the UCC or other Applicable Law, the restriction is ineffective), and the applicable Borrower is the sole payee or remittance party shown on the invoice;
- (f) no extension, compromise, settlement, modification, credit, deduction or return has been authorized with respect to the Account, except discounts or allowances granted in the Ordinary Course of Business for prompt payment that are reflected on the face of the invoice related thereto and in the reports submitted to Agent hereunder; and
- (g) to the best of Borrowers' knowledge, (i) there are no facts or circumstances that are reasonably likely to impair the enforceability or collectability of such Account; (ii) the Account Debtor had the capacity to contract when the Account arose, continues to meet the applicable Borrower's Credit and Collection Policies, is Solvent, is not contemplating or subject to an Insolvency Proceeding, and has not failed, or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against any Account Debtor that could reasonably be expected to have a material adverse effect on the Account Debtor's financial condition.

9.1.7 Financial Statements. The balance sheets, and related statements of income, cash flow and shareholder's equity, of Parent and its Restricted Subsidiaries that have been and are hereafter delivered to Agent and Lenders, are prepared in all material respects in accordance with GAAP, except as noted therein, and fairly present in all material respects the financial positions and results of operations of Parent and Restricted Subsidiaries at the dates and for the periods indicated subject, in the case of interim financial statements, to normal year-end adjustments and the absence of footnotes. All projections delivered from time to time to Agent and Lenders have been prepared in good faith, based on reasonable assumptions at the time prepared in light of the circumstances at such time (it being understood that no

assurance can be given that any particular projections will be realized, actual results may vary from such forecasts and that such variations may be material). Since December 31, 2020, there has been no change in the financial condition of Parent or its Restricted Subsidiaries, taken as a whole, that could reasonably be expected to have a Material Adverse Effect. Each Borrower is, and the Obligors and their Restricted Subsidiaries, taken as a whole, are Solvent.

9.1.8 Taxes. Parent and each of its Restricted Subsidiaries have timely filed all federal and other material tax returns and reports required to be filed by it, and have timely paid all federal and other material Taxes (whether or not shown on a tax return), including in its capacity as a withholding agent, levied or imposed upon it or its properties, income or assets otherwise due and payable, except (x) those which are being Properly Contested or (y) as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Neither Parent nor any Restricted Subsidiary has any knowledge of any proposed tax assessment against Parent or any Restricted Subsidiary that shall have or is reasonably likely to have a Material Adverse Effect. As of the Australian Borrower Activation Date, none of the Australian Domiciled Obligors is, or has ever been, a member of the GST Group.

9.1.9 Brokers. There are no brokerage commissions, finder's fees or investment banking fees payable in connection with any transactions contemplated by the Loan Documents.

9.1.10 Intellectual Property. Each of Parent and each of its Restricted Subsidiaries owns or has the lawful right to use all Intellectual Property necessary for the conduct of its business, without conflict with any rights of others, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. There is no pending or, to any Obligor's knowledge, threatened Intellectual Property Claim with respect to Parent, any of its Restricted Subsidiaries or any of their Property (including any Intellectual Property) which is reasonably likely to have a Material Adverse Effect.

9.1.11 Governmental Approvals. Each of Parent and each of its Restricted Subsidiaries has, is in compliance with, and is in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease and operate its Properties, except where noncompliance could not reasonably be expected to have a Material Adverse Effect. All necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and Parent and each of its Restricted Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a Material Adverse Effect.

9.1.12 Compliance with Laws. Each of Parent and each of its Restricted Subsidiaries has duly complied, and its Properties and business operations are in compliance, in all material respects with all Applicable Law, except where noncompliance could not reasonably be expected to have a Material Adverse Effect. No Inventory has been produced in the U.S. in violation of the FLSA.

9.1.13 Compliance with Environmental, Health or Safety Applicable Law. Except as could not reasonably be expected to have a Material Adverse Effect:

- (a) the operations of Parent and its Restricted Subsidiaries comply in all respects with all applicable Environmental, Health or Safety Applicable Law;
- (b) each of Parent and each Restricted Subsidiary has obtained all environmental, health and safety Permits necessary for its respective operations as currently conducted and Properties as currently used, and all such Permits are in good standing, and each of Parent and

each Restricted Subsidiary is currently in compliance with all terms and conditions of such Permits;

(c) Parent, its Restricted Subsidiaries and their respective present or past Property or operations are not subject to or the subject of any currently effective or ongoing judicial or administrative proceeding, order, judgment, decree, dispute, negotiations, agreement, or settlement respecting (i) any violation of or liability under any Environmental, Health or Safety Applicable Law, (ii) any Remedial Action, or (iii) any claims or liabilities and costs arising from the Release or threatened Release of a Contaminant into the environment;

(d) Neither Parent nor any Restricted Subsidiary has filed any notice under any Applicable Law: (i) reporting to any Person or Governmental Authority a Release of a Contaminant within the past three years; (ii) reporting under Section 103(c) of CERCLA, indicating past or present treatment, storage or disposal of a hazardous waste, as that term is defined under 40 C.F.R. Part 261 or any state equivalent; or (iii) reporting a violation of any applicable Environmental, Health or Safety Applicable Law or condition in any Permit under an Environmental, Health or Safety Applicable Law within the past three years;

(e) none of the present or, to any Obligor's knowledge, past Property of Parent or any Restricted Subsidiary is listed or proposed for listing on the National Priorities List ("**NPL**") pursuant to CERCLA or on the Comprehensive Environmental Response Compensation Liability Information System List ("**CERCLIS**") or any similar state list of sites requiring Remedial Action;

(f) neither Parent nor any Restricted Subsidiary has, to its knowledge, sent or directly arranged for the transport of any product, material or waste, to any current or proposed NPL site, or any site on any similar state list of sites requiring Remedial Action;

(g) there is not now in connection with or resulting from Parent or any Restricted Subsidiary's operations, nor, to any Obligor's knowledge, has there ever been on or in any of the current or former Property (i) any treatment, recycling, storage or disposal of any hazardous waste requiring a permit under 40 C.F.R. Parts 264 and 265 or any state equivalent, (ii) any solid waste landfill, waste pile, petroleum or hazardous waste, swamp, pit, pond, underground storage tank or surface impoundment, or (iii) a reportable or non-permitted Release to the environment of any Contaminant involving any polychlorinated biphenyls used in hydraulic oils, electrical transformers or other Equipment;

(h) to each of Parent's and each Restricted Subsidiary's knowledge, there have been no Releases of any Contaminants to the environment from any Property except (i) in compliance with Environmental, Health or Safety Applicable Law, or (ii) which have been addressed to the satisfaction of the appropriate Governmental Authorities;

(i) no Environmental Lien has attached to any Property;

(j) to the knowledge of each of Parent and each Restricted Subsidiary, none of its Property contains any asbestos-containing material or visible evidence of mold growth;

(k) none of the Property presently is subject to any Environmental Property Transfer Act, or to the extent such acts are presently applicable to any such Property, Parent and each of its Restricted Subsidiaries have fully complied with the requirements of such acts; and

(l) Parent and each of its Restricted Subsidiaries, taken as a whole, are not, and to their knowledge will not be, subject to liabilities and costs arising out of or relating to environmental, health or safety matters.

9.1.14 Burdensome Contracts. As of the Closing Date, except as set forth on **Schedule 9.1.14**, neither Parent nor any of its Restricted Subsidiaries is a party or subject to any contract, agreement or charter restriction that if violated would be known to have a Material Adverse Effect. As of the Closing Date, neither Parent nor any of its Restricted Subsidiaries is party or subject to any Restrictive Agreement which prohibits the execution, delivery or performance of any Loan Document by an Obligor.

9.1.15 Litigation. Except as shown on **Schedule 9.1.14**, there are no proceedings or investigations pending or, to any Obligor's knowledge, threatened against Parent or any of its Restricted Subsidiaries, or any of their businesses, operations or Properties, that (a) challenge the validity or enforceability of any of the Loan Documents or transactions contemplated thereby or (b) could reasonably be expected to have a Material Adverse Effect. Neither Parent nor any of its Restricted Subsidiaries is (1) in violation of any Applicable Law which violation has had or is reasonably likely to have a Material Adverse Effect or (2) in default with respect to any order, injunction or judgment of any Governmental Authority which default has had or could reasonably be expected to have a Material Adverse Effect.

9.1.16 No Defaults. No event or circumstance has occurred or exists that constitutes a Default or Event of Default. As of the Closing Date, neither Parent nor any of its Restricted Subsidiaries is in default, and no event or circumstance has occurred or exists that with the passage of time or giving of notice would constitute a default, under any Material Contract.

9.1.17 Employee Benefit Plans.

(a) ERISA. In relation to Plans subject to ERISA, except as disclosed on **Schedule 9.1.17** or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect:

(i) (A) Each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code, and other federal and state laws; (B) each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS, or is in the form of a pre-approved plan that is the subject of a favorable opinion letter from the IRS, or an application for such a determination or opinion letter is currently being processed by the IRS with respect thereto and, to the knowledge of Obligors, nothing has occurred which would reasonably be expected to prevent, or cause the loss of, such qualification; and (C) each Obligor and ERISA Affiliate has met all applicable requirements under the Code, ERISA and the Pension Protection Act of 2006, and no application for a waiver of the minimum funding standards or an extension of any amortization period has been made with respect to any Pension Plan.

(ii) (A) There are no pending or, to the knowledge of Obligors, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan; and (B) there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan.

(iii) (A) No ERISA Event has occurred or is reasonably expected to occur; (B) no Pension Plan has an Unfunded Pension Liability; (C) no Obligor or ERISA

Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (D) no Obligor or ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (E) no Obligor or ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

(b) Foreign Plans. Except as disclosed on **Schedule 9.1.17** or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, with respect to any Foreign Plan, (i) all employer and employee contributions required by law or by the terms of the Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices; (ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance, or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and (iii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities.

(c) UK Pension Plan.

(i) Except as disclosed on **Schedule 9.1.17**, no UK Domiciled Obligor is or has at any time during the last six years been (A) an employer (as defined for the purposes of sections 38 to 51 of the Pensions Act 2004(UK)) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act (1993)(UK)) or (B) “connected” with or an “associate” (as those terms are used in sections 38 and 43 of the Pensions Act 2004(UK)) of such an employer.

(ii) No UK Domiciled Obligor has been issued with a Financial Support Direction or Contribution Notice in respect of any pension scheme.

9.1.18 Reserved.

9.1.19 Labor Relations. Except as described on **Schedule 9.1.19**, there are no collective bargaining agreements covering the employees of Parent or any of its Restricted Subsidiaries as of the Closing Date, and there are no material grievances, disputes or controversies with any union or other organization of any of Parent or any of its Restricted Subsidiaries’ employees, or, to any Obligor’s knowledge, any asserted or threatened strikes or work stoppages.

9.1.20 Payable Practices. Neither Parent nor any of its Restricted Subsidiaries has made any material change in its historical accounts payable practices from those in effect on the Closing Date that would be materially adverse to the Lenders.

9.1.21 Not a Regulated Entity. No Obligor is (a) an “investment company” or a “person directly or indirectly controlled by or acting on behalf of an investment company” within the meaning of the Investment Company Act of 1940; (b) subject to regulation under the Federal Power Act, the

Interstate Commerce Act, any public utilities code or any other Applicable Law regarding its authority to incur Debt; or (c) has a license pursuant to the Dutch Financial Supervision Act.

9.1.22 Margin Stock. Neither Parent nor any of its Restricted Subsidiaries is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Loan proceeds or Letters of Credit will be used by Obligors to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose governed by Regulations T, U or X of the Board of Governors.

9.1.23 Sanctions. Neither Parent nor any of its Subsidiaries, nor to the knowledge of Parent or any of its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (a) currently the subject or target of any Sanctions, (b) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Bank List, or any similar list enforced by any other relevant sanctions authority or (c) located, organized or resident in a Designated Jurisdiction. This representation and warranty shall not be made by an Obligor to the extent that it would be in breach of, or conflict with Council Regulation (EC) No 2271/1996 of 22 November 1996 (as amended) (the "**EU Blocking Regulation**") or any law or regulation implementing the EU Blocking Regulation in any member state of the European Union or the United Kingdom.

9.1.24 UK Charges. Under the law of each Obligor's jurisdiction of incorporation it is not necessary that any UK Security Agreement be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar Tax be paid on or in relation to any UK Security Agreement or the transactions contemplated thereby, except (a) registration of particulars of each UK Security Agreement at the Companies Registration Office in England and Wales in accordance with Part 25 (Company Charges) of the Companies Act 2006 or any regulations relating to the registration of charges made under, or applying the provisions of, the Companies Act 2006, (b) filing, registration or recordation on a voluntary basis or as required in order to perfect the security interest created by any UK Security Agreement in any relevant jurisdiction and (c) in each case, payment of associated fees, stamp Taxes or mortgage duties.

9.1.25 Centre of Main Interests and Establishments. For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "**Regulation**"), each of the Foreign Domiciled Obligor's centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation and none of them have an "**establishment**" (as that term is used in *Article 2(h)* of the Regulation) in any other jurisdiction.

9.1.26 Pari Passu Ranking. Each Borrower's payment obligations under the Loan Documents rank at least pari passu with the claims of all its unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

9.1.27 Ranking. Each Security Document has or will have the ranking in priority which it is expressed to have therein and, other than as permitted under or contemplated by the Loan Documents (including with respect to Permitted Liens), it is not subject to any prior ranking or pari passu ranking Lien.

9.1.28 Receivables Sale Agreements. Each of the Receivables Sale Agreements constitutes a legal, valid and binding obligation of the parties thereto, enforceable against such parties in accordance with its terms and is in full force and effect. All Accounts originated by the Dutch Borrowers

have been sold and assigned to HY UK and will be sold and assigned to HY UK on a daily basis. With respect to Accounts originated by the Dutch Borrowers, at all times, and with respect to all Accounts originated by other Obligor subject to a Receivables Sale Agreement, at any time that such Accounts are included as Eligible Foreign Accounts, (A) all steps necessary to ensure that HY UK can exercise all of its rights under the Accounts transferred under the applicable Receivables Sale Agreement directly against the relevant account debtors have been taken, (B) the relevant account debtor has been notified of the transfer of such Accounts, (C) the proceeds of any such Accounts are paid into a Foreign Dominion Account and (D) to the extent required, the applicable Receivables Sale Agreement enables HY UK and Agent to effect transfers of the bare legal title of any Accounts to HY UK at agreed times in the future.

9.1.29 Australian Domiciled Obligors. If it is an Australian Domiciled Obligor, (a) the entering into and performance by it of its obligations under the Loan Documents to which it is expressed to be a party are for its commercial benefit and are in its commercial interests; and (b) the entry into and performance by it of its obligations under the Loan Documents to which it is a party do not contravene Part 2J.3 or Part 2E of the Australian Corporations Act.

9.1.30 Foreign Corrupt Practices Act. None of the Obligors or any of their Subsidiaries nor, to the knowledge of any Obligor, any director, officer, agent, employee or other person acting on behalf of such Obligor or any of its Subsidiaries have taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “**FCPA**”) or any other applicable anti-corruption law; and the Obligors and their Subsidiaries have instituted and maintain policies and procedures designed to ensure continued compliance therewith.

9.1.31 Commercial Tort Claims. As of the Closing Date, no U.S. Domiciled Obligor has a Commercial Tort Claim in excess of \$2,500,000.

9.2 Complete Disclosure. No Loan Document contains any untrue statement of a material fact, nor fails to disclose any material fact necessary to make the statements contained therein, in light of the circumstances under which and at the time at which they were made, taken as a whole, not materially misleading. There is no fact or circumstance that any Obligor has failed to disclose to Agent in writing that could reasonably be expected to have a Material Adverse Effect.

10. COVENANTS AND CONTINUING AGREEMENTS.

10.1 Affirmative Covenants. Obligors hereby covenant and agree that until the Commitments have terminated and Full Payment of all Obligations, each of them shall, and shall cause each Restricted Subsidiary to:

10.1.1 Inspections; Appraisals.

(a) Permit Agent from time to time, subject (except when a Default or Event of Default exists) to reasonable notice and normal business hours, to visit and inspect the Properties of Parent or any of its Restricted Subsidiaries, inspect, audit and make extracts from any of Parent’s or any of its Restricted Subsidiaries’ books and records (other than privileged correspondence with legal counsel), and discuss with its officers, employees, agents, advisors and independent accountants (with respect to independent accountants, in the presence of representatives of Obligors or otherwise with the consent of Parent) Parent’s or any of its Restricted Subsidiaries’ business, financial condition, assets, prospects and results of operations. Lenders may participate in any such visit or inspection, at their own expense. Neither Agent nor

any Lender shall have any duty to any Obligor to make any inspection, nor to share any results of any inspection, appraisal or report with any Obligor, except that Agent will share Inventory appraisals with Borrower Agents. Obligors acknowledge that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and Obligors shall not be entitled to rely upon them. Notwithstanding anything to the contrary in this **Section 10.1.1**, none of Parent nor any Restricted Subsidiary will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to Agent or any Lender (or their respective representatives or contractors) is prohibited by Applicable Law or any binding agreement or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product.

(b) Reimburse Agent for all charges, costs and expenses of Agent in connection with (i) examinations of any Obligor's books and records or any other financial or Collateral matters as Agent deems appropriate; and (ii) appraisals of Inventory; provided, that if no Default or Event of Default shall have occurred and be continuing, only one such examination and one such appraisal under the foregoing **clauses (i) and (ii)**, respectively, per Fiscal Year shall be conducted at Borrowers' expense (exclusive of any appraisals and examinations conducted pursuant to **Section 10.1.9**); provided, further, that if Total Excess Availability is less than the greater of (x) 15% of the Total Borrowing Base and (y) \$30,000,000 at any time during a Fiscal Year, one additional appraisal and one additional examination may be conducted at Borrowers' expense during such Fiscal Year (exclusive of any appraisals and field examinations conducted pursuant to **Section 10.1.9**). The foregoing shall not limit Agent's ability to perform additional appraisals or examinations at the sole expense of Borrowers upon the occurrence and continuance of a Default or Event of Default (or if a Default or Event of Default was in existence at the time such appraisal or examination was initiated). Borrowers agree to pay Agent's then standard charges for examination and appraisal activities, including the standard charges of Agent's internal examination and appraisal groups, as well as the charges of any third party used for such purposes.

10.1.2 **Financial and Other Information.** Keep adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP in all material respects reflecting all financial transactions; and furnish to Agent and Lenders:

(a) as soon as available, and in any event within 90 days after the close of each Fiscal Year, balance sheets as of the end of such Fiscal Year and the related statements of income, cash flow and shareholders' equity for such Fiscal Year, on a consolidated basis for Parent and its Subsidiaries, which consolidated statements shall be audited and certified (without a "going concern" or scope of audit qualification (other than with respect to an upcoming maturity date of Debt that is scheduled to occur within one year from the time such audit is delivered)) by Ernst & Young LLP or by another firm of independent certified public accountants of recognized standing selected by Parent and reasonably acceptable to Agent, and shall set forth in comparative form corresponding figures for the preceding Fiscal Year;

(b) as soon as available, and in any event within 45 days after the end of each of the first three Fiscal Quarters of Parent, an unaudited balance sheet as of the end of such Fiscal Quarter and the related statements of income and cash flow for such Fiscal Quarter and for the portion of the Fiscal Year then elapsed, on a consolidated basis for Parent and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year, certified by

a Financial Officer as prepared in accordance with GAAP and fairly presenting the financial position and results of operations for such Fiscal Quarter and period, subject to normal year-end adjustments and the absence of footnotes;

(c) at any time Total Excess Availability is less than the greater of (x) 20% of the Total Borrowing Base and (y) \$40,000,000, as soon as available, and in any event within 30 days after the end of each month (other than the last month of each Fiscal Quarter but including the last month of each Fiscal Year), an unaudited balance sheet as of the end of such month and the related statements of income and cash flow for such month and for the portion of the Fiscal Year then elapsed, on a consolidated basis for Parent and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by a Financial Officer as prepared in accordance with GAAP and fairly presenting the financial position and results of operations for such month and period, subject to normal yearend adjustments and the absence of footnotes;

(d) concurrently with the delivery of financial statements under clauses (a), (b) and (c) above, a Compliance Certificate executed by a Financial Officer;

(e) concurrently with delivery of financial statements under clause (a) above, copies of all management letters and other material reports submitted to Parent or its Restricted Subsidiaries by their accountants in connection with such financial statements;

(f) not later than March 31st of each Fiscal Year, and containing substantially the same types of financial information contained in the projections delivered pursuant to Section 6.1(l), the annual business plan for Parent and its Restricted Subsidiaries for such Fiscal Year and for each month in such Fiscal Year;

(g) at Agent's reasonable request, a listing of each Obligor's trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging, all in form reasonably satisfactory to Agent;

(h) promptly after the sending or filing thereof, copies of any proxy statements, financial statements or reports that Parent or any of its Restricted Subsidiaries has made generally available to its shareholders; copies of any regular, periodic and special reports or registration statements or prospectuses that Parent or any of its Restricted Subsidiaries files with the SEC or similar securities regulatory authority; and copies of any press releases or other statements made available by Parent or any of its Restricted Subsidiaries to the public concerning material changes to or developments in their business;

(i) promptly after the sending or filing thereof, copies of any annual report to be filed in connection with each Pension Plan, Foreign Plan (that is a defined benefit pension plan) and UK Pension Plan;

(j) promptly following receipt, a copy of any notice from the Pensions Regulator in which it proposes to take action which may result in the issuance of a Contribution Notice or Financial Support Direction in respect of any UK Pension Plan;

(k) such other reports and information (financial or otherwise) as Agent may reasonably request from time to time in connection with any Collateral or Parent's or any Restricted Subsidiary's financial condition or business; and

(l) concurrently with the delivery of the Compliance Certificate required pursuant to **Section 10.1.2(d)** (or more frequently in Borrowers' reasonable judgment), supplements, revisions or updates containing the information required by **Schedules 7.3, 8.4, 8.5.1, 9.1.4 or 9.1.19** to reflect changes to such schedules since the date of the most recent Compliance Certificate (or, prior to the delivery of the first Compliance Certificate, since the Closing Date); provided, that (i) no such supplements, revisions or updates to any such Schedule(s) shall be deemed to have cured any breach of warranty or misrepresentation occurring prior to the delivery of such revision or update by reason of the inaccuracy or incompleteness of any such Schedule(s) at the time such warranty or representation previously was made or deemed to be made and (ii) such Schedule(s) may only be updated to the extent that such related actions disclosed are otherwise not prohibited by this Agreement and other Loan Documents prior to such Schedule being supplemented, revised or updated.

