

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 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, 2020

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: 0-12255

**YRC Worldwide Inc.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)  
10990 Roe Avenue, Overland Park, Kansas  
(Address of principal executive offices)

48-0948788  
(I.R.S. Employer  
Identification No.)  
66211  
(Zip Code)

(913) 696-6100  
(Registrant's telephone number, including area code)

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

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

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T 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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	Outstanding at July 30, 2020
Common Stock, \$0.01 par value per share	53,283,698 shares

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## PART I—FINANCIAL INFORMATION

## Item 1. Financial Statements

CONSOLIDATED BALANCE SHEETS  
YRC Worldwide Inc. and Subsidiaries  
(Amounts in millions except share and per share data)

	June 30, 2020 (Unaudited)	December 31, 2019
<b>Assets</b>		
Current Assets:		
Cash and cash equivalents	\$ 264.2	\$ 109.2
Restricted amounts held in escrow	56.0	—
Accounts receivable, net	496.2	464.4
Prepaid expenses and other	42.9	44.6
<b>Total current assets</b>	<b>859.3</b>	<b>618.2</b>
Property and Equipment:		
Cost	2,716.0	2,761.6
Less – accumulated depreciation	(2,002.3)	(1,991.3)
<b>Net property and equipment</b>	<b>713.7</b>	<b>770.3</b>
Deferred income taxes, net	0.5	0.6
Operating lease right-of-use assets	319.2	386.0
Other assets	43.9	56.5
<b>Total Assets</b>	<b>\$ 1,936.6</b>	<b>\$ 1,831.6</b>
<b>Liabilities and Shareholders' Deficit</b>		
Current Liabilities:		
Accounts payable	\$ 195.7	\$ 163.7
Wages, vacations and employee benefits	333.2	195.9
Current operating lease liabilities	114.0	120.8
Claims and insurance accruals	111.0	120.4
Other accrued taxes	25.6	25.8
Other current and accrued liabilities	19.2	21.3
Current maturities of long-term debt	3.6	4.1
<b>Total current liabilities</b>	<b>802.3</b>	<b>652.0</b>
Other Liabilities:		
Long-term debt and financing, less current portion	871.1	858.1
Pension and postretirement	225.9	236.5
Operating lease liabilities	214.0	246.3
Claims and other liabilities	290.2	279.9
Commitments and contingencies	—	—
Shareholders' Deficit:		
Cumulative preferred stock, \$1 par value per share	—	—
Common stock, \$0.01 par value per share	0.3	0.3
Capital surplus	2,335.5	2,332.9
Accumulated deficit	(2,345.2)	(2,312.4)
Accumulated other comprehensive loss	(364.8)	(369.3)
Treasury stock, at cost (410 shares)	(92.7)	(92.7)
<b>Total shareholders' deficit</b>	<b>(466.9)</b>	<b>(441.2)</b>
<b>Total Liabilities and Shareholders' Deficit</b>	<b>\$ 1,936.6</b>	<b>\$ 1,831.6</b>

The accompanying notes are an integral part of these statements.

STATEMENTS OF CONSOLIDATED COMPREHENSIVE LOSS  
YRC Worldwide Inc. and Subsidiaries  
For the Three and Six Months Ended June 30  
(Amounts in millions except per share data, shares in thousands)  
(Unaudited)

	Three Months		Six Months	
	2020	2019	2020	2019
<b>Operating Revenue</b>	\$ 1,015.4	\$ 1,272.6	\$ 2,165.8	\$ 2,454.9
<b>Operating Expenses:</b>				
Salaries, wages and employee benefits	647.9	782.3	1,368.1	1,500.5
Fuel, operating expenses and supplies	162.7	228.3	370.7	464.2
Purchased transportation	126.0	158.0	262.2	304.3
Depreciation and amortization	34.2	38.5	69.9	78.5
Other operating expenses	55.2	57.4	116.8	121.2
Gains on property disposals, net	(6.0)	(6.2)	(45.3)	(4.6)
Impairment charges	—	—	—	8.2
Total operating expenses	1,020.0	1,258.3	2,142.4	2,472.3
<b>Operating Income (Loss)</b>	<u>(4.6)</u>	<u>14.3</u>	<u>23.4</u>	<u>(17.4)</u>
<b>Nonoperating Expenses:</b>				
Interest expense	40.2	28.2	68.5	55.2
Non-union pension and postretirement benefits	(1.6)	0.5	(3.2)	0.8
Other, net	1.4	0.1	(1.2)	(0.1)
Nonoperating expenses, net	40.0	28.8	64.1	55.9
Loss before income taxes	(44.6)	(14.5)	(40.7)	(73.3)
Income tax expense (benefit)	(7.5)	9.1	(7.9)	(0.6)
Net loss	(37.1)	(23.6)	(32.8)	(72.7)
Other comprehensive income, net of tax	3.2	2.0	4.5	5.5
<b>Comprehensive Loss</b>	<u>\$ (33.9)</u>	<u>\$ (21.6)</u>	<u>\$ (28.3)</u>	<u>\$ (67.2)</u>
<b>Average Common Shares Outstanding - Basic</b>	34,021	33,247	33,906	33,199
<b>Average Common Shares Outstanding - Diluted</b>	34,021	33,247	33,906	33,199
<b>Loss Per Share - Basic</b>	\$ (1.09)	\$ (0.71)	\$ (0.97)	\$ (2.19)
<b>Loss Per Share - Diluted</b>	\$ (1.09)	\$ (0.71)	\$ (0.97)	\$ (2.19)

The accompanying notes are an integral part of these statements.

STATEMENTS OF CONSOLIDATED CASH FLOWS  
YRC Worldwide Inc. and Subsidiaries  
For the Six Months Ended June 30  
(Amounts in millions)  
(Unaudited)

	2020	2019
<b>Operating Activities:</b>		
Net loss	\$ (32.8)	\$ (72.7)
Adjustments to reconcile net loss to cash flows from operating activities:		
Depreciation and amortization	69.9	78.5
Lease amortization and accretion expense	83.5	82.3
Lease payments	(55.7)	(75.4)
Paid-in-kind interest	38.8	—
Equity-based compensation and employee benefits expense	10.5	9.5
Gains losses on property disposals, net	(45.3)	(4.6)
Impairment charges	—	8.2
Deferred income tax benefit, net	0.1	(1.6)
Other noncash items, net	4.8	2.1
Changes in assets and liabilities, net:		
Accounts receivable	(31.9)	(67.2)
Accounts payable	22.0	5.3
Other operating assets	8.6	(4.5)
Other operating liabilities	141.1	10.6
<b>Net cash provided by (used in) operating activities</b>	<b>213.6</b>	<b>(29.5)</b>
<b>Investing Activities:</b>		
Acquisition of property and equipment	(24.1)	(70.6)
Proceeds from disposal of property and equipment	54.1	8.3
<b>Net cash provided by (used in) investing activities</b>	<b>30.0</b>	<b>(62.3)</b>
<b>Financing Activities:</b>		
Repayment of long-term debt	(28.2)	(17.5)
Debt issuance costs	(3.8)	—
Payments for tax withheld on equity-based compensation	(0.6)	(0.8)
<b>Net cash used in financing activities</b>	<b>(32.6)</b>	<b>(18.3)</b>
<b>Net Increase (Decrease) In Cash and Cash Equivalents and Restricted Amounts Held in Escrow</b>	<b>211.0</b>	<b>(110.1)</b>
<b>Cash and Cash Equivalents and Restricted Amounts Held in Escrow, Beginning of Period</b>	<b>109.2</b>	<b>227.6</b>
<b>Cash and Cash Equivalents and Restricted Amounts Held in Escrow, End of Period</b>	<b>\$ 320.2</b>	<b>\$ 117.5</b>
<b>Supplemental Cash Flow Information:</b>		
Interest paid	\$ (22.1)	\$ (50.6)
Income tax payment	(0.6)	(2.5)

The accompanying notes are an integral part of these statements.

STATEMENT OF CONSOLIDATED SHAREHOLDERS' DEFICIT  
YRC Worldwide Inc. and Subsidiaries  
For the Three and Six Months Ended June 30  
(Amounts in millions)  
(Unaudited)

	Preferred Stock	Common Stock	Capital Surplus	Accumulated Deficit	Accumulated Other Comprehensive Loss	Treasury Stock, At Cost	Total Shareholders' Deficit
<b>Balances at December 31, 2019</b>	\$ —	\$ 0.3	\$ 2,332.9	\$ (2,312.4)	\$ (369.3)	\$ (92.7)	\$ (441.2)
Equity-based compensation	—	—	1.8	—	—	—	1.8
Net income	—	—	—	4.3	—	—	4.3
Pension, net of tax:							
Amortization of prior net losses	—	—	—	—	3.3	—	3.3
Amortization of prior service credit	—	—	—	—	(0.1)	—	(0.1)
Foreign currency translation adjustments	—	—	—	—	(1.9)	—	(1.9)
<b>Balances at March 31, 2020</b>	\$ —	\$ 0.3	\$ 2,334.7	\$ (2,308.1)	\$ (368.0)	\$ (92.7)	\$ (433.8)
Equity-based compensation	—	—	0.8	—	—	—	0.8
Net loss	—	—	—	(37.1)	—	—	(37.1)
Pension, net of tax:							
Amortization of prior net losses	—	—	—	—	2.4	—	2.4
Amortization of prior service credit	—	—	—	—	(0.1)	—	(0.1)
Foreign currency translation adjustments	—	—	—	—	0.9	—	0.9
<b>Balances at June 30, 2020</b>	\$ —	\$ 0.3	\$ 2,335.5	\$ (2,345.2)	\$ (364.8)	\$ (92.7)	\$ (466.9)

	Preferred Stock	Common Stock	Capital Surplus	Accumulated Deficit	Accumulated Other Comprehensive Loss	Treasury Stock, At Cost	Total Shareholders' Deficit
<b>Balances at December 31, 2018</b>	\$ —	\$ 0.3	\$ 2,327.6	\$ (2,208.4)	\$ (332.3)	\$ (92.7)	\$ (305.5)
Equity-based compensation	—	—	1.6	—	—	—	1.6
Net loss	—	—	—	(49.1)	—	—	(49.1)
Pension, net of tax:							
Amortization of prior net losses	—	—	—	—	3.2	—	3.2
Amortization of prior service credit	—	—	—	—	(0.1)	—	(0.1)
Foreign currency translation adjustments	—	—	—	—	0.4	—	0.4
<b>Balances at March 31, 2019</b>	\$ —	\$ 0.3	\$ 2,329.2	\$ (2,257.5)	\$ (328.8)	\$ (92.7)	\$ (349.5)
Equity-based compensation	—	—	1.0	—	—	—	1.0
Net loss	—	—	—	(23.6)	—	—	(23.6)
Pension, net of tax:							
Amortization of prior net losses	—	—	—	—	1.6	—	1.6
Amortization of prior service credit	—	—	—	—	(0.1)	—	(0.1)
Foreign currency translation adjustments	—	—	—	—	0.5	—	0.5
<b>Balances at June 30, 2019</b>	\$ —	\$ 0.3	\$ 2,330.2	\$ (2,281.1)	\$ (326.8)	\$ (92.7)	\$ (370.1)

The accompanying notes are an integral part of these statements.

## 1. Description of Business

YRC Worldwide Inc. (also referred to as “YRC Worldwide,” the “Company,” “we,” “us” or “our”) is a holding company that, through its operating subsidiaries, offers its customers a wide range of transportation services. We have one of the largest, most comprehensive less-than-truckload (“LTL”) networks in North America with local, regional, national and international capabilities. Through our team of experienced service professionals, we offer expertise in LTL shipments and flexible supply chain solutions, ensuring customers can ship industrial, commercial and retail goods with confidence.

YRC Worldwide provides for the movement of industrial, commercial and retail goods through our LTL subsidiaries including USF Holland LLC (“Holland”), New Penn Motor Express LLC (“New Penn”), USF Reddaway Inc. (“Reddaway”), YRC Inc. and YRC Freight Canada Company (both doing business as, and herein referred to as, “YRC Freight”). Our LTL companies provide regional, national and international services through a consolidated network of facilities located across the United States, Canada, and Puerto Rico. We also offer services through HENRY Logistics, Inc. (“HENRY Logistics”), our customer-specific logistics solutions provider, specializing in truckload, residential, and warehouse solutions.

At June 30, 2020, approximately 80% of our labor force is subject to collective bargaining agreements, which predominantly expire on March 31, 2024.

## 2. Basis of Presentation

The accompanying consolidated financial statements include the accounts of YRC Worldwide and its wholly owned subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation. We report on a calendar year basis. The quarters of Holland and Reddaway consist of thirteen weeks that end on a Saturday either before or after the end of March, June and September, whereas all other companies’ quarters end on the natural calendar quarter end.

### Segments

As noted in our 2019 annual report on Form 10-K, our Chief Operating Decision Maker began evaluating performance and business results, as well as making resource and operating decisions under the single segment view as a result of the business transformation that began during 2019. As such, a single segment view is presented in this Form 10-Q. See further details in our 2019 annual report as filed March 11, 2020.

### Revenue Disaggregation

We considered the disclosure requirements for revenue disaggregation guidance in ASC Topic 606, *Revenue from Contracts with Customers*, and noted that our business transformation has led to one consolidated LTL network as we joined our national and regional operations and no longer measure revenues by geographies. The following table presents disaggregated revenue by revenue source between LTL shipments and total. LTL shipments are defined as shipments less than 10,000 pounds that move in our network.

Disaggregated Revenue (in millions)	Three Months		Six Months	
	2020	2019	2020	2019
LTL revenue	\$ 920.5	\$ 1,176.1	1,971.2	\$ 2,265.9
Other revenue	94.9	96.5	194.6	189.0
<b>Total revenue</b>	<b>\$ 1,015.4</b>	<b>\$ 1,272.6</b>	<b>\$ 2,165.8</b>	<b>\$ 2,454.9</b>

### Fair Value of Financial Instruments

The following table summarizes the fair value hierarchy of our financial assets and liabilities carried at fair value on a recurring basis as of June 30, 2020:

(in millions)	Total Carrying Value	Fair Value Measurement at June 30, 2020		
		Quoted prices in active market (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Restricted amounts held in escrow-current	\$ 56.0	\$ 56.0	\$ —	\$ —
Total assets at fair value	\$ 56.0	\$ 56.0	\$ —	\$ —

Restricted amounts held in escrow are invested in money market accounts and are recorded at fair value based on quoted market prices. The carrying value of cash and cash equivalents, accounts receivable and accounts payable approximate their fair value due to the short-term nature of these instruments.

#### Impact of Recently-Issued Accounting Standards

While there are recently issued accounting standards that are applicable to the Company, none of these standards are expected to have a material impact on our financial statements.

### 3. Debt and Financing

Our outstanding debt as of June 30, 2020 consisted of the following:

As of June 30, 2020 (in millions)	Par Value	Discount	Debt Issuance Costs	Book Value	Effective Interest Rate
New Term Loan	\$ 613.5	\$ (23.9)	\$ (10.7)	\$ 578.9	(a) 15.1%
ABL Facility	—	—	—	—	—
Secured Second A&R CDA	24.8	—	(0.1)	24.7	7.8%
Unsecured Second A&R CDA	45.2	—	(0.1)	45.1	7.8%
Lease financing obligations	226.3	—	(0.3)	226.0	16.6%
Total debt	\$ 909.8	\$ (23.9)	\$ (11.2)	\$ 874.7	
Current maturities of Unsecured Second A&R CDA	(1.4)	\$ —	\$ —	(1.4)	
Current maturities of lease financing obligations	(2.2)	\$ —	\$ —	(2.2)	
Long-term debt	\$ 906.2	\$ (23.9)	\$ (11.2)	\$ 871.1	

(a) Effective rate noted is as of June 30, 2020. Due to the Second New Term Loan Amendment, the rate effective for the third quarter will be a variable interest rate of 1, 3 or 6-month LIBOR, with a floor of 1.0%, plus a fixed margin of 7.5%.

#### US Treasury Loan

On July 7, 2020, the Company and certain of its subsidiaries, as guarantors (the "Term Guarantors"), entered into the UST Tranche A Term Loan Credit Agreement (the "Tranche A UST Credit Agreement") with The Bank of New York Mellon, as administrative agent and collateral agent and the UST Tranche B Term Loan Credit Agreement (the "Tranche B UST Credit Agreement" and together with the Tranche A UST Credit Agreement, the "UST Credit Agreements") with The Bank of New York Mellon, as administrative agent and collateral agent, pursuant to which the United State Treasury ("UST") will lend an aggregate of \$700.0 million to the Company pursuant to the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The obligations of the Company under the UST Credit Agreements are unconditionally guaranteed by the Term Guarantors.

The UST Credit Agreements have maturity dates of September 30, 2024, with a single payment at maturity of the outstanding balance. The Tranche A UST Credit Agreement consists of a \$300.0 million term loan and bears interest at a rate of Eurodollar rate plus a margin of 3.5% per annum, consisting of 1.50% in cash and the remainder paid-in-kind. Proceeds from the Tranche A UST Credit Agreement will primarily be used to meet the Company's contractual obligations and maintain working capital. The Tranche B UST Credit Agreement consists of a \$400.0 million term loan and bears interest at a rate of Eurodollar rate plus a margin of 3.5% per annum, paid in cash. Proceeds from the Tranche B UST Credit Agreement will be used predominantly for the acquisition of tractors and trailers. Each agreement requires that the Company must maintain minimum "Liquidity" (defined in the UST Credit Agreements to indicate that such amount is calculated as the Company's unrestricted cash on hand plus the amount of "Availability" (as defined in the loan agreement for the ABL Facility) to the extent such Availability could be borrowed under the ABL Facility) of \$125.0 million and a minimum Adjusted EBITDA commencing with the fiscal quarter ending December 31, 2021, to be not less than \$100.0 million for the four quarters ending December 31, 2021, \$150.0 million for the four quarters ending March 31, 2022, and \$200.0 million thereafter. Obligations under the UST Credit Agreements are secured by a perfected first priority security interest in the escrow or controlled account and a perfected junior priority security interest (subject to permitted liens) in substantially all assets of the Company and the Term Guarantors, subject to certain exceptions. The Company issued 15,943,753 shares of common stock as consideration related to the UST Credit Agreements as described in Item 2.

The UST Credit Agreements will be funded through a series of draws made over time as the proceeds are utilized for the purposes outlined by the agreements. As of July 31, 2020, \$245.0 million of funds have been drawn on the Tranche A UST Credit Agreement and no funds have been drawn on the Tranche B UST Credit Agreement.

Adjusted EBITDA, defined in our UST Credit Agreements and the New Term Loan Agreement (defined below), as amended, as "Consolidated EBITDA," is a measure that reflects our earnings before interest, taxes, depreciation, and amortization

expense, and is further adjusted for, among other things, letter of credit fees, equity-based compensation expense, net gains or losses on property disposals, restructuring charges, transaction costs related to issuances of debt, non-recurring consulting fees, non-cash impairment charges, integration costs, severance, non-recurring charges, the gains or losses from permitted dispositions, discontinued operations, and certain non-cash expenses, charges and losses (provided that if any of such non-cash expenses, charges or losses represents an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period will be subtracted from Adjusted EBITDA in such future period to the extent paid). Certain expenses that qualify as adjustments are capped at 10.0% of the trailing-twelve-month Adjusted EBITDA, in aggregate. Adjustments subject to the 10.0% cap include, but are not limited to, restructuring charges, integration costs, severance, and non-recurring charges. Additionally, all net gains from the disposition of properties are excluded from the definition of Adjusted EBITDA. Therefore any gains previously recognized in Adjusted EBITDA, as that term was previously defined in our SEC filings, in accordance with its definition in the Prior Term Loan Agreement, will not be included in the calculation of Adjusted EBITDA under the UST Credit Agreements.

#### ***New Term Loan***

On September 11, 2019, the Company and certain of its subsidiaries, as guarantors (the “Term Guarantors”), amended and restated the existing credit facilities under the credit agreement dated February 13, 2014 (the “Prior Term Loan Agreement”) and entered into a \$600.0 million term loan agreement (“New Term Loan”) with funds managed by Apollo Global Management, LLC acting collectively as lead lender, and Cortland Products Corp, as administrative agent and collateral agent. The obligations of the Company under the agreement governing (the “New Term Loan Agreement”) are unconditionally guaranteed by the Term Guarantors.

The New Term Loan has a maturity date of June 30, 2024, with a single payment due at maturity of the outstanding balance. The New Term Loan initially bore interest at LIBOR (subject to a floor of 1.0%) plus a margin of 7.5% per annum, payable at least quarterly in cash, subject to a 1.0% margin step down in the event the Company achieves greater than \$400.0 million in trailing-twelve-month Adjusted EBITDA. Obligations under the New Term Loan are secured by a perfected first priority security interest in (subject to permitted liens) assets of the Company and the Term Guarantors, including but not limited to all of the Company’s wholly owned terminals, tractors and trailers, subject to certain limited exceptions.

On April 7, 2020, the Company and certain of its subsidiaries entered into Amendment No. 1 (the “First New Term Loan Amendment”) to the New Term Loan Agreement as a result of expected future covenant and liquidity tightening due to unprecedented economic deterioration. Beginning the last two weeks of March, our industry and the economy at-large experienced an unexpected and significant decline in economic activity due to the impact of the 2019 novel coronavirus disease (“COVID-19”) and the resulting business shutdown and shelter-in-place orders made across North America by various governmental entities and private enterprises. The First New Term Loan Amendment principally provided additional liquidity allowing the Company to defer quarterly interest payments for the quarter ended March 31, 2020 and the quarter ending June 30, 2020 with almost all of such interest to be paid-in-kind. The First New Term Loan Amendment also provided for a waiver with respect to the Consolidated EBITDA financial covenant during each fiscal quarter during the fiscal year ending December 31, 2020. The interest rate was retroactively reset to a fixed 14% during the first six months of 2020.

On July 7, 2020, the Company and the Term Guarantors entered into Amendment No. 2 (the “Second New Term Loan Amendment”) to the New Term Loan Agreement. The material terms of the Second New Term Loan Amendment include, among other things, a consent to the refinancing and conforming changes to the description of collateral set forth in the UST Credit Agreements, permanently capitalizing previously paid-in-kind interest on borrowings under the New Term Loan Agreement, that all future interest shall accrue at the Eurodollar rate plus a margin of 7.5% per annum and 6.5% per annum in the case of alternative base rate borrowings paid in cash and a requirement that the Company must maintain minimum Liquidity of \$125.0 million and a minimum Consolidated EBITDA commencing with the fiscal quarter ending December 31, 2021, to be not less than \$100.0 million for the four quarters ending December 31, 2021, \$150.0 million for the four quarters ending March 31, 2022 and thereafter, \$200.0 million, and an extension of the EBITDA covenant holiday to the fiscal quarter ending December 31, 2021.

#### ***\$450 Million ABL Facility***

On February 13, 2014, we entered into our \$450 million ABL Facility from a syndicate of banks arranged by Citizens Bank N.A. (formerly known as RBS Citizens, N.A.) (the “ABL Agent”), Merrill Lynch, Pierce, Fenner & Smith and CIT Finance LLC. YRC Worldwide and our subsidiaries, YRC Freight, Reddaway, Holland and New Penn are borrowers under the ABL Facility, and certain of the Company’s domestic subsidiaries are guarantors thereunder.

Availability under the ABL Facility is derived by reducing the amount that may be advanced against eligible receivables plus eligible borrowing base cash by certain reserves imposed by the ABL Agent and our outstanding letters of credit and revolving

loans. Eligible borrowing base cash is cash that is deposited from time to time into a segregated restricted account and is included in “Restricted amounts held in escrow” in the accompanying consolidated balance sheet.

At our option, borrowings under the ABL Facility bear interest at either: (i) the applicable LIBOR rate plus 2.25%, as amended, or (ii) the base rate (as defined in the ABL Facility) plus 1.25%, as amended.

Letter of credit fees equal to the applicable LIBOR margin in effect, 2.25% as amended, are charged quarterly in arrears on the average daily stated amount of all letters of credit outstanding during the quarter. Unused line fees are charged quarterly in arrears (such unused line fee percentage is equal to 0.375% per annum if the average revolver usage is less than 50% or 0.25% per annum if the average revolver usage is greater than 50%.)

The ABL Facility is secured by a perfected first priority security interest (subject to permitted liens) in accounts receivable, cash, deposit accounts and other assets related to accounts receivable of the Company and the other loan parties and an additional second priority security interest (subject to permitted liens) in substantially all remaining assets of the borrowers and the guarantors other than the CDA Collateral.

The ABL Facility contains conditions, representations and warranties, events of default and indemnification provisions that are customary for financings of this type, including, but not limited to, a springing minimum fixed charge coverage ratio covenant, borrowing base reporting, limitations on incurrence of debt, investments, liens on assets, certain sale and leaseback transactions, transactions with affiliates, mergers, consolidations, purchases and sales of assets, and restricted payments. Certain provisions relating to investments, restricted payments and capital expenditures are relaxed upon meeting specified payment conditions or debt repayment conditions.

On July 7, 2020, the Company and certain of its subsidiaries entered into Amendment No. 6 (the “ABL Treasury Amendment”) in which the maturity date of the ABL was extended to January 9, 2024 and it included a consent to the refinancing and conforming changes to the description of collateral set forth in the UST Credit Agreements as well as an increase of 0.5% to applicable margin to borrowings under the ABL Facility (which increase is already reflected above).

#### Liquidity

Our principal sources of liquidity are cash and cash equivalents, available borrowings under our asset-based loan facility (the “ABL Facility”) and any prospective net cash flow from operations. As of June 30, 2020, our maximum availability under our ABL Facility was \$61.3 million, and our managed accessibility was \$20.4 million. Maximum availability is derived by reducing the amount that may be advanced against eligible receivables plus eligible borrowing base cash by certain reserves imposed by the ABL Agent and our \$347.9 million of outstanding letters of credit. Our Managed Accessibility of \$20.4 million represents the maximum amount we would access on the ABL Facility and is adjusted for eligible receivables plus eligible borrowing base cash measured at June 30, 2020. The credit agreement governing the ABL Facility permits adjustments from eligible borrowing base cash to restricted cash prior to the compliance measurement date of July 15, 2020. As of July 15, 2020, we moved \$18.0 million of cash out of restricted cash, as permitted under the ABL Facility, which effectively put our cash and cash equivalents and Managed Accessibility to \$302.6 million as of June 30, 2020.

For the December 31, 2019 borrowing base certificate, which was filed in January of 2020, we transferred \$29.0 million of cash into restricted cash to maintain the 10% threshold, as permitted under the ABL Facility, which transfer effectively put our cash and cash equivalents and Managed Accessibility to \$80.4 million.

The table below summarizes cash and cash equivalents and Managed Accessibility as of June 30, 2020 and December 31, 2019:

<u>(in millions)</u>	<u>June 30, 2020</u>	<u>December 31, 2019</u>
Cash and cash equivalents	\$ 264.2	\$ 109.2
Amounts placed (into)/out of restricted cash subsequent to period end	18.0	(29.0)
Managed Accessibility	20.4	0.2
Total cash and cash equivalents and Managed Accessibility	<u>\$ 302.6</u>	<u>\$ 80.4</u>

#### Covenants

The UST Credit Agreements and the New Term Loan Agreement include a financial covenant requirement for the Company to maintain a minimum Liquidity of \$125.0 million until the first date on which Consolidated EBITDA on the last day of a fiscal quarter is greater than \$200.0 million and a requirement that minimum Consolidated EBITDA commencing with the fiscal quarter ending December 31, 2021, to be not less than \$100.0 million for the four quarters ending December 31, 2021, \$150.0 million for the four quarters ending March 31, 2022 and \$200.0 million thereafter.

#### Risks and Uncertainties Regarding Liquidity and Compliance with Credit Facility Financial Covenants

Based on the close of UST Credit Agreements and the Second New Term Loan Amendment, the only applicable financial covenant until December 31, 2021 is the Liquidity requirement of \$125.0 million. With Liquidity as of June 30, 2020 of \$302.6 million, proceeds from the UST Credit Agreements to be received in the third quarter 2020, and forecasted operating results, management concludes it probable the Company will meet covenant requirements for the next twelve months. Substantial doubt raised during the first quarter 2020 under the accounting requirements of ASC 205-40, *Going Concern*, has been alleviated.

#### Fair Value Measurement

The book value and estimated fair values of our long-term debt, including current maturities and other financial instruments, are summarized as follows:

(in millions)	June 30, 2020		December 31, 2019	
	Book Value	Fair Value	Book Value	Fair Value
New Term Loan	\$ 578.9	\$ 576.7	\$ 559.9	\$ 559.3
ABL Facility	—	—	—	—
Lease financing obligations	226.0	222.9	231.3	233.7
Second A&R CDA	69.8	65.7	71.0	71.7
<b>Total debt</b>	<b>\$ 874.7</b>	<b>\$ 865.3</b>	<b>\$ 862.2</b>	<b>\$ 864.7</b>

The fair values of the New Term Loan and Second Amended and Restated Contribution Deferral Agreement (the "Second A&R CDA") were estimated based on observable prices (level two inputs for fair value measurements). The fair value of the lease financing obligations are estimated using a publicly traded secured loan with similar characteristics (level three input for fair value measurement).

#### 4. Leases

Leases (in millions)	Classification	June 30, 2020	December 31, 2019
<b>Assets</b>			
Operating lease assets	Operating lease right-of-use assets	\$ 319.2	\$ 386.0
Finance lease assets	Net property and equipment	2.4	2.6
<b>Total leased assets</b>		<b>\$ 321.6</b>	<b>\$ 388.6</b>
<b>Liabilities</b>			
<b>Current</b>			
Operating	Current operating lease liabilities	\$ 114.0	\$ 120.8
Finance	Other current and accrued liabilities	0.9	0.2
<b>Noncurrent</b>			
Operating	Operating lease liabilities	214.0	246.3
Finance	Claims and other liabilities	3.2	3.3
<b>Total lease liabilities</b>		<b>\$ 332.1</b>	<b>\$ 370.6</b>

Lease Cost (in millions)	Classification	Three Months		Six Months	
		2020	2019	2020	2019
Operating lease cost(a)	Purchased transportation; Fuel, operating expenses and supplies	\$ 40.4	\$ 41.1	\$ 83.5	\$ 82.3
Short-term cost	Purchased transportation; Fuel, operating expenses and supplies	2.1	3.4	4.1	6.9
Variable lease cost	Purchased transportation; Fuel, operating expenses and supplies	1.8	1.8	4.2	3.3
<b>Finance lease cost</b>					
Amortization of leased assets	Depreciation and amortization	0.0	0.1	0.1	0.3
Interest on lease liabilities	Interest expense	0.1	0.1	0.2	0.2
<b>Total lease cost</b>		<b>\$ 44.4</b>	<b>\$ 46.5</b>	<b>\$ 92.1</b>	<b>\$ 93.0</b>

(a) Operating lease cost represents non-cash amortization of ROU assets and accretion of the discounted lease liabilities and is segregated on the statement of consolidated cash flows.

Remaining Maturities of Lease Liabilities	Operating Leases		Finance Leases		Total
2020	\$	76.6	\$	0.7	\$ 77.3
2021		138.9		1.0	139.9
2022		90.2		0.6	90.8
2023		49.5		0.6	50.1
2024		18.2		0.7	18.9
After 2024		32.6		3.4	36.0
Total lease payments	\$	406.0	\$	7.0	\$ 413.0
Less: Imputed Interest		78.0		2.9	80.9
Present value of lease liabilities	\$	328.0	\$	4.1	\$ 332.1

Lease Term and Discount Rate (years and percent)	Weighted-Average Remaining Lease Term		Weighted-Average Discount Rate	
Operating leases	3.5		12.7% (a)	
Finance leases	8.0		10.3%	

(a) In an effort to preserve liquidity, certain equipment leases were modified during the second quarter to reduce short-term cash payments, resulting in an increase in payments in future periods. ROU assets and related liabilities were calculated using increased incremental borrowing rates as compared to prior periods due to a series of credit ratings downgrades. The increased incremental borrowing rates caused the ROU assets and lease liabilities to decrease, but this decrease was offset by an increase in future payment levels as a result of deferral agreements.

Other Information (in millions)	Three Months		Six Months					
	2020	2019	2020	2019				
Cash paid for amounts included in the measurement of lease liabilities								
Operating cash flows from operating leases(a)	\$	17.5	\$	38.9	\$	55.5	\$	75.2
Operating cash flows from finance leases		0.1		0.1		0.2		0.2
Financing cash flows from finance leases		0.1		0.1		0.2		0.2
Leased assets obtained in exchange for new operating lease liabilities	\$	6.3	\$	34.7	\$	10.0	\$	53.8

(a) Payments arising from operating leases are reported in operating activities on the statements of consolidated cash flows.

## 5. Employee Benefits

### Qualified and Nonqualified Defined Benefit Pension Plans

The following table presents the components of our Company-sponsored pension plan costs for the three and six months ended June 30:

(in millions)	Three Months		Six Months					
	2020	2019	2020	2019				
Interest cost	\$	9.6	\$	11.4	\$	19.2	\$	22.8
Expected return on plan assets		(14.9)		(14.3)		(29.9)		(28.6)
Amortization of prior service credit		(0.1)		(0.1)		(0.2)		(0.2)
Amortization of prior net pension loss		3.7		3.2		7.5		6.4
Total net periodic pension cost	\$	(1.7)	\$	0.2	\$	(3.4)	\$	0.4

We have contributed \$2.1 million to our Company-sponsored pension plans through June 30, 2020. Under the CARES Act, we are not required to make the remaining \$29.3 million of contributions in 2020. These contributions will be made on January 1, 2021, but may be made sooner.

## 6. Income Taxes

Our effective tax rate for the three and six months ended June 30, 2020 was 16.8% and 19.4%, respectively, compared to (62.8%) and 0.8%, respectively, for the three and six months ended June 30, 2019. The significant items impacting the 2020 rates include a benefit from the reversal of liability for an uncertain tax position resulting from statute expiration, a benefit recognized due to application of the exception to the rules regarding intraperiod tax allocation, a provision for net state and foreign taxes, certain permanent items and a change in the valuation allowance established for the net deferred tax asset balance projected for December 31, 2020. The significant items impacting the 2019 rates include a benefit recognized due to application of the exception to the rules regarding intraperiod tax allocation, a provision for net state and foreign taxes, certain permanent items and a change in the valuation allowance established for the net deferred tax asset balance that had been projected for December 31, 2019. We recognize valuation allowances on deferred tax assets if, based on the weight of the evidence, we determine it is more likely than not such assets will not be realized. Changes in valuation allowances are included in our tax provision in the period of change. In determining whether a valuation allowance is warranted, we evaluate factors such as prior years' earnings history, expected future earnings, loss carry-forward periods, reversals of existing deferred tax liabilities and tax planning strategies that potentially enhance the likelihood of the realization of a deferred tax asset. At June 30, 2020 and December 31, 2019, substantially all of our net deferred tax assets were subject to a valuation allowance.

## 7. Loss Per Share

Given our net loss position for each of the three and six months ended June 30, 2020 and June 30, 2019, we do not report dilutive securities for these periods. At June 30, 2020 and 2019, our anti-dilutive unvested shares, options, and stock units were approximately 436,000 and 325,000, respectively.

## 8. Commitments, Contingencies and Uncertainties

### *Department of Defense Complaints*

In December 2018, the United States on behalf of the United States Department of Defense filed a Complaint in Intervention ("Complaint") against the Company in the U.S. District in the Western District of New York captioned *United States ex rel. James Hannum v. YRC Freight, Inc.; Roadway Express, Inc.; and Yellow Transportation, Inc.*, Civil Action No. 08-0811(A). The Complaint alleges that the Company violated the False Claims Act by overcharging the Department of Defense for freight carrier services by failing to comply with the contractual terms of freight contracts between the Department of Defense and the Company and related government procurement rules. The Complaint also alleges claims for unjust enrichment and breach of contract. Under the False Claims Act, the Complaint seeks treble damages, civil penalties, attorneys' fees and costs of suit, all in unspecified amounts. The remaining common causes of action seek an undetermined amount for an alleged breach of contract or alternatively causes constituting unjust enrichment or a payment by mistake. The Company has moved to dismiss the case, and the court heard oral arguments on the motion on August 12, 2019. On July 17, 2020, the court granted the Company's motion to dismiss in part with respect to one claim and denied it in all other respects. Management believes the Company has meritorious defenses against the remaining counts and intends to vigorously defend this action. We are unable to estimate the possible loss, or range of possible loss, associated with these claims at this time.

### *Class Action Securities Complaint*

In January 2019, a purported class action lawsuit captioned *Christina Lewis v. YRC Worldwide Inc., et al.*, Case No. 1:19-cv-00001, was filed in the United States District Court for the Northern District of New York against the Company and certain of our current and former officers. The complaint was filed on behalf of persons who purchased or otherwise acquired the Company's publicly traded securities between March 10, 2014 and December 14, 2018. The complaint generally alleged that the defendants had violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 by making false and misleading statements relating to the Company's freight billing practices as alleged in the Department of Defense complaint described above. The action included claims for damages, including interest, and an award of reasonable costs and attorneys' fees. The co-lead plaintiffs filed an amended complaint on June 14, 2019, and the defendants moved to dismiss it on July 15, 2019. On March 27, 2020, the court granted defendants' motion to dismiss in its entirety and entered judgment closing the case. The co-lead plaintiffs filed a notice of appeal to the U.S. Court of Appeals for the Second Circuit on April 27, 2020.