Documents required to be delivered pursuant to **Sections 10.1.2(a), (b) or (h)** may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Parent or HYG posts such documents, or provides a link thereto on Parent's or HYG's website on the Internet; or (ii) on which such documents are posted on Parent's or HYG's behalf on an Internet or intranet website, if any, to which each Lender and Agent have access (whether a commercial, third-party website or whether sponsored by Agent); provided that: (i) Parent shall deliver paper copies of such documents to Agent or any Lender upon its request to Parent to deliver such paper copies until a written request to cease delivering paper copies is given by Agent or such Lender and (ii) Parent or HYG shall notify Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and, upon request by Agent, provide to Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Parent or HYG with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

10.1.3 Notices. Notify Agent and Lenders in writing, promptly after a Senior Officer of an Obligor obtains knowledge thereof, of any of the following that affects an Obligor: (a) the commencement of any proceeding or investigation by any Governmental Authority regarding any violation or asserted violation of any Applicable Law (including ERISA, OSHA, FLSA, or any Environmental, Health or Safety Applicable Law) which could reasonably be expected to have a Material Adverse Effect; (b) any material labor dispute, material strike or material walkout, or the expiration of any material labor contract; (c) the existence of any Default or Event of Default; (d) any judgment in an amount exceeding \$10,000,000 (net of insurance coverage therefor that has not been denied by the insurer); (e) the assertion of any Intellectual Property Claim which could reasonably be expected to have a Material Adverse Effect; (f) any Release by an Obligor or on any Property owned, leased or occupied by an Obligor or receipt of any Environmental Notice, in each case, which could reasonably be expected to have a Material Adverse Effect; (g) the occurrence of any ERISA Event which could reasonably be expected to result in liability in excess of \$10,000,000; (h) the discharge of or any withdrawal or resignation by Borrowers' independent accountants; and (i) any event that has resulted or could reasonably be expected to result in a Material Adverse Effect.

10.1.4 Landlord and Storage Agreements. Upon request, provide Agent with copies of all existing agreements, and, promptly after execution thereof, upon request provide Agent with copies of all future agreements between an Obligor and any landlord, warehouseman, processor, shipper, or bailee that owns or leases any premises at which any material Collateral is located.

10.1.5 Compliance with Laws. Comply with all Applicable Laws, including ERISA, Environmental, Health or Safety Applicable Law, FLSA, OSHA, AML Legislation, and laws regarding collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, in each case unless failure to comply (other than failure to comply with AML Legislation) or maintain could not reasonably be expected to have a Material Adverse Effect. No Obligor shall be required to comply with this covenant in relation to AML Legislation to the extent that it would be in breach of, or conflict with Council Regulation (EC) No 2271/1996 of 22 November 1996 (as amended) (the “**EU Blocking Regulation**”) or any law or regulation implementing the EU Blocking Regulation in any member state of the European Union or the United Kingdom.

10.1.6 Taxes; Australian Tax Consolidation.

(a) (i) Pay and discharge as the same shall become due and payable (A) all material Tax liabilities, assessments and governmental charges or levies imposed upon it or its properties or assets and (B) all material lawful claims which, if unpaid, would by law become a Lien upon its property and (ii) timely file all tax returns required to be filed, except (x) those which are being Properly Contested or (y) in the case of **clause (ii)**, as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(b) Each Australian Domiciled Obligor shall ensure that (i) so long as it is a member of a Tax Consolidated Group there is at all times a valid Tax Sharing Agreement for that Tax Consolidated Group (having regard to changes in the composition or activities of the Tax Consolidated Group); and (ii) it is not at any time liable for “group liability” (as such term is defined in Section 721-10 of the *Income Tax Assessment Act 1997* (Cth) of Australia) other than on a reasonable basis in accordance with the principles set out in Division 721 of the *Income Tax Assessment Act 1997* (Cth) of Australia (including as a result of tax consolidation or any tax sharing agreement), in each case except to the extent such Obligor is maintaining adequate reserves (in the good faith judgment of the management of such Obligor) with respect thereto and the failure to so comply could not reasonably be expected to result in a Material Adverse Effect.

(c) Each Australian Domiciled Obligor must ensure that it will not become a member of a GST Group unless the GST Group of which the Australian Domiciled Obligor becomes a member has at all times while the Australian Domiciled Obligor is a member a valid ITSA for that GST Group in a form and substance reasonably satisfactory to Agent, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

10.1.7 Insurance. In addition to the insurance required hereunder with respect to Collateral, maintain insurance covering liabilities, losses or damage as customarily are insured against by other Persons engaged in the same or similar businesses. All such policies of insurance shall be with financially sound insurance companies (other than in respect of any self-insurance which Borrowers believe (in the good faith judgment of management of Borrowers) is reasonable and prudent in light of the size and nature of their business) and in such amounts (after giving effect to any self-insurance maintained consistent with the standards provided for herein) as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located.

10.1.8 Licenses. Keep each material License affecting any ABL Facility Priority Collateral (including the manufacture, distribution or disposition of Inventory) of any Borrower in full force and effect.

10.1.9 Additional Obligors.

(a) Subject to limitations imposed by Applicable Law, each Foreign Borrower will cause each direct or indirect Foreign Restricted Subsidiary of Parent (other than any Excluded Subsidiary) that is organized under the laws of the Netherlands, the UK or following the Australian Borrower Activation Date under **Section 10.1.9(c)**, Australia formed or otherwise purchased or acquired after the Closing Date (including pursuant to a Permitted Acquisition), in each case within 60 days of the date formed or acquired (or such date as such Foreign Restricted Subsidiary ceases to be an Excluded Subsidiary) or such later date as to which Agent may agree, (i) to execute a supplement or joinder to this Agreement, substantially in the form of **Exhibit C**, in order for such Foreign Restricted Subsidiary to become a Foreign Borrower (provided, that any such Foreign Restricted Subsidiary organized under the laws of the UK outside of England and Wales shall not be permitted to become a Foreign Borrower) and/or a Foreign Facility Guarantor under **Section 5.10** and a grantor under the applicable Foreign Security Documents or, to the extent reasonably requested by Agent, enter into new Security Documents in form and substance reasonably satisfactory to Agent and Security Trustee and where such Foreign Restricted Subsidiary is an Australian Subsidiary, execute the Australian Security Trust Deed or (as the case may be) an accession deed to the Australian Security Trust Deed in form and substance reasonably satisfactory to Agent and the Australian Security Trustee, (ii) with respect to any such Foreign Restricted Subsidiary joining this Agreement as a Foreign Borrower, to deliver a Borrowing Base Certificate for such Foreign Restricted Subsidiary effective as of not more than 30 days preceding the date on which such Foreign Restricted Subsidiary becomes a Foreign Borrower and (iii) to execute and deliver such other documents, instruments and agreements as Agent or Security Trustee may reasonably require (including documents, instruments and agreements similar to those set forth in **Section 6.1** or, with respect to Australian Subsidiaries, **Section 10.1.9(c)**). Notwithstanding the foregoing, (A) no Foreign Restricted Subsidiary may be joined as a Foreign Borrower until completion of Agent's due diligence to its reasonable satisfaction and of Agent's and Foreign Lenders' compliance procedures for applicable "know your customer" and anti-money laundering rules and (B) subject to the final paragraph of the definition of "Foreign Borrowing Base", prior to permitting such new Foreign Borrower to borrow any Foreign Loans or obtain the issuance of any Foreign Letters of Credit hereunder, Agent, in its discretion, shall have the right to conduct an appraisal and field examination with respect to such Foreign Restricted Subsidiary, including, without limitation, of (x) such Foreign Restricted Subsidiary's practices in the computation of its component of the Foreign Borrowing Base and (y) the assets included in such Foreign Restricted Subsidiary's component of the Foreign Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, in each case, prepared on a basis reasonably satisfactory to Agent and at the sole expense of such Foreign Restricted Subsidiary.

(b) Each U.S. Borrower will cause each direct or indirect Domestic Restricted Subsidiary of Parent (other than any Excluded Subsidiary or any CFC Holdco or any direct or indirect Subsidiary of a Subsidiary that is a CFC) formed or otherwise purchased or acquired after the Closing Date (including pursuant to a Permitted Acquisition), in each case within 60 days of the date formed or acquired (or such date as such Domestic Restricted Subsidiary ceases to be an Excluded Subsidiary, CFC Holdco or any direct or indirect Subsidiary of a Subsidiary that is a CFC, as applicable) or such later date as to which Agent may agree, (i) to execute a supplement or joinder to this Agreement, substantially in the form of **Exhibit C**, in order for such Domestic Restricted Subsidiary to become a U.S. Borrower and/or a U.S. Facility Guarantor under **Section 5.10** and a grantor under **Section 7.1**, (ii) with respect to a Domestic Restricted

Subsidiary joining this Agreement as a U.S. Borrower, to deliver a Borrowing Base Certificate for such Domestic Restricted Subsidiary effective as of not more than 30 days preceding the date on which such Domestic Restricted Subsidiary becomes a U.S. Borrower and (iii) to execute and deliver such other documents, instruments and agreements as Agent may reasonably require. Notwithstanding the foregoing, (A) no Domestic Restricted Subsidiary may be joined as a U.S. Borrower until completion of Agent's due diligence to its reasonable satisfaction and of Agent's and U.S. Lenders' compliance procedures for applicable "**know your customer**" and anti-money laundering rules and (B) subject to the final paragraph of the definition of "U.S. Borrowing Base", prior to permitting such new U.S. Borrower to borrow any Loans or obtain the issuance of any U.S. Letters of Credit hereunder, Agent, in its discretion, shall have the right to conduct an appraisal and field examination with respect to such Domestic Restricted Subsidiary, including, without limitation, of (x) such Domestic Restricted Subsidiary's practices in the computation of its component of the U.S. Borrowing Base and (y) the assets included in such Domestic Restricted Subsidiary's component of the U.S. Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, in each case, prepared on a basis reasonably satisfactory to Agent and at the sole expense of such Domestic Restricted Subsidiary.

(c) Any Restricted Subsidiary organized under the laws of Australia or any state or territory thereof may, at the election of U.S. Borrower Agent by at least 30 days prior written notice to Agent (a copy of which Agent shall promptly provide to the Foreign Lenders), become the initial Australian Borrower hereunder upon (i) the execution and delivery to Agent and/or Australian Security Trustee (A) by such Restricted Subsidiary of a supplement or joinder to this Agreement, substantially in the form of **Exhibit C**, (B) by such Restricted Subsidiary of Australian Security Agreements in form and substance reasonably satisfactory to Agent and the Australian Security Trustee as may be required for Australia, (C) by such Restricted Subsidiary of the Australian Security Trust Deed or (as the case may be) an accession deed to the Australian Security Trust Deed in form and substance reasonably satisfactory to Agent and the Australian Security Trustee, (D) by a Senior Officer of U.S. Borrower Agent of a Borrowing Base Certificate for such Foreign Restricted Subsidiary effective as of not more than 30 days preceding the date on which such Foreign Restricted Subsidiary becomes an Australian Borrower and (E) such other documents, instruments and agreements as Agent or Australian Security Trustee may reasonably require, and (F) Agent receiving all the documents and evidence as Agent or Australian Security Trustee may reasonably require including but not limited to the following:

(A) each relevant Loan Document shall have been duly executed and delivered to Agent by each of the signatories thereto, and each Obligor shall be in compliance with all terms thereof;

(B) satisfactory evidence that the Australian Security Trustee shall have a valid and perfected first priority (except as otherwise permitted hereunder) Lien in the Collateral charged by the required Australian Security Agreements executed and delivered by that Restricted Subsidiary;

(C) a certificate of a duly authorized officer of that Restricted Subsidiary, certifying (A) that attached copies of that Restricted Subsidiary's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (B) that an attached copy of resolutions authorizing execution and delivery of the relevant Loan Documents is true and complete, and

that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; (C) to the title, name and signature of each Person authorized to sign the relevant Loan Documents; and (D) that attached thereto are all governmental and third party consents and approvals as may be appropriate for that Restricted Subsidiary to obtain in connection with this Agreement (or a statement that no such consents or approvals are required) (and Agent may conclusively rely on this certificate until it is otherwise notified by that Restricted Subsidiary in writing);

(D) copies of policies or certificates of insurance for the insurance policies carried that Restricted Subsidiary, all in compliance with the Loan Documents, and, if applicable, the designation of Agent or (as the case may be) the Australian Security Trustee as lender's loss payee as its interest may appear thereunder, in each case, in form and substance satisfactory to Agent;

(E) all Debt arising under the Australian Credit Facility shall have been repaid in full, and Agent shall have received a satisfactory payoff letter, lien release documentation or similar agreements which evidence the foregoing;

(F) Lien searches and other evidence satisfactory to Agent that its and/or the Australian Security Trustee's Liens are the only Liens upon the Collateral, except Permitted Liens;

(G) a certificate of an authorized officer of that Restricted Subsidiary certifying that it is not in breach of Chapter 2E of the Australian Corporations Act;

(H) a duly executed statutory declaration from the directors of the relevant Restricted Subsidiaries relating to the location and value of the assets of that Restricted Subsidiary;

(I) if assets of the relevant Restricted Subsidiary are located in New South Wales, a completed New South Wales Office of State Revenue multi-jurisdictional mortgage statement form duly executed by a Senior Officer of that Restricted Subsidiary;

(J) evidence that, to the extent applicable, estimated funds for payment of mortgage duty by the grantors under the Australian Security Agreements have either been paid to Agent (or its counsel) or withheld from the initial Foreign Loan to the Australian Borrower;

(K) any written opinions of Australian counsel to that Restricted Subsidiary in form and substance satisfactory to Agent; and

(L) to the extent necessary, any amendments or supplements to the Loan Documents.

Notwithstanding the foregoing, (1) no Foreign Restricted Subsidiary may be joined as an Australian Borrower until completion of Agent's due diligence to its reasonable satisfaction and of

Agent's and Foreign Lenders' compliance procedures for applicable "know your customer" and anti-money laundering rules and (2) prior to permitting such new Australian Borrower to borrow any Foreign Loans or obtain the issuance of any Foreign Letters of Credit hereunder, Agent, in its discretion, shall have the right to conduct an appraisal and field examination with respect to such Foreign Restricted Subsidiary, including, without limitation, of (x) such Foreign Restricted Subsidiary's practices in the computation of its component of the Foreign Borrowing Base and (y) the assets included in such Foreign Restricted Subsidiary's component of the Foreign Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, in each case, prepared on a basis reasonably satisfactory to Agent and at the sole expense of such Foreign Restricted Subsidiary. Prior to joining any Foreign Restricted Subsidiary as an Australian Borrower, Agent and Borrowers may amend this Agreement or any of the other Loan Documents to effect any changes as may be necessary or desirable, in the reasonable judgment of Agent and Borrowers, to reflect the inclusion of such Australian Borrower.

10.1.10 UK Pension Plans.

(a) Each UK Domiciled Obligor shall ensure that all pension schemes operated by or maintained for the benefit of members of the UK Domiciled Obligors and/or any of their employees are funded based on the recovery plan applicable to the relevant pension scheme in accordance with section 226 of the Pensions Act 2004 (UK) until completed, and thereafter, based on the statutory funding objective under sections 221 and 222 of the Pensions Act 2004 (UK) and, in each case, in compliance with the schedule of contributions under section 227 of the Pensions Act 2004 (UK) and that no action or omission (including, without limitation, the termination or commencement of winding-up proceedings of any such pension scheme or any member of the Group ceasing to employ any member of such a pension scheme) is taken by any UK Domiciled Obligor in relation to such a pension scheme which has or is reasonably likely to have a Material Adverse Effect.

(b) Except as disclosed on **Schedule 9.1.17**, each UK Domiciled Obligor shall ensure that no UK Domiciled Obligor is or has been at any time an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004 (UK)) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993 (UK)) or "connected" with or an "associate" of (as those terms are used in sections 38 or 43 of the Pensions Act 2004 (UK)) such an employer.

(c) Each UK Domiciled Obligor shall deliver to Agent at such times as those reports are prepared in order to comply with the then current statutory or auditing requirements (as applicable either to the trustees of any relevant schemes or to the UK Domiciled Obligor), actuarial reports in relation to all pension schemes mentioned in **clause (a)** above.

(d) Each UK Domiciled Obligor shall promptly notify Agent of any material change in the rate of contributions to any pension schemes mentioned in **clause (a)** above paid or recommended to be paid (whether by the scheme actuary or otherwise) or required (by law or otherwise).

10.1.11 Post-Closing Actions. Each Obligor shall complete each of the actions applicable to it that is described in **Schedule 10.1.11** no later than the date set forth in **Schedule 10.1.11** with respect to such action (or such later date as Agent may agree in its discretion).

10.1.12 Use of Proceeds. No part of the proceeds of the Loans will be used, directly or indirectly, 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. Each Borrower will maintain in effect policies and procedures designed to promote compliance by such Borrower, its Subsidiaries, and their respective directors, officers, employees, and agents with the FCPA and any other applicable anti-corruption laws.

10.2 Negative Covenants. Obligors hereby covenant and agree that until the Commitments have terminated and Full Payment of all Obligations, each of them shall not, and shall cause each Restricted Subsidiary not to:

10.2.1 Permitted Debt. Create, incur, guarantee or suffer to exist any Debt, except:

- (a) the Obligations;
- (b) Debt for trade payables, wages and other accrued expenses incurred in the Ordinary Course of Business;
- (c) Permitted Existing Debt and any extensions, renewals, refundings or replacements of such Debt, provided that any such extension, renewal, refunding or replacement is in an aggregate principal amount not greater than the principal amount of, and taken as a whole is on terms no less favorable to Parent or any Restricted Subsidiary, as applicable, than the terms of, such Permitted Existing Debt so extended, renewed, refunded or replaced;
- (d) Purchase Money Debt and Debt in connection with sale-leaseback transactions in an aggregate principal amount not to exceed \$100,000,000 at any time outstanding;
- (e) Debt in respect of taxes, assessments, governmental charges and claims for labor, materials or supplies, to the extent that payment thereof is not required pursuant to **Section 10.1.6**;
- (f) Debt constituting Investments permitted by **Section 10.2.4**;
- (g) Debt arising from unsecured intercompany loans permitted by **Section 10.2.4(e)** and **Section 10.2.4(i)**;
- (h) Debt with respect to Bank Products incurred in the Ordinary Course of Business;
- (i) Debt with respect to customary warranties and indemnities made under (i) any agreements for asset sales permitted under **Section 10.2.5**, or (ii) Contractual Obligations of Parent or any Restricted Subsidiary entered into in the Ordinary Course of its Business;
- (j) prior to the Australian Borrower Activation Date, (i) Debt of the Australian Subsidiaries with respect to the Australian Credit Facility and letters of credit issued by Citibank N.A. and its Affiliates in an aggregate amount not to exceed \$10,000,000 at any time and (ii) Accommodation Obligations with respect to any working capital facility and letters of credit guaranteed pursuant to the Foreign Working Capital Guaranty relating thereto in an aggregate guaranteed amount not to exceed \$10,000,000 at any time;

(k) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the Ordinary Course of Business;

(l) Debt arising under a declaration of joint and several liability used for the purpose of section 2:403 of the Dutch Civil Code (and any residual liability under such declaration arising pursuant to section 2:404(2) of the Dutch Civil Code);

(m) (i) Debt under the Term Loan Agreement in an aggregate principal amount not to exceed \$225,000,000 at any time, together with (x) all Incremental Increases and incurrences of Permitted Pari Passu Notes, Permitted Pari Passu Loans and Permitted Junior Debt (each as defined in the Term Loan Agreement as in effect on the date hereof) not to exceed the Maximum Increase Amount (as defined in the Term Loan Agreement as in effect on the date hereof) and (y) all Refinancing Term Loans, Refinancing Notes and Extended Loans (each as defined in the Term Loan Agreement as in effect on the date hereof), and (ii) Permitted Refinancings thereof (“**Permitted Term Debt**”);

(n) Debt arising under any receivables factoring, discounting facility or receivables assignment facility by any Foreign Restricted Subsidiary that is not a Borrower in an aggregate amount not to exceed \$10,000,000 outstanding at any time;

(o) Debt of the Bolzoni Entities in an aggregate principal amount not to exceed EUR 75,000,000 at any time;

(p) Debt of Foreign Restricted Subsidiaries with respect to Approved Floorplan and Factoring Facilities in an aggregate amount not to exceed \$7,500,000 at any one time outstanding, provided that (i) such Debt shall be secured by Liens encumbering only the Inventory financed with the proceeds of such Debt, (ii) none of the Inventory securing such Debt is located in a jurisdiction in which Eligible Inventory is located, (iii) all documentation with respect to such Debt shall be on terms and conditions satisfactory to Agent and (iv) the creditors therefor shall agree in writing to be bound by an Approved Intercreditor Agreement;