### **Shareholder Derivative Complaint**

In May 2019, a putative shareholder filed an action derivatively and on behalf of the Company naming James L. Welch, Jamie G. Pierson, Stephanie D. Fisher, Raymond J. Bromark, Douglas A. Carty, William R. Davidson, Matthew A. Doheny, Robert L. Friedman, James E. Hoffman, Michael J. Kneeland, Patricia M. Nazemetz, and James F. Winestock individually as defendants and the Company as the nominal defendant. In an amended complaint, filed on October 15, 2019, Darren D. Hawkins was added as a defendant. The case, captioned *Hastey v. Welch, et al.*, Case No. 2:19-cv-2266-KGG, was filed in the United States District Court for the District of Kansas. The Complaint alleged that the Company was exposed to harm by the individual defendants' purported conduct concerning its freight-billing practices as alleged in the Department of Defense Complaint and the Class Action Securities Complaint described above. The Complaint asserted that the individual defendants' purported conduct violated Section 14(a) of the Securities Exchange Act of 1934 and that they breached their fiduciary duties, were unjustly enriched, and engaged in corporate waste. On March 30, 2020, the Court granted the Company's and individual defendants' motion to dismiss, dismissing Plaintiff's Section 14(a) claim with prejudice, and declining to exercise supplemental jurisdiction over the remaining claims and thus dismissing them without prejudice. The Court further denied as moot motions to intervene in the action that had been filed by three putative shareholders.

In October 2019, another putative shareholder filed an action derivatively and on behalf of the Company in the United States District Court for the District of Delaware naming the same defendants as did the October 15, 2019 amended complaint in the *Hastey* case. The case is captioned *Broughton v. Hawkins, et al.* Case No. 1:19-cv-01958-UNA, and makes claims similar to those made in *Hastey*. After a motion to dismiss the *Broughton* Complaint was filed on December 20, 2019, Plaintiff filed an unopposed motion for voluntary dismissal of her Complaint without prejudice on February 19, 2020. The court granted the motion on April 20, 2020.

### **Other Legal Matters**

We are involved in litigation or proceedings that arise in ordinary business activities. When possible, we insure against these risks to the extent we deem prudent, but no assurance can be given that the nature or amount of such insurance will be sufficient to fully indemnify us against liabilities arising out of pending and future legal proceedings. Many of these insurance policies contain self-insured retentions in amounts we deem prudent. Based on our current assessment of information available as of the date of these consolidated financial statements, we believe that our consolidated financial statements include adequate provisions for estimated costs and losses that may be incurred within the litigation and proceedings to which we are a party.

### **9. Subsequent Events**

The Company has evaluated all events that occur after the balance sheet date through the date when the financial statements were issued to determine if they must be reported. The Company determined that there were no reportable subsequent events to be disclosed other than the UST Credit Agreements discussed in *Debt and Financing*.

**Cautionary Note Regarding Forward-Looking Statements**

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") should be read in conjunction with the Consolidated Financial Statements and the Notes to Consolidated Financial Statements included elsewhere in this report. This report includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended ("Exchange Act"). Forward-looking statements include those preceded by, followed by or characterized by words such as "will," "expect," "intend," "anticipate," "believe," "could," "should," "may," "project," "forecast," "propose," "plan," "designed," "estimate," "enable" and similar expressions which speak only as of the date the statement was made. Forward-looking statements are inherently uncertain, are based upon current beliefs, assumptions and expectations of Company management and current market conditions, and are subject to significant business, economic, competitive, regulatory and other risks, uncertainties and contingencies, known and unknown, many of which are beyond our control. Readers are cautioned not to place undue reliance on any forward-looking statements. Our future financial condition and results could differ materially from those predicted in such forward-looking statements because of a number of factors, including (without limitation):

- The impact of COVID-19 on our results of operations, financial condition and cash flows;
- General economic factors, including (without limitation) impacts of COVID-19 and customer demand in the retail and manufacturing sectors;
- our ability to generate sufficient liquidity to satisfy our cash needs and future cash commitments, including (without limitation) our obligations related to our indebtedness and lease and pension funding requirements, and our ability to achieve increased cash flows through improvement in operations;
- our failure to comply with the covenants in the documents governing our existing and future indebtedness, including financial covenants under our senior credit facilities, in light of recent operating results;
- business risks and increasing costs associated with the transportation industry, including increasing equipment, operational and technology costs and disruption from natural disasters;
- competition and competitive pressure on pricing;
- the risk of labor disruptions or stoppages if our relationship with our employees and unions were to deteriorate;
- changes in pension expense and funding obligations, subject to interest rate volatility;
- increasing costs relating to our self-insurance claims expenses;
- our ability to finance the maintenance, acquisition and replacement of revenue equipment and other necessary capital expenditures;
- our ability to comply and the cost of compliance with, or liability resulting from violation of, federal, state, local and foreign laws and regulations, including (without limitation) labor laws and laws and regulations regarding the environment;
- impediments to our operations and business resulting from anti-terrorism measures;
- the impact of claims and litigation expense to which we are or may become exposed;
- that we may not realize the expected benefits and costs savings from our performance and operational improvement initiatives;
- our ability to attract and retain qualified drivers and increasing costs of driver compensation;
- a significant privacy breach or IT system disruption;
- risks of operating in foreign countries;
- our dependence on key employees;
- seasonality;
- shortages of fuel and changes in the cost of fuel or the index upon which we base our fuel surcharge and the effectiveness of our fuel surcharge program in protecting us against fuel price volatility;
- limitations on our operations, our financing opportunities, potential strategic transactions, acquisitions or dispositions resulting from restrictive covenants in the documents governing our existing and future indebtedness;
- fluctuations in the price of our common stock;
- dilution from future issuances of our common stock;
- our intention not to pay dividends on our common stock;

- that we have the ability to issue preferred stock that may adversely affect the rights of holders of our common stock; and
- other risks and contingencies, including (without limitation) the risk factors that are included in our reports filed with the SEC, including those described under “Risk Factors” in our annual report on Form 10-K and quarterly reports on Form 10-Q, including this quarterly report.

## Overview

MD&A includes the following sections:

**Our Business** — a brief description of our business and a discussion of how we assess our operating results.

**Consolidated Results of Operations** — an analysis of our consolidated results of operations for the three and six months ended June 30, 2020 and 2019.

**Certain Non-GAAP Financial Measures** — presentation and an analysis of selected non-GAAP financial measures for the three and six months ended June 30, 2020 and 2019 and trailing-twelve-months ended June 30, 2020 and 2019.

**Financial Condition/Liquidity and Capital Resources** — a discussion of our major sources and uses of cash and an analysis of our cash flows and aggregate contractual obligations and commercial commitments.

The “second quarter” and “first half” of the years discussed below refer to the three and six months ended June 30, respectively.

## Our Business

YRC Worldwide is a holding company that, through its operating subsidiaries, offers our customers a wide range of transportation services. YRC Worldwide has one of the largest, most comprehensive LTL networks in North America with local, regional, national and international capabilities. Through its team of experienced service professionals, YRC Worldwide offers industry-leading expertise in LTL shipments and flexible supply chain solutions, ensuring customers can ship industrial, commercial and retail goods with confidence.

We measure the performance of our business using several metrics, but rely primarily upon (without limitation) operating revenue, operating income (loss), and operating ratio. We also use certain non-GAAP financial measures as secondary measures to assess our operating performance.

- **Operating Revenue:** Our operating revenue has two primary components: volume (commonly evaluated using tonnage, tonnage per day, number of shipments, shipments per day or weight per shipment) and yield or price (commonly evaluated using picked up revenue, revenue per hundredweight or revenue per shipment). Yield includes fuel surcharge revenue, which is common in the trucking industry and represents an amount charged to customers that adjusts with changing fuel prices. We base our fuel surcharges on the U.S. Department of Energy fuel index and adjust them weekly. Rapid material changes in the index or our cost of fuel can positively or negatively impact our revenue and operating income as a result of changes in our fuel surcharge. We believe that fuel surcharge is an accepted and important component of the overall pricing of our services to our customers. Without an industry accepted fuel surcharge program, our base pricing for our transportation services would require changes. We believe the distinction between base rates and fuel surcharge has blurred over time, and it is impractical to clearly separate all the different factors that influence the price that our customers are willing to pay. In general, under our present fuel surcharge program, we believe rising fuel costs are beneficial to us and falling fuel costs are detrimental to us in the short term, the effects of which are mitigated over time.
- **Operating Income (Loss):** Operating income (loss) is operating revenue less operating expenses.
- **Operating Ratio:** Operating ratio is a common operating performance measure used in the trucking industry. It is calculated as (i) 100 percent (ii) minus the result of dividing operating income by operating revenue or (iii) plus the result of dividing operating loss by operating revenue, and is expressed as a percentage.
- **Non-GAAP Financial Measures:** We use EBITDA and Adjusted EBITDA, which are non-GAAP financial measures, to assess the following:
  - o *EBITDA:* a non-GAAP measure that reflects our earnings before interest, taxes, depreciation, and amortization expense. EBITDA is used for internal management purposes as a financial measure that reflects our core operating performance.

- o *Adjusted EBITDA*: a non-GAAP measure that reflects EBITDA, and further adjusts for letter of credit fees, equity-based compensation expense, net gains or losses on property disposals, restructuring charges, transaction costs related to issuances of debt, non-recurring consulting fees, non-cash impairment charges and the gains or losses from permitted dispositions, discontinued operations, and certain non-cash expenses, charges and losses (provided that if any of such non-cash expenses, charges or losses represents an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period will be subtracted from Consolidated EBITDA in such future period to the extent paid). All references to “Adjusted EBITDA” throughout this section and the rest of this report refer to “Adjusted EBITDA” calculated under our New Term Loan Agreement (defined therein as “Consolidated EBITDA”) unless otherwise specified. Consolidated EBITDA is also a defined term in our ABL Agreement and the definition there aligns with the prior definition of Consolidated EBITDA under the Prior Term Loan Agreement. Adjusted EBITDA is used for internal management purposes as a financial measure that reflects our core operating performance, to measure compliance with financial covenants in our credit facilities and to determine certain management and employee bonus compensation.

We believe our presentation of EBITDA and Adjusted EBITDA is useful to investors and other users as these measures represent key supplemental information our management uses to compare and evaluate our core underlying business results, particularly in light of our leverage position and the capital-intensive nature of our business. Further, EBITDA is a measure that is commonly used by other companies in our industry and provides a comparison for investors to evaluate the performance of the companies in the industry. Additionally, Adjusted EBITDA helps investors to understand how the company is tracking against our financial covenant in our term loan credit agreements as this measure is calculated as defined in our term loan credit agreement and serves as a driving component of our key financial covenant.

Our non-GAAP financial measures have the following limitations:

- o EBITDA does not reflect the interest expense or the cash requirements necessary to service interest or fund principal payments on our outstanding debt;
- o Adjusted EBITDA does not reflect the interest expense or the cash requirements necessary to service interest or fund principal payments on our outstanding debt, letter of credit fees, restructuring charges, transaction costs related to the issuance of debt, non-cash expenses, charges or losses, or nonrecurring consulting fees, among other items;
- o Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will generally need to be replaced in the future and EBITDA and Adjusted EBITDA do not reflect any cash requirements for such replacements;
- o Equity-based compensation is an element of our long-term incentive compensation package, although Adjusted EBITDA excludes employee equity-based compensation expense when presenting our ongoing operating performance for a particular period; and
- o Other companies in our industry may calculate Adjusted EBITDA differently than we do, potentially limiting its usefulness as a comparative measure.

Because of these limitations, our non-GAAP measures should not be considered a substitute for performance measures calculated in accordance with GAAP. We compensate for these limitations by relying primarily on our GAAP results and use our non-GAAP measures as secondary measures.

#### **COVID-19**

The global outbreak of COVID-19 has significantly impacted the first half of 2020 results and may continue to do so throughout the year. The full extent of the outbreak, related business and travel restrictions and changes to behavior intended to reduce the virus's spread are uncertain and continue to evolve. While transportation is an essential business, and we have continued to operate without any material business interruptions, there has been a significant negative impact to the demand for transportation services.

Our shipping volumes began to decline in late March and have remained depressed compared to prior year. However, volumes improved throughout the second quarter. Given the amount of economic uncertainty, including uncertainty about how and when federal, state and local governments will lift business and travel restrictions, it is difficult to predict how long we may experience negative year-over-year trends. Additionally, the demand for crude oil has seen a decline during second quarter which will continue to put downward pressure on our fuel surcharge revenues. As shipping revenues decrease, the need to manage liquidity becomes increasingly important and actions the Company has taken are more fully described in Liquidity and Capital Resources. As of the date of this filing, there have been no significant charges related to bad debt.

As we have not experienced any significant information technology outages that have impacted day-to-day operations, our control environment and operations continue to operate as they did before the outbreak of COVID-19.

#### **Business Strategy Overview**

During 2019, the Company launched a multi-year enterprise transformation strategy to achieve long-term profitability and cash flow. Our strategic roadmap was built upon the proven alliance of our LTL regional and national networks, as well as our recently launched multi-mode freight brokerage solutions, to provide a broad portfolio of freight and business services to our customers.

The Company accomplished four foundational components during 2019:

1. Ratified a new five-year labor contract
2. Refinanced a term loan with improved and more flexible terms
3. Reorganized the field leadership structure to streamline decision making and enhance execution
4. Completed the reorganization of the enterprise-wide sales force

In 2020, the next phase of our transformation includes:

1. Operational optimization
2. Technology migration
3. Facility evaluation

The primary focus for the next phase of the enterprise transformation strategy is to operationally transform the movement of freight through our network and the technology used in the process. In the initial phase of our plan to optimize operations, which spanned most of 2019, two of our companies operated independently out of the same service area. Under the New NMFA that was ratified on May 14, 2019, we have the opportunity to consolidate service centers across our operating companies to optimize utilization of our assets and resources. We believe service center consolidation presents the greatest opportunity for this initiative. We launched our first consolidation in late 2019, with the emphasis of facility evaluation occurring in 2020. By rationalizing the number of physical locations in the network while maintaining geographic coverage, we will improve density which should allow for improved service for our valued customers. We expect these efforts have allowed us to recognize cost savings in our linehaul and pick-up and delivery operations due to improved density, increased asset utilization, and optimization of route planning and labor resources, but we believe COVID-19 impacts have masked the full impact of those improvements. Over time, this initiative should continue to enhance service and strategically position our network for the growing demand of our customers and their supply chain needs, provide productivity improvements and streamline our cost structure as we seek to optimize resources across the network, including facilities, infrastructure and human capital. We intend to consolidate individual operating company systems into a single platform, with the end goal of improving profitability and the customer experience. By streamlining systems, we are providing our customers access to five brands through one network and one enterprise-wide service offering.

Capital investment remains a top priority for us. We believe our UST Credit Agreements will enable a significant increase in the amount of capital we are able to invest in revenue equipment to improve the age of our fleet as there is an immediate return in improved fuel miles per gallon and reduced vehicle maintenance expense. To properly execute on our transformation plan, we are committed to investing in technology in order to enhance the customer experience and improve our operational flexibilities.

**Consolidated Results of Operations**

The table below provides summary consolidated financial information for the second quarter and first half 2020 and 2019:

(Amounts in millions)	Second Quarter				First Half				Percentage Change in Dollar Amounts	
	2020		2019		2020		2019		Second Quarter	First Half
	\$	%	\$	%	\$	%	\$	%	%	%
<b>Operating Revenue</b>	\$ 1,015.4	100.0	\$ 1,272.6	100.0	\$ 2,165.8	100.0	\$ 2,454.9	100.0	(20.2)	(11.8)
<b>Operating Expenses:</b>										
Salaries, wages and employee benefits	647.9	63.8	782.3	61.5	1,368.1	63.2	1,500.5	61.1	(17.2)	(8.8)
Fuel, operating expenses and supplies	162.7	16.0	228.3	17.9	370.7	17.1	464.2	18.9	(28.7)	(20.1)
Purchased transportation	126.0	12.4	158.0	12.4	262.2	12.1	304.3	12.4	(20.3)	(13.8)
Depreciation and amortization	34.2	3.4	38.5	3.0	69.9	3.2	78.5	3.2	(11.2)	(11.0)
Other operating expenses	55.2	5.4	57.4	4.5	116.8	5.4	121.2	4.9	(3.8)	(3.6)
Gains on property disposals, net	(6.0)	(0.6)	(6.2)	(0.5)	(45.3)	(2.1)	(4.6)	(0.2)	(3.2)	NM*
Impairment charges	—	—	—	—	—	—	8.2	0.3	—	(100.0)
Total operating expenses	1,020.0	100.5	1,258.3	98.9	2,142.4	98.9	2,472.3	100.7	(18.9)	(13.3)
<b>Operating Income (Loss)</b>	<b>(4.6)</b>	<b>(0.5)</b>	<b>14.3</b>	<b>1.1</b>	<b>23.4</b>	<b>1.1</b>	<b>(17.4)</b>	<b>(0.7)</b>	<b>(132.2)</b>	<b>234.5</b>
<b>Nonoperating Expenses:</b>										
Nonoperating expenses, net	40.0	3.9	28.8	2.3	64.1	3.0	55.9	2.3	38.9	14.7
Loss before income taxes	(44.6)	(4.4)	(14.5)	(1.1)	(40.7)	(1.9)	(73.3)	(3.0)	(207.6)	44.5
Income tax expense (benefit)	(7.5)	(0.7)	9.1	0.7	(7.9)	(0.4)	(0.6)	(0.0)	182.4	NM*
<b>Net Loss</b>	<b>\$ (37.1)</b>	<b>(3.7)</b>	<b>\$ (23.6)</b>	<b>(1.9)</b>	<b>\$ (32.8)</b>	<b>(1.5)</b>	<b>\$ (72.7)</b>	<b>(3.0)</b>	<b>(57.2)</b>	<b>54.9</b>

\*Not meaningful

**Second quarter of 2020 Compared to the Second quarter of 2019**

Results of operations in the second quarter of 2020 were impacted by the outbreak of COVID-19 as shipping volumes decreased significantly from typical levels and negatively impacted the pricing environment. Downward pressure on diesel prices reduced the amount of fuel surcharge revenues the Company was able to price in our services. As such, our consolidated operating revenue decreased \$257.2 million, or 20.2% during the second quarter.

With the downturn in volume the Company reduced variable expenses including labor through furloughs and reduced headcount, fuel, maintenance, and purchased transportation, among others. Offsetting these variable expense decreases was an increase in contractual wage and benefit rates for union employees. Salaries, wages and employee benefits expenses were impacted by these higher rates.

Total operating expenses decreased \$238.3 million, or 18.9%, primarily as a result of decreases in variable expenses. Further material changes are provided below.

*Fuel, operating expenses and supplies.* Fuel, operating expenses and supplies decreased \$65.6 million, or 28.7%, primarily due to a \$42.4 million decrease in fuel expense, which was largely a result of lower fuel prices and fewer miles driven. Additional decreases resulted from cost reduction efforts including a \$6.4 million decrease in other employee expenses, a \$6.4 million reduction in professional fees, and a \$6.4 million decrease in other operating expenses.

Our effective tax rate for the second quarter of 2020 and 2019 was 16.8% and (62.8%), respectively. The significant items impacting the 2020 rate include a benefit from the reversal of liability for an uncertain tax position resulting from statute expiration, a benefit recognized due to application of the exception to the rules regarding intraperiod tax allocation, a provision for net state and foreign taxes, certain permanent items and a change in the valuation allowance established for the net deferred tax asset balance projected for December 31, 2020. The significant items impacting the 2019 rate include a benefit recognized due to application of the exception to the rules regarding intraperiod tax allocation, a provision for net state and foreign taxes, certain permanent items and a change in the valuation allowance established for the net deferred tax asset balance that had been projected for December 31, 2019. We recognize valuation allowances on deferred tax assets if, based on the weight of the evidence, we determine it is more likely than not that such assets will not be realized. Changes in valuation allowances are included in our tax provision in the period of change. In determining whether a valuation allowance is warranted, we evaluate factors such as prior years' earnings history, expected future earnings, loss carry-forward periods, reversals of existing deferred tax liabilities and tax planning strategies that potentially enhance the likelihood of the realization of a deferred tax asset. At June 30, 2020 and December 31, 2019, substantially all of our net deferred tax assets were subject to a valuation allowance.

The table below summarizes the key revenue metrics for the second quarter of 2020 compared to the second quarter of 2019:

	Second Quarter		Percent Change <sup>(a)</sup>
	2020	2019	
Workdays	63.0	63.5	
LTL picked up revenue (in millions)	\$ 929.8	\$ 1,167.2	(20.3)%
LTL tonnage (in thousands)	2,283	2,702	(15.5)%
LTL tonnage per workday (in thousands)	36.24	42.54	(14.8)%
LTL shipments (in thousands)	4,003	4,803	(16.7)%
LTL shipments per workday (in thousands)	63.53	75.64	(16.0)%
LTL picked up revenue per hundred weight	\$ 20.36	\$ 21.60	(5.7)%
LTL picked up revenue per hundred weight (excluding fuel surcharge)	\$ 18.48	\$ 18.98	(2.6)%
LTL picked up revenue per shipment	\$ 232	\$ 243	(4.4)%
LTL picked up revenue per shipment (excluding fuel surcharge)	\$ 211	\$ 214	(1.2)%
LTL weight per shipment (in pounds)	1,141	1,125	1.4%
Total picked up revenue (in millions) <sup>(b)</sup>	\$ 1,018.4	\$ 1,264.0	(19.4)%
Total tonnage (in thousands)	2,926	3,375	(13.3)%
Total tonnage per workday (in thousands)	46.44	53.16	(12.6)%
Total shipments (in thousands)	4,122	4,912	(16.1)%
Total shipments per workday (in thousands)	65.44	77.35	(15.4)%
Total picked up revenue per hundred weight	\$ 17.40	\$ 18.72	(7.0)%
Total picked up revenue per hundred weight (excluding fuel surcharge)	\$ 15.85	\$ 16.51	(4.0)%
Total picked up revenue per shipment	\$ 247	\$ 257	(4.0)%
Total picked up revenue per shipment (excluding fuel surcharge)	\$ 225	\$ 227	(0.8)%
Total weight per shipment (in pounds)	1,419	1,374	3.3%

(in millions)

	2020	2019
(b) Reconciliation of operating revenue to total picked up revenue:		
Operating revenue	\$ 1,015.4	\$ 1,272.6
Change in revenue deferral and other	3.0	(8.6)
Total picked up revenue	\$ 1,018.4	\$ 1,264.0

(a) Percent change based on unrounded figures and not the rounded figures presented

(b) Does not equal financial statement revenue due to revenue recognition adjustments between accounting periods and the impact of other revenue

#### First Half of 2020 Compared to the First Half of 2019

Results of operations in the first half of 2020 were impacted by the outbreak of COVID-19 as described in the discussion of second quarter results. As such, our consolidated operating revenue decreased \$289.1 million, or 11.8%, during the first half of 2020 compared to the same period in 2019 due to decreased shipping volumes.

With the downturn in volume the Company reduced variable expenses including labor through furloughs and reduced headcount, fuel, maintenance, and purchased transportation, among others. Offsetting these variable expense decreases was an increase in contractual wage and benefit rates, which impacted salaries, wages and employee benefits expenses.

Total operating expenses decreased \$329.9 million, or 13.3%, for the first half of 2020 compared to the first half of 2019 primarily as a result of decreases in variable expenses. Further material changes are provided below.

*Fuel, operating expenses and supplies.* Fuel, operating expenses and supplies decreased \$93.5 million, or 20.1%, primarily due to a \$53.7 million decrease in fuel expense, which was largely a result of fewer miles driven and lower prices and a \$13.3 million decrease in other operating expense primarily related to vendor bankruptcy and settlement charges incurred in the prior year with no such expense in the current year. Additional decreases resulted from cost reduction efforts including a \$11.4 million decrease in professional services, and a \$9.2 million decrease in other employee expenses.

**Gains on property disposals.** Net gains on disposals of property were \$45.3 million in 2020, which were primarily the result of the sale of one real property, as compared to net gains of \$4.6 million in 2019, as a result of gains on the sale of real property.

**Impairment charges.** During the first quarter of 2019, we recorded an \$8.2 million impairment charge that reflects the write-down of an intangible asset as a result of rebranding strategies, leading to discontinued use of a tradename.

Our effective tax rate for the first half of 2020 and 2019 was 19.4% and 0.8%, respectively. The significant items impacting the 2020 rate include a benefit from the reversal of liability for an uncertain tax position resulting from statute expiration, a benefit recognized due to application of the exception to the rules regarding intraperiod tax allocation, a provision for net state and foreign taxes, certain permanent items and a change in the valuation allowance established for the net deferred tax asset balance projected for December 31, 2020. The significant items impacting the 2019 rate include a benefit recognized due to application of the exception to the rules regarding intraperiod tax allocation, a provision for net state and foreign taxes, certain permanent items and a change in the valuation allowance established for the net deferred tax asset balance that had been projected for December 31, 2019.

The CARES Act contained certain income tax provisions intended to provide relief to taxpayers, but it will not have any significant impact on our tax rate, current or deferred tax provision, or cash taxes.

	First Half		Percent Change(a)
	2020	2019	
Workdays	128.5	126.5	
LTL picked up revenue (in millions)	\$ 1,979.3	\$ 2,253.5	(12.2)%
LTL tonnage (in thousands)	4,827	5,226	(7.6)%
LTL tonnage per workday (in thousands)	37.57	41.31	(9.1)%
LTL shipments (in thousands)	8,325	9,259	(10.1)%
LTL shipments per workday (in thousands)	64.79	73.19	(11.5)%
LTL picked up revenue per hundred weight	\$ 20.50	\$ 21.56	(4.9)%
LTL picked up revenue per hundred weight (excluding fuel surcharge)	\$ 18.37	\$ 19.00	(3.3)%
LTL picked up revenue per shipment	\$ 238	\$ 243	(2.3)%
LTL picked up revenue per shipment (excluding fuel surcharge)	\$ 213	\$ 214	(0.7)%
LTL weight per shipment (in pounds)	1,160	1,129	2.7%
Total picked up revenue (in millions)(b)	\$ 2,159.8	\$ 2,440.4	(11.5)%
Total tonnage (in thousands)	6,159	6,530	(5.7)%
Total tonnage per workday (in thousands)	47.93	51.62	(7.1)%
Total shipments (in thousands)	8,548	9,461	(9.6)%
Total shipments per workday (in thousands)	66.52	74.79	(11.0)%
Total picked up revenue per hundred weight	\$ 17.53	\$ 18.69	(6.2)%
Total picked up revenue per hundred weight (excluding fuel surcharge)	\$ 15.77	\$ 16.52	(4.5)%
Total picked up revenue per shipment	\$ 253	\$ 258	(2.1)%
Total picked up revenue per shipment (excluding fuel surcharge)	\$ 227	\$ 228	(0.3)%
Total weight per shipment (in pounds)	1,441	1,380	4.4%

(in millions)	2020	2019
(b) Reconciliation of operating revenue to total picked up revenue:		
Operating revenue	\$ 2,165.8	\$ 2,454.9
Change in revenue deferral and other	(6.0)	(14.5)
Total picked up revenue	\$ 2,159.8	\$ 2,440.4

- (a) Percent change based on unrounded figures and not the rounded figures presented  
(b) Does not equal financial statement revenue due to revenue recognition adjustments between accounting periods and the impact of other revenue

## Certain Non-GAAP Financial Measures

As discussed in the “Our Business” section, we use certain non-GAAP financial measures to assess performance. These measures should be considered in addition to the results prepared in accordance with GAAP, but should not be considered a substitute for, or superior to, our GAAP financial measures.

### Consolidated Adjusted EBITDA

The reconciliation of net loss to EBITDA and EBITDA to Adjusted EBITDA (defined in our New Term Loan Agreement as “Consolidated EBITDA”) for the second quarter and first half of 2020 and 2019, and the trailing twelve months ended June 30, 2020 and 2019, is as follows:

(in millions)	Second Quarter		First Half		Trailing Twelve Months Ended	
	2020	2019	2020	2019	June 30, 2020	June 30, 2019
Reconciliation of net loss to Adjusted EBITDA(a):						
Net loss	\$ (37.1)	\$ (23.6)	\$ (32.8)	\$ (72.7)	\$ (64.1)	\$ (52.3)
Interest expense, net	40.2	27.8	68.4	54.3	124.0	107.8
Income tax expense (benefit)	(7.5)	9.1	(7.9)	(0.6)	(11.6)	13.0
Depreciation and amortization	34.2	38.5	69.9	78.5	143.8	150.9
EBITDA	29.8	51.8	97.6	59.5	192.1	219.4
Adjustments for New Term Loan Agreement:						
Gains on property disposals, net	(6.0)	(6.2)	(45.3)	(4.6)	(54.4)	(30.8)
Non-cash reserve changes(b)	2.7	16.0	3.0	16.0	3.1	16.0
Impairment charges	—	—	—	8.2	—	8.2
Letter of credit expense	1.6	1.6	3.2	3.2	6.5	6.4
Permitted dispositions and other	—	—	0.2	(1.1)	0.4	(1.5)
Equity-based compensation expense	1.2	1.1	3.2	3.4	6.1	4.9
Loss on extinguishment of debt	—	—	—	—	11.2	—
Non-union pension settlement charge	—	—	—	—	1.8	10.9
Other, net	2.1	1.0	0.5	2.1	1.3	1.9
Expense amounts subject to 10% threshold(c):						
COVID-19	3.7	—	3.9	—	3.9	—
Other, net	2.8	4.1	5.7	12.8	11.1	25.8
Adjusted EBITDA prior to 10% threshold	37.9	69.4	72.0	99.5	183.1	261.2
Adjustments pursuant to TTM calculation(c)	—	(2.1)	—	(2.1)	—	(2.1)
Adjusted EBITDA	\$ 37.9	\$ 67.3	\$ 72.0	\$ 97.4	\$ 183.1	\$ 259.1

(a) Certain reclassifications have been made to prior year to conform to current year presentation.

(b) Non-cash reserve changes reflect the net non-cash reserve charge for union and non-union vacation, with such non-cash reserve adjustment to be reduced by cash charges in a future period when paid.

(c) Pursuant to the New Term Loan Agreement, Adjusted EBITDA limits certain adjustments in aggregate to 10% of the trailing-twelve-month (“TTM”) consolidated Adjusted EBITDA, prior to the inclusion of amounts subject to the 10% threshold, for each period ending. Such adjustments include, but are not limited to, restructuring charges, integration costs, severance, and non-recurring charges. The limitation calculation is updated quarterly based on TTM Adjusted EBITDA, however, the sum of the quarters may not necessarily equal TTM Adjusted EBITDA, due to the expiration of adjustments from prior periods.

### Liquidity and Capital Resources

Our principal sources of liquidity are cash and cash equivalents, available borrowings under our asset-based loan facility and any prospective net cash flow from operations. As of June 30, 2020, our maximum availability under our ABL Facility was \$61.3 million, and our managed accessibility was \$20.4 million. Maximum availability is derived by reducing the amount that may be advanced against eligible receivables plus eligible borrowing base cash by certain reserves imposed by the ABL Agent and our \$347.9 million of outstanding letters of credit. Our Managed Accessibility of \$20.4 million represents the maximum amount we would access on the ABL Facility and is adjusted for eligible receivables plus eligible borrowing base cash measured at June 30, 2020. The credit agreement governing the ABL Facility permits adjustments from eligible borrowing

base cash to restricted cash prior to the compliance measurement date of July 15, 2020. As of July 15, 2020, we moved \$18.0 million of cash out of restricted cash, as permitted under the ABL Facility, which effectively put our cash and cash equivalents and Managed Accessibility to \$302.6 million as of June 30, 2020.

For the December 31, 2019 borrowing base certificate, which was filed in January of 2020, we transferred \$29.0 million of cash into restricted cash to maintain the 10% threshold, as permitted under the ABL Facility, which transfer effectively put our cash and cash equivalents and Managed Accessibility to \$80.4 million.

The table below summarizes cash and cash equivalents and Managed Accessibility as of June 30, 2020 and December 31, 2019:

<u>(in millions)</u>	<u>June 30, 2020</u>	<u>December 31, 2019</u>
Cash and cash equivalents	\$ 264.2	\$ 109.2
Amounts placed (into)/out of restricted cash subsequent to period end	18.0	(29.0)
Managed Accessibility	20.4	0.2
Total cash and cash equivalents and Managed Accessibility	<u>\$ 302.6</u>	<u>\$ 80.4</u>

Outside of funding normal operations, our principal uses of cash include making contributions to our non-union pension plans, and meeting our other cash obligations including, but not limited to, paying principal and interest on our funded debt, making payments on our equipment leases, and funding capital expenditures.

As of June 30, 2020, we had \$909.8 million in aggregate par value of outstanding indebtedness, the majority of which matures in approximately three to five years. We also have future funding obligations for our various multi-employer health, welfare and pension funds and non-union pension plans. In addition, we have, and will continue to have, operating lease obligations. As of June 30, 2020, our operating lease payment obligations through 2030 totaled \$406.0 million.

Our capital expenditures for the first half of 2020 and 2019 were \$24.1 million and \$70.6 million, respectively. These amounts were principally used to fund the purchase of new and used revenue equipment, for capitalized costs to improve our technology infrastructure and to refurbish engines for our revenue fleet. For the six months ended June 30, 2020, we entered into new operating lease commitments for revenue equipment with a capital equivalent value of \$0.7 million.

In response to the uncertainty related to cash flows associated with COVID-19, the Company began taking liquidity preservation efforts late in the first quarter of 2020. These measures included the reduction of capital expenditures, temporary deferrals of operating lease payments, union health & welfare payments, contributions to our non-union and multi-employer pension plans, among other items. Health & welfare payments deferred in the second quarter of 2020 were paid in full in July 2020.

As of June 30, 2020, our Standard & Poor's Corporate Family Rating was "CCC" and Moody's Investor Service Corporate Family Rating was "Caa1." On July 10, 2020 Standard & Poor's raised our rating to "CCC+."

#### **Covenants**

The UST Credit Agreements and the New Term Loan Agreement include a financial covenant requirement for the Company to maintain a minimum Liquidity of \$125.0 million until the first date on which Consolidated EBITDA on the last day of a fiscal quarter is greater than \$200.0 million and a requirement that minimum Consolidated EBITDA commencing with the fiscal quarter ending December 31, 2021, to be not less than \$100.0 million for the four quarters ending December 31, 2021, \$150.0 million for the four quarters ending March 31, 2022 and \$200.0 million thereafter.

#### **Risks and Uncertainties Regarding Liquidity and Compliance with Credit Facility Financial Covenants**

Based on the close of UST Credit Agreements and the Second New Term Loan Amendment, the only applicable financial covenant until December 31, 2021 is the Liquidity requirement of \$125.0 million. With Liquidity as of June 30, 2020 of \$302.6 million, proceeds from the UST Credit Agreements to be received in the third quarter 2020, and forecasted operating results, management concludes it probable the Company will meet covenant requirements for the next twelve months.

#### **Cash Flows**

##### *Operating Cash Flow*

Cash provided by operating activities was \$213.6 million during the first half of 2020, compared to \$29.5 million of cash used during the first half of 2019. The increase in cash provided was primarily attributable to deferrals of various payments recorded as other operating liabilities related to wages, vacations, and employee benefits. Other operating liabilities increased

\$141.1 million, of which \$129.0 million related to deferred health, welfare and pension payments which were paid in July 2020. Other smaller deferrals include amounts related to equipment and facility rentals. Cash used in operating activities during the remainder of 2020 is expected to increase significantly as deferred costs are repaid.

#### Investing Cash Flow

Cash provided by investing activities was \$30.0 million during the first half of 2020 compared to \$62.3 million used during the first half of 2019. The increase of \$92.3 million in cash provided was largely driven by cash proceeds from the sale of real property as well as less capital spend on revenue equipment acquisitions. Cash used by investing cash flows during the remainder of 2020 are expected to increase significantly due to increased capital expenditures utilizing funds from the UST Credit Agreements.

#### Financing Cash Flow

Cash used in financing activities for the first half of 2020 and 2019 was \$32.6 million and \$18.3 million, respectively. The use of cash is primarily related to repayments on our long-term debt with proceeds from the sale of real property. Cash provided by financing activities during the third quarter of 2020 will increase significantly due to the funds received as described by the UST Credit Agreements.

#### Contractual Obligations and Other Commercial Commitments

The following sections provide aggregated information regarding our contractual cash obligations and other commercial commitments as of June 30, 2020.

#### Contractual Cash Obligations

The following table reflects our cash outflows that we are contractually obligated to make as of June 30, 2020:

(in millions)	Payments Due by Period				
	Total	Less than 1 year	1-3 years	3-5 years	After 5 years
ABL Facility <sup>(a)</sup>	\$ 8.8	\$ 8.8	\$ —	\$ —	\$ —
Term Loan <sup>(b)</sup>	825.1	52.9	105.7	666.5	—
Lease financing obligations <sup>(c)</sup>	343.6	40.5	79.7	77.0	146.4
Pension deferral obligations <sup>(d)</sup>	83.3	6.7	76.6	—	—
Workers' compensation and third-party liability claims obligations <sup>(e)</sup>	355.1	107.5	112.7	46.8	88.1
Operating leases <sup>(f)</sup>	406.0	149.5	183.8	44.2	28.5
Other contractual obligations <sup>(g)</sup>	25.2	20.2	4.3	0.7	—
Capital expenditure obligations <sup>(h)</sup>	1.7	1.7	—	—	—
<b>Total contractual obligations</b>	<b>\$ 2,048.8</b>	<b>\$ 387.8</b>	<b>\$ 562.8</b>	<b>\$ 835.2</b>	<b>\$ 263.0</b>

(a) The ABL Facility includes future payments for the letter of credit and unused line fees and are not included on the Company's consolidated balance sheets.

(b) The Term Loan includes principal and interest payments but excludes unamortized discounts.

(c) The lease financing obligations consist primarily of interest payments.

(d) Pension deferral obligations includes principal and interest payments on the Second A&R CDA.

(e) The workers' compensation, property damage and liability claims obligations represent our estimate of future payments for these obligations, not all of which are contractually required.

(f) Operating leases represent future payments under contractual lease arrangements primarily for revenue equipment.

(g) Other contractual obligations include future service agreements and certain maintenance agreements and are not included on the Company's consolidated balance sheets.

(h) Capital expenditures and other obligations primarily include noncancelable orders for revenue equipment the Company will either purchase or lease. If leased, the cash obligations will be scheduled over the multi-year term of the lease and ROU assets and liabilities will be recorded upon lease execution.

Other Commercial Commitments

The following table reflects other commercial commitments or potential cash outflows that may result from a contingent event.

(in millions)	Amount of Commitment Expiration Per Period				
	Total	Less than 1 year	1-3 years	3-5 years	After 5 years
ABL Facility availability <sup>(a)</sup>	\$ 61.3	\$ 61.3	\$ —	\$ —	\$ —
Letters of credit <sup>(b)</sup>	347.9	347.9	—	—	—
Surety bonds <sup>(c)</sup>	109.5	109.5	—	—	—
Total commercial commitments	\$ 518.7	\$ 518.7	\$ —	\$ —	\$ —

- (a) Availability under the ABL Facility is derived by reducing the amount that may be advanced against eligible receivables plus eligible borrowing base cash by certain reserves imposed by the ABL Agent and our outstanding letters of credit. On July 7, 2020, the ABL agreement was extended to January 9, 2024.
- (b) Letters of credit outstanding are generally required as collateral to support self-insurance programs and do not represent additional liabilities as the underlying self-insurance accruals are already included in our consolidated balance sheets. On July 7, 2020, the ABL agreement was extended to January 9, 2024.
- (c) Surety bonds are generally required for workers' compensation to support self-insurance programs, which include certain bonds that do not have an expiration date but are redeemable on demand, and do not represent additional liabilities as the underlying self-insurance accruals are already included in our consolidated balance sheets.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements except for other contractual obligations for service agreements and capital purchases, letters of credit and surety bonds, which are reflected in the above tables.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are primarily exposed to the market risk associated with unfavorable movements in interest rates, foreign currencies, and fuel price volatility. The risk inherent in our market risk-sensitive instruments and positions is the potential loss or increased expense arising from adverse changes in those factors. There have been no material changes to our market risk policies or our market risk-sensitive instruments and positions as described in our annual report on Form 10-K for the year ended December 31, 2019.

Item 4. Controls and Procedures

As required by the Exchange Act, we maintain disclosure controls and procedures designed to ensure that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Our disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information we are required to disclose in reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Our management, with the participation of our principal executive and financial officers, has evaluated our disclosure controls and procedures as of June 30, 2020 and have concluded that our disclosure controls and procedures were effective as of June 30, 2020.

There were no changes in our internal control over financial reporting that occurred during the fiscal quarter ended June 30, 2020 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**Item 1. Legal Proceedings**

We discuss legal proceedings in the “Commitments, Contingencies and Uncertainties” note to our consolidated financial statements included with this quarterly report on Form 10-Q, and that discussion is incorporated by reference herein.

**Item 1A. Risk Factors**

In addition to the other information set forth in this report, you should carefully consider the factors discussed below and as discussed in Part I, Item 1A. “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2019, which could materially affect our business, financial condition or future results. The risks described below and in our Annual Report on Form 10-K are not the only risks facing us. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may eventually prove to materially adversely affect our business, financial condition and/or operating results.

**Business Risks**

**The widespread outbreak of an illness or any other communicable disease, including the effects of pandemics, or any other public health crisis, as well as regulatory measures implemented in response to such events, could adversely affect our business, results of operations, financial condition and cash flows.**

Our business could be negatively impacted by the widespread outbreak of an illness or any other communicable disease or other public health crisis. Measures intended to prevent the spread of a health epidemic could also have an adverse effect on our business.

The COVID-19 pandemic has, and is expected to continue to, adversely impact economic activity and conditions worldwide and created significant volatility and disruption to financial markets. Efforts to control the spread of COVID-19 have led governments and other authorities to impose restrictions such as travel bans and limits, quarantines, shelter-in-place orders, increased border and port controls and closures and shutdowns which have resulted in business closures and disrupted supply chains worldwide. The COVID-19 pandemic and measures taken to prevent its spread have negatively impacted demand for our services, and thus our shipment and tonnage levels, and has prevented us from delivering some freight in our network due to recipients that have closed their businesses to deliveries during the COVID-19 pandemic.

Specifically, the global outbreak of COVID-19 has had a significant negative impact on our first half of 2020 results that is likely to continue throughout the remainder of the year. Our shipping volumes began to decline in late March and have remained depressed compared to the prior year. Given the amount of economic uncertainty, including uncertainty about how and when federal, state and local governments will lift business and travel restrictions or put new restrictions in place, it is difficult to predict how long we may experience negative year-over-year trends. The continuing impact of the COVID-19 pandemic on our business is highly uncertain and will depend on future developments, including the duration and severity of the pandemic and government restrictions imposed in response to the pandemic. An extended period of economic disruption and resulting declines in industrial production and manufacturing, consumer spending, and demand for our services, as well as the ability of our customers and other business partners to fulfill their obligations, could have a material adverse effect on our results of operations, financial condition and cash flows.

Our description of risks related to general economic factors, including national health epidemics, are also described under “Item 1A. Risk Factors” in our 2019 annual report on Form 10-K within the risk factor titled “We are subject to general economic factors that are largely out of our control, any of which could have a material adverse effect on our business, financial condition and results of operations.”

**Financial and Liquidity Risks**

**Our failure to comply with the covenants in the documents governing our existing and future indebtedness could materially adversely affect our financial condition and liquidity.**

The documents governing our indebtedness contain financial covenants, affirmative covenants requiring us to take certain actions and negative covenants restricting our ability to take certain actions. In July 2020, we entered into the UST Credit Agreements and amended the New Term Loan Agreement. The UST Credit Agreements and the New Term Loan Agreement each require that we maintain \$125.0 million of Liquidity until the first date on which Consolidated EBITDA on the last day of a fiscal quarter ending on or after September 30, 2020 is greater than \$200.0 million. As of June 30, 2020, we had Liquidity of \$302.6 million. In addition, the UST Credit Agreements and New Term Loan Agreement require a minimum Adjusted EBITDA

commencing with the fiscal quarter ending December 31, 2021, to not be less than \$100.0 million for the four quarters ending December 31, 2021, \$150.0 million for the four quarters ending March 31, 2022 and \$200.0 million thereafter. The UST Credit Agreements also require us and our affiliates to comply with certain requirements in connection with the CARES Act, including (i) until one year from the initial funding under the UST Tranche B Term Loan Credit Agreement we must maintain our employment levels as of March 24, 2020, to the extent practicable, and in any case we may not reduce our employment levels by more than 10% from the levels on March 24, 2020, (ii) limitations on executive compensation and (iii) until 12 months following the repayment of the Tranche A Term Loan, we may not pay any dividends or make any other capital distributions with respect to our common stock.

In the near term, our ability to meet the minimum Liquidity requirement while it is applicable is dependent on no further unexpected material decline in our operating results as a result of an overall decrease in economic activity from the continuing impact of COVID-19 or for some other unforeseen reason. Over the longer term, our ability to meet the minimum Adjusted EBITDA requirement after December 31, 2021 is dependent on an improvement in our operating results from continued improvements of the national economy restoring economic activity consistent with levels experienced before the outbreak of COVID-19 and operating improvements we may continue to implement. Our ability to satisfy these financial covenants could be impacted by significant adverse conditions beyond our control, which could result from unanticipated effects from the COVID-19 pandemic, changes in global trade policies or increased contraction in the general economy. If we are unable to achieve the results required to comply with the applicable financial covenants, we may be required to take specific actions to reduce operating costs, as well as specific initiatives in the areas of pricing and customer engagement, and other operational actions to improve productivity and efficiency, as well as increased volume. If we are unable to satisfy our financial covenants or obtain a waiver or an amendment from our lenders, or take other remedial measures, we will be in default under our credit facilities, which would enable lenders thereunder to accelerate the repayment of amounts outstanding and exercise remedies with respect to the collateral. If our lenders under our credit facilities demand payment, we will not have sufficient cash to repay such indebtedness. In addition, a default under our credit facilities or the lenders exercising their remedies thereunder could trigger cross-default provisions in our other indebtedness and certain other operating agreements as well as increase our funding obligations under our pension plans. Our ability to amend our credit facilities or otherwise obtain waivers from our lenders depends on matters that are outside of our control and there can be no assurance that we will be successful in that regard. In addition, any covenant breach or event of default could harm our credit rating and our ability to obtain financing on acceptable terms. The occurrence of any of these events could have a material adverse effect on our financial condition and liquidity.

#### Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

##### *Treasury Equity Issuance*

On June 30, 2020, the Company entered into a Share Issuance Agreement (the "Share Issuance Agreement") with the United States Department of the Treasury (the "UST"), pursuant to which the Company agreed to issue 15,943,753 shares of common stock (the "Treasury Equity") to the UST (such issuance, the "Treasury Equity Issuance"). The Treasury Equity was issued to UST in consideration for entry into (i) that certain UST Tranche A Term Loan Credit Agreement and (ii) that certain UST Tranche B Term Loan Credit Agreement, the UST agreed to lend an aggregate of \$700.0 million to the Company pursuant to the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The Treasury Equity Issuance and the lending provided by the UST Credit Agreements each funded on July 9, 2020. The Treasury Equity was delivered to The Bank of New York Mellon, in its capacity as trustee for the benefit of the UST pursuant to a voting trust agreement.

The Treasury Equity was issued without stockholder approval in reliance on The Nasdaq Stock Market LLC Rule 5636T (the "Temporary COVID-19 Exception"). Stockholder approval would ordinarily be required under the Nasdaq rules but for the fact that the Company relied on this temporary exception to stockholder approval, which was approved by the Nasdaq Listing Qualifications Department prior to issuance. The Audit & Ethics Committee of the Board of Directors of the Company, which is comprised solely of independent, disinterested directors, expressly approved the Company's reliance on the Temporary COVID-19 Exception and determined that the transaction was in the best interest of the Company's stockholders.

The shares issued in the Treasury Equity Issuance are restricted securities, as defined in Rule 144, promulgated under the Securities Act of 1933, as amended, which were sold without registration thereunder in reliance on the exemption from registration afforded by Section 4(a)(2) thereof.

No underwriter participated in, nor did we pay any commissions or fees to any underwriter, in this transaction. The transaction did not involve a public offering. The UST represented that it had such knowledge and experience in financial and business matters and in investments of this type that it was capable of evaluating the merits and risks of the Treasury Equity and of making an informed investment decision with respect thereto.

#### Item 5. Other Information

None.

Item 6. Exhibits

10.1	<a href="#">Share Issuance Agreement, dated June 30, 2020, between the Company and the United States Department of the Treasury (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on July 7, 2020, File No. 000-12255).</a>
10.2*	<a href="#">Voting Rights Agreement, dated July 9, 2020, among the Company, the United States Department of the Treasury, and The Bank of New York Mellon, as trustee.</a>
10.3*	<a href="#">Registration Rights Agreement, dated July 9, 2020, between the Company and the United States Department of the Treasury.</a>
10.4*	<a href="#">UST Tranche A Term Loan Credit Agreement, dated July 7, 2020, by and among the Company, as borrower, the subsidiaries of the borrower party thereto from time to time, the lenders from time to time party thereto, and The Bank of New York Mellon, as administrative agent and collateral agent for the lenders.</a>
10.5*	<a href="#">UST Tranche B Term Loan Credit Agreement, dated July 7, 2020, by and among the Company, as borrower, the subsidiaries of the borrower party thereto from time to time, the lenders from time to time party thereto, and The Bank of New York Mellon, as administrative agent and collateral agent for the lenders.</a>
10.6*	<a href="#">Amendment No. 6 to Loan and Security Agreement, dated July 7, 2020, by and among the Company, certain of the Company's subsidiaries party thereto, the lenders party thereto and Citizens Business Capital, as agent.</a>
10.7	<a href="#">Amendment No. 1 to Amended and Restated Credit Agreement, dated April 7, 2020, by and among the Company, as borrower, the subsidiaries of the borrower party thereto from time to time, the lenders from time to time party thereto, and Cortland Products Corp. (n/k/a Alter Domus Products Corp.), as administrative agent and collateral agent for the lenders. (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q for the quarter ended March 31, 2020, File No. 000-12255).</a>
10.8*	<a href="#">Amendment No. 2 to Amended and Restated Credit Agreement, dated July 7, 2020, by and among the Company, as borrower, the subsidiaries of the borrower party thereto from time to time, the lenders from time to time party thereto, and Alter Domus Products Corp., as administrative agent and collateral agent for the lenders.</a>
31.1*	<a href="#">Certification of Darren D. Hawkins filed pursuant to Exchange Act Rules 13a-14 and 15d-14, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2*	<a href="#">Certification of Jamie G. Pierson filed pursuant to Exchange Act Rules 13a-14 and 15d-14, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1*	<a href="#">Certification of Darren D. Hawkins furnished pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
32.2*	<a href="#">Certification of Jamie G. Pierson furnished pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101.INS*	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Interline 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	Cover Page Interactive Data File (embedded within the Inline XBRL document)

\* Indicates documents filed herewith.

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.

YRC WORLDWIDE INC.

Date: August 3, 2020

/s/ Darren D. Hawkins  
Darren D. Hawkins  
Chief Executive Officer

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Date: August 3, 2020

/s/ Jamie G. Pierson  
Jamie G. Pierson  
Chief Financial Officer

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## VOTING TRUST AGREEMENT

**VOTING TRUST AGREEMENT** (as amended, supplemented or otherwise modified from time to time in accordance with the terms and conditions hereof, this “**Trust Agreement**”), dated as of July 9, 2020, by and among the United States Department of the Treasury (the “**Stockholder**”), YRC Worldwide Inc., a Delaware corporation (the “**Company**”), and The Bank of New York Mellon, not in its individual capacity, but solely as trustee under the Voting Trust created hereunder (in such capacity, the “**Trustee**”).

## WITNESSETH:

**WHEREAS**, the Stockholder and the Company are parties to that certain Share Issuance Agreement dated as of June 30, 2020 (the “**Purchase Agreement**”), pursuant to which, among other things, on the date so issued (the “**Closing Date**”), the Company shall issue in book entry form, registered in the name of the trustee of a voting trust to be established for the benefit of the Stockholder a number of shares of common stock of the Company, par value \$0.01 per share (“**Common Stock**”) equal to 42% of the Company’s Common Stock outstanding immediately prior to such issuance, including any shares of Common Stock issuable upon conversion, exchange or exercise of any outstanding security or options, convertible, exchangeable or exercisable into shares of Common Stock (“**fully diluted Common Stock outstanding**”) and 29.6% of fully diluted Common Stock outstanding on a pro forma basis reflecting such issuance;

**WHEREAS**, the terms of the Purchase Agreement require that (i) the shares of Common Stock issued to the Stockholder be deposited in a voting trust, (ii) the shares of Common Stock held by the voting trust be voted by the Trustee in proportion to the vote of certain stockholders of the Company and (iii) the shares of Common Stock be subject to certain transfer restrictions; and

**WHEREAS**, the Trustee is willing to act as voting trustee pursuant to the terms of this Trust Agreement.

**NOW THEREFORE**, the parties hereto agree as follows:

1. Creation of Trust – The Stockholder and the Company hereby appoint The Bank of New York Mellon as Trustee hereunder, and the Trustee hereby accepts said appointment and agrees to act as Trustee under this Trust Agreement as provided herein. Subject to the terms and conditions of this Trust Agreement, a voting trust (“**Voting Trust**”) is hereby created and established under this Trust Agreement for the purpose of meeting the requirements of Section 218 of the Delaware General Corporation Law. Upon the execution of this Trust Agreement by the parties hereto, the Company shall file a copy of this Trust Agreement in the Company’s registered office in the State of Delaware, which copy shall be open to the inspection of any stockholder of the Company or any holder of a beneficial interest in this Voting Trust, in person or by agent or attorney, daily during business hours, as provided in Section 218 of the Delaware General Corporation Law.
  2. Trust Is Irrevocable – This Trust Agreement during the term of the trust shall be irrevocable by the Stockholder and the Company and their Affiliates and shall terminate only in accordance with, and to the extent of, the provisions of Paragraph 7 hereof.
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3. Deposit of Shares –

(a) Pursuant to the Purchase Agreement, 15,943,753 shares of Common Stock shall be delivered in book entry form to the Trustee and shall be registered in the name of the Trustee on the stockholder register of the Company with a notation that such shares are held by the Trustee subject to a Voting Trust for the benefit of the Stockholder. Accordingly, upon execution and delivery of this Trust Agreement by the parties hereto and after the filing of a copy of this Trust Agreement in the Company's registered office in the State of Delaware as required by Section 1.1 hereof, the Company shall issue to the Trustee, as trustee of this Voting Trust, 15,943,753 shares of Common Stock (the "**Shares**"). For the avoidance of doubt, in no event whatsoever shall the Trustee be responsible for determining anything about the nature of shares deposited with it or compliance by the Stockholder and the Company with the terms of the Purchase Agreement or any other agreement between the Stockholder and the Company (excluding, for the avoidance of doubt, this Trust Agreement).

(b) The Shares shall be uncertificated, in book-entry form. If the Shares are certificated, each new certificate for Shares issued to the Trustee shall bear a legend in substantially the following form:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON JULY 9, 2020 AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THE SECURITIES REPRESENTED BY THIS CERTIFICATE, AMONG OTHER ITEMS, ARE SUBJECT TO A VOTING TRUST AGREEMENT DATED AS OF JULY 9, 2020 AMONG THE ISSUER OF SUCH SECURITIES (THE "COMPANY"), THE UNITED STATES DEPARTMENT OF THE TREASURY AND THE BANK OF NEW YORK MELLON, AS TRUSTEE, AND THE CERTIFICATE OF INCORPORATION OF THE COMPANY. THESE SECURITIES MAY BE NOT TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE VOTING TRUST AGREEMENT, A COPY OF WHICH IS ON FILE IN THE COMPANY'S REGISTERED OFFICE IN THE STATE OF DELAWARE, AND THE COMPANY'S CERTIFICATE OF INCORPORATION. A COPY OF SUCH VOTING TRUST AGREEMENT OR SUCH CERTIFICATE OF INCORPORATION WILL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST.

(c) To the extent that any certificated Shares delivered to the Trustee are not registered in the name of the Trustee, the Trustee shall present to the Company all certificates representing Shares not registered in the name of the Trustee, or its nominee, as trustee under this Trust Agreement, for surrender and cancellation and for the issuance and delivery to the Trustee of new certificates registered in the name of the Trustee, or its nominee, as Trustee under this Trust Agreement.

4. Voting of Shares – The Company shall give the Trustee at least 10 Business Days prior notice of each annual and special meeting of stockholders of the Company. The Company shall deliver a proxy card (the "**Company Proxy Card**") at least 10 Business Days prior to each such meeting (it being understood that the Company may subsequently file or provide supplemental proxy materials), it being understood that such proxy card will be

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substantially the same as the Company Proxy Card sent to each other stockholder of the Company in connection with such meeting, except that, in lieu of the ability to vote for, against or abstain with respect to any matter to be voted on by stockholders, it will provide that all shares represented by such proxy card shall be voted by the proxy named therein, which proxy shall be designated by the Company, with respect to all matters to come before stockholders at such meeting in the same proportion as all other shares are voted (other than any shares voted by or at the direction of any beneficial owner of more than 10% of the Common Stock). It is understood and agreed that the proxy named in the Company Proxy Card shall be exclusively responsible for determining such proportion and ensuring that all shares represented by such proxy card are voted accordingly, and in no event shall the Trustee be required to make any such determination. The Company and the Stockholder hereby instruct the Trustee to be present, in person or represented by proxy, at all such annual and special meetings of stockholders of the Company for which the Trustee has received notice in accordance with the terms of this Trust Agreement so that all Shares may be counted for the purposes of determining the presence of a quorum at such meetings. The Stockholder and the Company agree, and the Trustee acknowledges, that the Trustee shall not participate in or interfere with the management of the Company and shall take no other actions (including, for the avoidance of doubt, calling, encouraging or soliciting the calling of or otherwise participating in calling special meetings or acting by written consent) with respect to the Company except in accordance with the terms hereof. The Trustee shall vote all Shares with respect to all matters, including, without limitation, the election of directors, that the Company submits to its stockholders for a vote by properly executing and delivering the Company Proxy Card pursuant to the instructions set forth therein.

5. Transfers of Shares – The Trustee may sell, pledge, encumber or otherwise transfer or agree to transfer (a “**Transfer**”) the Shares only as and when directed by the Stockholder and, following receipt of written instructions from the Stockholder, shall Transfer the Shares as so directed; provided, however, (a) the Trustee may not Transfer any Shares to any person prior to the one year anniversary of the date hereof, except (i) with the Company’s prior written consent (not to be unreasonably withheld, conditioned or delayed), (ii) in connection with a transaction previously approved by the Company’s stockholders or (iii) to any U.S. federal governmental authority that agrees, as a condition to the effectiveness of such Transfer, to be bound by all of the terms and conditions of this Trust Agreement, and in each case in compliance with the conditions set forth in Section 5(b) and 5(c); (b) after the one year anniversary of the date hereof, the Trustee may not Transfer any Shares to any person except: (i) to any person that, following such Transfer, would beneficially own Shares equaling no more than 19.99% of the shares of Common Stock; provided, however, that any amount of Shares may be transferred to one or more securities intermediaries in furtherance of an underwritten public offering or other distribution of the Shares in which the securities intermediaries agree not to resell the Shares to any person that, following the sale, would be the beneficial owner of more than 19.99% of the shares of Common Stock; (ii) to any person as previously approved by the Company’s stockholders; (iii) to any U.S. federal governmental authority that agrees, as a condition to the effectiveness of such Transfer, to be bound by all of the terms and conditions of this Trust Agreement; and (c) in all cases, transfer of Shares may only be effected by delivery to the Trustee of a written instruction from the Stockholder, countersigned by the transferee, and, at the Trustee’s request, an Official Certificate of the Stockholder, in each case delivered to the Trustee and stating that such transfer is permissible under this Trust Agreement and applicable

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securities laws. The written instruction of the Stockholder shall be determinative as to all matters of fact, including the beneficial ownership of the Shares following the Transfer, and the Stockholder and counsel of Stockholder shall be entitled to rely without investigation on the written representations of transferees and securities intermediaries with respect thereon. The Trustee shall be entitled to conclusively rely without investigation on written instructions of the Stockholder and any opinion of Stockholder's counsel and any other written notice, document, instruction or request delivered by the Stockholder or the Company believed by it to be genuine and to have been signed by an Authorized Representative(s) of the Stockholder or the Company, as applicable, without inquiry and without requiring substantiating evidence of any kind and the Trustee shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. It is understood and agreed that the Trustee shall not be responsible for determining the conditions to transfer of any Shares hereunder. Upon completion of any permitted Transfer set forth in this Section 5, the Shares so transferred will no longer be subject to this Trust Agreement, except for any Shares transferred to a United States federal governmental authority pursuant to Section 5(a)(iii) or Section 5(b)(iii). Except as provided above, the Trustee shall not Transfer any Share and any transfer of Shares in violation of the foregoing shall be null and void. The Trustee shall promptly execute each Transfer duly requested by the Stockholder; provided the Trustee has received the written instruction and, if requested, the Official Certificate referred to above; and provided further that the Trustee shall in no event be required to receive any consideration for such Transfer of Shares, which consideration shall be paid directly to the Stockholder or its designee.

6. Dividends and Distributions; Subscription Rights Reorganizations and Recapitalizations –

- (a) The Trustee shall, promptly after receipt thereof, pay over to the Stockholder pursuant to the funds transfer instructions provided by an Authorized Representative of the Stockholder to the Trustee each cash dividend or cash distribution or distribution of property or securities of other issuers or securities issued by the Company having no conditional or unconditional voting rights on any matter ("**Non-Voting Distribution**"), as may be declared and paid upon the Shares; provided, however, that any distribution of shares of Common Stock or other securities convertible, exchangeable or exercisable into shares of Common Stock or any other security having conditional or unconditional right to vote on any matter ("**Voting Distribution**") shall be retained by the Trustee for the benefit of the Stockholder on the same terms and conditions as the Shares initially deposited under this Trust Agreement; provided further, that the Stockholder shall have the right to direct the Trustee to convert, exchange or exercise such securities into shares of Common Stock, so long as the shares issued upon such conversion, exchange or exercise are retained by the Trustee for the benefit of the Stockholder on the same terms as the Shares initially deposited under this Trust Agreement and the Stockholder delivers to the Trustee prior to such conversion, exchange or exercise, any consideration required to be paid in connection therewith.
- (b) Prior to the payment or distribution of any Voting Distribution or Non-Voting Distribution, the Company shall deliver a written notice to the Trustee designating such payment or distribution as a Voting Distribution or a Non-Voting Distribution. The Trustee may conclusively rely on any such designation. For the avoidance of doubt, in no event whatsoever
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shall the Trustee be responsible for determining anything about the nature of the dividends or distributions actually received by it, including but not limited to whether such are Voting Distributions or Non-Voting Distributions.

- (c) In case any stock or other securities of the Company are offered for subscription to the holders of capital stock of the Company deposited hereunder, through options, rights or otherwise, the Company shall furnish a copy of the offering document that the Company prepared in connection with such offering to the Trustee and the Stockholder. Upon receipt by the Trustee, at least five Business Days prior to the last day fixed by the Company for subscription and payment, of a request from the Stockholder to subscribe on its behalf, the Trustee shall notify the Company which shall effect such subscription with the Stockholder or its designee (who shall, if such securities have conditional or unconditional rights to vote on any matter, deposit the securities received thereof hereunder in accordance with the provisions hereof). It is understood that all payments to the Company for such subscriptions shall be made directly from the Stockholder or its designees to the Company. It is further understood that the sole responsibility of the Trustee in connection with any such subscriptions shall be to transmit the notice (prepared by the Company) that the Trustee receives from the Company to the Stockholder, to transmit to the Company any written request from the Stockholder wishing to subscribe and to accept the deposit of any such purchased securities that have conditional or unconditional rights to vote on any matter in accordance with the provisions hereof.
- (d) In the event that the Company is merged into or consolidated with another corporation, divided into two or more resulting entities, or all or substantially all of the assets of the Company are transferred to another corporation pursuant to a plan requiring the Company's assets to be distributed in liquidation, or all the shares of the Company are to be exchanged in connection with a reorganization or recapitalization of the Company, then in connection with such transaction or series of transactions, the term "Company" for all purposes of this Trust Agreement shall be taken to include any successor entity, and the Trustee shall receive and hold under this Trust Agreement any stock of, or other interests in, such successor entity received on account of the ownership, as Trustee hereunder, of the Shares prior to such merger, consolidation, division, transfer, reorganization or recapitalization.
- (e) In case any reorganization or recapitalization affecting Shares shall have been duly authorized, the Company shall notify the Trustee and the Stockholder of such event and the Trustee, at the written direction of the Stockholder, shall surrender Shares held by the Trustee hereunder, pro rata on behalf of the Stockholder, as may be required under the terms pursuant to which such reorganization or recapitalization is to be effected, and the Trustee shall receive and hold any and all other securities of the Company or successor thereto issued in exchange for such surrendered Shares.

7. Termination of Trust – This Trust Agreement shall terminate (and the Voting Trust created hereby shall cease and come to an end) on the date that all Shares are Transferred to any person other than (i) Treasury or (ii) another U.S. federal governmental authority.

8. Compensation of the Trustee – The Company agrees to pay to the Trustee the fees for all services rendered by it hereunder agreed upon by the Company and the Trustee from time to time in or pursuant to any fee letter the Company and the Trustee have negotiated and

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agreed on in good faith with respect to the services provided as Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and, subject to any limitations in any such written agreement, to reimburse the Trustee upon its request for all reasonable and documented expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Trust Agreement (including reasonable compensation and reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its gross negligence or willful misconduct. The provisions of this Paragraph 8 shall survive the termination of this Trust Agreement.

9. Concerning the Responsibilities and Indemnification of the Trustee – The Trustee may act through attorneys or agents and shall not be answerable for the default, negligence or misconduct of any agent or attorney appointed by it in pursuance hereof if such agent or attorney has been selected with reasonable care and such default, negligence or misconduct is not attributable to the Trustee. The Trustee shall not be responsible for the sufficiency or the accuracy of the form, execution, validity or genuineness of the Shares, or of any documents relating thereto, or for any lack of endorsement thereon, or for any description therein, nor shall the Trustee be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such Shares or document or endorsement or this Trust Agreement, except for the execution and delivery of this Trust Agreement by the Trustee and any other document, instrument or endorsement required to be executed or delivered by the Trustee pursuant to this Trust Agreement except to the extent the Trustee's gross negligence or willful misconduct. Except as otherwise explicitly provided herein, the Company shall indemnify and save harmless the Trustee, its affiliates and their respective successors, assigns, directors, agents and employees (“Indemnitees”) from any loss, cost or expense of any kind or character whatsoever (including taxes other than taxes based upon, measured by or determined by the income of the Trustee) incurred or suffered by an Indemnitee as a result of the execution of or administration of this Trust Agreement, or the Company's failure to perform any of its obligations under this Trust Agreement (i) in connection with the Voting Trust created hereby and the Trustee's performance of this Trust Agreement or (ii) resulting from Transfers of Shares in compliance with this Trust Agreement or the violation by the Company of applicable securities laws, except those losses, costs or expenses, if any, arising out of the gross negligence or willful misconduct of such Indemnitee, and will at all times undertake, assume full responsibility for, and pay all costs and expenses of any suit or litigation of any character with respect to the Shares or this Trust Agreement thereto except those, if any, arising out of the gross negligence or willful misconduct of such Indemnitee, and if an Indemnitee shall be made a party thereto, the Company will pay all costs and expenses, including reasonable counsel fees, to which such Indemnitee may be subject by reason thereof; *provided* that the Company shall not be responsible for the cost and expense of any suit or litigation that any Indemnitee shall settle without first obtaining the Company's prior written consent (which shall not be unreasonably withheld, conditioned or delayed). The Trustee may consult with counsel and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or omitted to be taken by the Trustee hereunder in reliance on such opinion, except for settlement of a suit or litigation without the Company's consent as provided in this Paragraph 9. The provisions of this Paragraph 9 shall survive the termination of this Trust Agreement or the resignation or removal of the Trustee.

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- (a) Any instructions to the Trustee pursuant to this Trust Agreement must be in writing and executed by the applicable party as evidenced by the signatures of the person or persons signing this Trust Agreement or one of the designated persons as set forth on the Designation of Authorized Representatives attached hereto as Schedules 1-A and 1-B (each an "**Authorized Representative**"), and delivered to the Trustee only as a Portable Document Format ("**PDF**") attached to an email only at the email address set forth in Section 17.
- (b) No such instruction shall be deemed delivered and effective unless the Trustee actually shall have received it by facsimile or as a PDF attached to an email only at the email address set forth in Section 17. The Trustee shall not be liable to the Company, the Stockholder or other person for refraining from acting upon any instruction if delivered to any other email address, including but not limited to a valid email address of any employee of the Trustee, unless such delivery was pursuant to the Trustee's instruction. Notwithstanding anything to the contrary, the Company and the Stockholder acknowledge and agree that the Trustee (i) shall have no obligation to take any action in connection with this Trust Agreement on a non-Business Day and any action the Trustee may otherwise be required to perform on a non-Business Day may be performed by the Trustee on the following Business Day and (ii) may comply with any instructions given hereunder until the Trustee has completed its security procedures, provided that the Trustee hereby agrees to complete such security procedures as promptly as practicable.
- (c) If any instructions are set forth in a permitted instruction in accordance with this Trust Agreement, the Trustee may confirm such instructions by a telephone call-back or email confirmation to an Authorized Representative of the applicable party.
- (d) The persons designated as Authorized Representatives and telephone numbers for same may be changed only in a writing executed by an Authorized Representative or other duly authorized person of the applicable party setting forth such changes and actually received by the Trustee via facsimile or as a PDF attached to an email. The Trustee may confirm any such change in Authorized Representatives by a telephone call-back or email confirmation according to its security procedures.
- (e) The Trustee and other financial institutions, including any intermediary bank and the beneficiary's bank, may rely upon the identifying number of the beneficiary, the beneficiary's bank or any intermediary bank included in a funds transfer instruction, even if it identifies a person different from the beneficiary, the beneficiary's bank or intermediary bank identified by name.
- (e) The Company and the Stockholder acknowledge that the security procedures set forth in this Section are commercially reasonable.

11. Trustee to Give Statement to Stockholder. To the extent requested to do so by the Stockholder, the Trustee shall furnish to the Stockholder a statement setting forward the number of Shares then deposited with the Trustee pursuant to this Trust Agreement.

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12. Resignation, Succession, Disqualification of Trustee – The Trustee, or any trustee hereafter appointed, may at any time resign by giving 60 days' written notice of resignation to the Stockholder and the Company. The Stockholder shall, at least 15 days prior to the effective date of such notice, appoint a successor trustee which shall (i) be reasonably acceptable to the Company and (ii) be a corporation or other entity organized and doing business under the laws of the United States or of any State thereof and authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal or state authority. If no successor trustee shall have been appointed and shall have accepted such appointment at least 15 days prior to the effective date of such notice of resignation, the resigning Trustee may petition any competent authority or court of competent jurisdiction (at the expense of the Stockholder) for the appointment of a successor trustee. Upon written assumption by the successor trustee of the Trustee's powers and duties hereunder, a copy of the instrument of assumption shall be delivered by the Trustee to the Stockholder and the Company shall be notified of its assumption, whereupon the Trustee shall be discharged of the powers and duties of the Trustee hereunder and the successor trustee shall become vested with such powers and duties and the term "Trustee" as used herein shall mean such successor trustee. In the event of any material violation by the Trustee of the terms and conditions of this Trust Agreement, the Trustee shall become disqualified from acting as trustee hereunder as soon as a successor trustee shall have been selected by the Stockholder in the manner provided by this paragraph.

13. Amendment – This Trust Agreement may from time to time be modified or amended by agreement executed by the Trustee, the Stockholder and the Company.

14. Governing Law; Jurisdiction – This Trust Agreement shall be governed by and construed in accordance with federal law. Insofar as there may be no applicable federal law, this Trust Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law rules (whether of the State of New York or any other jurisdiction). The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Trust Agreement or the transactions contemplated hereby shall be brought in the United States District Court for the District of Columbia or the United States Court of Federal Claims, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 17 shall be deemed effective service of process on such party.

15. Successors and Assigns; Company Consent; Filing of Agreement; Assignment –

(a) This Trust Agreement shall not be assignable by any party without the prior written consent of the other parties; provided, however, that this Trust Agreement shall be

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binding upon the successors and assigns to the parties hereto, including without limitation successors to the Company, Trustee or Stockholder, as applicable, by merger, consolidation or otherwise.

(b) Copies of this Trust Agreement, and each modification or amendment hereof, shall be filed by the Company in the principal office of the Company and shall be open for inspection by any stockholder of the Company, daily during business hours upon reasonable prior notice.

16. Counterparts – This Trust Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. Facsimile or other electronic counterpart signatures to this Trust Agreement shall be acceptable and binding.

17. Notices – Except as set forth in Section 10, any notice provided for in this Trust Agreement shall be in writing and shall be either personally delivered, sent by electronic mail, or sent by reputable overnight courier service (charges prepaid) to the addresses set forth below, or at such address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Notices will be deemed to have been given hereunder if (i) delivered personally, when delivered at the address specified in this Section 17, (ii) sent by electronic mail, on the first Business Day after when such electronic mail is sent to the e-mail address specified in this Section 17, or (iii) sent by reputable overnight courier service, one day after deposit with such service.

if to the Stockholder, to

United States Department of the Treasury 1500 Pennsylvania Ave., NW,  
Washington, D.C. 20220  
Attention: Eric Froman  
Assistant General Counsel (Banking & Finance) e-mail: Eric.Froman@treasury.gov

with a copy to (which shall not constitute notice): Davis Polk & Wardwell LLP  
450 Lexington Avenue New York, NY  
10017  
Attention: Nicholas Kronfeld

YRC Worldwide Inc.  
10990 Roe Avenue  
Overland Park, Kansas 66211 Attention: Jamie Pierson  
Email: [Jamie.Pierson@yrcw.com](mailto:Jamie.Pierson@yrcw.com)

e-mail: [nicholas.kronfeld@davispolk.com](mailto:nicholas.kronfeld@davispolk.com) if to the Company, to

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with a copy to (which shall not constitute notice): Sullivan & Cromwell LLP  
125 Broad Street New York, NY 10004  
Attention: H. Rodgin Cohen  
Melissa Sawyer  
e-mail: [Cohenr@sullcrom.com](mailto:Cohenr@sullcrom.com)  
[SawyerM@sullcrom.com](mailto:SawyerM@sullcrom.com)

if to the Trustee, to

The Bank of New York Mellon 240 Greenwich Street 7th  
Floor New York, NY 10286  
Attention: Joanna Shapiro, Managing Director Tel. No.: (212) 815-4949  
Email: [Joanna.g.shapiro@bnymellon.com](mailto:Joanna.g.shapiro@bnymellon.com) with a copy to [UST.Cares.Program@bnymellon.com](mailto:UST.Cares.Program@bnymellon.com)  
With a copy to (which shall not constitute notice): Hogan Lovells US LLP  
390 Madison Avenue New York, NY 10017  
Attention: Robert Ripin  
Email: [robert.ripin@hoganlovells.com](mailto:robert.ripin@hoganlovells.com)

The Company shall send to the Stockholder a copy of all notices, announcements, proxies and other communications furnished by it to the Trustee.