(q) Debt of any Person existing at the time such Person becomes a Restricted Subsidiary, or assumed at the time any Property is acquired by Parent or any of its Restricted Subsidiaries, in each case, pursuant to a Permitted Acquisition; provided that (i) such Debt was not created or incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary or the acquisition of such Property, (ii) none of Parent nor its Restricted Subsidiaries (other than (x) any such Person that becomes a Restricted Subsidiary (or any other Person such Person merges with) and such Person’s Restricted Subsidiaries or (y) any such Person that acquires such Property) shall have any liability or other obligation with respect to such Debt except to the extent otherwise permitted hereunder and (iii) the aggregate principal amount of all such assumed Debt shall not exceed \$50,000,000 at any time outstanding;

(r) Debt incurred by U.S. Domiciled Obligors with respect to any JV Financing Facility in an aggregate amount not to exceed \$15,000,000 at any one time outstanding; provided that (i) if secured, such Debt shall be secured by Liens encumbering only the Inventory and related assets that are the subject of such JV Financing Facility, (ii) none of the Inventory securing such Debt shall constitute Eligible Inventory or be included in the U.S. Borrowing Base, (iii) U.S. Borrower Agent shall provide Agent with written notice at the time of each advance of such Debt (which notice shall include detailed information identifying the individual units of

Inventory that are the subject of such financing), (iv) the proceeds of each advance shall be paid directly to the U.S. Dominion Account, (v) none of the Accounts resulting from any sale of such Inventory shall constitute Eligible Accounts or be included in the U.S. Borrowing Base, (vi) all material documentation with respect to such Debt shall be on terms and conditions reasonably satisfactory to Agent, and (vii) HYGFS shall agree in writing to be bound by an Approved Intercreditor Agreement;

(s) Debt constituting deferred purchase price relating to Investments permitted by **Section 10.2.4(h)** in an aggregate amount not to exceed \$52,000,000 at any time;

(t) in addition to Debt permitted by **clauses (a)** through **(s)** above, other unsecured Debt (but excluding intercompany loans), so long as each of the following is satisfied: (1) Borrowers are in compliance with **Section 10.3** (computed on a pro forma basis for the most recent four fiscal quarter period for which financials are required to be delivered), whether or not a Trigger Period is in effect, (2) no Default or an Event of Default has occurred and is continuing at the time of such incurrence or would result therefrom, and (3) with respect to any Debt incurred in reliance on this **clause (t)** in a principal amount in excess of \$50,000,000, such Debt (x) has a scheduled maturity at least 91 days after the Maturity Date and (y) does not amortize in excess of 1% per annum;

(u) Debt of any Restricted Subsidiary of Parent that is not an Obligor in an aggregate principal amount not to exceed \$75,000,000 at any time;

(v) Permitted Accommodation Obligations; and

(w) in addition to Debt permitted by **clauses (a)** through **(u)** above, other Debt (but excluding intercompany loans), in an aggregate principal amount not to exceed \$50,000,000 at any time outstanding;

10.2.2 **Permitted Liens**. Create or suffer to exist any Lien upon any of its Property, except the following (collectively, "**Permitted Liens**"):

(a) Liens in favor of Agent;

(b) existing Liens shown on **Schedule 10.2.2** and extensions, renewals, refundings and replacements thereof; provided that any such extension, renewal, refunding or replacement of any such Lien shall be limited to the Property covered by the Lien extended, renewed, refunded or replaced and that the obligations secured by any such extension, renewal, refunding or replacement Lien shall be in an amount not greater than the amount of the obligations then secured by the Lien extended, renewed, refunded or replaced;

(c) Customary Permitted Liens;

(d) Purchase Money Liens securing Debt permitted under **Section 10.2.1(d)**; provided that such Purchase Money Liens are created within 90 days after the incurrence of the related Debt;

(e) normal and customary rights of setoff upon deposits in favor of depository institutions, and Liens of a collecting bank on Payment Items in the course of collection;

- (f) certain statutory and contractual rights of retention on the Inventory of Parent and its Restricted Subsidiaries located outside of the U.S. which are subordinate to Agent's security interest therein;
- (g) Liens arising from judgments, decrees or attachments under circumstances that do not otherwise result in an Event of Default;
- (h) Liens arising from precautionary UCC-1 financing statement filings (or the equivalent in other jurisdictions) regarding Operating Leases covering only the Property subject thereto;
- (i) any Lien in connection with a Permitted Acquisition on or affecting any Property acquired by Parent or any of its Restricted Subsidiaries or Property of any acquired Restricted Subsidiary or Person which becomes a Restricted Subsidiary after the Closing Date of this Agreement (or any other Person such Person merges with) or Property of such Person's Restricted Subsidiaries; provided, that (i) such Lien is created prior to the date on which such Person becomes a Restricted Subsidiary or such Property was acquired, (ii) the Lien was not created in contemplation of such Permitted Acquisition, and (iii) to the extent such Lien secures Debt, such Debt is permitted pursuant to **Section 10.2.1(q)**;
- (j) Liens upon cash or Cash Equivalents securing obligations owing by Parent or any Restricted Subsidiary to Agent, a Lender or an Affiliate thereof that arise as a result of the termination of a Hedging Agreement in respect of interest rates permitted hereunder to which Parent or any Restricted Subsidiary, as applicable, and Agent, a Lender, or an Affiliate thereof, as applicable, were subject; provided that such Lien shall run solely for the benefit of Agent, the Lender or the Affiliate thereof, as applicable;
- (k) Liens securing Permitted Term Debt that are subject to the Intercreditor Agreement or another intercreditor agreement in form and substance reasonably satisfactory to Agent;
- (l) Liens on Property of the Bolzoni Entities in an aggregate principal amount not to exceed EUR 75,000,000 at any time;
- (m) Liens on (i) Inventory of Foreign Restricted Subsidiaries securing Debt permitted under **Section 10.2.1(p)** and (ii) Inventory and related assets of U.S. Domiciled Obligors securing Debt permitted under **Section 10.2.1(r)**; provided, that such Liens are in compliance with the requirements of **Section 10.2.1(p)** or **Section 10.2.1(r)**, as applicable;
- (n) Liens on assets being disposed of in a transaction permitted by this Agreement prior to the effectiveness of the disposition consisting of the agreement by the owner of such assets to sell or otherwise dispose of the assets;
- (o) Liens on Property of non-Obligor Restricted Subsidiaries in an aggregate principal amount not to exceed \$75,000,000 at any time; and
- (p) in addition to Liens permitted by **clauses (a)** through **(o)** above, other Liens in an aggregate principal amount not to exceed \$50,000,000 at any time; provided that Liens on any ABL Facility Priority Collateral shall not exceed \$25,000,000 in the aggregate and so long as any

such Liens on ABL Facility Priority Collateral are expressly subordinated and junior in right of payment to Full Payment of all Obligations on subordination terms satisfactory to Agent.

10.2.3 Distributions. Declare or make any Distributions, except (a) Upstream Payments, (b) dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person, (c) the purchase, redemption or other acquisition by any Person of its common Equity Interests with the proceeds received from the substantially concurrent issue of new common Equity Interests, (d) any other Distributions if, after giving effect to such Distribution as if it occurred on the first day of the Pro Forma Period, either (A) each of the following is satisfied: (1) average pro forma Total Excess Availability is greater than the greater of (x) 15% of the Total Borrowing Base and (y) \$30,000,000 for the Pro Forma Period and (2) Borrowers are in compliance with **Section 10.3** (computed on a pro forma basis for the most recent four fiscal quarter period for which financials are required to be delivered), whether or not a Trigger Period is in effect, or (B) average pro forma Total Excess Availability is greater than the greater of (x) 20% of the Total Borrowing Base and (y) \$40,000,000 for the Pro Forma Period, or (e) Distributions by Parent to the equity holders of Parent constituting dividends paid within 60 days of declaration of such Distribution so long as at the time of such declaration such Distributions were permitted under any of **subclauses (a) through (d)** above.

10.2.4 Permitted Investments. Make any Investment, except the following:

- (a) Investments in cash and Cash Equivalents (including, without limitation, Cash Collateral);
- (b) Investments existing on the Closing Date and identified as such on **Schedule 10.2.4**;
- (c) Investments received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the Ordinary Course of Business;
- (d) Investments in the form of advances to officers or employees for relocation, salary, commissions, travel expenses and similar items in the Ordinary Course of Business and other loans to employees for any lawful purpose, provided that the aggregate principal amount of all such advances and loans at any time outstanding shall not exceed \$1,500,000;
- (e) (i) Investments by Obligor in other Obligor (other than in the Specified Foreign Domiciled Obligor, unless such Investment is being contributed, on a substantially contemporaneous basis, by such Specified Foreign Domiciled Obligor to a U.S. Borrower, U.S. Facility Guarantor or Foreign Borrower, in which case such Investment shall be deemed to be made to such U.S. Borrower, U.S. Facility Guarantor or Foreign Borrower), (ii) Investments by Restricted Subsidiaries that are not Obligor in Obligor, (iii) Investments among Restricted Subsidiaries that are not Obligor, and (iv) Investments by Obligor in Restricted Subsidiaries that are not Obligor or in Specified Foreign Domiciled Obligor which, in the aggregate, does not exceed \$60,500,000 outstanding at any time; **provided**, that **clause (iv)** shall not be utilized for Investments by Obligor in the Bolzoni Entities;
- (f) Investments constituting an Acquisition so long as at the time and after giving effect to such Acquisition: (i) Agent has received at least five (5) Business Days' prior written notice of such Acquisition (or such shorter time as to which Agent may agree); (ii) unless the lines of business of the Person to be (or the property of which is to be) so purchased or otherwise

acquired are substantially the same lines of business as, or complementary, ancillary, incidental or related to, or a reasonable extension of, one or more of the businesses of Parent and its Restricted Subsidiaries, Agent shall have consented to such Acquisition prior to the consummation thereof; (iii) unless the Investment Condition is satisfied both immediately before and after giving pro forma effect to such Acquisition, the purchase price payable in cash and non-cash consideration does not exceed \$15,000,000 in any one Acquisition or \$25,000,000 in the aggregate in any Fiscal Year; (iv) no Default or Event of Default has occurred and is continuing or would result after giving effect to such Acquisition; (v) the acquiring Person and any newly-created or acquired Restricted Subsidiary shall comply (or Borrowers shall cause compliance) with the requirements of **Section 10.1.9** on the terms and within the time periods set forth therein to the extent applicable; (vi) the board of directors of the target of such Acquisition shall have approved such Acquisition and such Acquisition shall otherwise be consensual; (vii) the Debt acquired in connection with such Acquisition, if any, is otherwise permitted pursuant to **Section 10.2.1**; and (viii) Borrowers shall have delivered all financial reports and other documents reasonably requested by Agent in connection with such Acquisition and available to Parent or its Restricted Subsidiaries (an Acquisition satisfying the foregoing requirements, a “**Permitted Acquisition**”);

(g) Investments received as consideration in a sale of Property pursuant to **Section 10.2.5**, subject to the limitation on the amount of non-cash consideration that may be received in connection with such sale as set forth therein;

(h) the acquisition of the remaining outstanding Equity Interests of Hyster-Yale Maximal Forklift (Zhejiang) Co., Ltd., which may be paid in one or more installments or otherwise paid on a deferred basis, so long as such Investment was permitted under another clause of this **Section 10.2.4** at the time of entry into definitive purchase documentation therefor;

(i) any Investment not otherwise permitted above (excluding Acquisitions) if, after giving effect to such Investment as if it occurred on the first day of the Pro Forma Period, the Investment Condition is satisfied;

(j) Permitted Accommodation Obligations; and

(k) other Investments in an aggregate principal amount not to exceed \$15,000,000 at any time outstanding.

10.2.5 Disposition of Assets. Make any Asset Disposition, except the following:

(a) any replacement of Equipment that is worn, damaged or obsolete with Equipment of like function and value, if the replacement Equipment is acquired substantially contemporaneously with such disposition and is free of Liens;

(b) a sale of Inventory or other assets in the Ordinary Course of Business;

(c) termination of a lease of real or personal Property that is not necessary for the Ordinary Course of Business, could not reasonably be expected to have a Material Adverse Effect and does not result from an Obligor’s default;

(d) Asset Dispositions of Property from Parent or any Restricted Subsidiary to any Obligor, among any of the Obligors, from any Obligor to any Restricted Subsidiary not constituting an Obligor to the extent constituting an Investment permitted by **Section 10.2.4**, or

among any Restricted Subsidiaries not constituting Obligors, in each case, otherwise in accordance with the Loan Documents;

- (e) Investments and dispositions of Investments in cash and Cash Equivalents permitted pursuant to **Section 10.2.4(a)**;
- (f) the transfer of Property permitted in connection with transactions permitted in **Section 10.2.7**;
- (g) the sale of accounts receivable and related assets under any receivables factoring, discounting facility or receivables assignment facility by any Foreign Restricted Subsidiary that is not a Borrower in an aggregate amount not to exceed \$10,000,000 outstanding at any time;
- (h) Asset Dispositions of Property in connection with any sale-leaseback transaction not to exceed \$80,000,000 (less any Purchase Money Debt outstanding under **Section 10.2.1(d)**) in the aggregate during the term of this Agreement;
- (i) the sale of accounts receivable on a non-recourse basis arising from sales of Inventory financed under any Approved Floorplan and Factoring Facility by any Foreign Restricted Subsidiary;
- (j) the sale of accounts receivable and related assets owing by a customer on a non-recourse basis as part of a supply chain finance program offered by such customer, provided, that in the case of any such sales by an Obligor, (i) no Accounts from the related Account Debtor may be included in the Borrowing Base, (ii) Agent is notified of such program, (iii) all Net Proceeds of such sales are remitted to a Dominion Account and (iv) the documentation for such program is reasonably satisfactory to Agent;
- (k) (i) the sale of accounts receivable owing to a Foreign Restricted Subsidiary that is not an Obligor arising from sales of Inventory, which such sales of accounts receivable are on a non-recourse basis to one or more Persons financing the purchase of such Inventory by the customer, (ii) the sale of accounts receivable owing to a Foreign Domiciled Obligor (other than a UK Domiciled Obligor) arising from sales of Inventory, which such sales of accounts receivable are on a non-recourse basis to one or more Persons financing the purchase of such Inventory by the customer; provided that (A) the relevant Foreign Domiciled Obligor has notified Agent of such Asset Disposition, (B) the Net Proceeds resulting from such Asset Disposition shall be paid directly to a Foreign Dominion Account in accordance with **Section 8.2.5** and (C) thereafter, such accounts receivable are not included in the calculation of the Foreign Borrowing Base on any date of determination, and (iii) the sale of accounts receivable owing to a UK Domiciled Obligor arising from sales of Inventory, which such sales of accounts receivable are on a non-recourse basis to one or more Persons financing the purchase of such Inventory by the customer; provided that (A) the relevant UK Domiciled Obligor has notified Agent of such Asset Disposition for the purposes of the UK AR Deed of Release, (B) the Net Proceeds resulting from such Asset Disposition shall be paid directly to a Foreign Dominion Account in accordance with **Section 8.2.5** and (C) thereafter, such accounts receivable are not included in the calculation of the Foreign Borrowing Base on any date of determination; (iv) the sale of accounts receivable owing to a UK Domiciled Obligor arising from sales of Inventory to customers located in Africa and the Middle East, which such sales of accounts receivable are on a non-recourse basis; provided, that (A) the relevant UK Domiciled Obligor has notified Agent of such Asset

Disposition for the purposes of the UK AR Deed of Release, (B) the Net Proceeds resulting from such Asset Disposition shall be paid directly to a Foreign Dominion Account in accordance with **Section 8.2.5**, and (C) such accounts receivable are not included in the calculation of the Foreign Borrowing Base on any date of determination; and

(l) any Asset Disposition of any other Property so long as (i) such Asset Disposition is for not less than the fair market value thereof and any non-cash or Cash Equivalent consideration resulting from such Asset Disposition shall be limited to not more than 25% of the total consideration for such Asset Disposition; provided that, for purposes of this **clause (l)**, Deemed Non-Cash Consideration will be deemed to be cash, (ii) if such Asset Disposition involves ABL Facility Priority Collateral in excess of \$1,000,000, the applicable Borrower Agent shall have delivered to Agent a Borrowing Base Certificate giving pro forma effect to such Asset Disposition and, to the extent applicable, shall have complied with **Section 5.2** and **Section 8.1**; and (iii) no Overadvance and no Default or Event of Default shall have occurred and be continuing before and after giving effect to such Asset Disposition; **provided that clause (l)** above shall not be applicable to any Asset Disposition (A) having an aggregate fair market value of less than \$10,000,000; (B) of the assets or Equity Interests of any Subsidiary engaged in retail operations that is not an Obligor; (C) of the Equity Interests in, or any assets constituting all or any portion of, Nuvera Fuel Cells, LLC (including for non-cash consideration) and any other non-core assets (including for non-cash consideration) related thereto that are disposed of in connection with any such Asset Disposition pursuant to this **subclause (C)**, or (D) of the Property described on **Schedule 1.1(d)**.

10.2.6 Restrictions on Payment of Certain Debt. Make, directly or indirectly, any payment or other distribution (whether in cash, securities or other Property) of or in respect of principal of or interest on any Debt, or any payment or other distribution (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 Debt, except:

- (a) payments and other distributions in respect of Debt created under the Loan Documents;
- (b) (i) regularly scheduled interest and principal payments (excluding any excess cash flow payments but including payments due on the scheduled maturity), other than payments in respect of Subordinated Debt prohibited by the subordination provisions thereof, and (ii) solely with respect to Permitted Term Debt, (A) customary excess cash flow payments and (B) mandatory prepayments required thereunder with the proceeds of Asset Dispositions (other than the proceeds of dispositions of ABL Facility Priority Collateral to the extent required to be applied to the Obligations);
- (c) refinancings of Debt with proceeds of other Debt to the extent permitted by **Section 10.2.1**;
- (d) any payment in respect of secured Debt (other than Permitted Term Debt), including Debt in respect of any JV Financing Facility, that becomes due as a result of the voluntary sale or transfer of the Property securing such Debt;
- (e) any payment in respect of the Debt permitted by **Section 10.2.1(s)**;

(f) any payment in respect of Debt of any Restricted Subsidiary that is not an Obligor; and

(g) so long as no Default or Event of Default exists or would result therefrom, other payments and distributions in respect of Debt; provided that, after giving effect to such payment or distribution as if it occurred on the first day of the Pro Forma Period, either (i) each of the following is satisfied: (A) average pro forma Total Excess Availability is higher than the greater of (x) 15% of the Total Borrowing Base and (y) \$30,000,000 for the Pro Forma Period, and (B) Borrowers are in compliance with **Section 10.3** (computed on a pro forma basis for the most recent four fiscal quarter period for which financials are required to be delivered), whether or not a Trigger Period is in effect, or (ii) average pro forma Total Excess Availability is higher than the greater of (x) 20% of the Total Borrowing Base and (y) \$40,000,000 for the Pro Forma Period.

10.2.7 **Fundamental Changes.** (1) Solely with respect to any Obligor, change its name or change its form or state of organization, in each case without five Business Days prior written notice to Agent (or such other period as reasonably agreed to by Agent) or (2) liquidate, wind up its affairs or dissolve itself; or divide with or into or merge, combine or consolidate with any Person, whether in a single transaction or in a series of related transactions, except for the following:

(a) in connection with transactions permitted under **Section 10.2.5**;

(b) a merger, or division with or into, of (i) a U.S. Domiciled Obligor into a U.S. Borrower or a Foreign Domiciled Obligor into a Foreign Borrower, (ii) a Guarantor (that is not a Borrower) into another Guarantor (that is not a Borrower), or (iii) any other Restricted Subsidiary (that is not an Obligor) into another Restricted Subsidiary (that is not an Obligor) or into an Obligor, provided that, in each case, in the case of a division of a Person permitted in accordance with the foregoing **clauses (i) and (ii)** that results in any new Person coming into existence, such Person shall (x) be deemed to have been formed on the date of such division and (y) concurrently with giving effect to such division, comply with the requirements set forth in **Section 10.1.9** without giving effect to the time period set forth therein

(c) any of the following:

(i) any dissolution or liquidation of the assets and liabilities of a U.S. Domiciled Obligor (that is not a Borrower) into another U.S. Domiciled Obligor;

(ii) any dissolution or liquidation of the assets and liabilities of a Foreign Domiciled Obligor (that is not a Borrower) into another Foreign Domiciled Obligor;

(iii) any dissolution or liquidation of the assets and liabilities of a Foreign Domiciled Obligor (that is not a Borrower) into a U.S. Domiciled Obligor; or

(iv) any dissolution or liquidation of the assets and liabilities of any Restricted Subsidiary that is not an Obligor into another Restricted Subsidiary or an Obligor, and

(d) the merger of a merger subsidiary into a target as part of a Permitted Acquisition.

10.2.8 **Organic Documents.** Amend, modify or otherwise change any of its Organic Documents in a manner adverse to Agent or Lenders.

10.2.9 Accounting Changes. Make any material change in accounting treatment or reporting practices, except as required by GAAP and in accordance with Section 1.2; or change its Fiscal Year.

10.2.10 Restrictive Agreements. Become a party to any Restrictive Agreement, except (a) as in effect on the Closing Date and set forth on Schedule 10.2.10; (b) relating to secured Debt permitted hereunder, as long as the restrictions apply only to collateral for such Debt; (c) constituting customary restrictions on assignment in leases and other contracts or customary provisions restricting subletting or assignment of any lease governing a leasehold interest; (d) the Term Loan Agreement and any other agreement evidencing Permitted Term Debt or any Permitted Refinancing Debt in respect thereof; (e) that is binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such restriction was not entered into in contemplation of such Person becoming a Restricted Subsidiary; (f) that arises in connection with any Asset Disposition permitted under Section 10.2.5; or (g) constituting customary provisions in joint venture agreements and other similar agreements applicable to joint ventures

10.2.11 Hedging Agreements. Enter into any Hedging Agreement, except to hedge risks arising in the Ordinary Course of Business and not for speculative purposes.

10.2.12 Conduct of Business. Engage in any material line of business substantially different from those lines of business conducted by Parent and its Restricted Subsidiaries on the date hereof or any business or activities complementary, ancillary, incidental or related thereto, or a reasonable extension thereof.

10.2.13 Affiliate Transactions. Enter into or be party to any transaction with an Affiliate, except (a) transactions expressly permitted by the Loan Documents; (b) payment of reasonable compensation to officers and employees for services actually rendered, and payment of customary directors' fees and indemnities; (c) transactions solely among Obligors and Restricted Subsidiaries; (d) transactions with Affiliates consummated prior to the Closing Date, as shown on Schedule 10.2.13; and (e) transactions with Affiliates in the Ordinary Course of Business, upon fair and reasonable terms and no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate.

10.2.14 Plans. Become party to any Multiemployer Plan or Foreign Plan (that is a defined benefit pension plan), other than any in existence on the Closing Date.

10.3 Financial Covenant. Until the Commitments have terminated and Full Payment of all Obligations has occurred, Parent and its Restricted Subsidiaries shall maintain a Fixed Charge Coverage Ratio of at least 1.0 to 1.0 for each period of four Fiscal Quarters while a Trigger Period is in effect, commencing with the most recent period for which financial statements were, or were required to be, delivered hereunder pursuant to Section 10.1.2(a) or (b), as applicable, prior to the Trigger Period.

11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

11.1 Events of Default. Each of the following shall be an "Event of Default" if it occurs for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

- (a) Any Borrower fails to pay (i) any principal of the Loans when due (whether at stated maturity, on demand, upon acceleration or otherwise) or (ii) any other Obligations when

due (whether at stated maturity, on demand, upon acceleration or otherwise) and, so long as no Cash Dominion Event exists, such failure shall continue for three Business Days; or

(b) Any representation, warranty or other written statement of an Obligor made in connection with any Loan Documents or transactions contemplated thereby is incorrect or misleading in any material respect when given;

(c) An Obligor breaches or fails to perform any covenant contained in **Sections 8.1, 8.2.4, 8.2.5, 10.1.1, 10.1.2** (except **10.1.2(i)** and **(l)**), **10.2** or **10.3**;

(d) An Obligor breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 30 days after a Senior Officer of such Obligor has knowledge thereof or receives notice thereof from Agent, whichever is sooner;

(e) A Guarantor repudiates, revokes or attempts to revoke its Guaranty; an Obligor denies or contests the validity or enforceability of any Loan Documents or Obligations, or the perfection or priority of any Lien granted to Agent; or any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by Agent and Lenders, as expressly permitted hereunder or upon Full Payment of the Obligations);

(f) (i) Parent or any of its Restricted Subsidiaries shall fail to make any payment when due after any applicable grace period (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) with respect to any Debt (other than the Obligations) in excess of \$15,000,000, or (ii) any breach or default of Parent or any of its Restricted Subsidiaries occurs under (A) any Hedging Agreement or (B) any instrument or agreement to which it is a party or by which it or any of its Properties is bound, relating to any Debt (other than the Obligations) in excess of \$15,000,000, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach;

(g) Any judgment or order for the payment of money is entered against Parent or any of its Restricted Subsidiaries in an amount that exceeds, individually or cumulatively with all unsatisfied judgments or orders against Parent and its Restricted Subsidiaries, \$15,000,000 (net of insurance coverage therefor that has not been denied by the insurer), unless a stay of enforcement of such judgment or order is in effect, by reason of a pending appeal or otherwise;

(h) An Insolvency Proceeding is commenced by Parent or any of its Restricted Subsidiaries; Parent or any of its Restricted Subsidiaries makes an offer of settlement, extension or composition to its unsecured creditors generally; Parent or any of its Restricted Subsidiaries agrees to or commences any liquidation, dissolution, receivership or winding up of its affairs (other than as permitted under **Section 10.2.7**); a trustee is appointed to take possession of any substantial Property of or to operate any of the business of Parent or any of its Restricted Subsidiaries; or an Insolvency Proceeding is commenced against Parent or any of its Restricted Subsidiaries and such Person consents to institution of the proceeding, the petition commencing the proceeding is not timely contested by such Person, the petition is not dismissed within 60 days after filing (other than with respect to any Australian Domiciled Obligor, as to which the 60 day period shall not apply and an Event of Default shall immediately arise), or an order for relief is entered in the proceeding;

(i) Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of an Australian Domiciled Obligor;

(j) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan; (ii) Parent or any of its Restricted Subsidiaries or ERISA Affiliates fail to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or (iii) any event similar to the foregoing occurs or exists with respect to a Foreign Plan;

(k) The Pensions Regulator issues a Financial Support Direction or a Contribution Notice to any UK Domiciled Obligor;
or

(l) A Change of Control occurs.

11.2 Remedies upon Default. If an Event of Default described in **Section 11.1(h)** occurs, then to the extent permitted by Applicable Law, all Obligations (other than Secured Bank Product Obligations) shall become automatically due and payable and all Commitments shall terminate, without any action by Agent or notice of any kind. In addition, or if any other Event of Default exists, Agent may in its discretion (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:

(a) declare any Obligations (other than Secured Bank Product Obligations) immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Obligors to the fullest extent permitted by law;

(b) terminate, reduce or condition any Commitment, or make any adjustment to any Borrowing Base;

(c) require Obligors to Cash Collateralize their LC Obligations, Secured Bank Product Obligations and other Obligations that are contingent or not yet due and payable, and, if Obligors fail promptly to deposit such Cash Collateral, Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Loans (whether or not an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied); and

(d) together with Security Trustee, exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC or other similar domestic or foreign statutes. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Obligors to assemble Collateral, at Obligors' expense, and make it available to Agent and Security Trustee at a place designated by any of them; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by an Obligor, Obligors agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent and Security Trustee, in their discretion, deem advisable. Each Obligor agrees that 10 days' notice of any proposed sale or other disposition of Collateral by Agent or Security Trustee shall be reasonable, and that any sale conducted on the internet or to a licensor of Intellectual Property shall be commercially reasonable. Agent and Security Trustee may conduct sales on any Obligor's premises, without charge, and any sale may be adjourned from time to time in accordance with Applicable Law. Agent and Security Trustee shall have the right to sell,

lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent and Security Trustee may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

11.3 License. Agent and Security Trustee are hereby granted an irrevocable (prior to Full Payment of the Obligations), non-exclusive license or other right, effective only upon and during the continuance of an Event of Default, to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of Obligors, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. Each Obligor's rights and interests under Intellectual Property shall inure to Agent's and Security Trustee's benefit.

11.4 Setoff. At any time during an Event of Default, each of Agent, Security Trustee, any Issuing Bank, any Lender and any of their respective Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Agent, Security Trustee, such Issuing Bank, such Lender or such Affiliate to or for the credit or the account of an Obligor against its Obligations, whether or not Agent, Security Trustee, such Issuing Bank, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, Security Trustee, such Issuing Bank, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, Security Trustee, each Issuing Bank, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

11.5 Remedies Cumulative; No Waiver.

11.5.1 Cumulative Rights. All agreements, warranties, guaranties, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent, Security Trustee and Lenders under the Loan Documents are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations.

11.5.2 Waivers. No waiver or course of dealing shall be established by (a) the failure or delay of Agent, Security Trustee or any Lender to require strict performance by any Obligor under any Loan Document, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent, Security Trustee or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. It is expressly acknowledged by Obligors that any failure to satisfy the financial covenant set forth in **Section 10.3** on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

12. AGENT AND SECURITY TRUSTEE.

12.1 Appointment, Authority and Duties of Agent.

12.1.1 Appointment and Authority. Each Secured Party appoints and designates Bank of America as Agent under all Loan Documents. Agent may, and each Secured Party authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents, for Agent's benefit and the Pro Rata benefit of the Secured Parties. Each Secured Party agrees that any action taken by Agent or Required Lenders (as applicable) in accordance with the provisions of the Loan Documents, and the exercise by Agent or Required Lenders (as applicable) of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent, together with Security Trustee, shall have the sole and exclusive authority to act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; execute and deliver as Agent each Loan Document, including any intercreditor or subordination agreement (or joinder thereto), and accept delivery of each Loan Document from any Obligor or other Person; act as collateral agent and security trustee, as applicable, for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; manage, supervise or otherwise deal with Collateral; and take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Document, Applicable Law or otherwise. Agent alone shall be authorized to determine eligibility and applicable advance rates under any Borrowing Base, whether to impose or release any reserve, or whether any conditions to funding or issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Agent from liability to any Secured Party or other Person for any error in judgment.

12.1.2 Duties. The title of "Agent" is used solely as a matter of market custom and the duties of Agent are administrative in nature only. Agent has no duties except those expressly set forth in the Loan Documents, and in no event does Agent or Security Trustee have any agency, fiduciary or implied duty to or relationship with any Secured Party or other Person by reason of any Loan Document or related transaction. The conferral upon Agent or Security Trustee of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.

12.1.3 Agent Professionals. Agent and Security Trustee may perform its duties through agents and employees. Agent and Security Trustee may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent and Security Trustee shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

12.1.4 Instructions of Required Lenders. The rights and remedies conferred upon Agent and Security Trustee under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. In determining compliance with a condition for any action hereunder, including satisfaction of any condition in **Section 6**, Agent may presume that the condition is satisfactory to a Secured Party unless Agent has received notice to the contrary from such Secured Party before Agent takes the action. Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents or Collateral, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against all Claims that could be incurred by Agent in connection with any act.

Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and Agent shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting pursuant to instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 14.1.1**. In no event shall Agent be required to take any action that it determines, in its discretion, is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to liability.

12.2 European Security Trustee.

12.2.1 Appointment.

(a) The Foreign Facility Secured Parties appoint European Security Trustee to hold (i) any security interest created by any European Security Agreement; and (ii) the covenants and undertakings of the relevant European Security Agreements, with respect to any jurisdiction where the concept of trust is appropriate, on trust for the Foreign Facility Secured Parties and with respect to any jurisdiction where the concept of trust is not appropriate, as security agent for Foreign Facility Secured Parties, and, in each case, European Security Trustee accepts that appointment.

(b) European Security Trustee, its subsidiaries and associated companies may retain for its own account and benefit any fee, remuneration and profits paid to it in connection with (i) its activities under the Loan Documents and (ii) its engagement in any kind of banking or other business with any Obligor.

12.2.2 Delegation. European Security Trustee may delegate to any Person on such terms (which may include the power to sub-delegate) and subject to such conditions as it thinks fit, all or any of the rights, powers, authorities and discretions vested in it by any of the Loan Documents.

12.2.3 Separate European Security Trustees.

(a) European Security Trustee may (whether for the purpose of complying with any law or regulation of any overseas jurisdiction, or for any other reason) appoint any Person to act jointly with European Security Trustee either as a separate trustee or as a co-trustee (each an “**Appointee**”) on such terms and subject to such conditions as European Security Trustee thinks fit and with such of the rights, powers, authorities and discretions vested in European Security Trustee by any Loan Document as may be conferred by the instrument of appointment of the Appointee.

(b) European Security Trustee may pay reasonable remuneration to any Appointee, together with any costs and expenses (including legal fees) reasonably incurred by the Appointee in connection with its appointment. All such remuneration, costs and expenses shall be treated, for the purposes of this Agreement, as paid or incurred by European Security Trustee.

12.2.4 European Security Agreements.

(a) Each Foreign Facility Secured Party confirms its approval of the relevant European Security Agreements and of any security interest intended to be created under it, and

authorizes and instructs European Security Trustee to execute and deliver the relevant European Security Agreements.

(b) European Security Trustee may accept without enquiry the title (if any) which any Person may have to any assets over which security interest is intended to be created by the relevant European Security Agreements, and shall not be liable to any other party for any defect in or failure of any such title.

(c) European Security Trustee shall not be (i) liable or responsible to any Foreign Facility Secured Party for any failure to perfect, protect, register, make any filing or give notice in respect of the security interest intended to be created by the relevant European Security Agreements, unless that failure arises directly from its own gross negligence or willful misconduct; (ii) obliged to insure any assets over which security interest is intended to be created by the relevant European Security Agreements, to require any other person to maintain any such insurance, or to make any enquiry or conduct any investigation into the legality, validity, effectiveness, adequacy or enforceability of any insurance existing over any such asset; or (iii) obliged to hold in its own possession the relevant European Security Agreements, title deed or other document relating to any assets over which security interest is intended to be created by the relevant European Security Agreements.

12.2.5 European Security Trustee as Proprietor. Each Foreign Facility Secured Party confirms that it does not wish to be registered as a joint proprietor of any mortgage or charge created pursuant to the relevant European Security Agreements and accordingly authorizes the European Security Trustee to hold such mortgages and charges in its sole name as trustee for Foreign Facility Secured Parties; and requests the Land Registry (or other relevant registry) to register European Security Trustee as a sole proprietor (or heritable creditor, as the case may be) of any such mortgage or charge.

12.2.6 Investments. Except to the extent that an European Security Agreement otherwise requires, any moneys received by European Security Trustee under or pursuant to an European Security Agreement may be invested in any investments which it may select and which are authorized by Applicable Law; or placed on deposit at any bank or institution (including itself) on such terms as it may think fit, in each case in the name or under the control of European Security Trustee, and those moneys, together with any accrued income (net of any applicable Tax) shall be held by European Security Trustee to the order of Agent, and shall be payable to Agent on demand.

12.2.7 Foreign Facility Secured Parties' Indemnity to European Security Trustee. Each Foreign Facility Secured Party shall indemnify European Security Trustee, its delegates and sub-delegates and Appointees (each an "**Indemnified Party**"), within three Business Days of demand, against any cost, loss or liability incurred by European Security Trustee or the relevant Indemnified Party (otherwise than by reason of the gross negligence or willful misconduct of European Security Trustee or that Indemnified Party) in acting as European Security Trustee or its delegate, sub-delegate or Appointee under the relevant European Security Agreements (except to the extent that European Security Trustee, or the relevant Indemnified Party has been reimbursed by any Obligor pursuant to the relevant European Security Agreements).

12.2.8 Conduct of Business by European Security Trustee. No provision of this Agreement will interfere with the right of European Security Trustee to arrange its affairs (tax or otherwise) in whatever manner it thinks fit; oblige European Security Trustee to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

oblige European Security Trustee to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of tax.

12.2.9 Liability of European Security Trustee.

(a) European Security Trustee shall not nor shall any of its officers, employees or agents from time to time be responsible for: the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by any Obligor or any other person given in or in connection with the relevant European Security Agreements; or the legality, validity, effectiveness, adequacy or enforceability of the relevant European Security Agreements or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with the relevant European Security Agreements.

(b) Without limiting **Section 12.2.9(a)**, European Security Trustee shall not be liable for any action taken by it or not taken by it under or in connection with the relevant European Security Agreements, unless directly caused by its gross negligence or willful misconduct.

(c) No party (other than European Security Trustee) may take any proceedings against any officer, employee or agent of European Security Trustee in respect of any claim it might have against European Security Trustee or in respect of any act or omission of any kind by that officer, employee or agent in relation to the relevant European Security Agreements and any officer, employee or agent of European Security Trustee may rely on this **Section 12.2.9** and the provisions of the Contracts (Rights of Third Parties) Act 1999.

(d) European Security Trustee shall not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Loan Documents to be paid by European Security Trustee, if European Security Trustee has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognized clearing or settlement system used by European Security Trustee for that purpose.

(e) Without affecting the responsibility of Obligors for information supplied by them or on their behalf in connection with any Loan Document, each Foreign Facility Secured Party confirms to European Security Trustee that it has been, and shall continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with the relevant European Security Agreements including but not limited to: (i) the financial condition, status and nature of Obligors; (ii) the legality, validity, effectiveness, adequacy or enforceability of the relevant European Security Agreements and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the relevant European Security Agreements; (iii) whether such Foreign Facility Secured Party has recourse, and the nature and extent of that recourse, against any party or any of its respective assets under or in connection with any Loan Document, the transactions contemplated by the European Security Agreements or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the relevant European Security Agreements; and (iv) the adequacy, accuracy and/or completeness of any information provided by any person under or in connection with the relevant European Security Agreements, the transactions contemplated by the relevant European Security Agreements or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the relevant European Security Agreements.

12.2.10 Other European Security Agreement Matters.

(a) European Security Trustee shall accept without investigation, requisition or objection, such title as any person may have to the assets which are subject to the relevant European Security Agreements and shall not (i) be bound or concerned to examine or enquire into the title of any person; (ii) be liable for any defect or failure in the title of any person, whether that defect or failure was known to European Security Trustee or might have been discovered upon examination or enquiry and whether capable of remedy or not; or (iii) be liable for any failure on its part to give notice of the relevant European Security Agreements to any third party or otherwise perfect or register the security interests created by the relevant European Security Agreements (unless such failure arises directly from European Security Trustee's gross negligence or willful misconduct).

(b) European Security Trustee shall hold the relevant European Security Agreements and all proceeds of enforcement of them on trust for the Foreign Facility Secured Parties on the terms and conditions of this Agreement.

(c) The relevant European Security Agreements shall rank as continuing security interest for the discharge of the liabilities secured by it.

12.2.11 Disposals.

(a) Subject to **Section 12.4.1**, European Security Trustee is authorized by each of the Foreign Facility Secured Parties to execute on behalf of itself and each such Foreign Facility Secured Party without the need for any further referral to or authority from such Foreign Facility Secured Party, any release of the security interests created by the relevant European Security Agreements over that asset and, if such asset comprises all of the shares in any Obligor, European Security Trustee is further authorized, without the need for any further referral to or authority from such Foreign Facility Secured Party, to execute a release of any security interests granted by such Obligor over its assets pursuant to any of the European Security Agreements.

(b) Each Foreign Facility Secured Party undertakes to execute such releases and other documents as may be necessary to give effect to the releases specified in **Section 12.2.11(a)**.

12.2.12 Trust. The perpetuity period for each trust created by this Agreement shall be 80 years.

12.2.13 Appointment and Retirement of European Security Trustee. European Security Trustee subject to the appointment of a successor (in consultation with Foreign Borrower Agent) may, and must if Agent requires, retire at any time from its position as European Security Trustee under the Loan Documents without assigning any reason, and must give notice of its intention to retire by giving to the other Foreign Facility Secured Parties and Foreign Borrower Agent not less than 30 days' nor more than 60 days' notice.

12.2.14 Appointment of Successor. Agent may, with the approval of Foreign Borrower Agent (such approval not to be unreasonably withheld) other than during the continuation of an Event of Default, appoint a successor to European Security Trustee, during the period of notice in **Section 12.2.13**. If no successor is appointed by Agent, European Security Trustee may appoint (after consultation with

Agent and Foreign Borrower Agent) its successor. The Foreign Facility Secured Parties shall promptly enter into any agreements that the successor may reasonably require to effect its appointment.

12.2.15 Discharge of European Security Trustee. From the date that the appointment of a successor is effected under **Section 12.2.14**, the retiring European Security Trustee must be discharged from any further obligations under the Loan Documents as European Security Trustee, and the successor to European Security Trustee and each of the other Foreign Facility Secured Parties have the same rights and obligations between themselves as they would have had if the successor had been a party to those Loan Documents.

12.2.16 Parallel Debt Obligations. In order to ensure the continuing validity of the security interests governed by Dutch law (a) each Dutch Domiciled Obligor irrevocably and unconditionally undertakes (that undertaking in respect of any amount, a “**Parallel Debt Obligation**” and in respect of all of them, the “**Parallel Debt Obligations**”) to pay to the European Security Trustee an amount equal to and in the same currency as all amounts from time to time due and payable by that Dutch Domiciled Obligor to the Foreign Lenders under the Loan Documents (the obligations to the Foreign Lenders in respect of any amount and a certain currency, an “**Original Obligation**” and its obligations to the Foreign Lenders in respect of all of them, the “**Original Obligations**”); (b) the Parallel Debt Obligations shall be separate from and independent of the Original Obligations, so that the European Security Trustee will have an independent right to demand performance of any Parallel Debt Obligation; (c) the Parallel Debt Obligations shall be owed to the European Security Trustee in its own name and any European Security Agreement governed by Dutch law shall also be expanded to secure the Parallel Debt Obligations; (d) the Foreign Lenders, the Dutch Domiciled Obligors and the European Security Trustee acknowledge that the European Security Trustee acts in its own name and not as an agent or representative of the Foreign Lenders and the security interests governed by Dutch law created in favor of the European Security Trustee will not be held on trust; (e) other than as set out in **Section 12.2.16(f)**, the Parallel Debt Obligations shall not limit or affect the existence of the Original Obligations, for which the Foreign Lenders shall have an independent right to demand performance (to the extent permitted by this Agreement); (f) payment by the Dutch Domiciled Obligors of any Parallel Debt Obligation shall to the same extent decrease and be a good discharge of the corresponding Original Obligation owing to the Foreign Lenders and payment by the Dutch Domiciled Obligors of any Original Obligations to the Foreign Lenders shall to the same extent decrease and be a good discharge of the corresponding Parallel Debt Obligation owing by it to the European Security Trustee; and (g) without limiting or affecting the European Security Trustee’s right to protect, preserve or enforce its rights under any European Security Agreements governed by Dutch law, the European Security Trustee undertakes to the Foreign Lenders not to exercise its rights in respect of any Parallel Debt Obligation without the consent of Agent. Notwithstanding **clause (f)** above, no Dutch Domiciled Obligor may pay any Parallel Debt Obligation other than at the instruction of, and in the manner determined by, the European Security Trustee. For the avoidance of doubt, the Parallel Debt Obligations will become due and payable (*opeisbaar*) at the same time as the corresponding Original Obligations.