18. **Remedies** – The parties hereto shall be entitled to enforce their rights under this Trust Agreement specifically, to recover damages by reason of any breach of any provision of this Trust Agreement and to exercise all other rights existing in their favor. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Trust Agreement and that any party hereto may in its/his sole discretion apply to any court of law or equity of competent jurisdiction for specific performance or injunctive relief (without posting a bond or other security) in order to enforce or prevent any violation of the provisions of this Trust Agreement.

19. **Entire Agreement** – This Trust Agreement, together with the other agreements and documents referred to herein, constitutes the entire agreement, and supersedes all prior and contemporaneous agreements and understandings, oral and written, among the parties with respect to the subject matter hereof.

20. **Additional Rights of Trustee** –

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- (a) The duties, responsibilities and obligations of the Trustee shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Trustee shall not be subject to, nor required to comply with, any other agreement between or among any of the Stockholder or the Company, or to which any of the Stockholder or the Company is a party, even though reference thereto may be made herein, including, but not limited to the Purchase Agreement. The Trustee shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.
- (b) If at any time the Trustee is served with any governmental, judicial or administrative order, judgment, decree, writ or other form of governmental, judicial or administrative process which in any way affects the Voting Trust (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays) or relating to the transfer of any Shares, the Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate; and if the Trustee complies with any such governmental, judicial or administrative order, judgment, decree, writ or other form of governmental, judicial or administrative process, the Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified, vacated or otherwise determined to have been without legal force or effect.
- (c) The Trustee shall not be liable for any action taken or failed to be taken, or for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder, except to the extent of gross negligence or willful misconduct on its part. In no event shall the Trustee be liable for (i) acting in accordance with or relying upon any instruction, notice, demand, certificate or document from the Stockholder or any person authorized hereunder to instruct the Trustee, or (ii) any consequential, incidental, indirect, punitive or special damages, or lost profits or loss of business, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.
- (d) The Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee hereunder.
- (e) The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties hereunder.
- (f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document. Delivery of reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of the foregoing will not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein. The Trustee shall not be expected to act with discretion, but
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rather to act at the instruction of the Stockholder and/or the Company any of which the Trustee may conclusively rely upon and be fully protected in so relying. The Trustee shall not be liable for any errors of judgment made in good faith, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts.

- (g) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces reasonably beyond its control, including, without limitation, strikes, work stoppages, accidents, epidemics, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes, acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.
- (h) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Trustee hereunder, the Trustee may, in its sole discretion and upon notice to the person providing such notice, instruction or other communication, refrain from taking any action other than retaining possession of the Shares, unless the Trustee receives written instructions, signed by the Stockholder and the Company, which eliminates such ambiguity or uncertainty.
- (i) In the event of any dispute between or conflicting claims with respect to the Shares, the Trustee shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions as long as such dispute or conflict shall continue, and the Trustee shall not be or become liable in any way to any person for failure or refusal to comply with such conflicting claims, demands or instructions. The Trustee shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing satisfactory to the Trustee or (ii) the Trustee shall have received security or an indemnity satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting.
- (j) The Company shall pay or reimburse the Trustee upon request for any transfer or similar taxes (but, for the avoidance of doubt, in no event for taxes based upon, measured by or determined by the income of the Trustee) incurred in connection with transfer of the Shares or other securities held by the Trustee on behalf of the Stockholder.
- (k) The Trustee hereby notifies the Company and the Stockholder that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Company and the Stockholder, which information includes the name and address of the Company and the Stockholder and other information that will allow the Trustee to identify the Company and the Stockholder, in accordance with the USA PATRIOT Act.

21. Taxes. The Company, the Stockholder and the Trustee agree to take the position that the Stockholder is an "exempt recipient" for U.S. federal income tax purposes and shall not

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be required to provide any documentation to establish exemption from withholding for U.S. federal income tax purposes.

22. Certificate. Upon any request or application by the Stockholder to the Trustee to take any action under this Trust Agreement, the Trustee shall be entitled, upon request, to receive from the Stockholder an official's certificate ("**Official Certificate**") signed by an official of the Stockholder, as applicable, that is a Deputy Assistant Secretary or more senior official to the effect that all conditions precedent and covenants relating to the Stockholder, respectively, if any, provided for in this Trust Agreement relating to the proposed action have been satisfied, and the action complies with this Trust Agreement

23. Waiver of Jury Trial – EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS TRUST AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

24. Definitions – The following terms, as used herein, have the following meanings: "**Affiliate**" means, with respect to any person at any time, any other person directly or indirectly controlling, controlled by, or under common control with, such person as of such time; *provided* that neither the Company nor its subsidiaries shall be deemed to be an Affiliate of the Stockholder prior to the consummation of an acquisition of the Company by the Stockholder.

"**Business Day**" shall mean any day other than a Saturday, Sunday or any other day on which the Trustee located at the notice address set forth in Section 17 is authorized or required by law or executive order to remain closed.

"**USA PATRIOT Act**" shall mean The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be executed all as of the day and year first above written.

United States Department of the Treasury

By: Brent J. McIntosh  
Name: Brent J. McIntosh  
Title: Undersecretary for International Affairs United States  
Department of the Treasury

(Signature Page to Voting Trust Agreement)

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YRC Worldwide Inc.

By: /s/ Jamie G. Pierson

Name: Title:

Jamie G. Pierson  
Chief Financial Officer

[Signature Page to Voting Trust Agreement]

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By: s/ Bret S. Derman  
Name: Bret S. Derman  
Title: Vice President

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SCHEDULE 1-A

UNITED STATES DEPARTMENT OF THE TREASURY

DESIGNATION OF AUTHORIZED REPRESENTATIVES

The undersigned, \_\_\_\_\_, being the duly elected, qualified and acting \_\_\_\_\_ of United States Department of the Treasury ("Stockholder"), does hereby certify:

1. That each of the following representatives is at the date hereof an Authorized Representative, as such term is defined in the Voting Trust Agreement, dated July \_\_, 2020, by and among the Stockholder, the Company and the Trustee (the "Agreement"), that the signature appearing opposite each Authorized Representative's name is the true and genuine signature of such Authorized Representative, and that each Authorized Representative's contact information is current and up-to-date at the date hereof. Each of the Authorized Representatives is authorized to issue instructions, confirm funds transfer instructions by callback or email confirmation and effect changes in Authorized Representatives, all in accordance with the terms of the Agreement. Callbacks or emails confirming an instruction shall be made to an Authorized Representative other than the Authorized Representative who issued the instruction unless (a) only a single Authorized Representative is designated below, or (b) the information set forth below changes and is not updated by Stockholder such that only the Authorized Representative who issued the instruction is available to receive a callback or email confirmation. Stockholder acknowledges that pursuant to this Schedule, the Trustee is offering an option for callback or email confirmation to a different Authorized Representative, and if Stockholder nevertheless names only a single Authorized Representative or fails to update Authorized Representative information, Stockholder agrees to be bound by any instruction, whether or not authorized, confirmed by callback or email confirmation to the issuer of the instruction.

*[Insert names and contact information of individuals who can be readily available to provide instructions and/or confirm disbursements on the telephone, as needed.]*

NAME	SIGNATURE	TELEPHONE, CELL NUMBER and EMAIL ADDRESS
_____	_____	_____ (cell) _____ (email) _____
_____	_____	_____ (cell) _____ (email) _____
_____	_____	_____ (cell) _____ (email) _____

2. Email confirmation is only permitted to a corporate email address for purposes of this Schedule. Any personal email addresses provided will not be used for email confirmation.
3. This Schedule may be signed in counterparts and the undersigned certifies that any signature set forth on an attachment to this Schedule is the true and genuine signature of an Authorized Representative and that each such Authorized Representative's contact information is current and up-to-date at the date hereof.

\_\_\_\_\_

4. That pursuant to Stockholder's governing documents, as amended, the undersigned has the power and authority to execute this Designation on behalf of Stockholder, and that the undersigned has so executed this Designation this \_\_\_\_ day of July, 2020.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FOR YOUR SECURITY, PLEASE CROSS OUT ALL UNUSED SIGNATURE LINES ON THIS SCHEDULE 1-A**

All instructions, including but not limited to funds transfer instructions, whether transmitted by facsimile or set forth in a PDF attached to an email, must include the signature (or electronic signature subject to the conditions set forth in the Agreement) of the Authorized Representative authorizing said funds transfer on behalf of such party.

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SCHEDULE 1-B

YRC WORLDWIDE INC.

DESIGNATION OF AUTHORIZED REPRESENTATIVES

The undersigned, \_\_\_\_\_, being the duly elected, qualified and acting \_\_\_\_\_ of YRC Worldwide Inc. ("Company"), does hereby certify:

1. That each of the following representatives is at the date hereof an Authorized Representative, as such term is defined in the Voting Trust Agreement, dated \_\_\_\_\_, 20\_\_ by and among the Stockholder, the Company and the Trustee (the "Agreement"), that the signature appearing opposite each Authorized Representative's name is the true and genuine signature of such Authorized Representative, and that each Authorized Representative's contact information is current and up-to-date at the date hereof. Each of the Authorized Representatives is authorized to issue instructions, confirm funds transfer instructions by callback or email confirmation and effect changes in Authorized Representatives, all in accordance with the terms of the Agreement. Callbacks or emails confirming an instruction shall be made to an Authorized Representative other than the Authorized Representative who issued the instruction unless (a) only a single Authorized Representative is designated below, or (b) the information set forth below changes and is not updated by the Company such that only the Authorized Representative who issued the instruction is available to receive a callback or email confirmation. The Company acknowledges that pursuant to this Schedule, the Trustee is offering an option for callback or email confirmation to a different Authorized Representative, and if the Company nevertheless names only a single Authorized Representative or fails to update Authorized Representative information, the Company agrees to be bound by any instruction, whether or not authorized, confirmed by callback or email confirmation to the issuer of the instruction.

*[Insert names and contact information of individuals who can be readily available to provide instructions and/or confirm disbursements on the telephone, as needed.]*

NAME	SIGNATURE	TELEPHONE, CELL NUMBER and EMAIL ADDRESS
_____	_____	_____ (cell) _____ (email) _____
_____	_____	_____ (cell) _____ (email) _____
_____	_____	_____ (cell) _____ (email) _____

2. Email confirmation is only permitted to a corporate email address for purposes of this Schedule. Any personal email addresses provided will not be used for email confirmation.
3. This Schedule may be signed in counterparts and the undersigned certifies that any signature set forth on an attachment to this Schedule is the true and genuine signature of an Authorized Representative and that each such Authorized Representative's contact information is current and up-to-date at the date hereof.
4. That pursuant to the Company's governing documents, as amended, the undersigned has the power and authority to execute this Designation on behalf of the Company, and that the undersigned has so executed this Designation this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FOR YOUR SECURITY, PLEASE CROSS OUT ALL UNUSED SIGNATURE LINES ON THIS SCHEDULE 1-B**

All instructions, including but not limited to funds transfer instructions, whether transmitted by facsimile or set forth in a PDF attached to an email, must include the signature (or electronic signature subject to the conditions set forth in the Agreement) of the Authorized Representative authorizing said funds transfer on behalf of such party.

## REGISTRATION RIGHTS AGREEMENT

**REGISTRATION RIGHTS AGREEMENT** (as amended, supplemented or otherwise modified from time to time in accordance with the terms and conditions hereof, this “**Agreement**”), dated as of July 9, 2020, by and among the United States Department of the Treasury (the “**Stockholder**”) and YRC Worldwide Inc., a Delaware corporation (the “**Company**”).

## WITNESSETH:

**WHEREAS**, the Stockholder and the Company are parties to that certain Share Issuance Agreement dated as of June 30, 2020 (the “**Purchase Agreement**”), pursuant to which, among other things, the Company granting the Stockholder certain registration rights with respect to the common stock of the Company, par value \$0.01 per share (“**Common Stock**”) issued pursuant to the Purchase Agreement, in book entry form and registered in the name of the Voting Trust established pursuant to that Voting Trust Agreement dated as of July 9, 2020 (the “**Trust Agreement**”) by and among the Stockholder, the Company and the trustee thereunder as set forth in the Purchase Agreement and the Trust Agreement (the “**Treasury Equity**”).

**NOW THEREFORE**, the parties hereto agree as follows:

1. Registration –

- (a) Subject to the terms and conditions of this Agreement, the Company covenants and agrees that on or before the one year anniversary of the date hereof (the “**Registration Commencement Date**”), the Company shall prepare and file with the U.S. Securities and Exchange Commission (the “**SEC**”) a shelf registration on an appropriate form under Rule 415 under the Securities Act of 1933, as amended (the “**Securities Act**”) (a “**Shelf Registration Statement**”) covering the maximum number of Registrable Securities (or otherwise amend an existing Shelf Registration Statement filed with the SEC to cover the Registrable Securities) outstanding at that time, taking into account any limit that the staff of the SEC imposes on a resale shelf from time to time, and, to the extent the Shelf Registration Statement has not theretofore been declared effective or is not automatically effective upon such filing, subject to the other applicable provisions of this Agreement, the Company shall use reasonable best efforts to cause such Shelf Registration Statement to be declared or become effective and to keep such Shelf Registration Statement continuously effective and in compliance with the Securities Act and usable for resale of such Registrable Securities for a period from the date of its initial effectiveness until such time as there are no Registrable Securities remaining (including by refiling such Shelf Registration Statement (or a new Shelf Registration Statement) if the initial Shelf Registration Statement expires). So long as the Company is a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) at the time of filing of the Shelf Registration Statement with the SEC, such Shelf Registration Statement shall be designated by the Company as an automatic Shelf Registration Statement. Notwithstanding the foregoing, if on the Registration Commencement Date, the Company is not eligible to file a registration statement on Form S-3, then the Company shall not be obligated to file a Shelf Registration Statement unless and until it is so eligible.

- (b) If the Stockholder intends to distribute any Registrable Securities by means of an underwritten offering under such Shelf Registration Statement, it shall promptly so advise the Company and the Company shall take all reasonable steps to facilitate such distribution, including the actions required pursuant to Section 3; *provided* that the Company shall not be required to facilitate an underwritten offering of Registrable Securities unless the estimated market value of Registrable Securities expected to be sold in such offering exceeds \$10 million; and *provided, further* that the Company shall not be required to facilitate more than two completed underwritten offerings off a Shelf Registration Statement within any 12-month period or facilitate any underwritten offerings within a Blackout Period. The lead underwriters in any distribution of Registrable Securities shall be selected by the Stockholder in consultation with the Company.
- (c) If the Company is not S-3 eligible on the Registration Commencement Date or loses S-3 eligibility, the Stockholder will be entitled to require that the Company effect the registration under the Securities Act of all or any portion of the Registrable Securities (each at “**Demand Registration**”), and specify the intended method of disposition thereof, then the Company thereupon shall use its best efforts to effect, as expeditiously as possible, the registration under the Securities Act of such Registrable Securities to permit the disposition (in accordance with the intended methods thereof as aforesaid) of the Registrable Securities so to be registered; *provided* that the Company shall not be obligated to effect more than three such Demand Registrations in any 12-month period. A Demand Registration shall not be deemed to have occurred unless the registration statement relating thereto (a) has become effective under the Securities Act and (b) has remained effective for a period of at least 180 days (or such shorter period in which all Registrable Securities of the Stockholder included in such registration have actually been sold thereunder); *provided* that such registration statement shall not be considered a Demand Registration if, after such registration statement becomes effective, such registration statement is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court.
- (d) The Company shall not be required to effect a registration (including a resale of Registrable Securities from an effective Shelf Registration Statement) or an underwritten offering pursuant to this Section 1: (i) prior to the Registration Commencement Date; (ii) with respect to securities that are not Registrable Securities; or (iii) if the Company has notified Stockholder that in the good faith judgment of the Company’s Board of Directors, it would be materially detrimental to the Company or its securityholders for such registration or underwritten offering to be effected at such time, in which event the Company shall have the right to defer such registration or offering for a period of not more than 60 days after receipt of the request of the Stockholder (such period of time, a “**Blackout Period**”); *provided* that such right to delay a registration or underwritten offering shall be exercised by the Company (x) only if the Company has generally exercised (or is concurrently exercising) similar black-out rights against holders of similar securities that have registration rights, if any and (y) not more than three times in any 12-month period and not more than 90 days in the aggregate in any 12-month period. The Company shall notify the Stockholder of the date of any anticipated termination of any such deferral period prior to such date.
- (e) If during any period when an effective Shelf Registration Statement is not available, the Company proposes to register any of its equity securities, other than a Shelf

Registration, a Demand Registration as described above or a Special Registration, and the registration form to be filed may be used for the registration or qualification for distribution of Registrable Securities, the Company will give prompt written notice to the Stockholder of its intention to effect such a registration (but in no event less than ten days prior to the anticipated filing date) and will include in such registration all Registrable Securities with respect to which the Company has received a written request for inclusion therein within ten Business Days after the date of the Company's notice (a "**Piggyback Registration**"). If Stockholder has made such a written request, it may withdraw its Registrable Securities from such Piggyback Registration by giving written notice to the Company and the managing underwriter, if any, on or before the fifth Business Day prior to the planned effective date of such Piggyback Registration. The Company may terminate or withdraw any registration under this Section 1.01(e) prior to the effectiveness of such registration, whether or not Stockholder has elected to include Registrable Securities in such registration.

- (f) If the Piggyback Registration is proposed to be underwritten, the Company will so advise Stockholder as a part of the written notice given pursuant to Section 1.01(e). In such event, the right of the Stockholder to registration pursuant to this Section 1 will be conditioned upon Stockholder's participation in such underwriting and the inclusion of Stockholder's Registrable Securities in the underwriting if such securities are of the same class of securities as the securities to be offered in the underwritten offering, and the Stockholder will (together with the Company and any other persons distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company; *provided that* Stockholder shall not be required to indemnify any person in connection with any registration. If Stockholder disapproves of the terms of the underwriting, it may elect to withdraw therefrom by written notice to the Company and the managing underwriters.
- (g) If either (x) the Company grants "piggyback" registration rights to one or more third parties to include their securities in an underwritten offering under the Shelf Registration Statement pursuant to Section 1.01(b) or (y) a Piggyback Registration under Section 1.01(e) relates to an underwritten offering on behalf of the Company, and in either case the managing underwriters advise the Company that in their reasonable opinion the number of securities requested to be included in such offering exceeds the number which can be sold without adversely affecting the marketability of such offering (including an adverse effect on the per share offering price), the Company will include in such offering only such number of securities that in the reasonable opinion of such managing underwriters can be sold without adversely affecting the marketability of the offering (including an adverse effect on the per share offering price), which securities will be so included in the following order of priority: (i) first, in the case of a Piggyback Registration under Section 1.01(e), the securities the Company proposes to sell, (ii) then the Registrable Securities of the Stockholder.

2. **Expenses of Registration** – All Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Company. All Selling Expenses incurred in connection with any registrations hereunder shall be borne by the holders of the securities so registered *pro rata* on the basis of the aggregate offering or sale price of the securities so registered.

3. Obligations of the Company. – The Company shall use its reasonable best efforts, for so long as there are Registrable Securities outstanding, to take such actions as are under its control to not become an ineligible issuer (as defined in Rule 405 under the Securities Act) and to remain a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) if it has such status on the date hereof or becomes eligible for such status in the future. In addition, whenever required to effect the registration of any Registrable Securities or facilitate the distribution of Registrable Securities pursuant to an effective Shelf Registration Statement or pursuant to a Demand Registration, the Company shall, as expeditiously as reasonably practicable, as applicable:

- (a) Prepare and file with the SEC a prospectus supplement with respect to a proposed offering of Registrable Securities pursuant to an effective registration statement, subject to Section 4, keep such registration statement effective and keep such prospectus supplement current until the securities described therein are no longer Registrable Securities. The plan of distribution included in such registration statement shall include, among other things, an underwritten offering, ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers, block trades, privately negotiated transactions, the writing or settlement of options or other derivative transactions and any other method permitted pursuant to applicable law, and any combination of any such methods of sale.
- (b) Prepare and file with the SEC such amendments and supplements to the applicable registration statement and the prospectus or prospectus supplement used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.
- (c) Furnish to the Stockholder and any underwriters such number of copies of the applicable registration statement and each such amendment and supplement thereto (including in each case all exhibits) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned or to be distributed by them.
- (d) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Stockholder or any managing underwriter(s), to keep such registration or qualification in effect for so long as such registration statement remains in effect, and to take any other action which may be reasonably necessary to enable such seller to consummate the disposition in such jurisdictions of the securities owned by the Stockholder; *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.
- (e) Notify the Stockholder at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the applicable prospectus, as then in effect, includes an untrue statement of a material

fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing.

(f) Give written notice to the Stockholder:

(i) when any registration statement filed pursuant to Section 1 above or any amendment thereto has been filed with the SEC (except for any amendment effected by the filing of a document with the SEC pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act") and when such registration statement or any post-effective amendment thereto has become effective;

(ii) of any request by the SEC for amendments or supplements to any registration statement or the prospectus included therein or for additional information;

(iii) of the issuance by the SEC of any stop order suspending the effectiveness of any registration statement or the initiation of any proceedings for that purpose;

(iv) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Common Stock for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(v) of the happening of any event that requires the Company to make changes in any effective registration statement or the prospectus related to the registration statement in order to make the statements therein not misleading (which notice shall be accompanied by an instruction to suspend the use of the prospectus until the requisite changes have been made); and

(vi) if at any time the representations and warranties of the Company contained in any underwriting agreement contemplated by Section 3(j) cease to be true and correct.

(g) Use its reasonable best efforts to prevent the issuance or obtain the withdrawal of any order suspending the effectiveness of any registration statement referred to in Section 3(vi)(C) at the earliest practicable time.

(h) Upon the occurrence of any event contemplated by Section 3(e), 3(f)(v) or Section 4, promptly prepare a post-effective amendment to such registration statement or a supplement to the related prospectus or file any other required document so that, as thereafter delivered to the Stockholder and any underwriters, the prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Stockholder in accordance with Section 3(f)(v) to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Stockholder and any underwriters shall suspend use of such prospectus and use their reasonable best efforts to return to the Company all copies of such prospectus (at the Company's expense) other than permanent file copies then in the Stockholder's or underwriters' possession. The total number of days that any such suspension may be in effect in any 12-month period shall

not exceed 90 days. The Company shall notify the Stockholder of the date of any anticipated termination of any such suspension period prior to such date.

- (i) Use reasonable best efforts to procure the cooperation of the Company's transfer agent in settling any offering or sale of Registrable Securities, including with respect to the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by the Stockholder or any managing underwriter(s).
- (j) If an underwritten offering is requested either in connection with a Demand Registration or off the Shelf Registration Statement, enter into an underwriting agreement in customary form, scope and substance and take all such other actions reasonably requested by the Stockholder in connection therewith or by the managing underwriter(s), if any, to expedite or facilitate the underwritten disposition of such Registrable Securities, including (1) making members of management and executives of the Company available to participate in a reasonable number of "road shows", similar sales events and other marketing activities at reasonable times, (2) making such representations and warranties to the Stockholder and the managing underwriter(s), if any, with respect to the business of the Company and its subsidiaries, and the Shelf Registration Statement, prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, in customary form, substance and scope, and, if true, confirm the same if and when requested, (3) using its reasonable best efforts to furnish the underwriters with opinions and "10b-5" letters of counsel to the Company, addressed to the managing underwriter(s), if any, covering the matters customarily covered in such opinions and letters requested in underwritten offerings, (4) using its reasonable best efforts to obtain "cold comfort" letters from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any business acquired by the Company for which financial statements and financial data are included in the Shelf Registration Statement) who have certified the financial statements included in such Shelf Registration Statement, addressed to each of the managing underwriter(s), if any, such letters to be in customary form and covering matters of the type customarily covered in "cold comfort" letters, (5) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures customary in underwritten offerings (provided that Stockholder shall not be obligated to provide any indemnity), and (6) delivering such documents and certificates as may be reasonably requested by the Stockholder, its counsel and the managing underwriter(s), if any, to evidence the continued validity of the representations and warranties made pursuant to clause (A) above and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company.
- (k) Make available for inspection by a representative of the Stockholder, the managing underwriter(s), if any, and any attorneys or accountants retained by Stockholder or managing underwriter(s), at the offices where normally kept, during reasonable business hours, financial and other records, pertinent corporate documents and properties of the Company, and cause the officers, directors and employees of the Company to supply all information in each case reasonably requested (and of the type customarily provided in connection with due diligence conducted in connection with a registered public offering of securities) by any such representative, managing underwriter(s), attorney or accountant in connection with such Shelf Registration Statement.

- (l) Use reasonable best efforts to cause all such Registrable Securities to be listed on each national securities exchange on which similar securities issued by the Company are then listed or, if no similar securities issued by the Company are then listed on any national securities exchange, use its reasonable best efforts to cause all such Registrable Securities to be listed on such securities exchange as Stockholder may designate.
- (m) If requested by the Stockholder or the managing underwriter(s), if any, promptly include in a prospectus supplement or amendment such information as the Stockholder or managing underwriter(s), if any, may reasonably request in order to permit the intended method of distribution of such securities and make all required filings of such prospectus supplement or such amendment as soon as practicable after the Company has received such request.
- (n) Timely provide to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.
4. Suspension of Sales – Upon receipt of written notice from the Company that a registration statement, prospectus or prospectus supplement contains or may contain an untrue statement of a material fact or omits or may omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that circumstances exist that make inadvisable use of such registration statement, prospectus or prospectus supplement, Stockholder shall forthwith discontinue disposition of Registrable Securities until Stockholder has received copies of a supplemented or amended prospectus or prospectus supplement, or until Stockholder is advised in writing by the Company that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by the Company, Stockholder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in Stockholder's possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities current at the time of receipt of such notice. The total number of days that any such suspension may be in effect in any 12- month period shall not exceed 90 days. The Company shall notify Stockholder prior to the anticipated termination of any such suspension period of the date of such anticipated termination.
5. Termination of Registration Rights – Stockholder's registration rights as to any securities held by it shall not be available unless such securities are Registrable Securities.
6. Furnishing Information –
- (a) Stockholder shall not use any free writing prospectus (as defined in Rule 405) in connection with the sale of Registrable Securities without the prior written consent of the Company.
- (b) It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 3 that Stockholder and the underwriters, if any, shall furnish to the Company such information regarding themselves, the Registrable Securities held by them and the intended method of disposition of such securities as shall be required to effect the registered offering of their Registrable Securities.

- (a) The Company agrees to indemnify Stockholder and its officers, directors, employees, agents, representatives and Affiliates, and each Person, if any, that controls Stockholder within the meaning of the Securities Act (each, an “Indemnitee”), against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals incurred in connection with investigating, defending, settling, compromising or paying any such losses, claims, damages, actions, liabilities, costs and expenses), joint or several, arising out of or based upon any untrue statement or alleged untrue statement of material fact contained in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or any documents incorporated therein by reference or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by the Stockholder (or any amendment or supplement thereto); or any omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided*, that the Company shall not be liable to such Indemnitee in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon a. an untrue statement or omission made in such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by the Stockholder (or any amendment or supplement thereto), in reliance upon and in conformity with information regarding such Indemnitee or its plan of distribution or ownership interests which was furnished in writing to the Company by such Indemnitee for use in connection with such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto, or b. offers or sales effected by or on behalf of such Indemnitee “by means of” (as defined in Rule 159A) a “free writing prospectus” (as defined in Rule 405) that was not authorized in writing by the Company.

- (b) If the indemnification provided for in Section 7(a) is unavailable to an Indemnitee with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to therein or is insufficient to hold the Indemnitee harmless as contemplated therein, then the Company, in lieu of indemnifying such Indemnitee, shall contribute to the amount paid or payable by such Indemnitee as a result of such losses, claims, damages, actions, liabilities, costs or expenses in such proportion as is appropriate to reflect the relative fault of the Indemnitee, on the one hand, and the Company, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, actions, liabilities, costs or expenses as well as any other relevant equitable considerations. The relative fault of the Company, on the one hand, and of the Indemnitee, on the other hand, shall be determined by reference to, among other factors, whether the untrue statement of a material fact or omission to state a material fact relates to information supplied by the Company or by the Indemnitee and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; the Company and the Stockholder agree that it would not be just and equitable if contribution pursuant to this Section 7(b) were determined

by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 1. No Indemnitee guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from the Company if the Company was not guilty of such fraudulent misrepresentation.

8. Assignment of Registration Rights – The rights of Stockholder to registration of Registrable Securities pursuant to Section 1 may be assigned by Stockholder to a transferee or assignee of Registrable Securities in connection with a transfer of its Registrable Securities pursuant to the Trust Agreement; provided that the Registrable Securities so transferred and then held by the transferee shall be equal to at least 5% of the then-outstanding shares of Common Stock; *provided, further*, the transferor shall, within ten days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the number and type of Registrable Securities that are being assigned.

9. Clear Market – With respect to any underwritten offering of Registrable Securities by Stockholder pursuant to this Agreement, the Company agrees not to effect (other than pursuant to such registration or pursuant to a Special Registration) any public sale or distribution, or to file any Shelf Registration Statement (other than such registration or a Special Registration) covering, in the case of an underwritten offering of Common Stock, any of its equity securities, or, in each case, any securities convertible into or exchangeable or exercisable for such securities, during the period not to exceed 90 days following the effective date of such offering (or such shorter period agreed to by the underwriters). The Company also agrees to cause such of its directors and senior executive officers to execute and deliver customary lock- up agreements in such form and for such time period up to 90 days as may be requested by the managing underwriter. “*Special Registration*” means the registration of a. equity securities and/or options or other rights in respect thereof solely registered on Form S-4 or Form S-8 (or successor form) or b. shares of equity securities and/or options or other rights in respect thereof to be offered to directors, members of management, employees, consultants, customers, lenders or vendors of the Company or Company Subsidiaries or in connection with dividend reinvestment plans.

10. Rule 144 – With a view to making available to Stockholder the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its reasonable best efforts to:

- (a) make and keep adequate public information available, as those terms are understood and defined in Rule 144(c)(1) or any similar or analogous rule promulgated under the Securities Act, at all times after the date hereof;
- (b) file with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act;
- (c) so long as Stockholder owns any Registrable Securities, furnish to Stockholder forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of Rule 144 under the Securities Act, and of the Exchange Act; a copy of the most recent annual or quarterly report of the Company; and such other

reports and documents as Stockholder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities to the public without registration; *provided, however*, that the availability of the foregoing reports on the EDGAR filing system of the SEC will be deemed to satisfy the foregoing delivery requirements; and

- (d) take such further action as Stockholder may reasonably request, all to the extent required from time to time to enable Stockholder to sell Registrable Securities without registration under the Securities Act.
11. Defined Terms – The following terms shall have the following respective meanings:
- (a) “Register,” “registered,” and “registration” shall refer to a registration effected by preparing and (i) filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such registration statement or (ii) filing a prospectus and/or prospectus supplement in respect of an appropriate effective registration statement on Form S-3.
- (b) “Registrable Securities” means (A) the Treasury Equity and (B) any equity securities issued or issuable directly or indirectly with respect to the securities referred to in the foregoing clause (A) by way of conversion, exercise or exchange thereof, or share dividend or share split or in connection with a combination of shares, recapitalization, reclassification, merger, amalgamation, arrangement, consolidation or other reorganization, provided that, in the case of both (A) and (B), such securities will not be Registrable Securities when (1) they are sold pursuant to an effective registration statement under the Securities Act, (2) they shall have ceased to be outstanding or (3) they have been sold in a private transaction in which the transferor’s rights under this Agreement are not assigned to the transferee of the securities. No Registrable Securities may be registered under more than one registration statement at any one time.
- (c) “Registration Expenses” mean all transfer taxes applicable to the sale of the Registrable Securities, all expenses incurred by the Company in effecting any registration pursuant to this Agreement (whether or not any registration or prospectus becomes effective or final) or otherwise complying with its obligations under this Agreement, including all registration, filing and listing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, expenses incurred in connection with any “road show”, the reasonable fees and disbursements of Stockholder’s counsel (if Stockholder is participating in the registered offering), and expenses of the Company’s independent accountants in connection with any regular or special reviews or audits incident to or required by any such registration, but shall not include Selling Expenses.
- (d) “Rule 144”, “Rule 159A”, “Rule 405” and “Rule 415” mean, in each case, such rule promulgated under the Securities Act (or any successor provision), as the same shall be amended from time to time.
- (e) “Selling Expenses” mean all discounts and selling commissions applicable to the sale of Registrable Securities and fees and disbursements of counsel for

- (f) At any time, Stockholder may elect to forfeit its rights set forth in this Agreement from that date forward; *provided*, that Stockholder shall nonetheless be entitled to participate under Section 1(e)-(g) in any Pending Underwritten Offering to the same extent that Stockholder would have been entitled to if the Stockholder had not withdrawn; and *provided, further*, that no such forfeiture shall terminate Stockholder's rights or obligations under Section 6 with respect to any prior registration or Pending Underwritten Offering. "*Pending Underwritten Offering*" means, with respect to any Stockholder forfeiting its rights pursuant to this Section 11(f), any underwritten offering of Registrable Securities in which Stockholder has advised the Company of its intent to register its Registrable Securities either pursuant to Section 1 prior to the date of Stockholder's forfeiture that has not been withdrawn by Stockholder.

12. No Inconsistent Agreements. The Company shall not, on or after the date hereof, enter into any agreement with respect to its securities that may impair the rights granted to Stockholder under this Agreement or that otherwise conflicts with the provisions hereof in any manner that may impair the rights granted to Stockholder under this Agreement. In the event the Company has, prior to the date hereof, entered into any agreement with respect to its securities that is inconsistent with the rights granted to Stockholder under this Agreement (including agreements that are inconsistent with the order of priority contemplated by Section 1(g)) or that may otherwise conflict with the provisions hereof, the Company shall use its reasonable best efforts to amend such agreements to ensure they are consistent with the provisions of this Agreement. Any transaction entered into by the Company that would reasonably be expected to require the inclusion in a Shelf Registration Statement or any Company Report filed with the SEC of any separate financial statements pursuant to Rule 3-05 of Regulation S-X or pro forma financial statements pursuant to Article 11 of Regulation S-X shall include provisions requiring the Company's counterparty to provide any information necessary to allow the Company to comply with its obligation hereunder.

13. Notices – Any notice provided for in this Agreement shall be in writing and shall be either personally delivered, sent by electronic mail, or sent by reputable overnight courier service (charges prepaid) to the addresses set forth below, or at such address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Notices will be deemed to have been given hereunder if (i) delivered personally, when delivered at the address specified in this Section 14, (ii) sent by electronic mail, on the first Business Day after when such electronic mail is sent to the e-mail address specified in this Section 14, or (iii) sent by reputable overnight courier service, one day after deposit with such service.

if to the Stockholder, to

United States Department of the Treasury 1500 Pennsylvania Ave., NW,  
Washington, D.C. 20220  
Attention: Eric Froman

with a copy to (which shall not constitute notice): Davis Polk & Wardwell LLP  
450 Lexington Avenue New York, NY 10017  
Attention: Nicholas Kronfeld  
e-mail: [nicholas.kronfeld@davispolk.com](mailto:nicholas.kronfeld@davispolk.com) if to the Company, to  
YRC Worldwide Inc. 10990 Roe Avenue  
Overland Park, Kansas 66211 Attention: Jamie Pierson  
e-mail: [Jamie.Pierson@yrcw.com](mailto:Jamie.Pierson@yrcw.com)

with a copy to (which shall not constitute notice): Sullivan & Cromwell LLP  
125 Broad Street New York, NY 10004  
Attention: H. Rodgin Cohen  
Melissa Sawyer  
e-mail: [Cohen@sullcrom.com](mailto:Cohen@sullcrom.com)  
[Sawyer@sullcrom.com](mailto:Sawyer@sullcrom.com)

14. Counterparts – This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. Facsimile or other electronic counterpart signatures to this Agreement shall be acceptable and binding.

15. Amendments and Waivers – Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by all parties to this Agreement or, in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law

16. Governing Law; Jurisdiction – This Agreement shall be construed in accordance with federal law. Insofar as there may be no applicable federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law rules (whether of the State of New York or any other jurisdiction).

The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the United States District Court for the District of Columbia or the United States Court of Federal Claims, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 14 shall be deemed effective service of process on such party.

17. Remedies – The parties hereto shall be entitled to enforce their rights under this Agreement specifically, to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights existing in their favor. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that any party hereto may in its/his sole discretion apply to any court of law or equity of competent jurisdiction for specific performance or injunctive relief (without posting a bond or other security) in order to enforce or prevent any violation of the provisions of this Agreement.

18. Entire Agreement – This Agreement, together with the other agreements and documents referred to herein, constitutes the entire agreement, and supersedes all prior and contemporaneous agreements and understandings, oral and written, among the parties with respect to the subject matter hereof.