12.3 Australian Security Trustee. On or before the Australian Borrower Activation Date:

(a) the Australian Security Trustee, Agent, each Foreign Facility Secured Party and each Australian Domiciled Obligor shall enter into the Australian Security Trust Deed; and

(b) the Australian Security Trustee, Agent, each Foreign Facility Secured Party or any Australian Domiciled Obligor shall enter into any other documents as may be required by the Australian Security Trustee or Agent in connection the Australian Security Trust Deed.

12.4 Agreements Regarding Collateral and Reports.

12.4.1 Lien Releases; Care of Collateral.

(a) Secured Parties authorize Agent and Security Trustee to release any Lien with respect to any Collateral (i) upon Full Payment of the Obligations or in connection with a liquidation or dissolution permitted under **Section 10.2.7**; (ii) that the applicable Borrower Agent certifies in writing to Agent is subject to a disposal permitted under **Section 10.2.5** or a Lien which the applicable Borrower Agent certifies is permitted under **Section 10.2.2** and entitled to priority over Agent's and Security Trustee's Liens (including any subordination or release contemplated by **Section 10.2.1(m)**) (and Agent or Security Trustee, as applicable, may rely conclusively on any such certificate without further inquiry); (iii) that does not constitute a material part of the Collateral; (iv) following an Event of Default, in connection with an enforcement action and realization on Collateral; or (v) with the written consent of the Required Lenders; provided that, a release of all or substantially all of the Collateral shall require the written consent of all Lenders. Agent shall have no obligation to assure that any Collateral exists or is owned by an Obligor, or is cared for, protected or insured, nor to assure that Agent's or any Security Trustee's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

(b) Secured Parties authorize Agent and Security Trustee to release (i) any Obligor (other than a Borrower) from its guaranty of the Obligations if such Person becomes an Unrestricted Subsidiary or Excluded Subsidiary as a result of a transaction permitted under the Loan Documents or ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents; and (ii) Nuvera Fuel Cells, LLC from its guaranty of the Obligations if it becomes a non-Wholly Owned Restricted Subsidiary after the Closing Date as a result of a transaction permitted under the Loan Documents.

12.4.2 Possession of Collateral.

(a) Agent and Secured Parties appoint each Lender as agent (for the benefit of Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control.

(b) If any Lender obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or Security Trustee or otherwise deal with it in accordance with Agent's instructions.

12.4.3 Reports. Agent shall promptly provide to each Applicable Lender, when complete, copies of any field examination, audit or appraisal report prepared by or for Agent with respect to any Obligor or Collateral ("**Report**"). Reports and other Borrower Materials may be made available to Lenders by providing access to them on the Platform, but Agent shall not be responsible for system failures or access issues that may occur from time to time. Each Lender agrees (a) that neither Bank of America nor Agent makes any representation or warranty as to the accuracy or completeness of any Report, and shall not be liable for any information contained in or omitted from any Report; that the Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing any audit or examination will inspect only specific information regarding the Obligations or Collateral and will rely significantly upon the applicable Obligors' books and records as well as upon representations of the applicable Obligors' officers and employees and (b) that Agent makes no

representation or warranty as to the accuracy or completeness of any Borrower Materials and shall not be liable for any information contained in or omitted from any Borrower Materials, including any Report; and (c) to keep all Reports and Borrower Materials confidential and strictly for such Lender's internal use, and not to distribute any Report or Borrower Materials (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants, provided such persons are informed of the confidential nature of such Reports and Borrower Materials and instructed to keep it confidential and strictly for such Lender's use) or use any Report in any manner other than administration of the Loans and other Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Report or other Borrower Materials, as well as from any Claims arising as a direct or indirect result of Agent furnishing a Report or any Borrower Materials to such Lender, via the Platform or otherwise.

12.5 Reliance By Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telecopy or e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.

12.6 Action Upon Default. Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in Section 6, unless it has received written notice from a Borrower Agent or Required Lenders specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations (other than Secured Bank Product Obligations), or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral or to assert any rights relating to any Collateral.

12.7 Ratable Sharing. If any Lender shall obtain any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its share of such Obligation, determined on a Pro Rata basis or in accordance with Section 5.5.1, as applicable, such Lender shall forthwith purchase from Agent, any Issuing Bank and the other Applicable Lenders such participations in the affected Obligation as are necessary to cause the purchasing Lender to share the excess payment or reduction on a Pro Rata basis or in accordance with Section 5.5.1, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the full amount thereof to Agent for application under Section 4.2 and it shall provide a written statement to Agent describing the Obligation affected by such payment or reduction. No Lender shall set off against any Dominion Account without the prior consent of Agent.

12.8 Indemnification. EACH SECURED PARTY SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES AND ISSUING BANK INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS (BUT WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS OF OBLIGORS UNDER ANY LOAN DOCUMENTS), ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE, PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT). In Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee or Issuing Bank

Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Secured Party to the extent of its Pro Rata share.

12.9 Limitation on Responsibilities of Agent. Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Liens, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents or Borrower Materials; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

12.10 Successor Agent and Co-Agents.

12.10.1 Resignation; Successor Agent. Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and the Borrower Agents. Upon receipt of such notice, Required Lenders shall have the right to appoint a successor Agent which shall be a U.S. Lender or an Affiliate of a U.S. Lender; or a financial institution that is organized under the laws of the U.S. or any state or district thereof reasonably acceptable to Required Lenders and (provided no Default or Event of Default exists) the Borrower Agents. If no successor Agent is appointed prior to the effective date of Agent's resignation, then Agent may appoint a successor agent that is a financial institution acceptable to it (which shall be a Lender unless no Lender accepts the role) or in the absence of such appointment, Required Lenders shall on such date assume all rights and duties of Agent hereunder. Upon acceptance by any successor Agent of its appointment hereunder, such successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent without further act, and the retiring Agent shall be discharged from its duties and obligations hereunder but shall continue to have all rights and protections under the Loan Documents with respect to any actions taken or omitted to be taken by it while Agent, including the indemnification set forth in **Sections 12.8** and **14.2**, and all rights and protections under this **Section 12**. Any successor to Bank of America by merger or acquisition of stock or this loan shall continue to be Agent hereunder without further act on the part of any Secured Party or Obligor.

12.10.2 Co-Collateral Agent. If appropriate under Applicable Law, Agent may appoint a Person to serve as a co-collateral agent or separate collateral agent under any Loan Document. Each right, remedy and protection intended to be available to Agent under the Loan Documents shall also be vested in such agent. Secured Parties shall execute and deliver any instrument or agreement that Agent may request to effect such appointment. If any such agent shall die, dissolve, become incapable of acting,

resign or be removed, then all the rights and remedies of the agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

12.11 Due Diligence and Non-Reliance. Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Loans and participate in LC Obligations hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans and participating in LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates.

12.12 Remittance of Payments and Collections.

12.12.1 Remittances Generally. All payments by any Lender to Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by Agent and request for payment is made by Agent by 1:00 p.m. (Local Time) on a Business Day, payment shall be made by Lender not later than 3:00 p.m. (Local Time) on such day, and if request is made after 1:00 p.m. (Local Time), then payment shall be made by 11:00 a.m. (Local Time) on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.

12.12.2 Failure to Pay. If any Secured Party fails to pay any amount when due by it to Agent pursuant to the terms hereof, such amount shall bear interest, from the due date until paid in full, at the rate determined by Agent as customary for interbank compensation for two Business Days and thereafter at the Default Rate for U.S. Base Rate Loans. In no event shall Borrowers be entitled to receive credit for any interest paid by a Secured Party to Agent, nor shall any Defaulting Lender be entitled to interest on any amounts held by Agent pursuant to Section 4.2.

12.12.3 Recovery of Payments.

(a) If Agent pays an amount to a Secured Party in the expectation that a related payment will be received by Agent from an Obligor and such related payment is not received, then Agent may recover such amount from the Secured Party. If Agent determines that an amount received by it must be returned or paid to an Obligor or other Person pursuant to Applicable Law or otherwise, then Agent shall not be required to distribute such amount to any Secured Party. If any amounts received and applied by Agent to Obligations held by a Secured Party are later required to be returned by Agent pursuant to Applicable Law, such Secured Party shall pay to Agent, on demand, its share of the amounts required to be returned.

(b) Unless Agent shall have received notice from a Borrower Agent prior to the date on which any payment is due to Agent for the account of the Lenders or any Issuing Bank hereunder that any Borrower will not make such payment, Agent may assume that such 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. With respect to any payment that Agent makes for the account of the Lenders or any Issuing Bank hereunder as to which Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the “**Rescindable Amount**”): (a) no Borrower has in fact made such payment; (b) Agent has made a payment in excess of the amount so paid by such Borrower (whether or not then owed); or (c) Agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to Agent forthwith on demand the Rescindable Amount so distributed to such Lender or such Issuing Bank, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Agent, at the greater of the Federal Funds Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation. A notice of Agent to any Lender or a Borrower Agent with respect to any amount owing under this **Section 12.12.3** shall be conclusive, absent manifest error.

(c) Without limitation of any other provision in this Agreement, if at any time a payment hereunder in error to any Lender Recipient Party, whether or not in respect of an Obligation due and owing by any Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender Recipient Party receiving a Rescindable Amount severally agrees to repay to Agent forthwith on demand the Rescindable Amount received by such Lender Recipient Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to Agent, at the greater of the Federal Funds Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation. Each Lender Recipient Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. Agent shall inform each Lender Recipient Party promptly upon determining that any payment made to such Lender Recipient Party comprised, in whole or in part, a Rescindable Amount.

12.13 **Individual Capacities.** As a Lender, Bank of America shall have the same rights and remedies under the Loan Documents as any other Lender, and the terms “Lenders,” “Required Lenders” or any similar term shall include Bank of America in its capacity as a Lender. Agent, Lenders and their Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if they were not Agent or Lenders hereunder, without any duty to account therefor to any Secured Party. In their individual capacities, Agent, Lenders and their Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any Secured Party.

12.14 **Titles.** Each Lender, other than Bank of America, that is designated (on the cover page of this Agreement or otherwise) by Bank of America as an “Arranger,” “Bookrunner” or “Agent” of any type shall have no right, power or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event have any fiduciary duty to any Secured Party.

12.15 Bank Product Providers. Each Secured Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by the Loan Documents, including **Sections 5.5, 14.3.3** and **12**. Each Secured Bank Product Provider shall indemnify and hold harmless Agent Indemnitees, to the extent not reimbursed by Obligors, against all Claims that may be incurred by or asserted against any Agent Indemnitee in connection with such provider's Secured Bank Product Obligations.

12.16 Withholding Taxes. To the extent required by any Applicable Law, Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the IRS or any other Governmental Authority asserts a claim that Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed by such Lender, such Lender failed to notify Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason or such Lender otherwise failed to comply with **Section 5.8** or **Section 5.9**, or if Agent reasonably determined that a payment was made to a Lender pursuant to this Agreement without deduction or applicable withholding Tax from such payment, such Lender shall indemnify Agent fully for all amounts paid, directly or indirectly, by Agent as Tax or otherwise, including any expenses (including legal expenses) incurred.

12.17 No Third Party Beneficiaries. This **Section 12** is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations. This **Section 12** does not confer any rights or benefits upon Obligors or any other Person. As between Obligors and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

12.18 Certain ERISA Matters.

(a) Each Lender represents and warrants, as of the date it became a Lender party hereto, and covenants, from the date it became a Lender party hereto to the date it ceases being a Lender party hereto, for the benefit of, Agent and not, for the avoidance of doubt, to or for the benefit of Obligors, that at least one of the following is and will be true:

(i) Lender is not using "plan assets" (within the meaning of ERISA Section 3(42) or otherwise) of one or more Benefit Plans with respect to Lender's entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments or Loan Documents;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to Lender's entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and Loan Documents;

(iii) (A) 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 Lender to enter into, participate in, administer and perform the Loans, Letters of Credit, Commitments and Loan Documents, (C) the entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and Loan Documents satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14, and (D) to the best knowledge of Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to Lender's entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and Loan Documents; or

(iv) such other representation, warranty and covenant as may be agreed in writing between Agent, in its discretion, and Lender.

(b) Unless **clause (i)** or **(iv)** above is true with respect to a Lender, such Lender further represents and warrants, as of the date it became a Lender hereunder, and covenants, from the date it became a Lender to the date it ceases to be a Lender hereunder, for the benefit of, Agent and not, for the avoidance of doubt, to or for the benefit of any Obligor, that Agent is not a fiduciary with respect to the assets of such Lender involved in its entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and Loan Documents (including in connection with the reservation or exercise of any rights by Agent under any Loan Document).

13. BENEFIT OF AGREEMENT; ASSIGNMENTS AND PARTICIPATIONS.

13.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Obligors, Agent, Lenders, Secured Parties, and their respective successors and assigns, except that (a) no Obligor shall have the right to assign its rights or delegate its obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with **Section 13.3**. Agent may treat the Person which made any Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 13.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

13.2 Participations.

13.2.1 Permitted Participants; Effect. Subject to **Section 13.3.3**, any Lender may sell to a financial institution ("**Participant**") a participating interest in the rights and obligations of such Lender under any Loan Documents, provided, however, that any assignment or transfer made to a Participant (including any assignment of a Foreign Revolver Commitment) shall at least include an assignment or transfer of a part of Loan of a principal amount outstanding at that time of an amount at least equivalent to 100,000 Euros, unless it is made to any Person which qualifies as a professional market party (professionele marktpartij) under the Dutch Financial Markets Supervision Act (Wet op het financieel toezicht). Despite any sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Loans and Borrower Group Commitments for all purposes, all amounts payable by Obligors shall be determined as if it had not sold such participating interests, and Obligors and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant shall not be entitled to the benefits of **Section 5.8** unless such Participant agrees to comply with the provisions of

Section 5.9 as though it were a Lender (it being understood that the documentation required under **Section 5.9** shall be delivered to the participating Lender), and shall not be entitled to receive any greater payment under **Sections 3.7** or **5.8** than its participating Lender would have been entitled to receive unless U.S. Borrower Agent consents to the participation in writing.

13.2.2 **Voting Rights.** Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of a Loan Document other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Loan or Borrower Group Commitment in which such Participant has an interest, postpones the Foreign Commitment Termination Date or U.S. Commitment Termination Date, as applicable, or any date fixed for any regularly scheduled payment of principal, interest or fees on such Loan or Commitment, or releases any Borrower or substantially all Collateral.

13.2.3 **Participant Register.** Each Lender that sells a participation shall, acting as a non-fiduciary agent of Borrowers, maintain a register in which it enters the Participant's name, address and interest in Commitments, Loans (and stated interest) and LC Obligations. Entries in the register shall be conclusive, absent manifest error, and such Lender shall treat each Person recorded in the register as the owner of the participation for all purposes, notwithstanding any notice to the contrary. No Lender shall have an obligation to disclose any information in such register except to the extent necessary to establish that a Participant's interest is in registered form under the Code. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant register.

13.2.4 **Benefit of Setoff.** Obligors agree that each Participant shall have a right of set-off in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.7** as if such Participant were a Lender.

13.3 **Assignments.**

13.3.1 **Permitted Assignments.** A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of \$5,000,000 (unless otherwise agreed by Agent in its discretion) and integral multiples of \$1,000,000 in excess of that amount; (b) except in the case of an assignment in whole of a Lender's rights and obligations, the aggregate amount of the Commitments retained by the transferor Lender is at least \$5,000,000 (unless otherwise agreed by Agent in its discretion); and (c) the parties to each such assignment shall execute and deliver to Agent, for its acceptance and recording, an Assignment and Acceptance. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to secure obligations of such Lender, including a pledge or assignment to a Federal Reserve Bank; provided, however, that no such pledge or assignment shall release the Lender from its obligations hereunder nor substitute the pledge or assignee for such Lender as a party hereto.

13.3.2 **Effect; Effective Date.** Upon delivery to Agent of an Assignment and Acceptance and a processing fee of \$3,500 by the assignor or assignee (unless otherwise agreed by Agent in its discretion) and recording thereof by Agent pursuant to **Section 13.3.4**, the assignment shall become effective as specified in the notice, if it complies with this **Section 13.3**. From such effective date, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights

and obligations of a Lender thereunder and, following the Australian Borrower Activation Date under **Section 10.1.9(c)** any such Eligible Assignee with a Foreign Revolver Commitment shall also execute an accession deed to the Australian Security Trust Deed in form and substance satisfactory to Agent and the Australian Security Trustee. Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new notes, if applicable. The transferee Lender shall comply with **Section 5.9** and deliver, upon request, an administrative questionnaire satisfactory to Agent.

13.3.3 **Certain Assignees.** No assignment or participation may be made to a Borrower, Affiliate of a Borrower, Defaulting Lender or natural person. Any assignment by a Defaulting Lender shall be effective only upon payment by the Eligible Assignee or Defaulting Lender to Agent of an aggregate amount sufficient, upon distribution (through direct payment, purchases of participations or other compensating actions as Agent deems appropriate), to satisfy all funding and payment liabilities then owing by the Defaulting Lender hereunder. If an assignment by a Defaulting Lender shall become effective under Applicable Law for any reason without compliance with the foregoing sentence, then the assignee shall be deemed a Defaulting Lender for all purposes until such compliance occurs.

13.3.4 **Register.** Agent, acting as a non-fiduciary agent of Borrowers, shall maintain (a) a copy (or electronic equivalent) of each Assignment and Acceptance delivered to it, and (b) a register for recordation of the names, addresses and Commitments of, and the Loans, interest and LC Obligations owing to, each Lender. Entries in the register shall be conclusive, absent manifest error, and Borrowers, Agent and Lenders shall treat each Person recorded in such register as a Lender for all purposes under the Loan Documents, notwithstanding any notice to the contrary. The register shall be available for inspection by Borrowers or any Lender, from time to time upon reasonable notice.

13.4 **Replacement of Certain Lenders.** If a Lender (a) within the last 120 days failed to give its consent to any amendment, waiver or action for which consent of all Lenders was required and Required Lenders consented, (b) is a Defaulting Lender, or (c) within the last 120 days gave a notice under **Section 3.5** or requested payment or compensation under **Section 3.7** or **5.8** (and has not designated a different Lending Office pursuant to **Section 3.8**), then Agent or Borrower Agent may, upon 10 days' notice to such Lender, require it to assign its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment and Acceptance(s), within 20 days after the notice. Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment and Acceptance if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents through the date of assignment.

13.5 **Lender Loss Sharing Agreement.**

(a) The provisions of this **Section 13.5** are established for the purposes of allocating risks between and among the Lenders. Each of the Lenders is providing the financing arrangements contemplated by this Agreement in reliance upon each other Lender and Agent agreeing to the terms of this **Section 13.5**.

(b) On the CAM Exchange Date:

(i) the U.S. Revolver Commitments and the Foreign Revolver Commitments shall be deemed to have terminated in accordance with **Section 11.2**;

(ii) each U.S. Lender shall fund its participation in any outstanding U.S. Swingline Loans and U.S. Protective Advances in accordance with **Sections 2.1.6**

and **4.1.3** and each Foreign Lender shall fund its participation in any outstanding Foreign Swingline Loans and Foreign Protective Advances in accordance with **Sections 2.1.6** and **4.1.3**;

(iii) each U.S. Lender shall fund its participation in any unreimbursed drawings made under the U.S. Letters of Credit pursuant to **Section 2.2.2(b)** and each Foreign Lender shall fund its participation in any unreimbursed drawings made under the Foreign Letters of Credit pursuant to **Section 2.3.2(b)**;

(iv) the Lenders shall purchase in Dollars at par interests in the Dollar Equivalent of the Designated Obligations under each Revolver Facility (and shall make payments to Agent for reallocation to other Lenders to the extent necessary to give effect to such purchases) and shall assume the obligations to reimburse any Issuing Bank for unreimbursed drawings under outstanding Letters of Credit under such Revolver Facility such that, in lieu of the interests of each Lender in the Designated Obligations under the U.S. Revolver Commitments and the Foreign Revolver Commitments in which it shall participate immediately prior to the CAM Exchange Date, such Lender shall own an interest equal to such Lender's CAM Percentage in each component of the Designated Obligations immediately following the CAM Exchange.

(c) Each Lender and each Person acquiring a participation from any Lender as contemplated by this **Section 13.5** hereby consents and agrees to the CAM Exchange.

(d) As a result of the CAM Exchange, from and after the CAM Exchange Date, each payment received by Agent pursuant to any Loan Document in respect of any of the Designated Obligations shall be distributed to the Lenders, pro rata in accordance with their respective CAM Percentages.

(e) In the event that on or after the CAM Exchange Date, the aggregate amount of the Designated Obligations shall change as a result of the making of a disbursement under a Letter of Credit by an Issuing Bank that is not reimbursed by Obligor, then each Lender shall promptly reimburse the Issuing Bank for its CAM Percentage of such unreimbursed payment.

(f) Notwithstanding any other provision of this **Section 13.5**, Agent and each Lender agree that if Agent or a Lender is required under Applicable Law to withhold or deduct any taxes or other amounts from payments made by it hereunder or as a result hereof, such Person shall be entitled to withhold or deduct such amounts and pay over such taxes or other amounts to the applicable Governmental Authority imposing such tax without any obligation to indemnify Agent or any Lender with respect to such amounts and without any other obligation of gross up or offset with respect thereto and there shall be no recourse whatsoever by Agent or any Lender subject to such withholding to Agent nor any other Lender making such withholding and paying over such amounts, but without diminution of the rights of Agent or such Lender subject to such withholding as against Borrowers and the other Obligor to the extent (if any) provided in this Agreement and the other Loan Documents. Any amounts so withheld or deducted shall be treated as, for the purpose of this Agreement, having been paid to Agent or such Lender with respect to which such withholding or deduction was made.