19. Waiver of Jury Trial – EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed all as of the day and year first above written.

**UNITED STATES DEPARTMENT OF THE TREASURY**

By: /s/ Brent J. McIntosh

Name: Brent J. McIntosh  
Title: Undersecretary for International Affairs  
United States Department of the  
Treasury

[Signature Page to Registration Rights Agreement]

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YRC Worldwide Inc.

By: /s/ Jamie G. Pierson

Name: Title:

Jamie G. Pierson  
Chief Financial Officer

[Signature Page to Registration Rights Agreement]

UST TRANCHE A TERM LOAN CREDIT AGREEMENT

dated as of

July 7, 2020

among

YRC WORLDWIDE INC.,

THE OTHER GUARANTORS PARTY HERETO FROM TIME TO TIME  
THE LENDERS PARTY HERETO

and

THE BANK OF NEW YORK MELLON

as Administrative Agent and Collateral Agent

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UST TRANCHE A TERM LOAN CREDIT AGREEMENT, dated as of July 7, 2020 (this “**Agreement**”), among YRC WORLDWIDE INC., a Delaware corporation (the “**Borrower**”), the Guarantors party hereto from time to time, the Lenders (such term and each other capitalized term used but not defined in this introductory statement having the meaning given it in Article 1), and THE BANK OF NEW YORK MELLON, as administrative agent (in such capacity, including any permitted successor or assign thereto, the “**Administrative Agent**”) and as collateral agent (in such capacity, including any permitted successor or assign thereto, the “**Collateral Agent**”) for the Lenders.

WHEREAS, the Borrower has requested that the Lenders extend credit as is permissible under the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (Mar. 27, 2020), as the same may be amended from time to time (the “**CARES Act**”) to the Borrower, and the Lenders are willing to do so on the terms and conditions set forth herein.

WHEREAS, pursuant to Section 4003(h)(1) of the CARES Act, for purposes of the Code, the Loans shall be treated for U.S. federal income tax purposes as indebtedness and as having been issued for their stated principal amount, and the interest payable pursuant to Section 2.06 shall be treated as qualified stated interest for U.S. federal income tax purposes.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree as follows:

## **ARTICLE 1**

### DEFINITIONS

#### Section 1.01. *Defined Terms*

. As used in this Agreement, the following terms shall have the meanings specified below:

“**ABL Agent**” shall mean, as the context may require, Citizens Business Capital (a division of Citizens Asset Finance, Inc., a subsidiary of Citizens, N.A.), in its capacity as administrative agent under the ABL Facility Documentation, Citizens Business Capital (a division of Citizens Asset Finance, Inc., a subsidiary of Citizens, N.A.), in its capacity as collateral agent under the ABL Facility Documentation, such agents collectively or any permitted successor or assignee administrative agent or collateral agent under the ABL Facility Documentation.

“**ABL Credit Agreement**” shall mean that certain asset-based revolving credit agreement dated as of February 13, 2014, among the Borrower, YRC Inc., a Delaware corporation, USF Reddaway Inc., an Oregon corporation, USF Holland LLC, a Delaware limited liability company (as successor to USF Holland, Inc., a Michigan corporation) and New Penn Motor Express, LLC, a Delaware limited liability company (as successor to New Penn Motor Express, Inc., a Pennsylvania corporation), the other subsidiaries of the Borrower party thereto, the lenders party thereto and the ABL Agent, as amended by that certain Amendment No. 1, dated September 23, 2015, Amendment No. 2, dated June 28, 2016, Amendment No. 3 and Limited Consent, dated January 30, 2018, Amendment No. 4, dated February 12, 2019, Amendment No. 5, dated September 11, 2019 and Amendment No. 6, dated July 7, 2020, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, refunded, replaced

or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents and resulting in a financing that constitutes (or that would constitute if incurred as a new financing) a Permitted Refinancing of the ABL Facility Indebtedness), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof), in each case as and to the extent permitted by this Agreement and, if applicable, the ABL Intercreditor Agreement; *provided* that any such amendment, restatement, modification supplement, extension, renewal, restructuring, refunding, replacement or refinancing shall be permitted hereunder only if not less than a majority of its aggregate commitments are provided by lenders who are third party commercial banks or other financial institutions that customarily provide asset based lending credit facilities and other financial institutions consented to by the Administrative Agent (such consent not to be unreasonably withheld or delayed).

“**ABL Facility**” shall mean the asset-based revolving credit facility made available to the Borrower and certain of its Subsidiaries pursuant to the ABL Credit Agreement.

“**ABL Facility Documentation**” shall mean the ABL Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith and including all “Loan Documents” (as defined in the ABL Credit Agreement) or similar term.

“**ABL Facility Indebtedness**” shall mean Indebtedness of the Borrower or any Restricted Subsidiary outstanding under the ABL Facility Documentation, including Bank Product Debt (as defined in the ABL Credit Agreement).

“**ABL Intercreditor Agreement**” shall mean the Amended and Restated ABL Intercreditor Agreement dated as of July 7, 2020 among the Administrative Agent and/or Collateral Agent, the ABL Agent, the Tranche B-2 Term Agent, the UST Tranche B Term Agent and the Loan Parties, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, waived or replaced from time to time.

“**ABL Priority Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**ABL Secured Parties**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**ABR**”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“**Additional Lender**” shall mean, with respect to any Refinancing Amendment or in respect of any bank, financial institution or investor not theretofor a Lender that agrees to provide an Other Term Loan pursuant thereto, *provided* that the Administrative Agent shall have consented (not to be unreasonably withheld, conditioned or delayed) to such bank, financial institution or investor as would be required under Section 10.04(b) for an assignment of Loans to such bank, financial institution or investor.

“**Adjusted LIBO Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum equal to the greater of (a) 1.00% per annum and (b) the product of (i) the LIBO Rate in effect for such Interest Period and (ii) Statutory Reserves.

“**Administrative Account**” means the account opened with the Administrative Agent in the name of the United States Department of the Treasury with account number 4314148400, or such other account as the Administrative Agent shall advise the Borrower and each Lender from time to time.

“**Administrative Agent**” shall have the meaning assigned to such term in the introductory statement to this Agreement, together with its successors and any replacement designated pursuant to Article 9 of this Agreement.

“**Administrative Agent Fee Letter**” means that certain fee letter dated on or around the date hereof, by and between Borrower, the Collateral Agent and the Administrative Agent, as amended, amended and restated, supplemented, waived, replaced or otherwise modified from time to time.

“**Administrative Questionnaire**” shall mean an Administrative Questionnaire in the form of Exhibit A, or such other form as may be supplied from time to time by the Administrative Agent and approved by the Borrower (such approval not to be unreasonably withheld, conditioned or delayed).

“**Affiliate**” shall mean, 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; provided, that, with respect to the Borrower and its Subsidiaries, in no case shall any Governmental Authority constitute an “Affiliate”. “**Control**” shall mean 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.

“**Agent Indemnitees**” shall have the meaning assigned to such term in Section 10.05(b).

“**Agent Responsible Officer**” means, when used with respect to an Agent, any vice president, assistant vice president, assistant treasurer or trust officer in the corporate trust and agency administration of the Agent or any other officer of the Agent customarily performing functions similar to those performed by any of the above-designated officers, and, in each case, who shall have direct responsibility for the administration of this Agreement and also means, with respect to a particular agency matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

“**Agents**” shall have the meaning assigned to such term in Article 9.

“**Agreement**” shall have the meaning assigned to such term in the introductory statement to this Agreement.

“**Alternate Base Rate**” shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day

plus 1/2 of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%; *provided* that (i) for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the rate published on the Bloomberg "LIBOR01" screen page (or any successor or replacement screen on such service) on such day at approximately 11 a.m. (London time) for deposits in Dollars and (ii) in no event shall the Alternate Base Rate be less than 2.00% per annum. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective on the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, as the case may be.

"**Alternative Interest Rate Election Event**" shall have the meaning assigned to such term in [Section 10.24](#).

"**Applicable Margin**" shall mean, with respect to any Loan, a percentage per annum equal to (a) 3.50% per annum for Eurodollar Term Loans and (b) 2.50% per annum for ABR Term Loans.

"**Assignment and Acceptance**" shall mean an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in the form of [Exhibit B](#) or such other form as shall be approved by the Administrative Agent and the Borrower (such approval of the Borrower shall not be unreasonably withheld, conditioned or delayed).

"**Attorney Costs**" shall mean and shall include all reasonable and documented fees, expenses and disbursements of any law firm or other external legal counsel.

"**Attributable Indebtedness**" shall mean, 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.

"**Audited Financial Statements**" shall mean the audited consolidated balance sheets of the Borrower and its consolidated subsidiaries for the fiscal years ending December 31, 2019 and December 31, 2018 and the related consolidated statements of operations, changes in shareholders' equity and cash flows of the Borrower and its consolidated subsidiaries.

"**Availability Period**" means the period following the execution and delivery of this Agreement by the parties hereto until the Maturity Date.

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to [Section 10.24\(f\)](#).

**“Benchmark”** means, initially, USD LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 10.24(c).

**“Benchmark Replacement”** means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Required Lenders for the applicable Benchmark Replacement Date:

- (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;
- (3) the sum of: (a) the alternate benchmark rate that has been selected by the Required Lenders and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Required Lenders in their reasonable discretion and is available to the Administrative Agent. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

**“Benchmark Replacement Adjustment”** means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

- (1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Required Lenders:
  - (a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

- (b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and
- (2) for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Required Lenders and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar- denominated syndicated credit facilities;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Required Lenders in their reasonable discretion and is available to the Administrative Agent.

**“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Required Lenders decide 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 Required Lenders decide (or are notified by the Administrative Agent) that adoption of any portion of such market practice is not administratively feasible or if the Required Lenders determine that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Required Lenders decide is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**“Benchmark Replacement Date”** means the earliest to occur of the following events with respect to the then-current Benchmark, as determined by the Required Lenders and notified to the Administrative Agent and the Borrower:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the

- published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or
- (3) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders by the Administrative Agent (acting at the direction of the Required Lenders).

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means the occurrence of one or more of the following events with respect to the then-current Benchmark , as determined by the Required Lenders and notified to the Administrative Agent and the Borrower:

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

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

“**Benchmark Unavailability Period**” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Agreement and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Agreement.

“**Blocked Person**” shall mean any Person that is publicly identified on the most current list of “Specially Designated Nationals and Blocked Persons” published by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”).

“**Board**” shall mean the Board of Governors of the Federal Reserve System of the United States of America.

“**Borrower**” shall have the meaning assigned to such term in the introductory statement to this Agreement.

“**Borrower Materials**” shall have the meaning assigned to such term in [Section 10.01](#).

“**Borrowing**” shall mean Loans of the same Class and Type made or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“**Business Day**” shall mean any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close; *provided, however*, that when used in connection with a Eurodollar Loan, the term “**Business Day**” shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

“**Canadian Subsidiary**” shall mean any Subsidiary that is organized under the Laws of Canada or any state or province thereof.

“**Capital Expenditures**” shall mean, for any period, the aggregate of (a) all amounts that would be reflected as additions to property, plant or equipment on a consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries in accordance with GAAP and (b) the value of all assets under Capitalized Leases incurred by the Borrower and its Restricted Subsidiaries during such period.

“**Capitalized Leases**” shall mean all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided that*, subject to [Section 1.11](#), for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“**Cash Collateral Account**” shall mean a blocked account at a commercial bank reasonably satisfactory to the Required Lenders and the Administrative Agent, in the name of the

Borrower and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“**Cash Equivalents**” shall mean any of the following types of Investments, to the extent owned by the Borrower or any Restricted Subsidiary:

- (a) Dollars and, to the extent consistent with past practice, Canadian Dollars;
- (b) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of issuance thereof;
- (c) investments in commercial paper maturing within 270 days from the date of issuance thereof and having, at such date of acquisition, rated at least A-2 or P-2 by S&P or Moody’s;
- (d) investments in demand deposits, certificates of deposit, banker’s acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Administrative Agent, the ABL Agent, the Tranche B-2 Term Agent, the UST Tranche B Term Agent or any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000 and that issues (or the parent of which issues) commercial paper rated at least “Prime 1” (or the then equivalent grade) by Moody’s or “A 1” (or the then equivalent grade) by S&P;
- (e) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (b) above and entered into with a financial institution satisfying the criteria of clause (d) above;
- (f) investments in “money market funds” within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (e) above; and
- (g) other short-term investments entered into in accordance with normal investment policies and practices of any Foreign Subsidiary consistent with past practices for cash management and constituting investments in governmental obligations and investment funds analogous to and having a credit risk not greater than investments of the type described in clauses (a) through (f) above.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than set forth in clause (a) above; *provided* that such amounts are converted into currencies listed in clause (a) within ten Business Days following the receipt of such amounts.

“**Cash Interest Portion**” shall have the meaning assigned to such term in Section 2.06(d).

“**Casualty Event**” shall mean any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Property (including any improvements thereon) to replace or repair such equipment, fixed assets or Real Property or as compensation for such condemnation event.

“**CDA First Lien Obligations**” shall have the meaning assigned to such term in the definition of “Net Proceeds”.

“**Change of Control**” shall mean:

- (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof), in each case other than the United States federal government or any other Governmental Authority on behalf thereof (or, in each case, any agent, trustee or other Person on behalf thereof, including, for the avoidance of doubt, any voting trust and the trustee thereof created to hold the Equity Interests for the benefit of the United States federal government or any other Governmental Authority), of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower;
- (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated or approved by the board of directors of the Borrower nor (ii) appointed by directors so nominated or approved; or
- (c) a “**change of control**” (or similar event) shall occur under (i) the ABL Facility Documentation or any Permitted Refinancing thereof, (ii) the Tranche B-2 Term Loan Facility Documentation or any Permitted Refinancing thereof, (iii) the UST Tranche B Term Loan Facility Documentation or any Permitted Refinancing thereof or (iv) any other Indebtedness for borrowed money, with an aggregate principal amount (in the case of this clause (iv)) in excess of the Threshold Amount;

provided, that, notwithstanding anything in this definition to the contrary, in no event shall the Transactions constitute a Change of Control.

“**Charges**” shall have the meaning assigned to such term in Section 10.09.

“**Class**” when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are UST Tranche A Term Loans, Other Term Loans or Extended Term Loans, (b) any Commitment, refers to whether such Commitment is a Term Loan Commitment, Other Term Loan Commitment (and, in the case of an Other Term Loan Commitment, the Class of Term Loans to which such commitment relates), or a commitment in respect of Term Loans to be made pursuant to an Extension Offer and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments. Other Term Loan Commitments, Other Term Loans and Extended Term Loans that have different terms and conditions, and each tranche of Extended Term Loans, shall be construed to be in different Classes.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” shall mean all the “**Collateral**” as defined in any Collateral Document and shall also include the Mortgaged Properties.

“**Collateral Agent**” shall have the meaning assigned to such term in the introductory statement to this Agreement.

“**Collateral and Guarantee Requirement**” shall mean, at any time, the requirement that:

- (a) on the Effective Date the Administrative Agent and the Collateral Agent shall have received each Collateral Document to the extent required to be delivered on the Effective Date pursuant to Section 4.02(d), subject to the limitations and exceptions of this Agreement, duly executed by each Loan Party that is a party thereto;
- (b) in each case subject to the limitations and exceptions set forth in this Agreement and the Collateral Documents, the Obligations shall have been secured by:
  - (i) a perfected third priority security interest (subject to Liens permitted by Section 7.01) in all personal property of the Borrower and each Guarantor consisting of all accounts receivable, cash and Cash Equivalents, deposit accounts (other than the UST Tranche B Priority Accounts (as defined in the ABL Intercreditor Agreement) and the UST Tranche A Controlled Account) and supporting obligations and books and records related to the foregoing and, in each case, proceeds thereof;
  - (ii) a perfected third priority pledge (subject to Liens permitted by Section 7.01) of all Equity Interests directly held by the Borrower or any Guarantor;
  - (iii) with respect to each Material Real Property, (1) either (x) an amendment to the Existing Mortgage encumbering such Material Real Property (each, a “**Mortgage Amendment**”) amending the obligations secured thereby to include the Obligations or (y) a separate third priority mortgage, deed of trust or deed to secure debt (as applicable) (in each case, subject to Liens permitted by Section 7.01) on such Material Real Property pursuant to Mortgages that satisfy the requirements of clause (c) (i) below and (2) a perfected third priority security interest (subject to Liens permitted by Section 7.01) in all personal property relating to such Material Real Property and all fixtures thereon, provided, that, to the extent the opinion delivered to the Mortgage Collateral Agent confirms that the filing of the applicable Mortgage itself perfects the Mortgage Collateral Agent’s third priority security interest in such fixtures, no separate fixture filing shall be required; and
  - (iv) within one hundred twenty (120) days following the repayment in full of the CDA First Lien Obligations (or, if the proviso to this clause (iv) applies, the date the Requisite CDA Consent is obtained, as applicable), a third priority mortgage, deed of trust or deed to secure debt (as applicable) on each Pension Real Property (such mortgage, deed of trust or deed, a “**Pension Property Mortgage**”) pursuant to Mortgages that satisfy the requirements of clause (c)(i) below (subject to Liens permitted by Section 7.01) and a perfected third priority security interest (subject to Liens permitted by Section 7.01) in all personal property relating to such Pension Real Property and all fixtures thereon; *provided* that to the extent such Pension

Property Mortgage is prohibited under the terms of the Contribution Deferral Agreement (as in effect as of the date hereof), the Loan Parties shall use commercially reasonable efforts to obtain the necessary consents under the Contribution Deferral Agreement to permit such Pension Property Mortgage (the “Requisite CDA Consent”) and if after using such commercially reasonable efforts, such consent is not obtained, the Loan Parties shall not be required to deliver such Pension Property Mortgage until all obligations under the Contribution Deferral Agreement to the extent permitted under Section 7.03(u) shall have been paid in full; and

- (v) a perfected third priority security interest (subject to Liens permitted by Section 7.01) in substantially all other personal property of the Borrower and each Guarantor (other than the UST Tranche A Only Collateral and the UST Tranche B Priority Collateral), including the UST Tranche B Joint Collateral (including the UST Tranche B Joint Accounts (as defined in the ABL Intercreditor Agreement)), investment property, contracts, patents, copyrights, trademarks and other general intangibles (subject to a license in favor of the ABL Agent and/or the UST Tranche B Term Agent and/or the Tranche B-2 Term Agent, as applicable, to use intellectual property, subject to the ABL Intercreditor Agreement), commercial tort claims, letter of credit rights, intercompany notes and proceeds of the foregoing; and
  - (vi) a perfected fourth priority security interest in the UST Tranche B Priority Collateral (including the UST Tranche B Priority Accounts (as defined in the ABL Intercreditor Agreement));
  - (vii) a perfected first priority security interest in the UST Tranche A Only Collateral (including the UST Tranche A Controlled Account);
- (c) subject to the limitations and exceptions set forth in this Agreement and the Collateral Documents, to the extent a security interest in and mortgage lien on any Material Real Property (or, solely with respect to clause (b)(iv) above, any Pension Real Property) is required under Section 4.02, 6.11 or 6.13 (together with any Material Real Property that is subject to an Existing Mortgage, as amended by a Mortgage Amendment or by a Mortgage on the Effective Date pursuant to clause (b)(iii) above, each, a “**Mortgaged Property**”), the Administrative Agent and the Collateral Agent shall have received:
- (i) counterparts of either a Mortgage Amendment or a Mortgage with respect to such Real Property duly executed and delivered by the record owner of such property as filed or recorded in all filing or recording offices reasonably necessary or desirable in order to continue or create (as applicable) a valid and subsisting perfected Lien on the property and/or rights described therein in favor of the Mortgage Collateral Agent for the benefit of the Secured Parties, and evidence that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Required Lenders (it being understood that if a mortgage tax will be owed on the entire amount of the indebtedness evidenced hereby, then the amount secured by the Existing Mortgage as amended by a Mortgage Amendment or the Mortgage (as applicable) shall be limited to 120% (or,

in the case of Real Property located in the state of New York, 100%) of the fair market value of the property at the time the Mortgage Amendment or Mortgage (as applicable) is entered into if such limitation results in such mortgage tax being calculated based upon such fair market value);

- (ii) if a Mortgage Amendment is delivered with respect to such Real Property, a fully paid bringdown and modification endorsement to the existing lender's title insurance policy insuring the Lien of the Existing Mortgage, and if a Mortgage is delivered with respect to such Real Property, a fully paid policy of title insurance (or marked-up title insurance commitments having the effect of a policy of title insurance) issued by the Title Company or another nationally recognized title insurance company reasonably acceptable to the Required Lenders in form and in an amount reasonably acceptable to the Required Lenders (not to exceed 100% of the fair market value of such Material Real Property (or interest therein, as applicable) covered thereby), in each case, insuring the Existing Mortgage, as amended by the Mortgage Amendment, or the Mortgage (as applicable) to be a valid, subsisting Lien on the property described therein, free and clear of all Liens other than Liens permitted pursuant to Section 7.01 (such existing policies, as endorsed, or such policies (as applicable), "**Mortgage Policies**"), each of which shall (A) to the extent reasonably necessary, include such reinsurance arrangements (with provisions for direct access, if reasonably necessary) as shall be reasonably acceptable to the Required Lenders, (B) contain a "tie-in" or "cluster" endorsement, if available under applicable law (i.e., policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), (C) have been supplemented by such endorsements (or where such endorsements are not available, customary opinions of special counsel, architects or other professionals reasonably acceptable to the Collateral Agent and the Required Lenders) as shall be reasonably requested by the Collateral Agent or the Required Lenders (including endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity, revolving credit (if available after the applicable Loan Party uses commercially reasonable efforts), doing business, public road access, variable rate, environmental lien, subdivision, mortgage recording tax, separate tax lot and so-called comprehensive coverage over covenants and restrictions);
- (iii) either (1) an American Land Title Association/National Society for Professional Surveyors (ALTA/NSPS) form of survey for which all charges have been paid, dated a date, containing a certification and otherwise being in form and substance reasonably satisfactory to the Collateral Agent (a "**Survey**") or (2) such documentation ("**Other Survey Documentation**") as may be required by the Title Company to omit the standard survey exception to coverage under the Mortgage Policy with respect to such Material Real Property and issue affirmative endorsements reasonably requested by the Collateral Agent at the direction of the Required Lenders, including "same as" survey and comprehensive endorsements;
- (iv) a customary legal opinion, addressed to the Mortgage Collateral Agent, the Collateral Agent and the Secured Parties with respect to the Existing Mortgage, as

amended by the Mortgage Amendment, or the Mortgage (as applicable) on such Material Real Property; provided, however, with respect to any Material Real Property as of the Effective Date, Borrower shall only be required to deliver a legal opinion if such Material Real Property is located in a Required Opinion State; and

(v) in order to comply with the Flood Laws, the following documents: (A) a completed standard "life of loan" flood hazard determination form (a "**Flood Determination Form**"); (B) if any of the material improvement(s) to the improved Material Real Property is located in a special flood hazard area, a notification thereof to the Borrower ("**Borrower Notice**") and, if applicable, notification to the Borrower that flood insurance coverage under the National Flood Insurance Program ("**NFIP**") is not available because the community in which the property is located does not participate in the NFIP; (C) documentation evidencing the Borrower's receipt of the Borrower Notice (e.g., a countersigned Borrower Notice or return receipt of certified U.S. Mail or overnight delivery); and (D) if the Borrower Notice is required to be given and flood insurance is available in the community in which such Material Real Property is located, a copy of one of the following: the flood insurance policy, the Borrower's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued or such other evidence of flood insurance reasonably satisfactory to the Required Lenders (any of the foregoing being "**Evidence of Flood Insurance**");

(d) after the Effective Date, each Restricted Subsidiary of the Borrower that is not an Excluded Subsidiary shall become a Guarantor and signatory to this Agreement pursuant to a joinder agreement in accordance with Section 6.11 or 6.13; *provided* that, notwithstanding the foregoing provisions, any Subsidiary of the Borrower that would otherwise constitute an Excluded Subsidiary that Guarantees any ABL Facility Indebtedness, any Tranche B-2 Term Loan Facility Indebtedness, any UST Tranche B Term Loan Facility Indebtedness, any Junior Financing, Permitted Additional Debt, or any Permitted Refinancing of any Indebtedness thereof, or that is a borrower under the ABL Facility (or any Permitted Refinancing thereof), the Tranche B-2 Term Loan Facility (or any Permitted Refinancing thereof) or the UST Tranche B Term Loan Facility (or any Permitted Refinancing thereof) shall be a Guarantor hereunder for so long as it Guarantees such Indebtedness (or is a borrower with respect thereto).

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary:

(A) the foregoing definition shall not require, unless otherwise stated in this clause (A), the creation or perfection of pledges of, security interests in, Mortgages on, the obtaining of title insurance with respect to or the taking of any other actions with respect to: (i) any fee owned Real Property that is not Material Real Property (other than Pension Property Mortgages solely to the extent required to be delivered pursuant to clause (b)(iv) of this definition) and any Leasehold Property (it being understood there shall be no requirement to obtain any landlord waivers, estoppels or collateral access letters), (ii) motor vehicles (other than tractors, trucks, trailers and other rolling stock) consisting of an employee or light vehicle and other assets subject to certificates of title with an individual fair market value of less than \$40,000, *provided* that the aggregate fair market value of all assets excluded from the Collateral and Guarantee Requirement

pursuant to this sub-clause (ii) of this clause (A), together with the aggregate book value of all assets excluded from the Collateral and Guarantee Requirement pursuant to sub-clause (xiv) of this clause (A), shall not exceed \$5,000,000 in the aggregate at any time outstanding, (iii) letter of credit rights (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a UCC financing statement) of an amount less than \$5,000,000 and commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than \$5,000,000, (iv) any governmental licenses or state or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby (except to the extent such prohibition or restriction is rendered ineffective under the UCC or other applicable law), (v) Collateral in which pledges or security interests are prohibited or restricted by applicable law or require the consent of any governmental authority or third party, which consent has not been obtained, (vi) Margin Stock, (vii) Equity Interests in a bona fide joint venture formed after the Effective Date with any Person that is not an Affiliate of any Loan Party (but only to the extent that the organizational documents of such Subsidiaries or agreements with other equity holders prohibit or restrict the pledge thereof without the consent of the other equity holders under restrictions that are enforceable under the UCC or other applicable law and such consent has not been obtained), (viii) Equity Interests of (or held as assets by) Immaterial Subsidiaries, or captive insurance Subsidiaries, (ix) any lease, license or agreement or any property to the extent a grant of a security interest therein would violate or invalidate such lease, license or agreement or similar arrangement or create a right of termination in favor of any other party thereto after giving effect to the applicable anti-assignment provisions of the UCC or other applicable law, other than proceeds and receivables thereof, the assignment of which is deemed effective under the UCC or other applicable law, notwithstanding such prohibition, (x) any assets or rights subject to a purchase money security interest, Capitalized Lease or similar arrangement, other than in each case, the UST Tranche B Priority Collateral and UST Tranche B Joint Collateral, (xi) the UST Tranche B Only Collateral, (xii) any assets to the extent a security interest in such assets could result in adverse Tax consequences as reasonably determined by the Borrower, in consultation with the Required Lenders, (xiii) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable Federal law, (xiv) any equipment or other collateral with a net book value in an aggregate amount not to exceed \$5,000,000 for all such equipment or other collateral (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a UCC financing statement); *provided* that the aggregate fair market value of all assets excluded from the Collateral and Guarantee Requirement pursuant to this sub-clause (xiv), together with the aggregate net book value of all assets excluded from the Collateral and Guarantee Requirement pursuant to sub-clause (ii) of this clause (A), shall not exceed \$5,000,000 in the aggregate at any time outstanding, and (xv) other assets not specifically included in the Collateral in circumstances where the cost of obtaining a security interest in such assets exceeds the practical benefit to the Lenders afforded thereby as reasonably determined by the Required Lenders in consultation with the Borrower.

- (B) (i) the foregoing definition shall not require perfection by "control" except with respect to (1) Equity Interests or Indebtedness represented or evidenced by certificates or instruments and (2) deposit accounts and security accounts (which are required to be subject to Control Agreements pursuant to Section 3.04 of the Security Agreement, including the UST

Tranche A Controlled Account), other than Excluded Accounts; (ii) perfection by possession or control shall not be required with respect to (x) any intercompany notes in an aggregate principal amount not to exceed \$5,000,000 and (y) any other notes or other evidence of Indebtedness in an aggregate principal amount not to exceed \$5,000,000; (iii) except in the case of (A) Canadian Subsidiaries, (B) Dutch Subsidiaries and (C) other Foreign Subsidiaries that are not Excluded Foreign Subsidiaries, no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the United States (including the Equity Interests of any Foreign Subsidiary) or to perfect such security interests (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction); and (iv) except to the extent that perfection and priority may be achieved (w) by the filing of a financing statement under the Uniform Commercial Code with respect to the Borrower or a Guarantor, (x) with respect to Real Property and the recordation of Mortgages in respect thereof, as contemplated by clauses (b)(iii) and (c) above, (y) with respect to Equity Interests or Indebtedness, by the delivery of certificates or instruments representing or evidencing such Equity Interests or Indebtedness along with appropriate undated instruments of transfer executed in blank or (z) by notation of liens on certificate of title, the Loan Documents shall not contain any requirements as to perfection or priority with respect to any assets or property described in clause (A) above and this clause (B);

(C) the Collateral Agent, acting at the direction of the Required Lenders, may grant extensions of time for the creation or perfection of security interests in, and Mortgages (or Mortgage Amendments, if applicable) on, or obtaining of title insurance policies (or title endorsements, if applicable) or taking of other actions with respect to, particular assets (including extensions beyond the Effective Date) or any other compliance with the requirements of this definition (or any similar requirements set forth herein or in any other Loan Documents) where the Required Lenders reasonably determines, in consultation with the Borrower, that such creation or perfection of security interests or Mortgages, or such obtaining of title insurance policies (or endorsements) or taking of other actions, or any other compliance with the requirements of this definition cannot be accomplished without undue delay, burden or expense by the time or times at which such act would otherwise be required by this Agreement or any Collateral Documents; *provided* that the Collateral Agent shall have received on or prior to the Effective Date (or within the time period described in Schedule 6.13, if applicable), (i) UCC financing statements as filed under the UCC in the jurisdiction of incorporation or organization of each Loan Party, (ii) any certificates or instruments representing or evidencing Equity Interests of each direct wholly owned Subsidiary of the Borrower or any Guarantor, in each case accompanied by undated instruments of transfer and stock powers endorsed in blank and (iii) Mortgages (or Mortgage Amendments) and Mortgage Policies (or endorsements to existing title insurance policies) for each Material Real Property; and

(D) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to the exceptions and limitations set forth in this Agreement and the Collateral Documents.

“**Collateral Documents**” shall mean, collectively, the Security Agreement, the Mortgage Collateral Agency Agreement, each of the Mortgages, collateral assignments, security agreements, pledge agreements, intellectual property security agreements, Control Agreements or other similar agreements delivered to the Administrative Agent or the Collateral Agent pursuant to [Section 4.02](#).

Section 6.11 or Section 6.13, each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties, the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement.

“**Commitment**” shall mean, with respect to any Lender, such Lender’s Term Loan Commitment (including pursuant to any Refinancing Amendment or Extension Amendment).

“**Common stock**” means the common stock, par value \$0.01 per share, of Borrower.

“**Communications**” shall have the meaning assigned to such term in Section 10.01.

“**Compliance Certificate**” shall mean a certificate substantially in the form of Exhibit E.

“**Consolidated EBITDA**” shall mean, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income (other than clauses (viii) or (xi)), the sum of the following amounts for such period with respect to Borrower and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, any expenses or losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations or other derivative obligations, letter of credit fees, costs of surety bonds in connection with financing activities and any bank fees and financing fees (including commitment, underwriting, funding, “rollover” and similar fees and commissions, discounts, yields and other fees, charges and amounts incurred in connection with the issuance or incurrence of Indebtedness and all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Contracts entered into for the purpose of hedging interest or commodity rate risk) and annual agency, unused line, facility or similar fees paid under definitive documentation related to Indebtedness (whether amortized or immediately expensed),

(ii) provision for taxes based on income, profits or capital gains of the Borrower and the Restricted Subsidiaries, including, without limitation, federal, state, local, franchise and similar taxes and foreign withholding taxes paid or accrued during such period,

(iii) depreciation and amortization,

(iv) extraordinary, unusual or non-recurring charges, expenses or losses, *provided* that the aggregate amount added to “Consolidated EBITDA” pursuant to this clause (a)(iv) in any period, together with the aggregate amount added to Consolidated EBITDA pursuant to clause (a)(vi) of the definition of “Consolidated EBITDA”, shall not exceed in the aggregate 10.0% of Consolidated EBITDA for such period (as calculated prior to giving effect to any such adjustments),

(v) non-cash expenses, charges and losses (including reserves, impairment charges or asset write-offs, write-offs of deferred financing fees, losses from investments recorded using the equity method, purchase accounting adjustments and stock-based awards compensation expense), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to accounts receivable in the normal course or inventory; *provided* that if any of the non-cash charges referred to in this clause (v) represents an accrual or reserve for potential cash items in any future period, (1) the Borrower may determine not to add back such non-cash charge in the current period and (2) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to the extent paid,

(vi) restructuring costs and charges, integration costs, retention, recruiting, relocation and signing bonuses and expenses, and severance costs (including, for the avoidance of doubt, any bonuses payable in connection with the IBT Transactions); *provided* that the aggregate amount added to "Consolidated EBITDA" pursuant to this clause (a) (vi) in any period, together with the aggregate amount added to Consolidated EBITDA pursuant to clause (a)(iv) of the definition of "Consolidated EBITDA", shall not exceed in the aggregate 10.0% of Consolidated EBITDA for such period (as calculated prior to giving effect to any such adjustments),

(vii) Transaction Expenses, and any fees, costs and expenses in connection with any amendment, negotiation, modification, restatement, waiver, forbearance or other transaction in connection with the Transactions provided that the aggregate amount added to "Consolidated EBITDA" pursuant to this clause (a)(vii) with respect to the Transactions shall not exceed \$20,000,000,

(viii) pro forma cost savings for acquisitions (including the commencement of activities constituting such business), material dispositions (including the termination or discontinuance of activities constituting such business) of business entities or properties or assets, constituting a division or line of business of any business entity, division or line of business that is the subject of any such acquisition or disposition and operational changes and operational initiatives (collectively, "**Cost Savings**"), scheduled to be executed and realized (in the good faith determination of a Senior Financial Officer of the Borrower) in connection with any such transaction permitted hereunder, net of the amount of actual Cost Savings realized from such actions during such period; *provided* that (A) such Cost Savings are factually supportable and specifically identified, (B) such Cost Savings are scheduled to be executed and realized within twelve (12) months after the consummation of such transaction, (C) the Administrative Agent and the Required Lenders shall have received a certificate of a Senior Financial Officer of the Borrower, certifying the foregoing requirements and accompanied by a reasonably detailed statement or schedule of such Cost Savings; (D) the actions responsible for any expected Cost Savings are actually taken within twelve (12) months of the consummation of the relevant transaction, (E) any projected Cost Savings in respect of actions which are not actually taken within such twelve (12)-month period or have not been realized within such (12)-month period may no longer be added back in calculating Consolidated EBITDA pursuant to this clause (viii) for the

applicable periods, (F) such Cost Savings are not duplicative of any other adjustments to Consolidated EBITDA pursuant to this definition and (G) the aggregate amount added to Consolidated EBITDA pursuant to this clause (a)(viii) in any period, together with the aggregate amount of all adjustments pursuant to Section 1.10(c), shall not exceed in the aggregate 5.0% of Consolidated EBITDA for such period (as calculated prior to giving effect to any such adjustments),

(ix)[reserved],

(x)other transaction specific accruals, costs, charges, fees and expenses (including legal, tax, structuring and other costs and expenses) related to the Transactions, acquisitions, investments, restricted payments, dispositions or issuances, amendments, waivers or modifications of debt or equity (whether or not consummated) reasonably expected to be permitted under this Agreement or the consummation of which would result in the repayment in full of the Obligations (other than unasserted contingent indemnity and reimbursement obligations) (it being understood and agreed that this clause (a)(x) shall not permit adjustments of the type specified in clauses (a)(iv), (vi) or (viii)),

(xi)to the extent not already included in Consolidated Net Income, proceeds of business interruption insurance (other than business interruption insurance relating to COVID 19 (or any related virus) or any related events) received or reasonably expected to be received within 365 days after the end of such period; *provided* that any such expected proceeds that are not actually received in such 365 day period shall be deducted from Consolidated EBITDA in the fiscal quarter immediately following such 365 day period,

(xii)charges, losses or expenses to the extent indemnified or insured or reimbursed or reasonably expected to be indemnified, insured or reimbursed by a third party within 365 days after the end of such period; *provided* that any such expected amounts that are not actually received in such 365 day period shall be deducted from Consolidated EBITDA in the fiscal quarter immediately following such 365 day period,

(xiii)the amount of any minority interest expense attributable to minority interests of third parties in the positive income of any non-wholly owned Restricted Subsidiary,

(xiv)any net loss from disposed, abandoned or discontinued operations,

(xv)the amount of loss on sale of Securitization Assets and related assets to the Securitization Subsidiary in connection with a Qualified Securitization Financing,

(xvi)net realized losses under any Swap Contract or embedded derivatives that require similar accounting treatment and the application of Accounting Standard Codification Topic 815 and related pronouncements,

(xvii)the cumulative effect of a change in accounting principles,

(xviii) realized non-cash foreign exchange losses resulting from the impact of foreign currency changes on the valuation of assets or liabilities on the balance sheet of the Borrower and its Restricted Subsidiaries,

(xix) any losses attributable to Dispositions of Real Property,

less (b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period) and all other non-cash items of income for such period, (ii) any gains and income from investments recorded using the equity method, (iii) extraordinary, unusual or non-recurring gains, (iv) non-cash gains representing adjustments to pension assets, (v) any gains attributable to Dispositions of Real Property and (vi) any gains arising out of transactions of the types described in clauses (a)(xii), (xiii), (xiv), (xv) and (xvi) above; *provided* that, for the avoidance of doubt, any gain representing the reversal of any non-cash charge referred to in clause (a)(v)(B) above for a prior period shall be added (together with, without duplication, any amounts received in respect thereof to the extent not increasing Consolidated Net Income) to Consolidated EBITDA in any subsequent period to such extent so reversed (or received).

Notwithstanding the foregoing, Consolidated Net Income and Consolidated EBITDA shall be calculated to exclude any amounts otherwise increasing or included in Consolidated Net Income and/or Consolidated EBITDA relating to (x) business interruption insurance relating to COVID 19 (or any related virus) or any related events or (y) any assistance programs provided by Governmental Agencies (or the equivalent).

“**Consolidated Net Income**” shall mean, with reference to any period, the net income (or loss) of the Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP on a consolidated basis (without duplication) for such period (without deduction for minority interests); *provided* that in determining Consolidated Net Income, (a) the net income of any other Person which is not a Subsidiary of the Borrower or is accounted for by the Borrower by the equity method of accounting shall be included only to the extent of the payment of cash dividends or cash distributions by such other Person to the Borrower or a Guarantor that could be made during such period; *provided, however*, that for purposes of calculating the Cumulative Credit for purposes of Section 7.06(e)(y), such income shall only be included (directly or indirectly) to the extent such cash dividends or other cash distributions are actually received from such other Person by the Borrower or a Guarantor, (b) the net income of any Subsidiary of the Borrower shall be excluded to the extent that the declaration or payment of cash dividends or similar cash distributions by that Subsidiary of that net income is not at the date of determination permitted by operation of its charter or any agreement, instrument or law applicable to such Subsidiary (other than (i) restrictions that have been waived or otherwise released, (ii) restrictions pursuant to the Loan Documents, the ABL Facility Documentation, the Tranche B-2 Term Loan Facility Documentation or the UST Tranche B Term Loan Facility Documentation or the Treasury Equity Documents and (iii) restrictions arising pursuant to an agreement or instrument if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by the Borrower in good faith)), and (c) the income or loss of any Person accrued prior to the date it becomes a

Subsidiary or is merged into or consolidated with the Borrower or any Subsidiary or the date that such Person's assets are acquired by the Borrower or any Subsidiary shall be excluded.

**"Consolidated Total Assets"** shall mean the total assets of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the consolidated balance sheet of the Borrower for the most recently completed fiscal quarter for which financial statements have been delivered pursuant to Section 6.01(a) or (b).

**"Consolidated Total Debt"** shall mean, as of any date of determination, the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries (on a consolidated basis) outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP as long as such amount is no less than the aggregate face amount of such Indebtedness on such date, consisting of Indebtedness for borrowed money, Attributable Indebtedness or purchase money Indebtedness, debt obligations evidenced by bonds, debentures, promissory notes, loan agreements or similar instruments, and all Guarantees of any of the foregoing; *provided* that (i) Consolidated Total Debt shall not include Indebtedness in respect of letters of credit, bankers' acceptances and other similar contingent obligations, except to the extent of unreimbursed amounts thereunder, and (ii) Consolidated Total Debt shall not include obligations under Swap Contracts permitted hereunder.

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

**"Contribution Deferral Agreement"** means that certain Second Amended and Restated Contribution Deferral Agreement, dated as of January 31, 2014, by and between YRC Inc., USF Holland LLC (*f/k/a* USF Holland Inc.), New Penn Motor Express LLC (*f/k/a* New Penn Motor Express, Inc.), USF Reddaway Inc., certain other of the Subsidiaries of the Borrower, the Trustees for the Central States, Southeast and Southwest Areas Pension Fund, the Pension Fund Entities and each other pension fund from time to time party thereto and Wilmington Trust Company, all as the same may be amended, amended and restated, restated, supplemented or otherwise modified in accordance with the terms hereof.

**"Control"** shall have the meaning specified in the definition of "Affiliate".

**"Control Agreement"** means an agreement, in form and substance reasonably satisfactory to the Required Lenders, which provides for the Collateral Agent to have "control" (for purposes of this definition, as defined in Section 9 104 of the UCC of the State of New York or Section 8-106 of the UCC of the State of New York, as applicable) of Cash Collateral Accounts, Deposit Accounts or Securities Accounts, as applicable.

**"Corresponding Tenor"** with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

**"Credit Agreement Refinancing Indebtedness"** shall mean Permitted Additional Debt or Indebtedness incurred pursuant to a Refinancing Amendment, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in

exchange for, or to extend, renew, replace, restructure or refinance, in whole or part, existing Term Loans (including any successive Credit Agreement Refinancing Indebtedness) (“**Refinanced Debt**”); *provided* that (i) such extending, renewing, replacing, restructuring or refinancing Indebtedness is in an original aggregate principal amount (or accreted value, if applicable) not greater than the aggregate principal amount (or accreted value, if applicable) of the Refinanced Debt, except by an amount equal to accrued but unpaid interest, premiums and fees payable by the terms of such Indebtedness and reasonable fees, expenses, original issue discount and upfront fees incurred in connection with such exchange, modification, refinancing, refunding, renewal, restructuring, replacement or extension, (ii) such Refinanced Debt shall be repaid, defeased or satisfied and discharged with 100% of the Net Proceeds of the applicable Credit Agreement Refinancing Indebtedness and all accrued, due and payable interest, fees and premiums (if any) in connection therewith shall be paid promptly upon receipt of the proceeds of such Credit Agreement Refinancing Indebtedness, (iii) such Indebtedness does not have an earlier maturity and has a Weighted Average Life to Maturity equal to or greater than the Refinanced Debt; and (iv) and, in the case of any high yield notes constituting Credit Agreement Refinancing Indebtedness, such Indebtedness will not have mandatory prepayment provisions (other than related to customary asset sale and change of control and similar offers and AHYDO “catch up” payments) that would result in mandatory prepayment of such Indebtedness prior to the Refinanced Debt.

“**Credit Extension**” shall mean a Borrowing.

“**Cumulative Credit**” shall mean, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) the Cumulative Retained Excess Cash Flow Amount at such time, plus

(b) the cumulative amount of cash and Cash Equivalent proceeds from the sale of Equity Interests of the Borrower or of any direct or indirect parent of the Borrower after September 11, 2019 to the extent Not Otherwise Applied, plus

(c) the aggregate amount of Declined Proceeds at such time that have been retained by the Borrower in accordance with Section 2.13(d), plus

(d) to the extent not already included in the Cumulative Retained Excess Cash Flow Amount, an amount equal to any returns in cash and Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Borrower or any Restricted Subsidiary after the Effective Date in respect of any Investments made pursuant to Section 7.02(p)(y), and *provided* in each case that such amount does not exceed the amount of the original Investment made pursuant to Section 7.02(p)(y); minus

(e) any amount of the Cumulative Credit used to make Investments pursuant to Section 7.02(p)(y) after September 11, 2019 and prior to such time, minus

(f) any amount of the Cumulative Credit used to pay dividends or make distributions or other Restricted Payments pursuant to Section 7.06(d)(ii) or Section 7.06(e)(y) after September 11, 2019 and prior to such time, minus

(g) any amount of the Cumulative Credit used to make payments or distributions in respect of Permitted Additional Debt or Junior Financing (or any Permitted Refinancing thereof) pursuant to [Section 7.13\(a\)\(vi\)](#) after September 11, 2019 and prior to such time.

Notwithstanding anything to the contrary in this Agreement, during the Specified Period, the Cumulative Credit shall be unavailable for use under this Agreement and shall be disregarded in any calculation of or reference to any other term or provision herein.

“**Cumulative Retained Excess Cash Flow Amount**” shall mean “Cumulative Retained Excess Cash Flow Amount” as defined in the Tranche B-2 Term Loan Credit Agreement.

“**Custodial Administration Agreement**” shall mean the Amended and Restated Custodial Administration Agreement, dated as of the Effective Date, by and among the Borrower, the Subsidiaries from time to time parties thereto, VINtek, Inc., as custodial administrator, the Collateral Agent, as administrative and collateral agent for the benefit of the Secured Parties, the ABL Agent, as administrative and collateral agent for the benefit of the ABL Secured Parties, the Tranche B-2 Term Agent, as administrative and collateral agent for the benefit of the Tranche B-2 Secured Parties, the UST Tranche B Term Agent, as administrative and collateral agent for the benefit of the UST Tranche B Secured Parties and the Collateral Agent, as collateral agent for the benefit of the Secured Parties, the Tranche B-2 Secured Parties, the UST Tranche B Secured Parties and the ABL Secured Parties.

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

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

“**Declined Proceeds**” shall have the meaning assigned to such term in [Section 2.13\(d\)](#).

“**Default**” shall mean any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of any grace period, or both, without cure or waiver hereunder, would be an Event of Default.

“**Deposit Account**” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“**Disposition**” or “**Dispose**” shall mean the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or

other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“**Disqualified Equity Interests**” shall mean any Equity Interest that, 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 Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (c) provides for 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 ninety-one (91) days after the then Latest Maturity Date; *provided* that if such Equity Interests are issued pursuant to, or in accordance with a plan for the benefit of employees of the Borrower or the Restricted Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability.

“**Disqualified Lenders**” shall mean (i) each of those banks, financial institutions and other entities identified in writing prior to the Effective Date by the Borrower to the Administrative Agent and the Required Lenders, (ii) competitors of the Borrower or the Guarantors identified in writing from time to time by the Borrower to the Administrative Agent, and (iii) any known affiliates of the Persons identified pursuant to clause (i) or (ii); provided that a “competitor” or an affiliate of a competitor or an entity referenced in clause (i) shall not include any bona fide debt fund or investment vehicle (other than a Person which is excluded pursuant to clause (i) above) that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business and whose managers are not involved with any equity or equity-like investments or other investments with an equity component or characteristic managed by any Person described in clause (i) or (ii) above.

“**Dollars**” or “**\$**” shall mean lawful money of the United States of America.

“**Domestic Subsidiary**” shall mean any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“**Dutch Subsidiary**” shall mean any Subsidiary that is organized under the Laws of the Netherlands or any state or province thereof.

“**Early Opt-in Election**” means, if the then-current Benchmark is USD LIBOR, the occurrence of:

- (1) a notification by the Required Lenders to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such

- time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and
- (2) the joint election by the Required Lenders and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent, acting at the direction of the Required Lenders, of written notice of such election to the Lenders.

“**Effective Date**” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Article 9), which date is July 7, 2020.

“**Eligible Assignee**” shall mean (i) a Lender, (ii) an Affiliate of a Lender, (iii) a Related Fund of a Lender, and (iv) any other Person (other than a natural person) approved by the Administrative Agent and, unless an Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld, conditioned or delayed and the Borrower’s approval being deemed to have been given in the event that the Borrower does not object in writing to an assignment within three (3) Business Days after receipt of written notice of such assignment); *provided that*, notwithstanding the foregoing, (A) “**Eligible Assignee**” shall not include the Borrower or any other Controlled Affiliate of the Borrower and (B) no Borrower consent shall be required if any Lender is required to assign all or any portion of its Loans by any Governmental Authority. “**Eligible Assignee**” shall not include any Disqualified Lender without the prior written consent of the Borrower (which may be withheld in the Borrower’s sole discretion). Notwithstanding the foregoing or anything else to the contrary in this Agreement, each of the parties hereto acknowledges and agrees that the Administrative Agent (in its capacity as such) (x) shall not have any responsibility or obligation to determine whether any Lender or any potential assignee Lender is a Disqualified Lender and (y) shall not have any liability with respect to any assignment or participation made to a Disqualified Lender.

“**Environmental Laws**” shall mean all federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), and agreements in each case, relating to protection of the environment, natural resources, human health and safety (with respect to exposure to hazardous or toxic substances or wastes) or the presence, Release of, or exposure to, hazardous or toxic substances or wastes, or the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or the arrangement for such activities with respect to, hazardous or toxic substances or wastes.

“**Environmental Liability**” shall mean all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses and costs (including administrative oversight costs, capital and operating costs, injunctive relief, costs associated with financial assurance, permitting or closure requirements, natural resource damages and investigation or remediation costs), whether contingent or otherwise, arising out of or relating to (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release 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**” shall mean, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities) but excluding in each case any debt security that is convertible into, or exchanged for, Equity Interests.

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

“**ERISA Affiliate**” shall mean any Person, any trade or business (whether or not incorporated) that, together with a Loan Party or any Restricted Subsidiary, is or, within the six year period immediately preceding February 13, 2014, was treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“**ERISA Event**” shall mean (a) a Reportable Event; (b) the failure to satisfy the minimum funding standard with respect to a Plan within the meaning of Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA, whether or not waived (unless such failure is corrected by the final due date for the plan year for which such failure occurred), (c) a determination that a Plan is, or is expected to be, in “at risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (d) the receipt by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of notice pursuant to Section 305(b)(3)(D) of ERISA that a Multiemployer Plan is or will be in “endangered status” or “critical status” (as defined in Section 305(b) of ERISA), or is, or is expected to be, “insolvent” (within the meaning of Section 4245 of ERISA); (e) the filing pursuant to Section 431 of the Code or Section 304 of ERISA of an application for the extension of any amortization period; (f) the failure to timely make a contribution required to be made with respect to any Plan or Multiemployer Plan; (g) the filing of a notice to terminate any Plan if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA; (h) the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Plan or the termination of any Plan under Section 4041(c) of ERISA; (i) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (j) the incurrence by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (k) the receipt by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates from the PBGC or a plan administrator of any notice of an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (l) the receipt by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability; (m)

the occurrence of any event or condition that would reasonably be expected to result in the termination of a Plan or the appointment of a trustee to administer a Plan; (o) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to any Plan which could result in liability to a Loan Party or any Restricted Subsidiary or with respect to which a Loan Party or any Restricted Subsidiary is a “disqualified person” (as defined in Section 4975 of the Code) or a “party in interest” (as defined in Section 3(14) of ERISA); (p) the incurrence of any liability with respect to any Plan or Multiemployer Plan under Title IV of ERISA (other than premiums due and not delinquent under Section 4007 of ERISA); or (q) engagement in any transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

“**Eurodollar**”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate (other than the Alternate Base Rate) determined by reference to the Adjusted LIBO Rate.

“**Event of Default**” shall have the meaning assigned to such term in Article 8.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.

“**Excluded Account**” means (i) any Deposit Account specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Loan Parties’ salaried employees, (ii) any petty cash account to the extent the balance therein does not exceed (x) \$1,000,000 in the aggregate for more than five (5) Business Days, and/or (y) \$5,000,000 in the aggregate for more than one (1) Business Day, (iii) any zero-balance account, (iv) any account specifically and exclusively used to maintain cash collateral required pursuant to the ABL Credit Agreement, (v) any escrow account, (vi) the UST Tranche A Controlled Account and (vii) the UST Tranche B Controlled Account.

“**Excluded CDA Proceeds**” shall have the meaning assigned to such term in the definition of “Net Proceeds”.

“**Excluded Foreign Subsidiary**” shall mean any Foreign Subsidiary (other than any Canadian Subsidiary or Dutch Subsidiary) of the Borrower that does not individually have total assets or revenues (for the period of four fiscal quarters most recently ended) that exceed 3.0% of the Borrower’s total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* that the aggregate amount of assets or revenues (for the period of four fiscal quarters most recently ended) of such Subsidiaries shall not at any time exceed 7.0% of the Borrower’s total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* further that if, as of the date the financial statements for any fiscal quarter of the Borrower are delivered or required to be delivered hereunder, the consolidated assets or revenues of all Excluded Foreign Subsidiaries shall have, as of the last day of such fiscal quarter, exceeded the limits set forth above, then within sixty (60) days (or such later date as agreed by the Administrative Agent and the Required Lenders in their reasonable discretion) after the date such financial statements are so delivered (or so required to be delivered), the Borrower shall cause one or more Foreign Subsidiaries to comply with Section 6.11 such that, as a result thereof, the consolidated assets and revenues of all Excluded Foreign Subsidiaries do not exceed such limits.

For the avoidance of doubt, no Canadian Subsidiary or Dutch Subsidiary shall constitute an Excluded Foreign Subsidiary.

“**Excluded Property**” shall have the meaning assigned to such term in the Security Agreement.

“**Excluded Real Property**” shall mean (a) any Real Property set forth on Schedule 1.01(a) and (b) any Pension Real Property.

“**Excluded Subsidiary**” shall mean (a) any bona fide joint venture formed after the Effective Date with any Person that is not an Affiliate of any Loan Party, (b) any Immaterial Subsidiary, (c) any Subsidiary that is prohibited by applicable Law whether or not existing on the Effective Date or Contractual Obligations existing on the Effective Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from Guaranteeing the Obligations or if Guaranteeing the Obligations would require governmental (including regulatory) consent, approval, license or authorization (unless such contractual obligation is waived or otherwise removed or such consent, approval, license or authorization has been obtained), (d) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent (at the direction of the Required Lenders), in consultation with the Borrower, the burden or cost or other consequences (other than adverse tax consequences) of providing a Guarantee of the Obligations shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (e) any other Subsidiary with respect to which, in the reasonable judgment of the Borrower, the tax consequences of providing a Guarantee could be adverse in consultation the Administrative Agent (provided that the Borrower shall give notice of such determination to the Required Lenders and, at the request of the Required Lenders, shall consult with the Required Lenders), (f) any Excluded Foreign Subsidiary of the Borrower, and (g) any Securitization Subsidiary, captive insurance company or non-profit Subsidiary; provided that no Person shall be an Excluded Subsidiary to the extent it guarantees or pledges any of its assets to secure, directly or indirectly, any other Indebtedness of any Loan Party in excess of the Threshold Amount; provided, further, that in the event that any Excluded Subsidiary guarantees or otherwise becomes an obligor under any Indebtedness, the aggregate principal amount of which exceeds the Threshold Amount, then such Excluded Subsidiary shall, notwithstanding the foregoing, no longer constitute an Excluded Subsidiary, and shall become a Loan Party hereunder. If any Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall only be permitted to be released from its Guarantee so long as the fair market value of any and all Investments then held by the Loan Parties in such Person are permitted as an Investment under [Section 7.02\(c\)\(iii\)](#) and [Section 7.02\(p\)](#) at the time such Person becomes an Excluded Subsidiary pursuant to clause (a) of the definition of “Excluded Subsidiary”.

“**Existing Mortgage**” shall mean, with respect to each Material Real Property as of the Effective Date, either Mortgage in favor of the Collateral Agent securing the obligations under the Tranche B-2 Term Credit Agreement or the ABL Credit Agreement (as applicable).

“**Extended Term Loans**” shall have the meaning assigned to such term in [Section 2.19\(a\)](#).

“**Extension**” shall have the meaning assigned to such term in [Section 2.19\(a\)](#).

“**Extension Amendment**” shall have the meaning assigned to such term in [Section 2.19\(c\)](#).

“**Extension Offer**” shall have the meaning assigned to such term in [Section 2.19\(a\)](#).

“**Facility**” shall mean the UST Tranche A Term Loans, the Extended Term Loans or the Other Term Loans, as the context may require.

“**FATCA**” shall mean Sections 1471 through 1474 of the Code, as in effect on the Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“**Federal Funds Effective Rate**” shall mean, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“**Fees**” shall have the meaning assigned to such term in [Section 2.05](#).

“**Flood Laws**” shall mean the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board).

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

“**Foreign Disposition**” shall have the meaning set forth in [Section 2.13\(f\)](#).

“**Foreign Subsidiary**” shall mean any direct or indirect Subsidiary of the Borrower which is not a Domestic Subsidiary.

“**Funding Date**” shall have the meaning set forth in [Section 2.01](#).

“**GAAP**” shall mean generally accepted accounting principles in the United States of America, as in effect from time to time, subject to [Section 1.11](#); *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“**Governmental Authority**” shall mean any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, the Treasury).

“**Granting Lender**” shall have the meaning assigned to such term in Section 10.04(i).

“**Guarantee**” shall mean, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness of the payment or performance of such Indebtedness, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of any other Person, whether or not such Indebtedness is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include (i) endorsements for collection or deposit, in either case in the ordinary course of business, (ii) customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness) or (iii) product warranties. 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.

“**Guaranteed Obligations**” shall have the meaning specified in Section 11.01.

“**Guarantors**” shall mean (i) each Domestic Subsidiary of the Borrower as of the Effective Date (other than an Excluded Subsidiary), (ii) each Canadian Subsidiary and Dutch Subsidiary of the Borrower that issues a Guarantee of the Obligations after the Effective Date pursuant to Schedule 6.13(a) and (iii) each Subsidiary that issues a Guarantee of the Obligations after the Effective Date pursuant to Section 6.11 (which Section 6.11, for the avoidance of doubt, does not require that any Excluded Subsidiary provide such a Guarantee) or otherwise. For avoidance of doubt, the Borrower may cause any Restricted Subsidiary that is not (and is not required to be) a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent, and any such Restricted Subsidiary shall be treated as a Guarantor hereunder for all purposes (each such Subsidiary, an “Electing Guarantor”) and may also cause the Guaranty of any such Electing Guarantor, and any Liens securing such Guaranty, to be released upon providing written notice to

the Administrative Agent and the Collateral Agent that such Electing Guarantor shall be treated as an Excluded Subsidiary to the extent consistent with the definition of Excluded Subsidiary. The Guarantors as of the Effective Date are (A) set forth on Schedule 1.01(b) and (B) not Electing Guarantors.

“**Guaranty**” shall mean, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

“**Hazardous Materials**” shall mean (a) any petroleum products, distillates or byproducts and all other hydrocarbons, coal ash, radon gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, chlorofluorocarbons and all other ozone-depleting substances and (b) any chemical, material, substance or waste that is prohibited, limited or regulated by or pursuant to any Environmental Law.

“**IBT**” shall mean the International Brotherhood of Teamsters.

“**IBT Agreement**” shall mean that certain National Master Freight Agreement, effective April 1, 2019, among the IBT, YRC Inc. (formerly, Yellow Transportation, Inc. and Roadway Express, Inc.), USF Holland LLC and New Penn Motor Express LLC, as amended, restated, modified, supplemented, extended, renewed or replaced from time to time.

“**IBT Extension Agreement**” shall mean that certain Extension of the Agreement for the Restructuring of the YRC Worldwide Inc. Operating Companies, by and among YRC Inc., USF Holland, Inc., New Penn Motor Express, Inc., USF Reddaway and the Teamsters National Freight Industry Negotiating Committee of the IBT.

“**IBT Transactions**” shall mean the modification and extension through March 31, 2024 or any date thereafter, including pursuant to a subsequent modification, extension, approval and ratification, of the IBT Agreement, and the approval and ratification of the IBT Extension Agreement by the members of the IBT in accordance in all material respects with all applicable laws, rules, regulations and other requirements relating thereto.

“**Immaterial Subsidiary**” shall mean any Subsidiary of the Borrower that does not individually have total assets or revenues (for the period of four fiscal quarters most recently ended) that exceed 1.0% of the Borrower’s total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* that the aggregate amount of assets or revenues (for the period of four fiscal quarters most recently ended) of such Subsidiaries shall not at any time exceed 2.5% of the Borrower’s total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided further* that if, as of the date the financial statements for any fiscal quarter of the Borrower are delivered or required to be delivered hereunder, the consolidated assets or revenues of all Restricted Subsidiaries so designated by the Borrower as “Immaterial Subsidiaries” shall have, as of the last day of such fiscal quarter, exceeded the limits set forth above, then within 10 Business Days (or such later date as agreed by the Administrative Agent and the Required Lenders in their reasonable discretion) after the date such financial statements are so delivered (or so required to be delivered), the Borrower shall redesignate one or more Immaterial Subsidiaries, in each case in a written notice to the Required Lenders and

Administrative Agent, such that, as a result thereof, the consolidated assets and revenues of all Restricted Subsidiaries that are still designated as “Immaterial Subsidiaries” do not exceed such limits. Upon any such Restricted Subsidiary ceasing to be an Immaterial Subsidiary pursuant to the preceding sentence, such Restricted Subsidiary, to the extent not otherwise qualifying as an Excluded Subsidiary, shall comply with Section 6.11, to the extent applicable.

“**Indebtedness**” shall mean, as to any Person at a particular time, without duplication and without reference to what constitutes indebtedness or a liability in accordance with GAAP, all of the following:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;
- (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;
- (e) indebtedness (excluding prepaid interest thereon) described in clauses (a) through (d) and (f) through (h) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness;
- (g) all obligations of such Person to purchase, redeem, retire or otherwise acquire for value any Disqualified Equity Interests (but solely to the extent required to occur on or prior to the Latest Maturity Date (other than as a result of a change of control, asset sale or similar event)); and
- (h) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person (i) 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 joint venturer, except to the extent such Person’s liability for such Indebtedness is otherwise expressly contractually limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Debt and (ii) shall exclude (A) trade accounts payable in the ordinary course of business, (B) any earn-out obligation until such earn-out obligation has become due and payable, (C) any current and undeferred pension contributions or health and welfare contributions due from such Person and/or its applicable Subsidiaries to any Pension Fund Entity, (D) liabilities accrued in the ordinary

course, (E) deferred revenues, liabilities associated with customer prepayments and deposits and any such obligations incurred under ERISA, and other accrued obligations (including transfer pricing), in each case incurred in the ordinary course of business, (F) operating leases, (G) customary obligations under employment agreements and deferred compensation and (H) deferred tax liabilities. 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. The amount of Indebtedness of any Person for purposes of clause (e) that is limited in recourse to the property encumbered thereby shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

“**Indemnified Taxes**” shall have the meaning assigned to such term in [Section 3.01\(a\)](#).

“**Indemnitee**” shall have the meaning assigned to such term in [Section 10.05\(b\)](#).

“**Information**” shall have the meaning assigned to such term in [Section 10.16](#).

“**Initial Funding Date**” means the date on which the conditions specified in Section 4.02 are satisfied (or waived in accordance with Article 9).

“**Intellectual Property Security Agreement**” shall have the meaning assigned to such term “Grant of Security Interest” in the Security Agreement.

“**Intercompany Note**” shall mean (i) for existing promissory notes as of the Effective Date, each promissory note (or amended and restated promissory note) with subordination language reasonably acceptable to the Required Lenders and (ii) for promissory notes issued after the Effective Date, a promissory note substantially in the form of [Exhibit E](#).

“**Intercreditor Agreement**” shall include all permitted intercreditor agreements (including the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement).

“**Interest Payment Date**” shall mean (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months’ duration been applicable to such Borrowing.

“**Interest Period**” shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last Business Day) in the calendar month that is 1, 2, 3 or 6 (or, if agreed by all applicable Lenders, 12) months thereafter (or any shorter period agreed by all applicable Lenders), as the Borrower may elect; *provided, however*, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of

such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period and (c) no Interest Period for any Loan shall extend beyond the maturity date of such Loan. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

**“Internally Generated Cash”** shall mean cash resulting from operations of the Borrower and the Restricted Subsidiaries and not constituting (x) proceeds of the issuance of (or contributions in respect of) Equity Interests, (y) proceeds of Dispositions (other than in the ordinary course of business) and Casualty Events or (z) proceeds of the incurrence of Indebtedness.

**“Investment”** shall mean, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of related transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, (i) the amount of any Investment shall equal (A) the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment minus, except for purposes of calculating the Cumulative Credit, (B) the aggregate amount of dividends, distributions or other payments received in cash in respect of such Investment (including by way of a sale or other disposition of such Investment) but not in excess of the original amount invested and (ii) the fair market value of any and all Investments (which for the avoidance of doubt shall include all debt, equity and other items described in the foregoing provisions of this definition) held by any Loan Party in any Guarantor that becomes an Excluded Subsidiary pursuant to clause (a) of the definition of “Excluded Subsidiary” shall be deemed to be an Investment incurred on the date such Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of “Excluded Subsidiary”.

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

**“Junior Financing”** shall mean any unsecured Indebtedness incurred by the Borrower or a Guarantor in the form of one or more series of unsecured notes or loans having an outstanding aggregate principal amount of not less than the Threshold Amount and any Subordinated Indebtedness (for greater certainty, not including the ABL Facility Indebtedness, the UST Tranche B Facility Indebtedness and the Tranche B-2 Term Loan Facility Indebtedness).

**“Junior Financing Documentation”** shall mean any documentation governing any Junior Financing.

“**Junior Lien Intercreditor Agreement**” shall mean a “junior lien” intercreditor agreement among the Collateral Agent and one or more Junior Lien Representatives for holders of Permitted Junior Priority Additional Debt, in form and substance reasonably satisfactory to the Required Lenders and the Borrower.

“**Junior Lien Representative**” shall mean, with respect to any series of Permitted Junior Priority Additional Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Latest Maturity Date**” shall mean, at any date of determination, the latest maturity or expiration date applicable to any Loan hereunder at such time, including the latest maturity or expiration date of any UST Tranche A Term Loan, any Other Term Loan or any Extended Term Loan, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” shall mean, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, requirements, and agreements with, any Governmental Authority.

“**Leasehold Property**” shall mean any leasehold interest of any Loan Party as lessee under any lease of Real Property.

“**Lender**” shall mean each lender from time to time party hereto. For avoidance of doubt, each Additional Lender is a Lender to the extent any such Person has executed and delivered a Refinancing Amendment, as the case may be, and to the extent such Refinancing Amendment shall have become effective in accordance with the terms hereof and thereof. As of the Effective Date, Schedule 2.01 sets forth the name of each Lender.

“**Lender Indemnitees**” shall have the meaning assigned to such term in Section 10.05(b).

“**LIBO Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate per annum determined by the Administrative Agent by reference to the Bloomberg “LIBOR01” screen page (or any successor or replacement screen on such service) at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the commencement of such Interest Period for deposits in Dollars for a period equal to such Interest Period; *provided* that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, and except as set forth in Section 10.24, the “**LIBO Rate**” shall be the LIBO Rate for the immediately preceding Interest Period.

“**Lien**” shall mean any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease or financing lease having substantially the same economic effect as any of the foregoing).

“**Liquidity**” shall mean, as of any date of determination, the sum of (A) unrestricted cash and Cash Equivalents of the Loan Parties as of such date and (B) the aggregate amount of “Availability” under the ABL Credit Agreement (as such term is defined in the ABL Credit Agreement as in effect as of the date hereof and without giving effect to proviso in such definition) so long the conditions for utilizing have been satisfied other than with respect to the delivery of a borrowing request or similar funding notice, which the Borrower is permitted to deliver. Liquidity shall not include cash and Cash Equivalents held in the UST Tranche A Controlled Account or the UST Tranche B Controlled Account.

“**Liquidity Test Period**” shall mean the period commencing on the Effective Date and ending on the first date after for which Consolidated EBITDA for a Test Period ending on the last day of a fiscal quarter ending on or after September 30, 2020 is greater than \$200,000,000 and the Borrower shall have delivered a Compliance Certificate to the Administrative Agent showing such calculation in reasonable detail.

“**Loan**” shall mean any Term Loan.

“**Loan Documents**” shall mean this Agreement (including, without limitation, any amendments to this Agreement), the Collateral Documents, the Custodial Administration Agreement, the Administrative Agent Fee Letter, each Refinancing Amendment, each Extension Offer and each amendment of any Loan Document in connection therewith, and the Term Notes, if any, executed and delivered pursuant to [Section 2.04\(e\)](#).

“**Loan Parties**” shall mean, collectively, the Borrower and each Guarantor.

“**Margin Stock**” shall have the meaning assigned to such term in Regulation U.

“**Master Agreement**” shall have the meaning specified in the definition of “**Swap Contract**”.

“**Material Adverse Effect**” shall mean a (a) material adverse effect on the business, operations, assets, liabilities (actual or contingent), operating results or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform their payment obligations under the Loan Documents to which the Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the rights and remedies available to the Lenders, the Administrative Agent or the Collateral Agent under any Loan Document (other than due to the action or inaction of any Agent or any Lender); provided, that with respect to the foregoing clause (a), the impacts of COVID 19 on the business, operations, assets, liabilities (actual or contingent), operating results or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole, will be disregarded.

“**Material Real Property**” shall mean each Real Property that is (i) owned in fee by a Loan Party, (ii) located in the United States and (iii) not an Excluded Real Property.

“**Maturity Date**” shall mean, (i) with respect to the UST Tranche A Term Loans, September 30, 2024, (ii) with respect to any tranche of Extended Term Loans, the final maturity date as specified in the applicable Extension Offer accepted by the respective Lender or Lenders and (iii) with respect to any Other Term Loans, the final maturity date as specified in the applicable

Refinancing Amendment; *provided* that if any such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

“**Maximum Rate**” shall have the meaning assigned to such term in [Section 10.09](#).

“**Minimum Extension Condition**” shall have the meaning assigned to such term in [Section 2.19\(b\)](#).

“**MNPI**” shall mean material information concerning the Borrower, Subsidiary or Controlled Affiliate of any of the foregoing or their securities that has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD under the Securities Act and the Exchange Act. For purposes of this definition, “material information” means information concerning the Borrower, the Subsidiaries or any Controlled Affiliate of any of the foregoing or any of their securities that could reasonably be expected to be material for purposes of the United States Federal and State securities laws and, where applicable, foreign securities laws.

“**Moody’s**” shall mean Moody’s Investors Service, Inc., or any successor thereto.

“**Mortgage Collateral Agency Agreement**” shall mean the Mortgage Collateral Agency Agreement, dated as of the date of the Mortgages, among the Collateral Agent, as mortgage collateral agent, the Collateral Agent, as UST Tranche A term loan representative, the UST Tranche B Term Agent, as UST Tranche B term loan representative and the Borrower and the other Loan Parties party thereto, as each of the same may be further amended, restated, modified, supplemented, extended, renewed, restructured or replaced.

“**Mortgage Collateral Agent**” shall mean The Bank of New York Mellon, as mortgage collateral agent pursuant to the Mortgage Collateral Agency Agreement.

“**Mortgage Policies**” shall have the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“**Mortgaged Property**” shall have the meaning specified in the definition of “Collateral and Guarantee Requirement.” The Mortgaged Properties as of the Effective Date are set forth on [Schedule 1.01\(c\)](#).

“**Mortgages**” shall mean, collectively, the mortgages, deeds of trust, trust deeds, hypothecs deeds to secure debt and similar instruments (including any Existing Mortgage, as amended by a Mortgage Amendment) by the Loan Parties in favor or for the benefit of the Mortgage Collateral Agent on behalf of the Secured Parties (as defined in the Mortgage Collateral Agency Agreement) creating and evidencing a Lien on a Mortgaged Property in form and substance reasonably satisfactory to the Required Lenders, Collateral Agent and the Borrower, and any other mortgages executed and delivered pursuant to [Section 4.02](#), [6.11](#) or [6.13](#).

“**Multiemployer Plan**” shall mean any multiemployer plan as defined in Section 4001(a)(3) of ERISA subject to the provisions of Title IV of ERISA to which a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates is an “employer” as defined in Section 3(5) of ERISA.

“**Net Equity Proceeds**” shall mean 50% of the cash proceeds from the issuance or sale by the Borrower (or contributions in respect) of any Equity Interests issued after the Effective Date, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale, provided, that, if the amount of any estimated taxes exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid.