(g) This **Section 13.5** is solely for the benefit of Agent and Lenders and is not enforceable by, and may be amended without the consent of, Obligor.

14. MISCELLANEOUS.

14.1 Consents, Amendments and Waivers.

14.1.1 Amendment. No modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of Agent (with the consent of Required Lenders) and each Obligor party to such Loan Document; provided, however, that

(a) without the prior written consent of Agent, no modification shall alter any provision in a Loan Document that relates to any rights, duties or discretion of Agent;

(b) without (i) the prior written consent of U.S. Issuing Bank, no modification shall alter **Sections 2.2, 2.4** or any other provision in a Loan Document that relates to U.S. Letters of Credit or any rights, duties or discretion of U.S. Issuing Bank and (ii) the prior written consent of Foreign Issuing Bank, no modification shall alter **Sections 2.3, 2.4** or any other provision in a Loan Document that relates to Foreign Letters of Credit or any rights, duties or discretion of Foreign Issuing Bank;

(c) without the prior written consent of each affected Lender, including a Defaulting Lender, no modification shall (i) increase or extend the Commitment of such Lender; (ii) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2** or any waiver of additional interest imposed at the Default Rate); (iii) extend the Foreign Revolver Termination Date, U.S. Revolver Termination Date or Maturity Date; or (iv) amend this **clause (c)**;

(d) without the prior written consent of all Lenders (except any Defaulting Lender), no modification shall (i) alter **Section 5.5.2** (or any other provision of this Agreement in a manner that would have the effect of altering the ratable reduction of Commitments or the pro rata sharing of payments otherwise required hereunder) or **14.1.1**; (ii) amend the definition of Pro Rata, Required Lenders or Super-Majority Lenders; (iii) release all or substantially all Collateral or subordinate Agent's Liens thereon; (iv) waive any condition in **Section 6.1**; (v) increase the advance rates applicable to any of the Borrowing Bases; (vi) increase the Maximum Facility Amount; (vii) release all or substantially all of the value of the Guaranties; or (viii) subordinate, or have the effect of subordinating, the Obligations to any other indebtedness or other obligation of Obligors;

(e) without the prior written consent of the Super-Majority Lenders, no amendment or waiver shall be effective that would amend the definition of Foreign Borrowing Base or U.S. Borrowing Base (or any defined term used in such definitions) if the effect of such amendment is to increase borrowing availability or to add new types of eligible Collateral thereunder; and

(f) without the prior written consent of a Secured Bank Product Provider, no modification shall affect its relative payment priority under **Section 5.5.2**.

Notwithstanding the foregoing, (i) only the consent of Agent, Borrowers and those Lenders participating in the FILO Loan shall be required for amendments to this Agreement deemed necessary by Agent in order to implement the FILO Loan, (ii) Agent may release or subordinate its Lien on Inventory and accounts receivable subject to Approved Floorplan and Factoring Facilities as provided in **Section 10.2.1(p)**, (iii) Agent may enter into the Intercreditor Agreement or any other intercreditor

agreement in form and substance reasonably satisfactory to it in connection with any Permitted Term Debt or any Permitted Refinancing in respect thereof without the consent of Required Lenders; provided that such other intercreditor agreement is substantially similar to the Intercreditor Agreement or is not materially adverse to the Lenders, and (iv) Agent and Borrowers may amend any Loan Document to correct any errors, mistakes, omissions, defects or inconsistencies so long as such amendments are not materially adverse to the Lenders, and such amendment shall become effective without any further consent of any other party to such Loan Document other than Agent and Borrowers.

Notwithstanding anything in this **Section 14.1.1** to the contrary, this Agreement may be amended (or amended and restated) with the written consent of only Agent, the Foreign Borrower Agent and each Lender participating in such additional facility to add a facility hereunder for one or more Restricted Subsidiaries of Parent domiciled in Canada or Singapore or, with the consent of Agent and all affected Lenders, any other jurisdiction (the “**Additional Foreign Facility**” and such Restricted Subsidiaries, the “**Additional Foreign Facility Loan Parties**”) and to permit the extensions of credit from time to time outstanding thereunder, and the accrued interest and fees in respect thereof, to share in the benefits of this Agreement and the other Loan Documents, provided, that (i) (A) with respect to Singapore, the Commitments in respect of such Additional Foreign Facility shall be implemented utilizing a Commitment Increase pursuant to **Section 2.1.7** as a separate tranche (a “**Singapore Tranche**”) with a separate Borrowing Base and (B) with respect to Canada, such Additional Foreign Facility shall be implemented as part of the existing Foreign Borrowing Base, (ii) no Default or Event of Default shall exist before and after giving effect to implementation of the Additional Foreign Facility, (iii) the types of assets included in, and the advance rates for, any Borrowing Base established for the Additional Foreign Facility shall be substantially the same as those for the other Foreign Domiciled Obligors (and each Additional Foreign Facility Loan Party shall be added as a Foreign Borrower and a Borrower) subject to any changes as may be necessary to implement a Singapore Tranche, (iv) the proposed Additional Foreign Facility Loan Parties shall enter into such Security Documents and other Loan Documents reasonably requested by, and in form and substance reasonably satisfactory to, Agent, including such documentation as may be required in respect of other Foreign Domiciled Obligors pursuant to **Section 10.1.9(a)** of this Agreement, (v) Agent completes its due diligence on the proposed Additional Foreign Facility Loan Parties to its reasonable satisfaction, including Agent’s and each such Lenders’ compliance procedures for applicable “know your customer” and anti-money laundering rules, (vi) Agent shall have conducted an appraisal and field examination with respect to such proposed Additional Foreign Facility Loan Parties, including of (A) such Restricted Subsidiary’s practices in the computation of its Borrowing Base and (B) the assets included in such Restricted Subsidiary’s Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, in each case, prepared on a basis reasonably satisfactory to Agent and at the sole expense of such Restricted Subsidiary, (vii) Agent or a Security Trustee shall have a perfected, first priority Lien in the proposed Additional Foreign Facility Loan Parties’ property, and (viii) Obligors shall guarantee the Obligations of the proposed Additional Foreign Facility Loan Parties pursuant to **Section 5.10.1**, and such Additional Foreign Facility Loan Parties shall guarantee the other Obligations.

14.1.2 Limitations. The agreement of Obligors shall not be required for any modification of a Loan Document that deals solely with the rights and duties of Lenders, Agent and/or Issuing Bank as among themselves. Only the consent of the parties to any agreement relating to fees or a Bank Product shall be required for modification of such agreement, and no Bank Product provider (in such capacity) shall have any right to consent to modification of any Loan Document other than its Bank Product agreement. Any waiver or consent granted by Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified.

14.1.3 Payment for Consents. No U.S. Domiciled Obligor will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent. No Foreign Domiciled Obligor will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Foreign Lenders providing their consent.

14.2 Indemnity. EACH U.S. DOMICILED OBLIGOR SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE. EACH FOREIGN DOMICILED OBLIGOR SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE. In no event shall any Obligor have any obligation to indemnify or hold harmless an Indemnitee with respect to a Claim to the extent (x) determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee, (y) resulting from a claim brought by Borrowers or any other Obligor against an Indemnitee for material breach of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower or such Obligor has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) resulting from claims among Indemnitees not involving an act or omission by Obligors or their Subsidiaries or Affiliates and other than any such losses, claims, costs, expenses, damages or liabilities against any Indemnitee solely in its capacity or in fulfilling its role as Agent, an arranger, or similar role. This Section shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

14.3 Notices and Communications.

14.3.1 Notice Address. Subject to **Section 4.1.4**, all notices and other communications by or to a party hereto shall be in writing and shall be given to any Obligor, at Borrower Agent's address shown on the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment and Acceptance), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. Each communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the U.S. mail, with first-class postage pre-paid, addressed to the applicable address; or (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged. Notwithstanding the foregoing, no notice to Agent pursuant to **Section 2.1.4, 2.2, 2.3, 3.1.2** or **4.1.1** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any written communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by a Borrower Agent shall be deemed received by all Obligors.

14.3.2 Reserved.

14.3.3 Platform. Borrower Materials shall be delivered pursuant to procedures approved by Agent, including electronic delivery (if possible) upon request by Agent to an electronic system maintained by Agent (“**Platform**”). Borrowers shall notify Agent of each posting of Borrower Materials on the Platform and the materials shall be deemed received by Agent only upon its receipt of such notice. Borrower Materials and other information relating to this credit facility may be made available to Secured Parties on the Platform, and Obligors and Secured Parties acknowledge that “public” information is not segregated from material non-public information on the Platform. The Platform is provided “as is” and “as available.” Agent does not warrant the accuracy or completeness of any information on the Platform nor the adequacy or functioning of the Platform, and expressly disclaims liability for any errors or omissions in the Borrower Materials or any issues involving the Platform. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY AGENT WITH RESPECT TO BORROWER MATERIALS OR THE PLATFORM. Secured Parties acknowledge that Borrower Materials may include material non-public information of Obligors and should not be made available to any personnel who do not wish to receive such information or who may be engaged in investment or other market-related activities with respect to any Obligor’s securities. No Agent Indemnitee shall have any liability to Obligors, Secured Parties or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) relating to use by any Person of the Platform or delivery of Borrower Materials and other information through the Platform or over the internet.

14.3.4 Non-Conforming Communications. Agent and Lenders may rely upon any communications purportedly given by or on behalf of any Obligor even if they were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Obligor shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any electronic or telephonic communication purportedly given by or on behalf of an Obligor.

14.4 Performance of Obligors’ Obligations. Agent may, in its discretion at any time and from time to time, at Obligors’ expense, pay any amount or do any act required of an Obligor under any Loan Documents or otherwise lawfully requested by Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Agent’s Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All payments, costs and expenses (including Extraordinary Expenses) of Agent under this Section shall be reimbursed to Agent by Obligors, on demand, with interest from the date incurred until paid in full, at the Default Rate applicable to U.S. Base Rate Loans. Any payment made or action taken by Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

14.5 Reserved.

14.6 Severability. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

14.7 Cumulative Effect; Conflict of Terms. The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

14.8 Execution; Electronic Records. Any Loan Document, including any required to be in writing, may (if agreed by Agent) be in the form of an Electronic Record and may be executed using Electronic Signatures. An Electronic Signature on or associated with any Communication shall be valid and binding on each Obligor and other party thereto to the same extent as a manual, original signature, and any Communication entered into by Electronic Signature shall constitute the legal, valid and binding obligation of each party, enforceable to the same extent as if a manually executed original signature were delivered. A Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. The parties may use or accept manually signed paper Communications converted into electronic form (such as scanned into pdf), or electronically signed Communications converted into other formats, for transmission, delivery and/or retention. Agent and Lenders may, at their option, create one or more copies of a Communication in the form of an imaged Electronic Record (“**Electronic Copy**”), which shall be deemed created in the ordinary course of the Person's business, and may destroy the original paper document. Any Communication in the form or format of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything herein, (a) Agent is under no obligation to accept an Electronic Signature in any form unless expressly agreed by it pursuant to procedures approved by it; (b) each Secured Party shall be entitled to rely on any Electronic Signature purportedly given by or on behalf of an Obligor without further verification and regardless of the appearance or form of such Electronic Signature; and (c) upon request by Agent, any Loan Document using an Electronic Signature shall be promptly followed by a manually executed, original counterpart.

14.9 Entire Agreement; Existing Loan Agreement Amended and Restated. Time is of the essence with respect to all Loan Documents and Obligations. The Loan Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter thereof. Upon satisfaction of the conditions set forth in **Section 6**, this Agreement shall amend and restate the Existing Loan Agreement in its entirety. On the Closing Date, the rights and obligations of the parties under the Existing Loan Agreement shall be subsumed within and be governed by this Agreement; provided, however, that each of the “Loans” (as such term is defined in the Existing Loan Agreement) outstanding under the Existing Loan Agreement on the Closing Date shall, for purposes of this Agreement, be included as Loans hereunder and each of the Existing Letters of Credit outstanding under the Existing Loan Agreement on the Closing Date shall be Letters of Credit hereunder. This Agreement shall constitute a continuation of such obligations and not a novation. Each Obligor hereby ratifies and affirms its obligations and Liens under the Loan Documents (as amended, restated or otherwise modified on the Closing Date), each of which (as amended, restated or otherwise modified on the Closing Date) shall continue in full force and effect.

14.10 Relationship with Lenders. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents

or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, joint venture or similar arrangement, nor to constitute control of any Obligor.

14.11 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated by any Loan Document, Obligors acknowledge and agree that (a)(i) this credit facility and any arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Obligors and their Affiliates, on one hand, and Agent, any Lender, any of their Affiliates or any arranger, on the other hand; (ii) Obligors have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Obligors are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Obligors, their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Obligors and their Affiliates, and have no obligation to disclose any of such interests to Obligors or their Affiliates. To the fullest extent permitted by Applicable Law, each Obligor hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

14.12 Confidentiality.

14.12.1 General Provisions. Each of Agent, Lenders and Issuing Bank shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, advisors and representatives (provided they are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto; (e) in connection with any action or proceeding relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or any actual or prospective party (or its advisors) to any Bank Product or to any swap, derivative or other transaction under which payments are to be made by reference to an Obligor or Obligor's obligations; (g) with the consent of a Borrower Agent; or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) is available to Agent, any Lender, Issuing Bank or any of their Affiliates on a nonconfidential basis from a source other than Borrowers. Notwithstanding the foregoing, Agent and Lenders may publish or disseminate general information concerning this credit facility for league table, tombstone and advertising purposes, and may use Borrowers' logos, trademarks or product photographs in advertising materials. As used herein, "**Information**" means information received from an Obligor or any Subsidiary relating to it or its business that is identified as confidential when delivered. A Person required to maintain the confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises a degree of care similar to that accorded its own confidential information. Each of Agent, Lenders and Issuing Bank acknowledges that (i) Information may include material non-public information; (ii) it has developed compliance procedures regarding the use of such information; and (iii) it will handle the material non-public information in accordance with Applicable Law.

14.12.2 Australian PPSA. Nothing requires a Secured Party to disclose any information of the kind referred to in section 275(1) of the Australian PPSA. Obligors agree that they will only

authorize the disclosure of information for the purposes of section 275(7)(c) or request information for the purposes of section 275(7)(d) if Agent approves.

14.13 Australian PPSA Provisions.

14.13.1 PPSA Notices. Neither a Secured Party nor any receiver or manager is obliged to give any notice under the Australian PPSA (including notice of a verification statement) unless the notice is required by the Australian PPSA and cannot be excluded. Obligors consent to the waiver of the requirement for notice and waive any rights they have to receive a notice under sections 95, 118, 121(4), 130, 135 and 157 of the Australian PPSA.

14.13.2 Contracting Out:

(a) Where any Foreign Facility Secured Party has a security interest (as defined in the Australian PPSA) under any Loan Document, to the extent the law permits:

(i) for the purposes of sections 115(1) and 115(7) of the Australian PPSA: (A) each Foreign Facility Secured Party with the benefit of the security interest need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the Australian PPSA; and sections 142 and 143 of the Australian PPSA are excluded;

(ii) for the purposes of section 115(7) of the Australian PPSA, each Foreign Facility Secured Party with the benefit of the security interest need not comply with sections 132 and 137(3);

(iii) each party to this Agreement waives its right to receive from any Foreign Facility Secured Party any notice required under the Australian PPSA (including a notice of a verification statement); and

(iv) if any Foreign Facility Secured Party with the benefit of a security interest exercises a right, power or remedy in connection with it, that exercise is taken not to be an exercise of a right, power or remedy under the Australian PPSA unless the Foreign Facility Secured Party states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the Australian PPSA.

This does not affect any rights a person has or would have other than by reason of the Australian PPSA and applies despite any other clause in any Loan Document.

14.13.3 Further Assurance. Whenever Agent or a Security Trustee reasonably requests an Obligor to do anything:

(a) to ensure any Loan Document (or any security interest (as defined in the Australian PPSA) or other Lien under any Loan Document) is fully effective, enforceable and perfected with the contemplated priority;

(b) for more satisfactorily assuring or securing to the Secured Parties the property the subject of any such security interest or other Lien in a manner consistent with the Loan Documents; or

(c) for aiding the exercise of any power in any Loan Document,

an Obligor shall do it promptly at its own cost. This may include obtaining consents, signing documents, getting documents completed and signed and supplying information, delivering documents and evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any property the subject of any security interest or Lien.

14.14 GOVERNING LAW. UNLESS EXPRESSLY PROVIDED IN ANY LOAN DOCUMENT, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ALL CLAIMS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

14.15 Consent to Forum.

14.15.1 Forum. EACH OBLIGOR HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURT SITTING IN OR WITH JURISDICTION OVER THE BOROUGH OF MANHATTAN, NEW YORK CITY, NEW YORK, IN ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH OBLIGOR IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING ANY SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN **SECTION 14.3.1**. A final judgment in any proceeding of any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other manner provided by Applicable Law.

14.15.2 Process Agent.

(a) Without prejudice to any other mode of service allowed under any Applicable Law, each Foreign Domiciled Obligor hereby irrevocably designates, appoints and empowers U.S. Borrower Agent as its designee, appointee and agent (in such capacity "**Process Agent**") to receive, accept and acknowledge for and on its behalf, and in respect of its property, service of any and all legal process, summons, notices and documents that may be served in any such action or proceeding arising out of or relating to this Agreement or any other Loan Document. Such service may be made by mailing or delivering a copy of such process to the applicable Foreign Domiciled Obligor, in care of the Process Agent (or any successor thereto, as the case may be) at such Process Agent's above address (or the address of any successor thereto, as the case may be), and each Foreign Domiciled Obligor hereby irrevocably authorizes and directs the Process Agent (and any successor thereto) to accept such service on its behalf. If for any reason such designee, appointee and agent shall cease to be available to act as such, each Foreign Domiciled Obligor agrees to designate a new designee, appointee and agent in the State of New York on the terms and for the purposes of this provision reasonably satisfactory to Agent, and further shall at all times maintain an agent for service of process in the U.S., so long as there shall be outstanding any Obligations. Foreign Borrower Agent shall give notice to Agent of any such appointment of

successor agents for service of process, and shall obtain from each successor agent a letter of acceptance of appointment and promptly deliver the same to Agent.

(b) Each Foreign Domiciled Obligor agrees that failure by the Process Agent to notify such Foreign Domiciled Obligor of any process will not invalidate the proceedings concerned. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

14.15.3 Other Jurisdictions. Nothing herein shall limit the right of Agent, Security Trustee or any Lender to bring proceedings against any Obligor in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent or Security Trustee of any judgment or order obtained in any forum or jurisdiction.

14.16 Waivers by Obligors. To the fullest extent permitted by Applicable Law, each Obligor waives (a) the right to trial by jury (which Agent, Security Trustee and each Lender hereby also waives) in any proceeding or dispute of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Agent and Security Trustee on which an Obligor may in any way be liable, and hereby ratifies anything Agent and Security Trustee may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Agent and Security Trustee to exercise any rights or remedies; (e) the benefit of all valuation, appraisal and exemption laws; (f) any claim (which Agent, Security Trustee and each Lender hereby also waives) on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Obligor acknowledges that the foregoing waivers are a material inducement to Agent, Security Trustee, Issuing Bank and Lenders entering into this Agreement and that they are relying upon the foregoing in their dealings with Obligors. Each Obligor has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

14.17 Patriot Act Notice. Agent, Security Trustee and Lenders hereby notify Obligors that pursuant to the Patriot Act, Agent, Security Trustee and Lenders are required to obtain, verify and record information that identifies each Obligor, including its legal name, address, tax ID number and other information that will allow Agent, Security Trustee and Lenders to identify it in accordance with the Patriot Act. Agent, Security Trustee and Lenders will also require information regarding each personal guarantor, if any, and may require information regarding Obligors' management and owners, such as legal name, address, social security number and date of birth. Obligors shall, promptly upon request, provide all documentation and other information as Agent, Security Trustee, Issuing Bank or any Lender may request from time to time in order to comply with any obligations under any "**know your customer**," anti-money laundering or other requirements of Applicable Law, including the Patriot Act and Beneficial Ownership Regulation.

14.18 Australian Anti-Money Laundering Provisions. The Australian Borrowers agree that Agent may delay, block or refuse to process any request for a Foreign Borrowing or Foreign Letter of Credit without incurring any liability if any Foreign Lender reasonably suspects that:

- (a) the transaction may breach any AML Legislation;
- (b) the transaction involves any Person (natural, corporate or governmental) that is sanctioned under economic and trade sanctions imposed by the United States, the European Union or Australia; or
- (c) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful in Australia.

The Australian Borrowers must provide all information to Agent which any Foreign Lender reasonably requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any laws or regulations in Australia. The Australian Borrowers agree that Agent may disclose any information concerning the Australian Borrowers to:

- (i) any law enforcement, regulatory agency or court where required by any such law or regulations in Australia;
- and
- (ii) any correspondent entity a Foreign Lender uses to make the payment for the purpose of compliance with any such law or regulation.

Unless an Australian Borrower has disclosed that it is acting in a trustee capacity or on behalf of another party, the Australian Borrower warrants that it is acting on its own behalf in entering into this document.

Each Australian Borrower declares and undertakes to Agent that the processing of any request for a Borrowing of Foreign Loans or Foreign Letter of Credit by Agent in accordance with an Australian Borrower's instructions will not breach any laws or regulations in Australia. The Foreign Lenders and Agent acknowledge and agree that any Australian Borrower and any banks through which transactions are conducted may notify any Governmental Authority of any transactions as and when required under AML Legislation.

14.19 NO ORAL AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.

14.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties, each party hereto (including each Secured Party) acknowledges that, with respect to any Secured Party that is an Affected Financial Institution, any liability of such Secured Party arising under a Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority, each party hereto 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 party hereto 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 any Write-Down and Conversion Powers of the applicable Resolution Authority.