“**Net Proceeds**” shall mean:

- (a) 100% of the cash proceeds actually received by the Borrower or any Restricted Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation and similar awards, but in each case only as and when received) from any Disposition or Casualty Event, net of the following:
- (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes,
  - (ii) other than with respect to a Pension Real Property Event, required debt payments and required payments (including principal amount, premium or penalty, if any, interest, fees and expenses and other amounts) of other obligations that are secured by the applicable asset or property (other than pursuant to the Loan Documents, the ABL Facility Documentation (other than in respect of ABL Priority Collateral and Term Priority Collateral), the Tranche B-2 Term Loan Facility Documentation (other than in respect of ABL Priority Collateral and Term Priority Collateral), the UST Tranche B Term Loan Facility Documentation, (other than in respect of the UST Tranche B Priority Collateral, the UST Tranche B Joint Collateral and the UST Tranche B Only Collateral) or any Permitted Junior Priority Additional Debt),
  - (iii) in the case of a Disposition or a Casualty Event with respect to any Pension Real Property (a “**Pension Real Property Event**”), to the extent the Contribution Deferral Agreement (as in effect as of the date hereof) requires the repayment or prepayment with the Net Proceeds of such Pension Real Property Event of any Specified Pension Fund Obligations which are secured on a first lien basis by such Pension Real Property (such obligations, “**CDA First Lien Obligations**”), the Net Proceeds of such Pension Real Property Event shall be reduced by an amount equal to the amount of such Specified Pension Fund Obligations that are so repaid or prepaid with such proceeds and have not been declined by the holders thereof,
  - (iv) in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iv)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof,

(v) taxes paid or reasonably estimated to be payable as a result thereof (provided, that if the amount of any such estimated taxes exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition or Casualty Event, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid),

(vi) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) or (v) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Restricted Subsidiaries with respect to the assets subject to the Disposition or Casualty Event including, without limitation, liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction), and

(vii) any funded escrow established pursuant to the documents evidencing any such sale or disposition to secure any indemnification obligations or adjustments to the purchase price associated with any such sale or disposition;

*provided*, that if no Event of Default exists such proceeds, other than Real Property Disposition Proceeds, may be applied by the Borrower or any Restricted Subsidiary to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions or any acquisition permitted hereunder of all or substantially all the assets of, or all the Equity Interests (other than directors' qualifying shares) in, a Person or division or line of business of a Person (or any subsequent investment made in a Person, division or line of business previously acquired) that in each case become Collateral (or, in the case of the acquisition of the Equity Interests of a Person, such Person becomes a Loan Party under the Loan Documents), in each case within 270 days of such receipt, and such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 270 days of such receipt, so used or contractually committed with a third party to be so used (it being understood that if any portion of such proceeds are not so used within such 270 day period but within such 270 day period are contractually committed with a third party to be used, then upon the termination of such contract or if such Net Proceeds are not so used within the later of such 270 day period and 180 days from the entry into such contractual commitment, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso; it being understood that such proceeds shall constitute Net Proceeds if there is a Specified Default at the time of a proposed reinvestment unless such proposed reinvestment is made pursuant to a binding commitment with a third party entered into at a time when no Specified Default was continuing); *provided, further* that, (i) except with respect to (I) Real Property Disposition Proceeds and (II) at any time during the Specified Period, any other Net Proceeds, no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless the aggregate net proceeds exceeds \$7,500,000 in any fiscal year, commencing upon the expiration of the Specified Period (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (a)), (ii) notwithstanding anything to the contrary in this Agreement, during the Specified Rolling Stock Prepayment Period, all Net Proceeds from any Disposition of Rolling Stock in excess of the Specified Rolling Stock

Reinvestment Threshold in any fiscal year shall be applied (x) with respect to any Rolling Stock constituting UST Tranche B Priority Collateral to prepay the UST Tranche B Term Loan Facility in accordance with the UST Tranche B Term Loan Credit Agreement, (y) with respect to any Rolling Stock constituting UST Tranche B Joint Collateral 67% to prepay the UST Tranche B Term Loan Facility in accordance with the UST Tranche B Term Loan Credit Agreement and 33% to prepay the Tranche B-2 Term Loan Facility in accordance with the Tranche B-2 Term Loan Credit Agreement and (z) with respect to any Rolling Stock constituting Non-UST Tranche B Term Priority Collateral to prepay the Tranche B-2 Term Loan Facility in accordance with the Tranche B-2 Term Loan Credit Agreement, in each case of clauses (x), (y) and (z) above, without giving effect to any thresholds (other than such Specified Rolling Stock Reinvestment Threshold) or reinvestment rights, (iii) pending reinvestment in accordance with this proviso, (A) proceeds from the Disposition of Rolling Stock constituting (x) Non-UST Tranche B Term Priority Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited and maintained in a Non-UST Tranche B Priority Account (as defined in the ABL Intercreditor Agreement), (y) UST Tranche B Priority Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited and maintained in a UST Tranche B Priority Account (as defined in the ABL Intercreditor Agreement) and (z) UST Tranche B Joint Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited and maintained in a UST Tranche B Joint Account (as defined in the ABL Intercreditor Agreement) and (iv) the Borrower shall not, nor shall it permit any Restricted Subsidiary to, Dispose of Rolling Stock that does not constitute UST Tranche B Priority Collateral or UST Tranche B Joint Collateral with an aggregate fair market value in any fiscal year in excess of \$5,000,000 without the prior consent of the Required Lenders.

- (b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale, *provided*, that if the amount of any estimated taxes exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Borrower or the Restricted Subsidiaries shall be disregarded.

“**Non-Consenting Lender**” has the meaning set forth in [Section 3.06\(b\)](#).

“**Non-UST Tranche B Term Priority Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**Not Otherwise Applied**” shall mean, with reference to any amount of net proceeds of any transaction or event, that such amount (a) was not required to be applied to prepay the Loans pursuant to [Section 2.13\(a\)](#) and (b) was not previously applied in determining the permissibility of a transaction under the Loan Documents where such permissibility was (or may have been) pursuant to [Section 7.02\(p\)\(y\)](#), [Section 7.03\(ee\)](#), [Section 7.06\(e\)\(y\)](#) or [7.13\(a\)\(vi\)](#).

“**Obligations**” shall mean 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, 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 (or would accrue but for the operation of applicable Debtor Relief Laws), regardless of whether such interest and fees are allowed or allowable claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents include (a) the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party to the Agents, the Lenders or other Persons under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Agent or Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

“**OFAC**” shall have the meaning assigned to such term in the definition of “Blocked Person”.

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

“**Other Survey Documentation**” shall have the meaning specified in the definition of “Collateral and Guarantee Requirement”.

“**Other Taxes**” shall have the meaning assigned to such term in Section 3.01(b).

“**Other Term Loan Commitments**” shall mean one or more Classes of term loan commitments hereunder that result from a Refinancing Amendment entered into after the Effective Date.

“**Other Term Loans**” shall mean one or more Classes of Term Loans that result from a Refinancing Amendment entered into after the Effective Date.

“**Participant Register**” shall have the meaning assigned to such term in Section 10.04(f).

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**Pension Fund Entities**” shall mean those entities identified on Schedule 1.01(d) hereto.

“**Pension Contribution Cap**” means, as of any date of determination, (i) for any such date of determination occurring from and after September 11, 2019 and on or prior to September 11, 2020, \$150,000,000, (ii) for any such date of determination occurring after September 11, 2020 but on or prior to September 11, 2021, \$153,000,000, (iii) for any such date of determination occurring after September 11, 2021 but on or prior to September 11, 2022, \$156,060,000, (iv) for any such date of determination occurring after September 11, 2022 but on or prior to September 11, 2023, \$159,181,200 and (v) for any such date of determination occurring thereafter, \$162,364,824.

“**Pension Real Property**” shall mean any Real Property for so long as such Real Property secures the obligations of the Borrower under the Contribution Deferral Agreement on a first lien basis on the Effective Date, as set forth on Schedule 1.01(a).

“**Pension Real Property Event**” shall have the meaning assigned to such term in the definition of “Net Proceeds”.

“**Perfection Certificate**” shall mean a certificate substantially in the form of Exhibit II to the Security Agreement or any other form reasonably approved by the Collateral Agent and the Borrower, as the same shall be supplemented from time to time.

“**Permits**” shall mean all necessary certificates, licenses, permits, franchises, trade names, certificates of occupancy, consents and other approvals required under applicable Laws for the operation of any Real Property.

“**Permitted Acquisition**” shall have the meaning assigned to such term in [Section 7.02\(h\)](#).

“**Permitted Acquisition Provisions**” shall have the meaning assigned to such term in [Section 2.17\(c\)](#).

“**Permitted Additional Debt**” shall mean Indebtedness incurred by the Borrower or any Guarantor, which Indebtedness may be (x) in the form of one or more series of notes or in the form of bank loans and, in either case, secured by the Collateral on a junior basis to the Obligations (“**Permitted Junior Priority Additional Debt**”) or (y) in the form of one or more series of notes or in the form of bank loans and unsecured; *provided* that (i) such Indebtedness is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, (ii) the other terms and conditions of such Indebtedness (excluding pricing, fees, rate floors and optional prepayment or redemption terms), if different from the Term Loans, are customary market terms for Indebtedness of such type but in no event shall such terms and conditions (taken as a whole) be materially more restrictive to the Borrower and its Subsidiaries than the terms and conditions hereof (*provided*, that the financial maintenance covenant on the then outstanding Term Loans shall be amended to provide the Lenders the benefit of any financial maintenance covenant of such Permitted Additional Debt that is in addition to or more restrictive in any material manner than the financial maintenance covenant on the then outstanding Term Loans) (*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 (or such shorter period as the Administrative Agent with the consent of the Required Lenders may agree in their sole discretion), 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 of this clause (ii) shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent or the Required Lenders notify the Borrower within such five Business Day period (or such shorter period as the Administrative Agent with the consent of the Required Lenders may agree in its sole discretion) that the Required Lenders disagree with such determination (including a reasonable description of the basis upon which the Required Lenders disagree), (iii) [reserved], (iv) no Default shall exist immediately prior to or after giving effect to such incurrence and (v) if such Indebtedness is Permitted Additional Debt that is secured, a Junior Representative acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of the Junior Lien Intercreditor Agreement. Permitted Additional Debt will include any Registered Equivalent Notes issued in exchange therefor.

**“Permitted Junior Priority Additional Debt”** shall have the meaning assigned to such term in the definition of “Permitted Additional Debt”.

**“Permitted Refinancing”** shall mean, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *provided that* (a) the original aggregate principal amount (or accreted value, if applicable) does not exceed the aggregate principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except (i) by an amount equal to accrued but unpaid interest, premiums and fees payable by the terms of such Indebtedness and reasonable fees, expenses, original issue discount and upfront fees incurred in connection with such modification, refinancing, refunding, renewal, replacement or extension and (ii) by an amount equal to any existing available commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement 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 greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), at the time thereof, no Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is Indebtedness permitted pursuant to Section 7.03(b), 7.03(p) or 7.03(g), or is otherwise a Junior Financing, (i) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment or in lien priority to the Obligations, the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment or in lien priority, as applicable, to the Obligations on terms (taken as a whole) (x) at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended (*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 (or such shorter period as the Administrative Agent with the consent of the Required Lenders may agree in its sole discretion), 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 foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the

foregoing requirement unless the Administrative Agent or the Required Lenders notify the Borrower within such five Business Day period that the Required Lenders disagree with such determination (including a reasonable description of the basis upon which the Required Lenders disagree) or (y) otherwise reasonably acceptable to the Required Lenders)), and (ii) the obligors (including any guarantors) in respect of the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement or extension shall not include any Person other than the obligors (including any guarantors) of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended unless otherwise permitted hereby, (e) in the case of any Permitted Refinancing in respect of the ABL Facility, such Permitted Refinancing is a revolving working capital facility and is secured only by all or any portion of the collateral securing the ABL Facility (but not by any other assets) pursuant to one or more security agreements subject, in the case of assets constituting (or required to constitute) Collateral, to the ABL Intercreditor Agreement, (f) in the case of any Credit Agreement Refinancing Indebtedness, the Permitted Refinancing shall constitute Credit Agreement Refinancing Indebtedness and (g) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is unsecured, the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement or extension must be unsecured. When used with respect to any specified Indebtedness, **“Permitted Refinancing”** shall mean the Indebtedness incurred to effectuate a Permitted Refinancing of such specified Indebtedness.

**“Permitted Repricing Amendment”** shall have the meaning set forth in Section 10.08(b).

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

**“PIK Interest”** shall have the meaning assigned to such term in Section 2.06(d).

**“Plan”** shall mean any employee pension benefit plan within the meaning of Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Sections 412 and 430 of the Code or Sections 302 and 303 of ERISA and in respect of which a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates is, or if such plan were terminated would under Section 4069 of ERISA be deemed to be, or within the six year period immediately preceding the date hereof was, a “contributing sponsor” as defined in Section 4001(a)(13) of ERISA or an “employer” as defined in Section 3(5) of ERISA.

**“Platform”** shall have the meaning assigned to such term in Section 10.01.

**“Prime Rate”** shall mean, as of any day, the rate last quoted by The Wall Street Journal as the “Prime Rate” in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by the Required Lenders) or any similar release by the Federal Reserve Board (as reasonably determined by the Required Lenders).

“**Pro Forma Basis**” shall mean, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with [Section 1.10](#).

“**Pro Rata Share**” shall mean, with respect to each Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments (or, if Commitments have been terminated, the principal amount of the Loans) under the applicable Facility or Facilities of such Lender at such time and the denominator of which is the amount of the aggregate Commitments (or, if the Commitments have been terminated, the principal amount of the Loans) under the applicable Facility or Facilities at such time.

“**Projections**” shall have the meaning set forth in [Section 6.01\(c\)](#).

“**Public Lender**” shall have the meaning assigned to such term in [Section 10.01](#).

“**Qualified Equity Interests**” shall mean any Equity Interests that are not Disqualified Equity Interests.

“**Qualified Securitization Financing**” means any Securitization Facility of a Securitization Subsidiary that meets the following conditions: (i) the Borrower shall have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and its Restricted Subsidiaries party to the Securitization Facility; (ii) all sales of Securitization Assets and related assets by the Borrower or any Restricted Subsidiary to the Securitization Subsidiary or any other Person are made at fair market value (as determined in good faith by the Borrower); (iii) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings; and (iv) the obligations under such Securitization Facility are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Borrower or any of its Restricted Subsidiaries (other than a Securitization Subsidiary).

“**Real Property**” shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“**Real Property Disposition Proceeds**” shall mean any Net Proceeds realized from a Disposition of, or Sale and Leaseback Transaction with respect to, any Real Property, including, for the avoidance of doubt, any Pension Real Property (in each case, consummated on or after the Effective Date), other than, in each case, leases of Real Property entered into in the ordinary course of business (excluding Sale and Leaseback Transactions).

“**Receivables Assets**” shall mean (a) any accounts receivable owed to the Borrower or a Restricted Subsidiary subject to a Receivables Facility and the proceeds thereof and (b) all collateral securing such accounts receivable, all contracts and contract rights, in each case, of the

type which would constitute ABL Priority Collateral, guarantees or other obligations in respect of such accounts receivable, all records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in connection with a non-recourse accounts receivable factoring arrangement, except for Standard Securitization Undertakings, assigned or otherwise transferred or pledged by the Borrower in connection with a Receivables Facility.

“**Receivables Facility**” shall mean an arrangement between the Borrower or a Restricted Subsidiary and another Person pursuant to which (a) the Borrower or such Restricted Subsidiary, as applicable, sells (directly or indirectly) in the ordinary course of business to such Person accounts receivable owing by customers, together with Receivables Assets related thereto, (b) the obligations of the Borrower or such Restricted Subsidiary, as applicable, thereunder are non-recourse (except for Securitization Purchase Obligations) to the Borrower and such Restricted Subsidiary and (c) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings.

“**Reference Time**” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Required Lenders in their reasonable discretion and notified to the Administrative Agent.

“**Refinanced Debt**” shall have the meaning specified in the definition of “Credit Agreement Refinancing Indebtedness”.

“**Refinancing Amendment**” shall mean an amendment to this Agreement executed by each of (a) the Borrower, (b) the Administrative Agent, (c) each Additional Lender that will make an Other Term Loan pursuant to such Refinancing Amendment and (d) each existing Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.18.

“**Register**” shall have the meaning assigned to such term in Section 10.04(d).

“**Registered Equivalent Notes**” shall mean, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Regulation T**” shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Rejection Notice**” shall have the meaning assigned to such term in Section 2.13(d).

“**Related Fund**” shall mean, with respect to any Lender that is a fund or commingled investment vehicle that invests in loans, any other fund that invests in loans and is managed or advised by the same investment advisor/manager as such Lender or by an Affiliate of such investment advisor/manager.

“**Related Parties**” shall mean, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“**Release**” shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment or from, within or upon any vessel, vehicle, building, structure, facility or fixture.

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

“**Reportable Event**” shall mean any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived with respect to a Plan.

“**Request for Credit Extension**” shall mean a request by the Borrower in accordance with the terms of Section 2.03(a) or Section 2.10, as applicable, and substantially in the form of Exhibit C, or such other form as shall be approved by the Administrative Agent.

“**Request for Disbursement**” shall mean a request by the Borrower in accordance with the terms of Section 2.03(b) and substantially in the form of Exhibit D, or such other form as shall be approved by the Administrative Agent.

“**Required Class Lenders**” shall mean, as of any date of determination, Lenders of a Class having more than 50% of the sum of the outstanding Loans and unused Commitments of the applicable Class.

“**Required Lenders**” shall mean, at any time, Lenders having Loans and unused Term Loan Commitments representing more than 50% of the sum of all Loans outstanding and unused Term Loan Commitments at such time.

“**Required Opinion State**” shall mean each of the following states: Pennsylvania, California, Ohio, New York, Illinois, New Jersey, Texas, Michigan, Tennessee, North Carolina, Oregon, Georgia, Maryland, Indiana, Missouri, Wisconsin, South Carolina, Nevada, Minnesota and Utah.

“**Responsible Officer**” shall mean the chief executive officer, president, vice president, chief financial officer, treasurer, assistant treasurer, director of treasury or other similar officer of a Loan Party and, as to any document delivered on the Effective Date, any secretary or assistant secretary of such Loan Party; provided that with respect to the Borrower, “Responsible Officer” shall mean only the chief executive officer and chief financial officer. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed

by the recipient of such document 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 by the recipient of such document to have acted on behalf of such Loan Party.

“**Restricted Payment**” shall mean any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest of the Borrower or any Restricted Subsidiary, or on account of any return of capital to the Borrower’s or a Restricted Subsidiary’s stockholders, partners or members (or the equivalent Persons thereof).

“**Restricted Subsidiary**” shall mean each Subsidiary of the Borrower.

“**Rolling Stock**” shall mean any vehicles, tractors, trucks, trailers, tank trailer and other trailers, or similar vehicles and trailers, railroad cars, locomotives, stacktrains and other rolling stock and accessories used on such railroad cars, locomotives or other rolling stock (including superstructures and racks).

“**S&P**” shall mean Standard & Poor’s Ratings Service, or any successor thereto.

“**Sale and Leaseback Transaction**” shall mean any arrangement, directly or indirectly, whereby a seller or transferor shall sell or otherwise transfer any real or personal property and then or thereafter lease, or repurchase under an extended purchase contract, conditional sales or other title retention agreement, the same property.

“**Scheduled Property**” shall have the meaning assigned to such term in [Section 7.05\(l\)](#).

“**SEC**” shall mean the Securities and Exchange Commission or any Governmental Authority that is the successor thereto.

“**Secured Parties**” shall have the meaning assigned to such term in the Security Agreement.

“**Securities Account**” as defined in the UCC.

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**Securitization Asset**” shall mean (a) any accounts receivable or related assets and the collections and proceeds thereof, in each case subject to a Securitization Facility and (b) all collateral securing such receivable or asset, all contracts and contract rights in each case, of the type which would constitute ABL Priority Collateral, guaranties or other obligations in respect of such receivable or asset, lockbox accounts, books and records with respect to such account or asset and any other assets customarily transferred (or in respect of which security interests are customarily granted) together with accounts or assets in a securitization financing and which in the case of clause (a) and (b) above are sold, conveyed, assigned or otherwise transferred or pledged by any Loan Party in connection with a Qualified Securitization Financing.

“**Securitization Facility**” shall mean any transaction or series of securitization financings that may be entered into by the Borrower or any of its Restricted Subsidiaries pursuant to which the Borrower or any of its Restricted Subsidiaries may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) any Person that is not a Restricted Subsidiary or (b) any other Subsidiary of the Borrower (that in turn sells such Securitization Assets to a Securitization Subsidiary) or a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries; *provided* that, it is understood and agreed that the ABL Facility is deemed a Securitization Facility.

“**Securitization Fees**” shall mean distributions or payments made directly or by means of discounts with respect to any Securitization Asset or participation interest therein issued or sold in connection with, and other fees and expenses (including fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Financing or a Receivables Facility.

“**Securitization Purchase Obligation**” shall mean any obligation of the Borrower or a Restricted Subsidiary in respect of Securitization Assets or Receivables Assets in a Qualified Securitization Financing or a Receivables Facility to purchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including, without limitation, as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to such party.

“**Securitization Subsidiary**” shall mean any Subsidiary of the Borrower in each case formed for the purpose of and that solely engages in one or more Qualified Securitization Financings and other activities reasonably related thereto or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers Securitization Assets and related assets.

“**Security Agreement**” shall mean, except as the context may otherwise require, both (a) the Security Agreement dated on or around the Effective Date among the Borrower, the Guarantors party thereto and the Collateral Agent and (b) the Security and Collateral Agency Agreement, dated on or around the Effective Date, among the Collateral Agent, as collateral agent and term loan representative, the ABL Agent, as ABL representative, the Tranche B-2 Term Agent, as Tranche B-2 term loan representative, the UST Tranche B Term Agent, as UST Tranche B term loan representative and the Borrower and the other Loan Parties party thereto, as each of the same may be further amended, restated, modified, supplemented, extended, renewed, restructured or replaced.

“**Security Agreement Supplement**” shall have the meaning specified in the Security Agreement.

“**Senior Financial Officer**” of any Person shall mean the chief financial officer, principal accounting officer, treasurer, controller or other similar officer of such Person.

“**Single-Employer Plans**” shall mean the Roadway LLC Pension Plan, the Yellow Corporation Pension Plan and the YRC Retiree Pension Plan or any other Plans sponsored or maintained by the Borrower or any Restricted Subsidiary.

“**SOFR**” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.

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

“**SOFR Administrator’s Website**” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**Specified Default**” shall mean an Event of Default under [Section 8.01\(a\)](#), (f) or (g).

“**Specified Pension Fund Obligations**” shall mean the payment obligations due from the Borrower and/or its applicable Subsidiaries to the Pension Fund Entities under the terms and conditions of the Contribution Deferral Agreement.

“**Specified Period**” shall mean the period commencing on the Effective Date and ending on the first date after for which Consolidated EBITDA for a Test Period ending on the last day of a fiscal quarter ending on or after June 30, 2022 is greater than \$200,000,000 and the Borrower shall have delivered a Compliance Certificate to the Administrative Agent and the Lenders showing such calculation in reasonable detail.

“**Specified Rolling Stock Prepayment Period**” means the period commencing on the Effective Date and ending on the first date after for which Consolidated EBITDA for a Test Period ending on the last day of a fiscal quarter ending on or after September 30, 2020 is greater than \$200,000,000 and the Borrower shall have delivered a Compliance Certificate to the Administrative Agent and the Lenders showing such calculation in reasonable detail.

“**Specified Rolling Stock Reinvestment Threshold**” means, with respect to Dispositions of Rolling Stock in any fiscal year, the first \$500,000 of Net Proceeds received by the Borrower and its Subsidiaries with respect to such Dispositions in such fiscal year to the extent such Net Proceeds are reinvested in accordance with the proviso to clause (a) of the definition of “Net Proceeds”.

“**Specified Transaction**” shall mean any Investment that results in a Person becoming a Restricted Subsidiary, any Permitted Acquisition, any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower, any Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person or any Disposition of a business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case consummated after the Effective Date and whether by merger, consolidation, amalgamation or otherwise, and any incurrence or repayment of Indebtedness or

Restricted Payment, in each case, that by the terms of this Agreement requires a financial ratio or test to be calculated on a "Pro Forma Basis".

"SPV" shall have the meaning assigned to such term in [Section 10.04\(i\)](#).

"Standard Securitization Undertakings" shall mean representations, warranties, covenants, guarantees and indemnities entered into by the Borrower or any Subsidiary of the Borrower which the Borrower has determined in good faith to be customary in a Securitization Facility, it being understood that any Securitization Purchase Obligation shall be deemed to be a Standard Securitization Undertaking or, in the case of a Receivables Facility, a non-credit related recourse accounts receivable factoring arrangement.

"Statutory Reserves" shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate or other fronting office making or holding a Loan) is subject for Eurocurrency Liabilities (as defined in Regulation D of the Board). Eurodollar Loans shall be deemed to constitute Eurocurrency Liabilities (as defined in Regulation D of the Board) and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Indebtedness" shall mean any Indebtedness that is, or is required to be, subordinated in right of payment to the Obligations (for greater certainty, not including the ABL Facility Indebtedness, the UST Tranche B Facility Indebtedness and the Tranche B-2 Term Loan Facility Indebtedness).

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

"Successor Borrower" shall have the meaning specified in [Section 7.04\(d\)](#).

"Survey" shall have the meaning assigned to such term in the definition of "Collateral and Guarantee Requirement".

"Swap Contract" shall mean (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 Termination Value**” shall mean, 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**” shall have the meaning assigned to such term in [Section 3.01\(a\)](#).

“**Term Borrowing**” shall mean a Borrowing comprised of Term Loans.

“**Term Lender**” shall mean a Lender with a Term Loan Commitment or an outstanding Term Loan.

“**Term Loan Commitment**” shall mean the UST Tranche A Term Loan Commitment.

“**Term Loans**” shall mean the UST Tranche A Term Loans, Extended Term Loans and Other Term Loans.

“**Term Note**” shall mean a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of [Exhibit J](#) hereto, evidencing the aggregate Indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

“**Term Priority Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**Term SOFR**” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“**Test Period**” shall mean, for any date of determination under this Agreement, the most recent period as of such date of four consecutive fiscal quarters of the Borrower for which financial statements have been delivered (or were required to have been delivered) pursuant to [Section 6.01\(a\)](#) or [6.01\(b\)](#), as applicable, or, prior to the first such requirement, the four fiscal quarter period ended March 31, 2020.

“**Threshold Amount**” shall mean \$30,000,000.

“**Title Company**” shall mean Chicago Title Insurance Company.

“**Total Leverage Ratio**” shall mean, as of any date, the ratio of (a) Consolidated Total Debt as of such date to (b) Consolidated EBITDA for the Test Period applicable as of such date.

“**tranche**” shall have the meaning assigned to such term in [Section 2.19\(a\)](#).

“**Tranche B-2 Secured Parties**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**Tranche B-2 Term Agent**” shall mean, as the context may require, Alter Domus Products Corp. (formerly known as Cortland Products Corp.), in its capacity as administrative agent under the Tranche B-2 Term Loan Facility Documentation, Alter Domus Products Corp. (formerly known as Cortland Products Corp.), in its capacity as collateral agent under the Tranche B-2 Term Loan Facility Documentation, such agents collectively or any permitted successor or assignee administrative agent or collateral agent under the Tranche B-2 Term Loan Facility Documentation.

“**Tranche B-2 Term Loan Credit Agreement**” shall mean that certain Amended and Restated Credit Agreement dated as of September 11, 2019, among the Borrower, the guarantors party thereto from time to time, the lenders party thereto and Alter Domus Products Corp. (formerly known as Cortland Products Corp.), as administrative agent and collateral agent, as amended by that certain Amendment No. 1 dated April 7, 2020 and Amendment No. 2 dated July 7, 2020, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents and resulting in a financing that constitutes (or that would constitute if incurred as a new financing) a Permitted Refinancing of the Tranche B-2 Term Loan Facility Indebtedness), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof), in each case as and to the extent permitted by this Agreement and, if applicable, the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement.

“**Tranche B-2 Term Loan Facility**” shall mean the term loans made available to the Borrower pursuant to the Tranche B-2 Term Loan Credit Agreement.

“**Tranche B-2 Term Loan Facility Documentation**” shall mean the Tranche B-2 Term Loan Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith.

“**Tranche B-2 Term Loan Facility Indebtedness**” shall mean Indebtedness of the Borrower or any Restricted Subsidiary outstanding under the Tranche B-2 Term Loan Facility Documentation.

“**Transaction Benefit**” means any (i) entitlement to any change in control or transaction-related bonus, severance pay, termination benefits or any other similar employment or severance pay or benefit, (ii) acceleration of the time of payment or vesting, or increase in the amount of, any

cash or equity incentive or other compensation or benefits, or (iii) increase, enhancement or funding of any benefits or amounts payable under any employee compensation or benefit arrangement (including any employee benefit plan within the meaning of Section 3(3) of ERISA), in each case for or to the benefit of any current or former employee, director or other service provider of the Borrower or any Restricted Subsidiary.

“**Transaction Expenses**” shall mean any costs, fees or expenses incurred or paid by the Borrower or any of its Subsidiaries in connection with the Transactions, this Agreement and the other Loan Documents.

“**Transactions**” shall mean, collectively, (a) the negotiation, execution and delivery by the Loan Parties of the Loan Documents to which they are a party and the making of the Borrowings hereunder on each Funding Date, (b) the execution and delivery by the Borrower and the Subsidiaries party thereto of an amendment to the ABL Facility Documentation, an amendment to the Tranche B-2 Term Loan Facility Documentation, in each case in connection with the matters described in clause (a) and effecting certain other amendments in connection therewith or herewith, (c) the execution and delivery by the Loan Parties of the UST Tranche B Term Loan Facility Documentation to which they are a party, (d) the Treasury Equity Issuance and the negotiation, execution and delivery of the Treasury Equity Documents and (e) the payment of the Transaction Expenses.

“**Transferred Guarantor**” shall have the meaning specified in the [Section 11.10](#).

“**Treasury**” means the United States Department of the Treasury.

“**Treasury Equity**” means the 15,943,753 shares of Common Stock of the Borrower issued and delivered pursuant to this Agreement, directly or indirectly, to the United States federal government or any Governmental Authority on behalf thereof (including, in each case, any agent, trust or Person on behalf thereof, including, for the avoidance of doubt, any voting trust and the trustee thereof created to hold the Treasury Equity for the benefit of the United States federal government or any other Governmental Authority).

“**Treasury Equity Documents**” means (i) the Share Issuance Agreement, dated as of June 30, 2020, between the Borrower and the Treasury, (ii) the Voting Trust Agreement, by and among the Borrower, Treasury and the trustee thereunder to be entered into on or before the Treasury Equity Issuance and having substantially the terms set forth in Annex A attached hereto and (iii) the Registration Rights Agreement, by and between the Borrower and Treasury to be entered into on or before the Treasury Equity Issuance and having substantially the terms set forth in Annex B attached hereto.

“**Treasury Equity Issuance**” means the issuance and delivery of the Treasury Equity to a voting trust having substantially the terms set forth in Annex A attached hereto (the “**Voting Trust**”) created to hold the Treasury Equity for the benefit of Treasury in connection with the Transactions, and which Treasury Equity shall be (i) issued in book entry form, registered in the name of the Voting Trust or as directed by the Treasury and (ii) equal to 42% of the Borrower’s Common Stock outstanding immediately prior to such issuance, including any shares of Common Stock issuable upon conversion, exchange or exercise of any outstanding security

convertible, exchangeable or exercisable into shares of Common Stock (including any warrants, rights or options to purchase or other arrangements or rights to acquire shares of Common Stock) (“**fully diluted Common Stock outstanding**”) and 29.58% of fully diluted Common Stock outstanding on a pro forma basis reflecting the Treasury Equity Issuance.

“**Type**”, when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term “**Rate**” shall mean the Adjusted LIBO Rate and the Alternate Base Rate.

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

“**Unaudited Financial Statements**” shall mean the unaudited consolidated balance sheets and related statements of operations and cash flows of the Borrower and its consolidated Subsidiaries as at the end of and for the fiscal quarter ended March 31, 2020.

“**Uniform Commercial Code**” or “**UCC**” shall mean the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

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

“**United States Tax Compliance Certificate**” shall have the meaning assigned to such term in Section 3.01(d).

“**USA PATRIOT Act**” shall mean The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“**USD LIBOR**” means the London interbank offered rate for U.S. dollars.

“**UST Tranche A Controlled Account**” shall mean a blocked account at a commercial bank reasonably satisfactory to the Required Lenders and the Administrative Agent in the name of the Borrower and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent and the Required Lenders. It is understood and agreed that any amounts on deposit in the UST Tranche A Controlled Account not disbursed and used in accordance with the terms of this Agreement shall be returned to Treasury.

“**UST Tranche A Only Collateral**” shall mean the UST Tranche A Controlled Account and all Money (as defined in the UCC) and all cash, checks, other negotiable instruments, funds and other evidences of loan proceeds properly held therein.

“**UST Tranche A Term Lender**” shall mean a Lender with a UST Tranche A Term Loan Commitment or an outstanding UST Tranche A Term Loan.

“**UST Tranche A Term Loan Commitment**” shall mean, with respect to each Lender, the commitment, if any, of such Lender to make a UST Tranche A Term Loan hereunder, expressed as an amount representing the maximum principal amount of the UST Tranche A Term Loan to be made by such Lender hereunder. The initial aggregate amount of the UST Tranche A Term Loan Commitments as of the Effective Date is \$300,000,000; provided that the Lenders and the Borrower may agree to increase the aggregate amount of the UST Tranche A Term Loan Commitments and correspondingly decrease the aggregate amount of the UST Tranche B Term Loan Facility by an equal amount.

“**UST Tranche A Term Loans**” shall mean the term loans made by the Lenders from time to time to the Borrower pursuant to Section 2.01(b). For the avoidance of doubt, a Term Loan shall no longer be a “UST Tranche A Term Loan” when it shall have become an “Extended Term Loan”.

“**UST Tranche B Controlled Account**” shall have the meaning assigned to such term in the UST Tranche B Term Loan Credit Agreement.

“**UST Tranche B Joint Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**UST Tranche B Only Collateral**” shall mean the UST Tranche B Controlled Account and all Money (as defined in the UCC) and all cash, checks, other negotiable instruments, funds and other evidences of loan proceeds properly held therein.

“**UST Tranche B Priority Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**UST Tranche B Secured Parties**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**UST Tranche B Term Agent**” shall mean, as the context may require, The Bank of New York Mellon, in its capacity as administrative agent under the UST Tranche B Term Loan Facility Documentation, The Bank of New York Mellon, in its capacity as collateral agent under the UST Tranche B Term Loan Facility Documentation, such agents collectively or any permitted successor or assignee administrative agent or collateral agent under the UST Tranche B Term Loan Facility Documentation.

“**UST Tranche B Term Loan Credit Agreement**” shall mean that certain UST Tranche B Term Loan Credit Agreement dated as of July 7, 2020, among the Borrower, the guarantors party thereto from time to time, the lenders party thereto from time to time, and The Bank of New York Mellon, as administrative agent and collateral agent, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents and resulting in a financing that constitutes (or that would constitute if incurred as a new financing) a Permitted Refinancing of the UST Tranche B Term Loan Facility Indebtedness), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof), in each case as and to the extent permitted by

this Agreement and, if applicable, the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement.

“**UST Tranche B Term Loan Facility**” shall mean the commitments and term loans made available to the Borrower pursuant to the UST Tranche B Term Loan Credit Agreement.

“**UST Tranche B Term Loan Facility Documentation**” shall mean the UST Tranche B Term Loan Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith and including all “Loan Documents” (as defined in the UST Tranche B Term Loan Credit Agreement) or similar term.

“**UST Tranche B Term Loan Facility Indebtedness**” shall mean Indebtedness of the Borrower or any Restricted Subsidiary outstanding under or secured by the UST Tranche B Term Loan Facility Documentation.

“**Weighted Average Life to Maturity**” shall mean, 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 scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled 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 for purposes of determining the Weighted Average Life to Maturity of any Refinanced Debt or any Indebtedness that is being modified, refinanced, refunded, renewed, replaced, restructured or extended (the “**Applicable Indebtedness**”), the effects of any amortization of or prepayments made on such Applicable Indebtedness prior to the date of the applicable modification, refinancing, restructuring, refunding, renewal, replacement or extension shall be disregarded.

“**wholly owned**” shall mean, 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) 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.

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

Section 1.02. *Other Interpretive Provisions*

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

The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(iii) The term “including” is by way of example and not limitation.

The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

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.”

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.

All references to “knowledge” or “awareness” of any Loan Party or a Restricted Subsidiary thereof means the actual knowledge of a Responsible Officer of a Loan Party or such Restricted Subsidiary.

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.

The word “or” is not exclusive.

For purposes of determining compliance with any one of Sections 7.01, 7.02, 7.03, 7.05, 7.06, 7.08, 7.09 and 7.13, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of more than one of the categories of transactions permitted pursuant to any clause of such Section, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower (and the Borrower shall be entitled to redesignate use of any such clauses from time to time) in its sole discretion at such time; provided that the Borrower shall not be permitted to subsequently reclassify any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Indebtedness as having been incurred under a Non-Fixed Basket if such Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Indebtedness was originally incurred under a Fixed Basket or any other Basket that is not a Non-Fixed Basket. For all purposes hereunder, (x) “Fixed Basket” shall mean any Basket that is subject to a fixed-dollar limit and (y) “Non-Fixed Basket” shall mean any Basket that is subject to compliance with a financial ratio or test (including Total Net Leverage Ratio) or based on a percentage of Consolidated EBITDA or total assets.

The usage of the term “written” includes electronic messages, including e-mail.

Any reference herein or in any other Loan Document to (i) a transfer, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a

limited liability company, or an allocation of assets to a series of a limited liability company, as if it were a transfer, assignment, sale or transfer, or similar term, as applicable, to a separate Person, and (ii) a merger, consolidation, amalgamation or consolidation, or similar term, shall be deemed to apply to the unwinding of such a division or allocation, as if it were a merger, consolidation, amalgamation or consolidation or similar term, as applicable, with a separate Person.

Section 1.03. *Certifications*

. All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such a Person in his or her capacity solely as an officer or representative of such Loan Party, on such Loan Party's behalf and not in such Person's individual capacity.

Section 1.04. *Accounting Terms*

. 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, except as otherwise specifically prescribed herein or therein.

Section 1.05. *Rounding*

. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under 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).

Section 1.06. *References to Agreements, Laws, Etc*

. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements, replacements, extensions, renewals, refinancings, restructurings and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements, replacements, extensions, renewals, refinancings, restructurings and other modifications are not prohibited by hereby; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.07. *Times of Day*

. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.08. *Timing of Payment or Performance*

. Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

Section 1.09. *Cumulative Credit Transactions*

. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Credit immediately prior to the taking of such action, the permissibility

of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

Section 1.10. *Pro Forma Calculations*

Notwithstanding anything to the contrary herein, the Total Leverage Ratio shall be calculated in the manner prescribed by this Section 1.10.