14.21 Acknowledgement Regarding Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**”, and each such QFC, a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

If 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, 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 Regimes 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. If a Covered Party or 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 Regimes if the Supported QFC and Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a defaulting lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

14.22 Exiting Lender. Subject to receipt of funds necessary to pay off all accrued but unpaid principal, interest and fees to and including the Closing Date owed to Intesa Sanpaolo S.p.A. New York branch (the “**Exiting Lender**”), each of the parties hereto hereby agrees and confirms, Exiting Lender’s Commitment shall be \$0, its commitment to lend, its obligation to participate in any LC Obligations and all of its obligations under this Agreement shall be terminated and Exiting Lender shall cease to be a Lender for all purposes under the Loan Documents, except to the extent of any provisions thereof which by their terms expressly survive for the benefit of a Lender regardless of the termination or expiration of

the Loan Documents. The Commitments of each Lender on and from the Closing Date are set out in **Schedules 1.1(a)** or **1.1(b)**, as applicable.

14.23 Release of Retiring Obligors; Release of Local Law Pledges. Each of Agent, Security Trustee and the Lenders hereby (a) release each of Hyster-Yale Italia S.p.A., Bolzoni Capital UK Limited and Bolzoni Capital Holding BV (collectively, the “**Released Parties**”) from all of their obligations under the Loan Documents (as defined in the Existing Loan Agreement), including any Guaranty (as defined in the Existing Loan Agreement and including, without limitation, the Guaranty by Hyster-Yale Italia S.p.A. dated December 18, 2013), except for obligations and provisions that expressly survive termination pursuant to their terms, (b) release their security interests created under the Security Documents (as defined in the Existing Loan Agreement) in the Collateral (as defined in the Existing Loan Agreement) of the Released Parties, and (c) agree to execute any relevant deed or other release documentation to effect the foregoing. Each of Agent, Security Trustee and the Lenders hereby (a) releases, discharges and terminates each of (i) the Share Pledge Agreement dated January 30, 2014 by Hyster-Yale Nederland B.V. of the shares in Hyster-Yale Italia S.p.A., (ii) the Quota Pledge Agreement dated March 18, 2014, as amended by the First Amendment to Quota Pledge Agreement dated July 14, 2016, and as further amended by the Second Amendment to Quota Pledge Agreement dated June 18, 2019 by Hyster-Yale Group, Inc. and Hyster-Yale Holding B.V. of the shares in Hyster-Yale Brasil Empilhadeiras LTDA, and (iii) the Pledge Agreement dated March 18, 2014, as amended by the First Addendum to the Pledge Agreement dated July 27, 2016 and as further amended by the Second Addendum to the Pledge Agreement dated July 15, 2019 by Hyster-Yale Group, Inc. of the shares in Hyster-Yale Mexico, S.A. DE C.V. and (b) agree to execute any relevant deed or other release documentation to effect the foregoing.

*[Remainder of page intentionally left blank;
signatures begin on following page]*

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date set forth above.

HYSTER-YALE MATERIALS HANDLING, INC., as a U.S. Borrower and a Guarantor

By: /s/ Suzanne S. Taylor
Name: Suzanne S. Taylor
Title: Senior Vice President, General Counsel and Secretary

HYSTER-YALE GROUP, INC., as a U.S. Borrower and a Guarantor

By: /s/ Suzanne S. Taylor
Name: Suzanne S. Taylor
Title: Senior Vice President, General Counsel and Secretary

BOLZONI AURAMO, INC., as a U.S. Borrower and a Guarantor

By: /s/ Suzanne S. Taylor
Name: Suzanne S. Taylor
Title: Secretary

HYSTER-YALE NEDERLAND B.V., as a Dutch Borrower and a Guarantor

By: /s/ Dirkjan Johannes Josephus Peters
Name: Dirkjan Johannes Josephus Peters
Title: Authorized Signatory

HYSTER-YALE UK LIMITED, as a UK Borrower and a Guarantor

By: /s/ R.T.S. Tyler
Name: R.T.S. Tyler
Title: Director

Signature Page to
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**HYSTER OVERSEAS CAPITAL
CORPORATION, LLC, as a Guarantor**

By: /s/ Suzanne S. Taylor
Name: Suzanne S. Taylor
Title: Secretary

BOLZONI HOLDINGS, LLC, as a Guarantor

By: /s/ Suzanne S. Taylor
Name: Suzanne S. Taylor
Title: Secretary

NUVERA FUEL CELLS, LLC, as a Guarantor

By: /s/ Suzanne S. Taylor
Name: Suzanne S. Taylor
Title: Vice President and Secretary

**HYSTER-YALE GROUP LIMITED, as a
Guarantor**

By: /s/ R.T.S. Tyler
Name: R.T.S. Tyler
Title: Director

**HYSTER-YALE INTERNATIONAL B.V., as
a Guarantor**

By: /s/ Dirkjan Johannes Josephus Peters
Name: Dirkjan Johannes Josephus
Peters
Title: Authorized Signatory

HYSTER-YALE HOLDING B.V., as a
Guarantor

By: HYSTER-YALE GROUP LIMITED, as
authorized signatory

By: /s/ Dirkjan Johannes Josephus Peters
Name: Dirkjan Johannes Josephus
Peters
Title: Authorized Signatory

Address for Borrowers and Guarantors:

5875 Landerbrook Drive, Suite 300
Cleveland, Ohio 44124-4069
Attention: Brian Frentzko
Facsimile: 40-449-9577

BANK OF AMERICA, N.A., as Agent and a
U.S. Lender

By: /s/ Thomas H. Herron
Name: Thomas H. Herron
Title: Senior Vice President

Address:

Bank of America, N.A.
110 N Wacker Drive
Mailcode: IL4-110-08-03
Chicago, Illinois 60606
Attention: Thomas H. Herron
Facsimile: (312) 904-7190

BANK OF AMERICA, N.A., (acting through
its London Branch), as European Security
Trustee and a Foreign Lender

By: /s/ Thomas H. Herron
Name: Thomas H. Herron
Title: Senior Vice President

CITIBANK, N.A., as a U.S. Lender and a
Foreign Lender

By: /s/ Shane Azzara
Name: Shane Azzara
Title: Managing Director and Vice
President

Address: 388 Greenwich Street, 7th Flr
New York, NY 10013

**HSBC BANK USA, NATIONAL
ASSOCIATION**, as a U.S. Lender and a
Foreign Lender

By: /s/ Chris Helmecci
Name: Chris Helmecci
Title: Director

Address: 150 North Radnor Chester Rd Suite
A250
Radnor, PA 19087

WELLS FARGO BANK, N.A., as a U.S.
Lender

By: /s/ Peter Aziz
Name: Peter Aziz
Title: Authorized Signatory

Address: 1800 Century Park East, Suite 1100
Los Angeles, CA 90067

**WELLS FARGO BANK, NATIONAL
ASSOCIATION, LONDON BRANCH**, as a
Foreign Lender

By: /s/ Patricia Del Busto
Name: Patricia Del Busto
Title: Authorized Signatory

Address: 8th Floor, 33 King William Street, London, EC4R
9AT

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KEYBANK NATIONAL ASSOCIATION, as
a U.S. Lender and a Foreign Lender

By: /s/ Michael V. Panichi
Name: Michael V. Panichi
Title: Senior Vice President

Address: 127 Public Square, Cleveland OH
44114

**FIFTH THIRD BANK, NATIONAL
ASSOCIATION**, as a U.S. Lender and a
Foreign Lender

By: /s/ Patrick Lingrosso
Name: Patrick Lingrosso
Title: Vice President

Address:

U.S. BANK NATIONAL ASSOCIATION, as
a U.S. Lender and a Foreign Lender

By: /s/ Lisa Freeman
Name: Lisa Freeman
Title: Senior Vice President

Address: 185 Asylum Street
Hartford, CT 06103

INTESA SANPAOLO S.P.A., New York
Branch, as an Exiting Lender

By: /s/ Jordan Schweon
Name: Jordan Schweon
Title: Managing Director

By: /s/ Anne Culver
Name: Anne Culver
Title: Vice President

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Schedule 1.1(a)
Foreign Revolver Commitments

Foreign Lender	Foreign Revolver Commitment
Bank of America, N.A. (acting through its London branch)	\$22,500,000.00
Citibank, N.A.	\$18,000,000.00
HSBC Bank USA, National Association	\$12,750,000.00
Wells Fargo Bank, National Association, London Branch	\$12,750,000.00
Fifth Third Bank, National Association	\$8,250,000.00
U.S. Bank National Association	\$8,250,000.00
KeyBank National Association	\$7,500,000.00
Total:	\$90,000,000.00

Schedule 1.1(b)
U.S. Revolver Commitments

U.S. Lender	U.S. Revolver Commitment
Bank of America, N.A.	\$52,500,000.00
Citibank, N.A.	\$42,000,000.00
HSBC Bank USA, National Association	\$29,750,000.00
Wells Fargo Bank, N.A.	\$29,750,000.00
Fifth Third Bank, National Association	\$19,250,000.00
U.S. Bank National Association	\$19,250,000.00
KeyBank National Association	\$17,500,000.00
Total:	\$210,000,000.00

EQUITY TRANSFER AGREEMENT

Between

Y-C HONGKONG HOLDING CO., LIMITED

And

HYSTER-YALE ACQUISITION HOLDING LTD

Regarding

HYSTER-YALE MAXIMAL FORKLIFT (ZHEJIANG) CO., LTD.

May 28, 2021

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This **Equity Transfer Agreement** (the “**Agreement**”) is dated May 28, 2021 (the “**Execution Date**”) and entered into

BETWEEN:

- (1) **Y-C Hongkong Holding Co., Limited**, a limited liability company incorporated under the Laws of Hong Kong, with its registered office at Room D, 10/F, Tower A, Billion Centre, 1 Wang Kwong Road, Kowloon Bay, Kowloon, Hong Kong (the “**Seller**”); and
- (2) **Hyster-Yale Acquisition Holding Ltd.**, a corporation organized and existing under the laws of England and Wales, with its registered address at Centennial House, Building 4.5, Frimley Business Park, Frimley, Surrey GU16 7SG, UK, or any of its affiliates designated (the “**Purchaser**”).

The Seller and the Purchaser are hereinafter referred to individually as a “**Party**”, collectively as the “**Parties**”.

WHEREAS

- A. Hyster-Yale Maximal Forklift (Zhejiang) Co., Ltd. (the “**Company**”) is a limited liability company incorporated and existing under the laws of the People’s Republic of China (“**PRC**” or “**China**”) with its registered address at Jiang Jia Village, Lu Shan Street, Fuyang District, Hangzhou City, Zhejiang Province, China. The Company’s registered capital is RMB 78,700,000. The Seller and the Purchaser are the two shareholders of the Company, with the Seller holding 25% of the registered capital of the Company (representing registered capital of RMB 19,675,000) and the Purchaser holding 75% of the registered capital of the Company (representing registered capital of RMB 59,025,000) respectively.
- B. The Seller has agreed to sell and the Purchaser has agreed to purchase and pay for 15% of equity interest (out of the original 25% originally held) of the Seller in the Company (the “**Equity Interest**”) (representing registered capital of RMB 11,805,000) on the terms and subject to the conditions of this Agreement (the “**Equity Transfer**”).
- C. After the Equity Transfer, the Seller and the Purchaser will continue to be the two shareholders of the Company, with the Seller holding 10% of the equity interest of the Company (representing registered capital of RMB 7,870,000) and the Purchaser holding 90% of the equity interest (representing registered capital of RMB 70,830,000) of the Company respectively.

NOW, THEREFORE, in accordance with the relevant laws and regulations of the PRC, the Parties, on the basis of friendly negotiation and mutual benefit, hereby agree as follows:

1. INTERPRETATION

1.1 Defined Terms

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“**Affiliate**” shall mean a corporation, partnership, trust or entity in other forms that directly or indirectly controls, is controlled by, or is under common control with a Party. For purposes of this Agreement, “control” (including the terms “controlling,” “controlled by” and “under common control with”) means direct or indirect ownership of more than fifty percent (50%) of the shares, registered capital or voting rights of an entity, or the power to direct the management and decision-making of an entity (including without limitation, the power to appoint or to remove the senior management personnel of such entity), whether by equity ownership, agreement or otherwise;

“**Agreement**” shall have the meaning defined in the preamble;

“**Board**” shall have the meaning defined in Clause 5.2(b);

“**Business**” shall have the meaning defined in Clause 5.4(a);

“**Business Day**” shall mean a day on which banks are open for ordinary banking business in China, the United States and Hong Kong;

“**Call Option**” shall have the meaning defined in Clause 5.7(a);

“**China**” or “**PRC**” shall mean the People’s Republic of China;

“**Closing**” shall have the meaning defined in Clause 2.3(a);

“**Closing Date**” shall have the meaning defined in Clause 2.3(a);

“**Closing Payment**” shall have the meaning defined in Clause 2.3(b);

“**Company**” shall have the meaning defined in the preamble;

“**Competing Activities**” shall have the meaning defined in Clause 5.4(a);

“**Competing Business**” shall have the meaning defined in Clause 5.4(a);

“**EBITDA**” shall mean the earnings of the Company before interest, taxes, depreciation and amortization determined in accordance with the United States Generally Accepted Accounting Principles, as in effect from time to time, consistently applied;

“**Encumbrance**” shall mean any interest of any person (including, without limitation, any right to acquire, option or right of pre-emption) and any charge, mortgage, security interest, pledge, lien (including retention of title claims) and any rental,

conditional sale or other agreement for payment on deferred terms or any other third party right or encumbrance of any nature whatsoever (whether or not perfected);

“**Equity Interest**” shall have the meaning defined in the preamble;

“**Equity Transfer**” shall have the meaning defined in the preamble;

“**Execution Date**” shall have the meaning defined in the preamble;

“**HKIAC**” shall have the meaning defined in Clause 9.2(b);

“**Hyster-Yale**” shall mean Hyster-Yale Group, Inc., the parent company of the Purchaser;

“**Incentive Agreement**” shall mean the Incentive Agreement entered into by and between Mr. Lu and Hyster-Yale on December 6, 2017;

“**KNSN**” shall have the meaning defined in Clause 3(i);

“**Letter of Guarantee**” shall mean the letter of guarantee issued by KNSN in favor of the Purchaser and its Affiliates, successors and assigns on April 28, 2018;

“**Losses**” shall mean all actual losses, liabilities, costs (including, without limitation, legal costs), penalties, fines, charges and expenses recognizable under PRC laws;

“**MOFCOM**” shall mean the PRC Ministry of Commerce or its authorized local division;

“**Mr. Lu**” shall mean Jinhong Lu, the ultimate controlling person of the Seller and a director of the Company;

“**New AOA**” shall have the meaning defined in Clause 2.3(c)(ii)(A);

“**New Business License**” shall have the meaning defined in Clause 5.2(c);

“**New Business License Date**” shall have the meaning defined in Clause 5.2(c);

“**New Shareholders Agreement**” shall mean the amended shareholders agreement to be executed by the Parties, in the form and substance as the attached Schedule I;

“**Non-Competition Agreement**” shall have the meaning defined in Clause 5.4(b)(i);

“**Outside Date**” shall have the meaning defined in Clause 7.1(c);

“**Overdue Payment**” shall have the meaning defined in Clause 2.3(e);

“**Party**” or “**Parties**” shall have the meaning defined in the preamble;

“**Purchaser**” shall have the meaning defined in the preamble;

“**Purchase Price**” shall have the meaning defined in Clause 2.2;

“**RMB**” shall mean the lawful currency of the PRC;

“**Restricted Persons**” shall have the meaning defined in Clause 5.4(a);

“**SAMR**” shall mean the State Administration for Market Regulation of the PRC and/or its local counterpart with the appropriate jurisdiction in the context;

“**Second Tranche**” shall have the meaning defined in Clause 2.3(b);

“**Seller**” shall have the meaning defined in the preamble;

“**Shanghai Hyster**” shall have the meaning defined in Clause 5.6(a);

“**Share Charge Deed**” shall mean the Share Charge Deed entered into by and among the Seller as charger, Mr. Lu and Jun Su as principles and the Purchaser as chargee on June 1, 2018;

“**Shareholders Agreement**” shall mean the shareholder agreement entered into by and between the Seller and the Purchaser on March 22, 2018;

“**Third Tranche**” shall have the meaning defined in Clause 2.3(b);

“**Tranche Payment**” or “**Tranche Payments**” shall have the meaning defined in Clause 2.3(b);

“**Transaction Documents**” shall mean this Agreement, the New Shareholders Agreement, the New AOA, the Non-Competition Agreement, and any other agreements and documents required to be executed, delivered or filed under this Agreement;

“**USD**” shall mean the lawful currency of the United States of America;

“**2017 ETA**” shall mean the equity transfer agreement entered into by and between KNSN and the Purchaser on December 6, 2017.

1.2 Other Definitions

Other capitalized terms shall have the meanings set forth in the respective clauses set forth herein.

2. **PURCHASE AND SALE; CLOSING**

2.1 Purchase and Sale of Equity Interest

Pursuant to the terms of this Agreement, at the Closing, the Seller shall sell to the Purchaser, and the Purchaser shall purchase from the Seller, all of Seller’s right, title and interest in and to the Equity Interest.

2.2 Purchase Price

In consideration of the Seller's transfer of the Equity Interest to the Purchaser pursuant to this Agreement, the Purchaser shall pay to the Seller an aggregate amount of USD 25,185,000 in cash (the "**Purchase Price**"), which represents a purchase price equal to a 6% compounded annual growth rate beginning June 1, 2018 based on the June 1, 2018 valuation of the Company (i.e., USD 133 million).

The Purchase Price shall be paid by wire transfer of immediately available funds in US dollars in the amounts and on the dates specified in Clause 2.3 hereof.

2.3 Payment of the Purchase Price

(a) Closing Date. The closing of the Equity Transfer (the "**Closing**") shall take place on or before June 1, 2022 (the "**Closing Date**") after all of the closing conditions set forth in Clause 6 have been satisfied or waived or at such other time and place as may be agreed by the Parties.

(b) Payment of Purchase Price. The payment of the Purchase Price will be arranged by three tranches (each a "Tranche Payment" and together the "**Tranche Payments**") based on the schedule as follows:

Tranche 1: \$8,395,000 at the Closing Date (the "**Closing Payment**");

Tranche 2: \$8,395,000 by June 1, 2023 (the "**Second Tranche**"); and

Tranche 3: \$8,395,000 by June 1, 2024 (the "**Third Tranche**").

(c) Closing Deliveries

(i) At the Closing, the Purchaser shall deliver to the Seller the Closing Payment, by wire transfer of immediately available funds to a Hong Kong bank account designated in writing by the Seller, such designation to be made by the Seller at least five (5) Business Days prior to the Closing Date.

(ii) On or before the Closing, the Seller shall have assisted the Company, and presented to the Purchaser the following:

(A) the updated registration records of the Company from the SMAR public database reflecting that (i) the Purchaser holds 90% equity interest of the Company and the Seller holds 10% equity interest of the Company, (ii) the Company has adopted an amended and restated articles of association with the terms agreed by the parties in this Agreement (the "**New AOA**", in a form and substance as set forth in Schedule II) by a resolution of the Board, and (iii) the Board of the Company has been changed to reflect the board composition provided in the New AOA.

(B) The signed originals of the Transaction Documents.

(d) Post-Closing Tranche Payments

Subject to the condition that the Seller has performed and complied with all of its obligations under this Agreement, the Purchaser shall make the remaining Tranche Payments in accordance with the schedule sets out in Section 2.3(b).

(e) Late Payment Penalty

A late payment penalty equivalent to a 0.05% of an overdue Tranche Payment (the “**Overdue Payment**”) on a daily basis may apply until such Overdue Payment is paid in full by the Purchaser.

3. REPRESENTATIONS AND WARRANTIES OF SELLER

The Seller hereby represents and warrants to the Purchaser, as of the date of this Agreement and as of the Closing Date, as follows:

- (a) All information and documents provided by the Seller or its respective Affiliates to the Purchaser, its professional advisors and other authorized representatives with regard to the Seller or the Company are true, accurate and complete in all respects and where applicable, all the documents so provided are true and complete copies of the originals.
- (b) The Seller is a corporation duly incorporated and validly existing under the laws of Hong Kong, and has the requisite legal capacity and authority to enter into this Agreement and perform its obligations hereunder.
- (c) The Seller has obtained all appropriate board and/or shareholder level approvals for entering into and undertaking the transactions contemplated in this Agreement and its execution and performance of this Agreement does not violate any applicable laws, order, judgment or decree.
- (d) The Seller is the sole legal and beneficial owner of the Equity Interest and has full power and capacity to transfer the Equity Interest to the Purchaser.
- (e) The Equity Interest is free and clear of all Encumbrances and there is no outstanding claim with regard to such Equity Interest or any agreements to transfer the Equity Interest to any third parties.
- (f) The Seller has been in compliance with the Shareholders Agreement.
- (g) All officers and directors appointed by the Seller to the Company have been in compliance with all the applicable laws and regulations including but not limited to the anti-corruption laws with respect to any and all matters, operations and activities relating to the Company directly or indirectly.

For the purpose of this sub-clause, “**anti-corruption laws**” should mean, collectively, as amended from time to time (i) the U.S. Foreign Corrupt Practices Act of 1977, and the rules and regulations promulgated thereunder; (ii) the People’s Republic of China’s anti-corruption laws and regulations

including but not limited to the Criminal Law, the Anti-Unfair Competition Law and the Interim Provisions on Banning Commercial Bribery; and (iii) the UK Bribery Act 2010, and the rules and regulations promulgated thereunder; and (iv) all other anti-corruption laws, regulations, rules, orders, decrees, or other directives carrying the force of law applicable to the Company or any activities engaged in by the Company.

- (h) The Seller and all shareholders of the Seller have been in compliance with the Share Charge Deed.
- (i) KNSN Pipe & Pile Company Limited (“KNSN”) has been in compliance with the Letter of Guarantee.
- (j) Mr. Lu, Jun Su and Seller, have been in compliance with the Incentive Agreement, Letter of Guarantee and other agreements entered into by Mr. Lu, Jun Su and/or Seller.
- (k) There has been no material change in the Company’s operations or financial conditions which individually or in aggregate will cause its EBITDA to drop below USD 6 million from the Company’s 2021 financial statements.
- (l) Neither the execution and performance by the Seller of the Transaction Documents, nor the consummation of the Equity Transfer will require any consents or approvals from any third party.

4. REPRESENTATIONS AND WARRANTIES OF PURCHASER

The Purchaser hereby represents and warrants to the Seller, as of the date of this Agreement and as of the Closing Date, as follows:

- (a) The Purchaser is duly organized and validly existing under the laws of England and Wales and has the requisite legal capacity and authority to enter into this Agreement and perform its obligations hereunder.
- (b) The Purchaser has obtained all appropriate board and/or shareholder level approvals for entering into and undertaking the transactions contemplated in this Agreement and its execution and performance of this Agreement does not violate any applicable law, order, judgment or decree.

5. COVENANTS

5.1 Conduct of Business

Each Party shall use its reasonable best efforts to procure that from the Execution Date until the Closing Date:

- (a) The Company will carry on business in compliance with all applicable laws and in the ordinary and usual course and in the lawful manner and scope consistent with the past practice as of the Execution Date;

- (b) The Parties shall comply, and shall cause the Company to comply, in all respects, with the terms of the Shareholders Agreement; and
- (c) Purchaser and Seller agree, that purposes of all tax years up to and including 2022, that Purchaser can determine transfer pricing provided that the mark-up is determined on an arms-length basis.

5.2 Approvals and Government Filings

As soon as possible after the date hereof, the Seller and the Purchaser shall use reasonable best efforts to take all actions necessary to obtain (and shall cooperate with each other in obtaining) any regulatory approvals (which actions shall include furnishing all information required in connection with such approvals) required to be obtained or made by the Seller, the Purchaser or the Company in connection with the Equity Transfer, including:

- (a) the Seller and the Purchaser shall execute shareholder resolutions to adopt unanimous resolutions to approve, among other matters, the Equity Transfer by the Seller to the Purchaser pursuant to this Agreement, the adoption of the New AOA, and the removal and/or replacement of the current directors of the Company to cause that the board composition of the Company comply with the New AOA;
- (b) the Seller and the Purchaser shall cause the board of directors of the Company (the “**Board**”) to adopt unanimous resolutions to approve, among other matters, the Equity Transfer by the Seller to the Purchaser pursuant to this Agreement, and the adoption of the New AOA;
- (c) the Purchaser shall, and shall cause the Company to, with necessary assistance of the Seller as may be required by applicable law, submit to SAMR all required documents to register the Equity Transfer, the replacement directors, the adoption of the New AOA, and other relevant changes in the corporate records of the Company and obtain a new business license (the “**New Business License**”). The date of issuance of the New Business License is referred to as “**New Business License Date**”; and
- (d) as soon as practical following the New Business License Date, the Purchaser shall, and shall cause the Company to, with necessary assistance of the Seller, apply to the relevant authorities to complete all other relevant registrations arising from the Equity Transfer, the replacement directors, and the adoption of the New AOA, including without limitation, online registration with MOFCOM, foreign exchange registrations, tax registrations and such other registrations as required under applicable laws.

5.3 Confidentiality

Each Party undertakes that, except required by the law, it shall not, and shall procure that no Affiliate of it will, disclose to any other person or use the following confidential information: (a) the existence and terms of this Agreement, (b) any non-public information or knowledge obtained in connection with the negotiation or

execution of this Agreement or the transactions contemplated hereby, (c) any non-public information relating to the Company that it has obtained either in its position as shareholder thereof or otherwise (including, without limitation, the Company's plans regarding its future business, its products, pricing and cost information, employee benefits and compensation data, and financial planning information), or (d) any and all non-public information or knowledge it has learned in connection with or relating to the Purchaser and/or its Affiliates including but not limited to all records, documents, statements, and other business or technical information relating to the Purchaser and/or any of its Affiliates.

5.4 Non-Competition

- (a) Within two (2) years after the Closing Date (i.e., from June 1, 2022 to May 31, 2024), the Seller shall, and shall cause its Affiliates (excluding the Company), branches and their respective directors, officers, partners and employees, and their respective family members (the "**Restricted Persons**") as well as Mr. Lu not to, directly or indirectly engage in any activity that competes (the "**Competing Activities**") with the Company's or the Purchaser's key business including but not limited to the design, manufacture, sales, commissioned agency (excluding auction), import and export, leasing, installation, maintenance and provision of technical services of forklift trucks, hoisting machinery, material handling equipment, as well as components and spare parts of the aforementioned products (the "**Business**").

For the purpose of this sub-clause, "Competing Activities" shall include without limitation any activities related to (A) setting up, and/or investing in, directly or indirectly, any type of business that is the same as or similar to the Business (the "**Competing Business**"); (B) undertaking, directly or indirectly, any form of business activities that compete with the Business, whether for the benefit of the Seller or any of the Restricted Persons; (C) acquiring, directly or indirectly, any Competing Business, through the purchase of the assets or equity of such business; (D) owning, directly or indirectly, any equity interest in any Competing Business; (E) initiatively offering employment to or otherwise initiatively soliciting any active employees of the Company or the Purchaser; or (F) directly or indirectly soliciting any customers or other business partners or associates of the Company.

- (b) The Seller shall cause Jun Su not to engage in any Competing Activities in accordance with the following:
- i. If Jun Su's employment with the Company terminates before the Closing, Jun Su shall comply with the non-compete obligations under Jun Su's employment contract in accordance with and subject to the terms and conditions of such employment agreement for the period starting from the employment termination date and ending on the Closing Date. After the Closing Date, Jun Su will be subject to the non-competition obligations under a separate non-competition agreement (despite of the non-compete provision in his current employment contract) to be entered into by and among Jun Su, Purchaser, the

Company and the Seller in the form and substance as the attached Schedule III (the “**Non-Competition Agreement**”). The combined non-competition period for Jun Su under this Clause 5.4(b)(i) will be two years, and Company’s obligations (e.g., for payment and others) and Jun Su’s employment contract regarding the non-compete shall immediately expire and no longer bind the Company or Purchaser upon the Closing.

- ii. If Jun Su’s employment with the Company terminates after the second (2nd) anniversary of the Closing, Jun Su shall comply with the non-compete obligations under Jun Su’s employment contract in accordance with and subject to the terms and conditions of such employment agreement.
- (c) The Seller shall ensure that Mr. Lu and Jun Su will enter into the Non-Competition Agreement, which sets out the details to reflect the above Clauses, 5.4(a) and 5.4(b) respectively and comply with the terms therein.
- (d) The Seller shall be liable to and shall indemnify the Purchaser or the Company, as the case may be, for any breach of this Section 5.4 by the Seller, and shall, without limitation to the Purchaser’s other remedies, pay the Purchaser or the Company an amount equal to the sales profits generated from or that otherwise results, directly and indirectly, from the Competing Activities for such period or periods of time during which the Competing Activities occurred.
- (e) The Seller shall also be jointly and severally liable with Mr. Lu and Jun Su for their violation of this Section 5.4 and shall indemnify the Purchaser or the Company, as the case maybe, against any losses which may incur due to the breach by Mr. Lu and Jun Su.

5.5 Tax Clearance Certificate.

As soon as reasonably practicable following the respective date for each of the Tranche Payments, but no later than three months after each of the Tranche Payments is made, the Seller shall provide to the Purchaser a copy of the tax clearance certificate (or similar documentation issued by the local tax authority) proving that the Seller has paid in full its Chinese taxes (including but not limited to Chinese capital gain taxes) payable in light of the Equity Transfer and the tax receipts of all the Tranche Payments according to applicable laws. In the event that Seller fails to pay for any Chinese taxes in light of the Equity Transfer and the local tax authority is requesting the Company to pay for the Seller (including the penalties imposed if any), Seller will compensate the Company for the amount of the taxes plus the penalties in full.

5.6 Transfer of Shanghai Hyster

In accordance with section 8.2 of the Shareholders Agreement, the Parties hereby agree that:

- (a) Prior to the Closing, (i) the Purchaser may cause the Company to acquire certain manufacturing functions and/or customer relationships from Shanghai Hyster Forklift Ltd. (“**Shanghai Hyster**”), and the consent of the Seller in relation to such acquisition should not be withheld if the Purchaser elects to do so, and (ii) the Purchaser shall not cause the Company to acquire any equity or all assets of Shanghai Hyster through a merger, equity acquisition or asset purchase.
- (b) After the Closing, the Purchaser may cause the Company to acquire any or all of the equity interest in or assets of Shanghai Hyster. If the Purchaser, in its sole discretion, elects to make the aforesaid acquisition, the Seller shall provide necessary or desirable assistance to complete such transfer of Shanghai Hyster at a price approved by the Board of the Company and agreeable to Shanghai Hyster.

5.7 Call Option

- (a) After the Closing Date (and after the payment of the Closing Payment), the Purchaser shall have an option to purchase from the Seller at any time prior to June 8, 2056, all (not partial) of the Seller’s remaining equity interest in the Company, i.e., initially 10% as of the date of this Agreement, subject to dilution as a result of a future increase of registered capital of the Company at the sole discretion of and subscribed only by the Purchaser (“**Call Option**”). For clarity, valuation of the Seller’s equity interest in the Company, regardless of the percentage when the Call Option is exercised, should be at all times in equivalent of USD 16.79 million. After the Call Option is exercised, the Purchaser will own 100% of the equity interest of the Company and the Company will become a wholly foreign owned enterprise owned by a sole shareholder (i.e., the Purchaser).
- (b) The Purchaser shall notify the Seller in writing of its exercise of the Call Option pursuant to this Clause 5.7. Within five (5) Business Days after the date of the notice, the Seller shall, and shall procure the director appointed by the Seller in the Company to, work with the Purchaser to prepare and execute all necessary documents and apply for and obtain all necessary approvals and registrations from the relevant government authorities to effectuate the Purchaser’s exercise of the Call Option.
- (c) For the avoidance of doubt, the Call Option could be triggered if the Seller is contemplating a sale of any of its equity interest in the Company to a third party in accordance with the terms in the New Shareholders Agreement.

6. **CLOSING CONDITIONS**

6.1 Conditions to the Purchaser’s Obligations at Closing

The obligations of the Purchaser to effect the Closing of the Equity Transfer and pay the Purchase Price to the Seller pursuant to Clause 2.3 of this Agreement are subject to the satisfaction of each of the following conditions, unless otherwise expressly waived by the Purchaser:

- (a) all the representations and warranties of the Seller set forth in Clause 3 shall be true and correct in all material respects as of the date hereof and as of the Closing Date;
- (b) the covenants and agreements of the Seller to be performed or complied with on or before the Closing Date in accordance with this Agreement shall have been performed or complied with in all material respects;
- (c) no injunction or other judgment issued by any court of competent jurisdiction shall have been entered and remain in effect which prevents the consummation of the Equity Transfer;
- (d) any and all approvals, consents, authorizations, waiver, registrations and permissions necessary for the transactions contemplated herein having been duly obtained according to the requirements of applicable PRC laws and regulations and such approvals, consents, authorizations, waiver, registrations and permissions remaining in full force and effect; such approvals, consents, authorizations, waiver, registrations and permissions including without limitation the New Business License of the Company;
- (e) since the date hereof, no governmental authority of either China or the United States of America has enacted, issued, promulgated, enforced or entered into any law (whether temporary, preliminary or permanent) that has material adverse impact on the Purchaser or Hyster-Yale or their strategic exports and imports, operations and sales plan currently in place;
- (f) all third party consents required for the consummation of the Equity Transfer have been obtained, including the written approval from partnering banks of the Purchaser committing to provide financing for this Equity Transfer;
- (g) all related-party and third-party guarantees provided by the Company for the benefit of the Seller, KNSN, their shareholders and Affiliates and other persons and entities have been cleared and removed pursuant to terms and conditions under the 2017 ETA;
- (h) Mr. Lu will remain as a non-executive director on the Board until the earlier of (a) the Seller ceases to hold any equity interest in the Company, or (b) the Seller is no longer majority owned by its parent company Y-C Investment Holding International Co., Limited and Y-C Investment Holding International Co., Limited is not majority owned by Mr. Lu;
- (i) payment schedule of the Second Escrow Payment as defined under the 2017 ETA remains unchanged;
- (j) the Seller, the Purchaser and the relevant parties shall have executed all of the Transaction Documents;
- (k) payment schedule of the Incentive Compensation as defined under the Incentive Agreement remains unchanged; and

- (l) the Seller's consent in a written form to waive its rights to subscribe pro rata in any future increase of registered capital of the Company before the Call Option is exercised pursuant to Clause 5.7.

6.2 Conditions to the Seller's Obligations at Closing

The obligations of the Seller to effect the Closing of the Equity Transfer are subject to the satisfaction of each of the following conditions, unless otherwise expressly waived by the Seller:

- (a) all the representations and warranties of the Purchaser set forth in Clause 4 shall be true and correct in all material respects as of the date hereof and as of the Closing Date; and
- (b) the covenants and agreements of the Purchaser to be performed or complied with on or before the Closing Date in accordance with this Agreement shall have been performed or complied with in all material respects.

7. **TERMINATION**

7.1 This Agreement may be terminated:

- (a) by mutual written consent of the Parties;
- (b) by a non-breaching Party, in the event of a material breach of this Agreement by any Party, which may result in a substantial impediment to the Closing under this Agreement, and if such breach is not cured within twenty (20) Business Days after the non-breaching Party's notice thereof to the breaching Party; or
- (c) by either Party, if the Closing shall not have occurred on or prior to December 31, 2022 (such date, as may be so extended in writing by both Parties, the "**Outside Date**"); provided that the right to terminate this Agreement under this Clause 7.1(c) shall not be available to any Party whose failure to perform any covenant or obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Outside Date.

7.2 If this Agreement is terminated:

- (a) such termination shall be without prejudice to the Parties' accrued rights under this Agreement at the date of termination; and
- (b) all obligations of the Parties under this Agreement shall cease, with the exception of obligations that are stated to survive termination or that by their nature survive termination.

8. INDEMNIFICATION

8.1 Indemnity by the Seller

The Seller shall unconditionally indemnify and keep the Purchaser fully indemnified from and against all damages and Losses of any nature incurred or suffered by the Purchaser arising out of or in connection with its purchase of the Equity Interest under this Agreement, including without limitation damages and Losses arising out of or in connection with any breach by the Seller of any of its representations, warranties, covenants, obligations or undertakings contained or referenced in this Agreement.

8.2 Indemnity by the Purchaser

The Purchaser shall unconditionally indemnify and keep the Seller fully indemnified from and against all damages and Losses of any nature incurred or suffered by the Seller arising out of or in connection with any breach by the Purchaser of any of its representations, warranties, covenants, obligations or undertakings contained or referenced in this Agreement.

9. GENERAL PROVISIONS

9.1 Governing Law

The formation, validity, interpretation, execution, enforcement, amendment and termination of this Agreement shall be governed by the published laws of the PRC.

9.2 Dispute Resolution

- (a) In case of any disputes arising from or in connection with the validity, interpretation, performance, implementation or termination of this Agreement, the Parties shall try to resolve such dispute through friendly consultations.
- (b) If a dispute cannot be resolved through friendly consultations within thirty (30) days from the date a Party gives the other Party written notice of such dispute, such dispute shall be resolved exclusively by arbitration under the auspices of Hong Kong International Arbitration Centre (“**HKIAC**”) in accordance with the arbitration rules of the HKIAC in force at the time of the request for arbitration.
- (c) Arbitration shall take place in Hong Kong at the HKIAC. The arbitration proceeding shall be conducted in English. The arbitral tribunal shall consist of three (3) arbitrators, with one arbitrator to be appointed by the Seller, one arbitrator to be appointed by the Purchaser, and the third arbitrator to be appointed by the Chairman or Deputy Chairman of HKIAC. Each of the arbitrators shall be senior counsel (senior Barrister-at-law) of Hong Kong and fluent in English.
- (d) The arbitration award shall be final and binding on the Parties and shall not be subject to any appeal, and the Parties shall be bound thereby and shall act accordingly. Judgment on the award of the arbitrators may be enforced by any

court of competent jurisdiction. The losing Party, as determined by the arbitrators, shall pay all out-of-pocket expenses incurred by the prevailing Party (including legal fees), as determined by the arbitrators in connection with any such dispute.

9.3 Effectiveness

This Agreement shall become effective upon execution by the authorized representatives of the Parties.

9.4 Amendment

No amendment or modification of this Agreement shall be valid or effective unless a variation is agreed to in writing and signed by the authorized representative of each of the Parties.

9.5 Severability

If one or more of the provisions of this Agreement is for any reason whatsoever held invalid or unenforceable, such provisions shall be deemed severable from the remaining covenants, agreements and provisions of this Agreement and such invalidity or unenforceability shall in no way affect the validity or enforceability of such remaining provisions or the rights of any Party. To the extent permitted by laws, the Parties hereby waive any provision of laws that renders any provision of this Agreement invalid or unenforceable in any respect.

9.6 Waiver

Within the period when the relevant rights are effective, failure or delay on the part of either Party hereto to exercise a right, power or privilege under this Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege preclude exercise of any other future exercise thereof or any other right, power or privilege.

9.7 Expenses

Unless otherwise agreed, each Party shall bear its own expenses in negotiating and concluding this Agreement, including without limitation attorneys' and consultants' fees, and pay and bear its own taxes relating to the transactions contemplated herein in accordance with applicable laws.

9.8 Binding Effect

This Agreement shall be legally binding on the Seller and the Purchaser and their lawful successors and assignees.

9.9 Language

This Agreement is written and executed in Chinese and English. Both language versions of this Agreement shall be consistent with each other, and shall have the same legal effect.

9.10 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. In case of any discrepancy between this Agreement and any previous oral and written agreements, contracts, understandings and communications of the Parties in respect of the subject matter of the Agreement, this Agreement shall prevail.

9.11 Notices

Any notice or written communication required to be given by one Party to the other pursuant to this Agreement, including but not limited to any and all offers, writings or notices to be given hereunder, shall be written in English and may be delivered personally or sent by registered airmail or postage prepaid airmail or by a recognized courier service or by facsimile transmission followed by hard-copy confirmations or by electronic mail to the address of the relevant Party or Parties set forth below. The dates on which notices shall be deemed to have been effectively given shall be determined as follows:

- (a) Notices given by personal delivery shall be deemed effectively given on the date of personal delivery.
- (b) Notices given by registered airmail or postage prepaid airmail shall be deemed effectively given on the seventh (7th) day after the date on which they were mailed (as indicated by the postmark).
- (c) Notices given by courier shall be deemed effectively given on the third (3rd) day after they were sent by recognized courier service.
- (d) Notices given by facsimile transmission shall be deemed effectively given on the first (1st) Business Day following the date the hard-copy confirmations were sent.
- (e) Notices given by electronic mail shall be deemed effectively given on the day such notices are sent, provided that the sender has received a confirmation of such electronic transmission.

For the purpose of notices, the addresses of the Parties are as follows:

To Seller:

Address: No. 1 Jinxing Road, Lu Shan Street, Fuyang District, Hangzhou City, Zhejiang Province, China, 311407

Email: barry@maxforklift.com

Fax: 0086-571-28001569

Attention: Mr. Jun Su

and

To Purchaser:

Address: 5875 Landerbrook Drive, Mayfield Heights, Ohio 44124

Email: suzy.taylor@hyster-yale.com

Fax: +1 (440) 449-9561

Attention: Ms. Suzanne Taylor (Senior Vice President, General Counsel and Secretary)

Any Party may at any time change its address for service by notice in writing delivered to the other Party in accordance with the terms hereof.

[INTENTIONALLY LEFT BLANK]

[Signature Page of the Equity Transfer Agreement]

The Seller: The Purchaser:

Y-C HONGKONG HOLDING CO., LIMITED

HYSTER-YALE ACQUISITION HOLDING LTD

Signature : /s/ Jun Su

Signature : /s/ Rajiv Kumar Prasad

Name : Jun Su

Name : Rajiv Kumar Prasad

Title : Authorized Representative

Title : President and CEO

Date : May 28, 2021

Date : May 28, 2021

Schedule I

Form of New Shareholders Agreement

Schedule II
Form of New AOA

Schedule III

Form of Non-Competition Agreement

Certifications

I, Alfred M. Rankin, Jr., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Hyster-Yale Materials Handling, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2021

/s/ Alfred M. Rankin, Jr.

Alfred M. Rankin, Jr.

Chairman and Chief Executive Officer (principal executive officer)

Certifications

I, Kenneth C. Schilling, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Hyster-Yale Materials Handling, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2021

/s/ Kenneth C. Schilling

Kenneth C. Schilling

Senior Vice President and Chief Financial Officer (principal financial officer)

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Hyster-Yale Materials Handling, Inc. (the "Company") on Form 10-Q for the quarter ended June 30, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to such officer's knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates and for the periods expressed in the Report.

Date: August 3, 2021

/s/ Alfred M. Rankin, Jr.

Alfred M. Rankin, Jr.

Chairman and Chief Executive Officer (principal executive officer)

Date: August 3, 2021

/s/ Kenneth C. Schilling

Kenneth C. Schilling

Senior Vice President and Chief Financial Officer (principal financial officer)