For purposes of calculating the Total Leverage Ratio, Specified Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (i) during the applicable Test Period or (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made 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 therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.10, then the Total Leverage Ratio shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.10.

Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Senior Financial Officer of the Borrower and may include, for the avoidance of doubt, Cost Savings to the extent permitted by, and subject to the requirements of, clause (a)(viii) of the definition of "Consolidated EBITDA". Notwithstanding the foregoing, all *pro forma* adjustments under this clause (c) shall not, taken together with those added pursuant to clause (a)(viii) of the definition of "Consolidated EBITDA", increase *pro forma* Consolidated EBITDA by more than 5% for any Test Period (calculated prior to giving effect to any addback pursuant to this clause (c) or clause (a)(viii) of the definition of "Consolidated EBITDA").

In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of the Total Leverage Ratio (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes and not incurred in reliance on Section 7.03(t)), (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Total Leverage Ratio shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period of the Total Leverage Ratio. Interest on a Capitalized Lease shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Borrower to be the rate of interest implicit in such Capitalized Lease in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to

have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or Restricted Subsidiary may designate.

Whenever any provision of this Agreement requires the Borrower to have a Total Leverage Ratio on a Pro Forma Basis in connection with any action to be taken by the Borrower hereunder, the Borrower shall deliver to the Administrative Agent a certificate of each Responsible Officer of the Borrower setting forth in reasonable detail the calculations demonstrating such compliance or such Total Leverage Ratio.

Section 1.11. *Certain Accounting Matters*

. Notwithstanding any other provision contained herein or in any other Loan Document, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, (a) without giving effect to any election under Statement of Financial Accounting Standards 159 or Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any of its Restricted Subsidiaries at "fair value", as defined therein; and (b) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 and/or Statement of Financial Accounting Standards 150 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. Furthermore, unless the Borrower elects otherwise, notwithstanding any other provision contained herein or in any other Loan Document, for all purposes under this Agreement and the other Loan Documents, including negative covenants, financial covenants and component definitions, operating leases and Capitalized Leases will be deemed to be treated in a manner consistent with their current treatment under GAAP as in effect on December 31, 2018, notwithstanding any modifications or interpretive changes thereto that may occur thereafter. For the avoidance of doubt, the principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP, except as expressly set forth in clauses (a) and (b) of this Section 1.11.

Section 1.12. *Classification of Loans and Borrowings*

. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "UST Tranche A Term Loan") or by Type (e.g., a "Eurodollar Loan") or by Class and Type (e.g., a "Eurodollar Term Loan"). Borrowings also may be classified and referred to by Class (e.g., a "Term Borrowing") or by Type (e.g., a "Eurodollar Borrowing") or by Class and Type (e.g., a "Eurodollar Term Borrowing").

Section 1.13. *Currency Equivalents Generally*

. For purposes of determining compliance with Sections 7.01, 7.02, 7.03, 7.05, 7.06, 7.08, 7.09 and 7.13 with respect to any amount of Indebtedness, Lien, Asset Sale, Restricted Payment, Capital Expenditure, affiliate transaction, Contractual Obligation, prepayment of Indebtedness or Investment in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or

Investment, at the time incurred, made or acquired, was permitted hereunder) and once incurred or made, the amount of such Indebtedness, Lien, Asset Sale, Restricted Payment, Capital Expenditure, affiliate transaction, Contractual Obligation, prepayment of Indebtedness or Investment, shall be always deemed to be at the Dollar amount on such date, regardless of later changes in currency exchange rates.

For purposes of determining the Total Leverage Ratio, amounts denominated in a currency other than Dollars will be converted to Dollars at the currency exchange rates used in preparing the Borrower's financial statements corresponding to the Test Period with respect to the applicable date of determination and will, in the case of Indebtedness, reflect the currency translation effects, determined in accordance with GAAP, of Swap Contracts permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

## ARTICLE 2 THE CREDITS

### Section 2.01. *UST Tranche A Term Loan Commitments*

[Revised].

Subject to the terms and conditions and relying upon the representations and warranties set forth herein, each UST Tranche A Term Lender agrees, severally and not jointly, to provide all or a portion of the UST Tranche A Term Loans to the Borrower from time to time during the Availability Period (each such date of funding, a "**Funding Date**"). The aggregate principal amount of the UST Tranche A Term Loans funded by each UST Tranche A Term Lender shall not to exceed its UST Tranche A Term Loan Commitment. Amounts repaid or prepaid in respect of the UST Tranche A Term Loan may not be reborrowed. All proceeds of the UST Tranche A Term Loan shall be deposited by the Administrative Agent into the UST Tranche A Controlled Account and shall only be disbursed therefrom upon instruction from the Required Lenders to the Administrative Agent following the satisfaction (or waiver pursuant to Article 9) of the conditions set forth in Section 4.03.

### Section 2.02. *Loans*

Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments; *provided, however*, that in no event shall the Borrower request more than two Borrowings in any calendar month; *provided further, however* that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). The Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$1,000,000 and not less than \$25,000,000 (except, with respect to any Other Term Loans, to the extent otherwise provided in the applicable Refinancing Amendment) or (ii) equal to the remaining available balance of the applicable Commitments.

Subject to Section 3.02 each Borrowing shall be comprised entirely of Eurodollar Loans. Borrowings of more than one Type may be outstanding at the same time; *provided* that the

total number of such additional Interest Periods does not exceed 10 at any one time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

Each Lender shall make each UST Tranche A Term Loan required to be made by it hereunder on each Funding Date by wire transfer of immediately available funds to the Administrative Account not later than 12:00 p.m., New York City time on such date, and upon receipt of all requested funds the Administrative Agent shall promptly credit the amounts so received to the UST Tranche A Controlled Account.

Section 2.03. *Borrowing and Disbursement Procedure*

(a) In order to request a Borrowing, the Borrower shall notify the Administrative Agent of such request in writing not later than 12:00 p.m., New York City time, (i) with respect to the Initial Funding Date, one (1) Business Day prior to such Borrowing and (ii) for any Borrowing following the Initial Funding Date, five (5) Business Days before such Borrowing. Each such Request for Credit Extension shall be irrevocable and signed by each Responsible Officer of the Borrower and shall specify the following information: (i) the Class of Loans to be borrowed; (ii) the date of such Borrowing (which shall be a Business Day); (iii) the amount of such Borrowing; and (iv) the Interest Period with respect thereto; *provided, however*, that, notwithstanding any contrary specification in any Request for Credit Extension, each requested Borrowing shall comply with the requirements set forth in Section 2.02. Each requested Borrowing shall be a Eurodollar Borrowing. If no Interest Period with respect to any Eurodollar Borrowing is specified in any such Request for Credit Extension, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall promptly advise the applicable Lenders of any Request for Credit Extension given pursuant to this Section 2.03(a) (and the contents thereof), and of each Lender's portion of the requested Borrowing.

(b) In order to request a disbursement from the UST Tranche A Controlled Account, the Borrower shall notify the Administrative Agent of such request in writing not later than 1:00 p.m., New York City time, (i) with respect to any disbursement on the Initial Funding Date, one (1) Business Day prior to such disbursement and (ii) for any disbursement following the Initial Funding Date, three (3) Business Days before such disbursement; provided, that any disbursement request delivered hereunder may be delivered contemporaneously with the Request for Credit Extension delivered pursuant to Section 2.03(a) above. Each such Request for Disbursement shall be irrevocable and signed by each Responsible Officer of the Borrower and shall specify the following information: (i) the date of such disbursement (which shall be a Business Day); (ii) the number and location of the account to which funds are to be disbursed; (iii) the amount of such disbursement; and (iv) a certification (A) that the proceeds of such disbursement shall be used solely to (w) satisfy certain of the Borrower's applicable contractual obligations with respect to certain (1) health insurance obligations, (2) real estate leases, (3) equipment leases, (4) pension obligations, (5) interest payments with respect to Indebtedness of the Borrower and (6) other expenditures (including a description of such other expenditures in reasonable detail), (x) for maintaining working capital, (y) finance technology and information technology infrastructure development and upgrades and (z) fund costs and expenses in connection with the Transactions, in each case consistent in all material respects with the amounts approved by the Administrative Agent and the Required Lenders on or prior to the Effective Date or thereafter and (B) of the amounts to be applied to each of sub-clauses (w)(1) through (6), (x), (y) and (z) of clause (A)

above. The Administrative Agent shall promptly advise the applicable Lenders of any notice given pursuant to this Section 2.03(b) (and the contents thereof). Following the satisfaction (or waiver pursuant to Article 9) of the conditions precedent to disbursement set forth in Section 4.03, the Administrative Agent shall instruct the Account Bank to make disbursements from the UST Tranche A Controlled Account in the amounts and to the accounts specified in the Request for Disbursement.

Section 2.04. *Evidence of Debt; Repayment of Loans*

The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the principal amount of each Term Loan of such Lender as provided in Section 2.11 (or, in the case of Extended Term Loans or Other Term Loans, as provided for in the applicable Extension Offer, Refinancing Amendment or other governing documentation).

Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Class and Type thereof and, if applicable, the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower or any Guarantor and each Lender's share thereof.

The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be prima facie evidence of the existence and amounts of the obligations therein recorded; provided, however, that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms and (ii) in the event of any conflict between the accounts set forth in paragraphs (b) and (c) above, the amounts set forth in the accounts maintained pursuant to paragraph (c) shall prevail.

Any Lender may request that Loans made by it hereunder be evidenced by a Term Note. In such event, the Borrower shall promptly execute and deliver to such Lender a Term Note payable to such Lender and its registered assigns in accordance with Section 10.04. Notwithstanding any other provision of this Agreement, in the event any Lender shall request and receive a Term Note, the interests represented by such Term Note shall at all times (including after any assignment of all or part of such interests pursuant to Section 10.04) be represented by one or more promissory notes payable to the payee named therein or its registered assigns, unless such Term Note is duly cancelled.

This Section 2.04 shall at all times be interpreted and administered in such a way that the Term Notes will be issued in "registered form" within the meaning of Treasury Regulation Section 5f.163-1(a).

Section 2.05. *Fees*

The Borrower agrees to pay to the Administrative Agent, for its own account, the administrative agent fees applicable to the Facilities payable in the amounts and at the times agreed upon between the Borrower and the Administrative Agent as set forth in the Administrative Agent Fee Letter (the "Fees").

All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent. Once paid, none of the Fees shall be refundable under any circumstances.

#### Section 2.06. *Interest on Loans*

Subject to the provisions of Section 2.07, the Loans comprising each ABR Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, and calculated from and including the date of such Borrowing to but excluding the date of repayment thereof) at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin; provided, that no Borrowings hereunder shall be made in ABR except as set forth in Section 10.24.

Subject to the provisions of Section 2.07, the Loans comprising each Eurodollar Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan except as otherwise provided in this Agreement. The applicable Alternate Base Rate or Adjusted LIBO Rate for each Interest Period or day within an Interest Period, as the case may be, shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Notwithstanding anything to the contrary in this Section 2.06,

(i) on each Interest Payment Date, the Borrower shall pay a portion of the interest due on each such date in cash in an amount equal to interest at a rate per annum equal to one and a half percent (1.50%) (the "**Cash Interest Portion**");

(ii) all interest payable on each Interest Payment Date (other than the Cash Interest Portion which is due and payable on each such Interest Payment Date) shall be payable in kind, with such interest amount being automatically added to, and made part of, the outstanding principal amount of Loans on such date (all interest payable in kind pursuant to this Agreement, "**PIK Interest**").

Unless the context otherwise requires, for all purposes under this Agreement, references to the "principal" and the "principal amount" of any Term Loans include any increase in the principal amount thereof due to the addition of PIK Interest thereto pursuant to this clause (d).

#### Section 2.07. *Default Interest*

Automatically from and after the occurrence and during the continuance of an Event of Default under Section 8.01(a), (f) or (g) or at the election of the Required Lenders during the continuance of any other Event of Default, the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the

Loans or any fees or other amounts owed hereunder, shall thereafter, after as well as before judgment, bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on written demand at a rate that is 2.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2.0% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans); *provided* that in the case of Eurodollar Term Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, if such Eurodollar Rate Loans shall become ABR Loans in accordance with Section 2.10(e), such Loans shall thereafter bear interest payable upon written demand at a rate which is 2.0% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans.

Section 2.08. [Reserved].

Section 2.09. *Termination and Reduction of Commitments*

All ~~(a)~~ a portion of the Term Loan Commitment for the UST Tranche A Term Loan shall automatically terminate upon the making of the UST Tranche A Term Loans on each Funding Date in an amount equal to the amount of UST Tranche A Term Loans so funded on such Funding Date.

Up~~(b)~~ at least one Business Days' prior irrevocable written or fax notice to the Administrative Agent, the Borrower may at any time in whole permanently terminate, or from time to time in part permanently reduce, any Class of unfunded Term Loan Commitments; *provided, however*, that each partial reduction of any Class of Term Loan Commitments shall be in an integral multiple of \$1,000,000 and in a minimum amount of \$1,000,000; *provided further* that, a notice of termination of the Commitments of any Class delivered by the Borrower may state that such notice is conditioned upon the consummation of an acquisition or sale transaction or upon the effectiveness of other credit facilities or the receipt of proceeds from the issuance of other Indebtedness or any other specified event, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

Eac~~(c)~~ reduction in the Term Loan Commitments hereunder shall be made ratably among the Lenders in accordance with their respective applicable Commitments.

Section 2.10. *Conversion and Continuation of Borrowings*

The Borrower shall have the right at any time upon prior irrevocable written notice to the Administrative Agent not later than 1:00 p.m., New York City time, three Business Days prior to conversion, to convert the Interest Period with respect to any Eurodollar Borrowing to another permissible Interest Period, subject in each case to the following:

(i)[reserved];

(ii)each conversion or continuation shall be made pro rata among the Lenders in accordance with the respective principal amounts of the Loans comprising the converted or continued Borrowing;

(iii) if less than all the outstanding principal amount of any Borrowing shall be converted or continued, then each resulting Borrowing shall satisfy the limitations specified in Sections 2.02(a) and 2.02(b) regarding the principal amount and maximum number of Borrowings of the relevant Type;

each conversion shall be effected by each Lender and the Administrative Agent by recording for the account of such Lender the new Loan of such Lender resulting from such conversion and reducing the Loan (or portion thereof) of such Lender being converted by an equivalent principal amount; accrued interest on any Eurodollar Loan (or portion thereof) being converted shall be paid by the Borrower at the time of conversion;

(i) if any Eurodollar Borrowing is converted on a day prior to the last day of the Interest Period applicable thereto, the Borrower shall pay, upon demand, any amounts due to the Lenders pursuant to Section 3.04;

any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a Eurodollar Borrowing, unless agreed by all applicable Lenders;

any portion of a Eurodollar Borrowing that cannot be converted into or continued as a Eurodollar Borrowing by reason of the immediately preceding clause shall be automatically converted at the end of the Interest Period in effect for such Borrowing into an ABR Borrowing; and

upon notice to the Borrower from the Administrative Agent given at the request of the Required Lenders, after the occurrence and during the continuance of an Event of Default, no outstanding Loan may be converted into, or continued as, a Eurodollar Loan.

Each such Request for Credit Extension shall (except as set forth herein) be irrevocable and shall refer to this Agreement and specify (i) the identity and amount of the Borrowing that the Borrower requests be converted or continued, (ii) if such Request for Credit Extension requests a conversion, the date of such conversion (which shall be a Business Day) and (iii) the Interest Period with respect thereto. If no Interest Period is specified in any such Request for Credit Extension with respect to any conversion to or continuation as a Eurodollar Borrowing, the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall promptly advise the Lenders of any Request for Credit Extension and of each Lender's portion of any converted or continued Borrowing. If the Borrower shall not have given a Request for Credit Extension in accordance with this Section 2.10 to continue any Borrowing into a subsequent Interest Period (and shall not otherwise have given notice in accordance with this Section 2.10 to convert such Borrowing), such Borrowing shall, at the end of the Interest Period applicable thereto (unless repaid pursuant to the terms hereof), automatically be continued or converted into a Eurodollar Borrowing with a one month Interest Period.

#### Section 2.11. *Repayment of Term Borrowings*

The Borrower shall repay to the Administrative Agent for the ratable account of the applicable Term Lenders on the Maturity Date for such UST Tranche A Term Loans, the aggregate principal amount of such UST Tranche A Term Loans outstanding on such date, together in each

case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment. Upon the conversion of UST Tranche A Term Loans to Extended Term Loans or the refinancing of UST Tranche A Term Loans with Credit Agreement Refinancing Indebtedness, all scheduled amortization payments, if any, shall be reduced ratably by the aggregate principal amount of the UST Tranche A Term Loans so converted, refinanced or replaced. The Borrower shall repay Extended Term Loans and Other Term Loans in such amounts and on such date or dates as shall be specified therefor in the applicable Extension Offer, Refinancing Amendment or other governing documentation.

To ~~(the)~~ extent not previously paid, all Term Loans (including, for avoidance of doubt, Term Loans that are not UST Tranche A Term Loans) shall be due and payable on the applicable Maturity Date, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

All ~~(re)~~payments pursuant to this Section 2.11 shall be subject to Section 3.04, but shall otherwise be without premium or penalty.

#### Section 2.12. *Voluntary Prepayment*

The ~~(B)~~Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, upon at least three Business Days' prior written (email) notice in the case of Eurodollar Loans, or written (email) notice at least one Business Day prior to the date of prepayment in the case of ABR Loans, to the Administrative Agent before 12:00 p.m., New York City time; *provided, however*, that each partial prepayment shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$2,000,000.

Exc~~(e)~~pt as may otherwise be set forth in any Extension Offer or any Refinancing Amendment, voluntary prepayments of Term Loans pursuant to this Section 2.12 shall be applied ratably to each Class of Term Loans then outstanding.

Each ~~(n)~~notice of prepayment shall specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid shall be irrevocable and shall commit the Borrower to prepay such Borrowing by the amount stated therein on the date stated therein; *provided, however*, that a notice of prepayment delivered by the Borrower may state that such notice is conditioned upon the consummation of an acquisition or sale transaction or upon the effectiveness of other credit facilities or the receipt of proceeds from the issuance of other Indebtedness or any other specified event, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied (*provided*, that the provisions of Section 3.04 shall apply to any prepayment that is not made as a result of the failure of such condition). All prepayments under this Section 2.12 shall be subject to Section 2.12(d) (to the extent applicable) and Section 3.04 but otherwise without premium or penalty. All prepayments under this Section 2.12 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment.

#### Section 2.13. *Mandatory Prepayments*

[Res~~(erved)~~].

(ii) Subject to Section 2.13(g), if (1) the Borrower or any Restricted Subsidiary Disposes of any Real Property, Rolling Stock or Disposes of any other property or assets pursuant to Section 7.05 (j), (l) or (t) or under any transaction that would be prohibited by Section 7.05 (other than (w) so long as the ABL Credit Agreement is in effect, any Disposition of ABL Priority Collateral, (x) so long as the UST Tranche B Term Loan Credit Agreement is in effect, any Disposition of UST Tranche B Priority Collateral, UST Tranche B Joint Collateral or UST Tranche B Only Collateral and (y) leases of Real Property entered into in the ordinary course of business (excluding Sale and Leaseback Transactions)), or (2) any Casualty Event occurs, which, in each case, results in the realization or receipt by the Borrower or a Restricted Subsidiary of Net Proceeds, the Borrower shall cause to be prepaid on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or any Restricted Subsidiary of such Net Proceeds an aggregate principal amount of Term Loans in an amount equal to 100% of the Net Proceeds (or, in the case of any Disposition of, or Sale and Leaseback Transaction, with respect to Real Property, 100% of the Real Property Disposition Proceeds) realized or received.

(iii) Subject to Section 2.13(g), if the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness after the Effective Date (other than Indebtedness permitted under Section 7.03 (other than any Credit Agreement Refinancing Indebtedness)), the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after (or, in the case of Credit Agreement Refinancing Indebtedness, one Business Day after) the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(iv) Subject to Section 2.13(g), if the Borrower issues any Subordinated Indebtedness after the Effective Date, the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 33% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower of such Net Proceeds.

(v) Subject to Section 2.13(g), if the Borrower issues any Equity Interests after the Effective Date (excluding the Treasury Equity Issuance), the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 50% of all Net Equity Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower of such Net Equity Proceeds; provided, that the Borrower shall only be required to apply up to \$30,000,000 in the aggregate of Net Equity Proceeds pursuant to this Section 2.13(a)(v).

Except as may otherwise be set forth in any Extension Offer, any Refinancing Amendment, any Permitted Repricing Amendment or any other governing documentation, each prepayment of Term Loans pursuant to Section 2.13(a) shall be applied ratably to each Class of Term Loans then outstanding and the UST Tranche B Term Loan Facility; *provided*, that any prepayment of Term Loans pursuant to Section 2.13(a)(iii) in respect of Credit Agreement Refinancing Indebtedness shall be applied solely to each applicable Class of Refinanced Debt.

With respect to each Class of Term Loans, each prepayment pursuant to Section 2.13(a) shall be paid to the Lenders in accordance with their respective Pro Rata Shares, subject to

Section 2.13(d). For the avoidance of doubt, this Section 2.13(c) is applicable to any prepayment made with the Net Proceeds of Credit Agreement Refinancing Indebtedness.

The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to Section 2.13 by 1:00 p.m., New York City time, least three (3) Business Days prior to the date of such prepayment. Each such notice shall specify the date of such prepayment, provide a reasonably detailed calculation of the amount of such estimated prepayment and specify to which Loan such prepayment shall apply. The Administrative Agent will promptly notify each applicable Lender of the contents of the Borrower's prepayment notice and of such Lender's Pro Rata Share or other applicable share of the prepayment. Each Term Lender may reject all of its Pro Rata Share or other applicable share of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Term Loans required to be made pursuant to Section 2.13 by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 5:00 p.m., New York City time, one Business Day prior to the date of such prepayment; *provided* that, for the avoidance of doubt, no Lender may reject any prepayment made with proceeds of Credit Agreement Refinancing Indebtedness. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans unless the Borrower and the Administrative Agent, with the consent of the Required Lenders, agree to an extension of time for such failure to be corrected. Any Declined Proceeds shall be retained by the Borrower.

*Foreign Losses, Etc.* All prepayments under this Section 2.13 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment and shall be made together with, in the case of any such prepayment of a Eurodollar Loan on a day prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurodollar Loan pursuant to Section 3.04. All prepayments under Section 2.13(a)(iii) shall be subject to Section 2.12(d) (to the extent applicable). Notwithstanding any of the other provisions of Section 2.13(a), so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurodollar Loans is required to be made under Section 2.13(a) prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit the amount of any such prepayment otherwise required to be made thereunder (including accrued interest to the last day of such Interest Period) into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.13. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with Section 2.13(a).

*Foreign Dispositions.* Notwithstanding any other provisions of this Section 2.13, (A) to the extent that any or all of the Net Proceeds of any Disposition by a Foreign Subsidiary ("**Foreign Disposition**") are (x) prohibited or delayed by applicable local law or (y) restricted by applicable organizational or constitutive documents or any agreement, from being repatriated to the United States, in each case the portion of such Net Proceeds so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.13 but may be retained by the applicable Foreign Subsidiary (the Borrower hereby agreeing to use reasonable efforts (as

determined in the Borrower's reasonable business judgment) to otherwise cause the applicable Foreign Subsidiary to within one year following the date on which the respective payment would otherwise have been required, promptly take all actions reasonably required by the applicable local law, applicable organizational or constitutive document impediment to permit such repatriation), and if within one year following the date on which the respective payment would otherwise have been required, such repatriation of any of such affected Net Proceeds is permitted under the applicable local law, applicable organizational or constitutive document impediment, such repatriation will be promptly effected and such repatriated Net Proceeds will be promptly (and in any event not later than 5 Business Days after such repatriation could be made) applied (net of additional taxes, costs and expenses payable or reserved against as a result thereof) (whether or not repatriation actually occurs) to the repayment of the Term Loans pursuant to this Section 2.13 and (B) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Disposition could cause adverse tax consequences to the Borrower, such Net Proceeds so affected may be retained by the applicable Foreign Subsidiary. The non-application of any prepayment amounts as a consequence of the foregoing provisions will not, for the avoidance of doubt, constitute a Default or an Event of Default.

Notwithstanding anything to the contrary set forth in any other clause in this Section 2.13, no mandatory prepayments of Term Loans that would have otherwise been required under Section 2.13(a) shall be required to be made until the Tranche B-2 Term Loan Facility Indebtedness (other than contingent indemnification or reimbursement obligations) shall have been paid or satisfied in full; provided that the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received from any Credit Agreement Refinancing Indebtedness.

Notwithstanding the foregoing to the contrary, with respect to proceeds of any ABL Priority Collateral and Term Priority Collateral that is required to be applied to the ABL Facility Indebtedness pursuant to the ABL Facility Documentation, the Lenders hereby agree that such proceeds shall be applied in the manner set forth in the ABL Facility Documentation prior to application to the Obligations hereunder pursuant to this Section 2.13.

#### Section 2.14. *Pro Rata Treatment*

. Except as required under Section 3.02, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each reduction of the Term Loan Commitments and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Lenders of the applicable Class in accordance with their respective applicable Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans); *provided* that the provisions of this Section 2.14 shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole Dollar amount.

#### Section 2.15. *Sharing of Setoffs*

. Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Borrower or any other Loan Party, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other

security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any Loan or Loans as a result of which the unpaid principal portion of its Loans shall be proportionately less than the unpaid principal portion of the Loans of any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Loans of such other Lender, so that the aggregate unpaid principal amount of the Loans and participations in Loans held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Loans then outstanding as the principal amount of its Loans prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Loans outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; *provided, however*, that (i) if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.15 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest, and (ii) the provisions of this Section 2.15 shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower as to which the provisions of this Section 2.15 shall apply (*provided*, that if the applicable payment, assignment, sale or participation to the Borrower is expressly permitted under Section 10.04, the provisions of this Section 2.15 shall not be construed to apply). The Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in a Loan deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by the Borrower to such Lender by reason thereof as fully as if such Lender had made a Loan directly to the Borrower in the amount of such participation. For the avoidance of doubt, neither this Section nor Section 2.14 shall limit the ability of the Borrower to pay principal, fees, premiums and interest with respect to Other Term Loans following the effectiveness of any Refinancing Amendment or any Extension Offer, as applicable, on a basis different from the Loans of such Class that will continue to be held by Lenders that were not Extending Lenders or Lenders pursuant to such Refinancing Amendment, as applicable.

#### Section 2.16. *Payments*

The Borrower shall make each payment (including principal of or interest on any Borrowing or any Fees or other amounts due and payable) hereunder and under any other Loan Document not later than 12:00 p.m., New York City time, on the date when due in immediately available Dollars, without setoff, defense or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. Each such payment shall be made to the Administrative Account. The Administrative Agent shall promptly distribute to each Lender any payments received by the Administrative Agent on behalf of such Lender.

Except as otherwise expressly provided herein, whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder or under any other Loan Document shall become due, or otherwise would occur, on a day that is not

a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or Fees, if applicable.

Section 2.17. [Reserved]

Section 2.18. *Refinancing Amendments*

(a) At any time after the Effective Date, the Borrower may obtain, from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness (other than Permitted Additional Debt) in respect of all or any portion of the Term Loans then outstanding under this Agreement, in the form of Other Term Loans or Other Term Loan Commitments pursuant to a Refinancing Amendment; *provided that* (A) such Credit Agreement Refinancing Indebtedness will rank *pari passu* in right of payment and of security with the other Loans and Commitments hereunder, (B) such Credit Agreement Refinancing Indebtedness will have such pricing, fees, interest, premiums and optional prepayment terms as may be agreed by the Borrower and the Lenders thereof (*provided, that such Credit Agreement Refinancing Indebtedness may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory prepayments hereunder, as specified in the applicable Refinancing Amendment*), (C) such Credit Agreement Refinancing Indebtedness will have a maturity date later than the maturity date of, and will have a Weighted Average Life to Maturity that is not shorter than, the Refinanced Debt, (D) the covenants, events of default and guarantees of such Credit Agreement Refinancing Indebtedness, if not consistent with the terms of the UST Tranche A Term Loans, shall be on customary market terms for Indebtedness of such type (as determined by the Borrower in good faith) (*provided, that the financial maintenance covenant on the then outstanding Term Loans shall be amended to provide the Lenders the benefit of any financial maintenance covenant of such Credit Agreement Refinancing Indebtedness that is in addition to or more restrictive in any material manner than the financial maintenance covenant on the then outstanding Term Loans*)), (E) the proceeds of such Credit Agreement Refinancing Indebtedness shall be applied, substantially concurrently with the incurrence thereof, to the prepayment of outstanding Term Loans being so refinanced and (F) other than in the case of Credit Agreement Refinancing Indebtedness the proceeds of which are applied to pay all outstanding Term Loans and other Obligations in full in cash, the Borrower shall have obtained the consent of the Required Lenders. The effectiveness of any Refinancing Amendment shall be subject to the satisfaction (or waiver) on the date thereof of each of the conditions set forth in Section 4.01 (and for purposes thereof the incurrence of the Credit Agreement Refinancing Indebtedness shall be deemed to be a Request for Credit Extension) and, to the extent reasonably requested by the Administrative Agent and the Required Lenders, receipt by the Administrative Agent of customary legal opinions, board resolutions, officers' certificates and a solvency certification or representation, in each case materially consistent with those delivered on the Effective Date under Section 4.02 (other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent), and customary reaffirmation agreements. Each Class of Credit Agreement Refinancing Indebtedness incurred under this Section 2.18(a) shall be in an aggregate principal amount that is (x) not less than

\$40,000,000 and (y) an integral multiple of \$1,000,000 in excess thereof. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment.

(b) Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to a Refinancing 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 Credit Agreement Refinancing Indebtedness incurred pursuant thereto and (ii) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Required Lenders and the Borrower, to effect the provisions of this Section 2.18, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Refinancing Amendment. Without limiting the foregoing, in connection with any Refinancing Amendment, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the Latest Maturity Date after giving effect to such Refinancing Amendment so that such maturity date is extended to the then Latest Maturity Date (or such later date as may be advised by local counsel to the Required Lenders).

(c) This Section 2.18 shall supersede any provisions in Section 2.14, 2.15 or 10.08 to the contrary.

Section 2.19. *Extensions of Term Loans*

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an “**Extension Offer**”) made from time to time by the Borrower to all Lenders of a Class of Term Loans with a like Maturity Date on a pro rata basis (based on the aggregate outstanding principal amount of the respective Term Loans of such Class with the same Maturity Date) and on the same terms to each such Lender, the Borrower may from time to time with the consent of any Lender that shall have accepted such offer extend the maturity date of any Term Loans and otherwise modify the terms of such Term Loans of such Lender pursuant to the terms of the relevant Extension Offer (including, without limitation, by increasing the interest rate or fees payable in respect of such Term Loans and/or modifying the amortization schedule in respect of such Term Loans) (each, an “**Extension**”, and each group of Term Loans as so extended, as well as the group of original Term Loans not so extended, being a “**tranche**”; any Extended Term Loans shall constitute a separate tranche of Term Loans from the tranche of Term Loans from which they were converted and a separate Class of Term Loans), so long as the following terms are satisfied (or waived): (i) no Event of Default shall exist at the time the notice in respect of an Extension Offer is delivered to the Lenders, and no Event of Default shall exist immediately prior to or after giving effect to the effectiveness of any Extended Term Loans, (ii) except as to interest rates, fees, amortization, final maturity date, premium, AHYDO “catch up” payments, required prepayment dates and participation in prepayments (which shall, subject to immediately succeeding clauses (iii), (iv) and (v), be determined by the Borrower and set forth in the relevant Extension Offer), the Term Loans of any Term Lender extended pursuant to any Extension (“**Extended Term Loans**”) shall have the same terms and conditions that are substantially identical to, or less favorable to the lenders or investors

providing such Extended Term Loans as the tranche of Term Loans subject to such Extension Offer, (iii) the final maturity date of any Extended Term Loans shall be no earlier than the then Latest Maturity Date and the amortization schedule, if any, applicable to Term Loans for periods prior to the then applicable Latest Maturity Date may not be increased, (iv) the Weighted Average Life to Maturity of any Extended Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans extended thereby, (v) any Extended Term Loans may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory prepayments hereunder, as specified in the applicable Extension Offer, (vi) if the aggregate principal amount of Term Loans (calculated on the face amount thereof) in respect of which Term Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans of such Term Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Term Lenders have accepted such Extension Offer, (vii) all documentation in respect of such Extension shall be consistent with the foregoing, and (viii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower.

(b) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.19, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.12, 2.13 or 2.15 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment, *provided* that the Borrower may at its election specify as a condition (a “**Minimum Extension Condition**”) to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower’s sole discretion and may be waived by the Borrower) of Term Loans of any or all applicable Classes be tendered. The Administrative Agent and the Lenders hereby consent to the Extensions and the other transactions contemplated by this Section 2.19 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.12, 2.13, 2.14 and 2.15) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.19.

(c) Each of the parties hereto hereby (A) agrees that this Agreement and the other Loan Documents may be amended to give effect to each Extension (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 Term Loans incurred pursuant thereto, (ii) modify the scheduled repayments set forth in Section 2.11 with respect to any Class of Term Loans subject to an Extension to reflect a reduction in the principal amount of the Term Loans thereunder in an amount equal to the aggregate principal amount of the Extended Term Loans amended pursuant to the applicable Extension (with such amount to be applied ratably to reduce scheduled repayments of such Term Loans required pursuant to Section 2.11), (iii) modify the prepayments set forth in Sections 2.12 and 2.13 to reflect the existence of the Extended Term Loans and the application of prepayments with respect thereto, and (iv) effect such other amendments to this Agreement and the other Loan

Documents as may be necessary or appropriate, in the reasonable opinion of the Required Lenders and the Borrower, to effect the provisions of this Section 2.19, and the Required Lenders hereby expressly and irrevocably, for the benefit of all parties hereto, authorize the Administrative Agent to enter into any such Extension Amendment and (B) consent to the transactions contemplated by this Section 2.19 (including, for the avoidance of doubt, payment of interest, fees or premiums in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Amendment). Without limiting the foregoing, in connection with any Extension, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the then Latest Maturity Date so that such maturity date is extended to the Latest Maturity Date after giving effect to such Extension (or such later date as may be advised by local counsel to the Required Lenders).

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five (5) Business Days' (or such shorter period as may reasonably be agreed by the Administrative Agent at the direction of the Required Lenders) prior written notice thereof, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.19.

(e) This Section 2.19 shall supersede any provisions in Section 2.14, 2.15 or 10.08 to the contrary.

### ARTICLE 3

#### TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

##### Section 3.01. *Taxes*

Except as provided in this Section 3.01, any and all payments made by or on account of the Borrower or any Guarantor under any Loan Document to any Lender or Agent shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, assessments, withholdings (including backup withholding), fees or similar charges imposed by any Governmental Authority including interest, penalties and additions to tax (collectively "**Taxes**"), excluding (i) Taxes imposed on or measured by net income, however denominated, and franchise (and similar) Taxes imposed on it in lieu of net income Taxes, (ii) Taxes attributable to the failure by the relevant Lender or Agent to deliver the documentation required to be delivered pursuant to clause (d) of this Section 3.01, (iii) Taxes imposed by a jurisdiction as a result of any connection between such Lender or Agent and such jurisdiction other than any connection arising from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, or enforcing any Loan Document, (iv) any branch profits Taxes imposed by the United States or any similar Tax imposed by any other jurisdiction in which the Borrower or any Guarantor (as appropriate) is located, (v) any U.S. federal withholding tax imposed on amounts payable hereunder pursuant to a law in effect at such time the Lender or Agent becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower under Section 3.06), or designates a new lending office, except in each case to the extent such Lender (or its assignor, if any) was entitled at the time of designation of a new lending office (or assignment) to receive additional amounts with respect to such withholding

tax pursuant to this Section 3.01 and (vi) any Tax imposed under FATCA (all such non-excluded Taxes imposed on such payments, being hereinafter referred to as “**Indemnified Taxes**”). If the Borrower, any Guarantor or other applicable withholding agent shall be required by any Laws to deduct any Indemnified Taxes or Other Taxes (as defined below) from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) the sum payable by the Borrower or Guarantor shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), such Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions, (iii) the applicable withholding agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), if the Borrower or any Guarantor is the applicable withholding agent, the applicable withholding agent shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise, property, intangible or mortgage recording taxes, or charges or levies of the same character, imposed by any Governmental Authority, which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (including additions to tax, penalties and interest related thereto) (including any Mortgage Amendment) excluding, in each case, such amounts that result from an Agent or Lender’s Assignment and Acceptance, grant of a Participation, transfer or assignment to or designation of a new applicable lending office or other office for receiving payments under any Loan Document (collectively, “**Assignment Taxes**”) except for Assignment Taxes resulting from assignment or participation that is requested or required in writing by the Borrower (all such non-excluded taxes described in this Section 3.01(b) being hereinafter referred to as “**Other Taxes**”).

Without duplication of Section 3.01(a) or (b), the Borrower and each Guarantor agree to indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes and Other Taxes paid by such Agent or Lender (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and (ii) any expenses arising therefrom or with respect thereto, *provided* such Agent or Lender, as the case may be, provides Borrower or Guarantor with a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts.

Each Lender and Agent shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law certifying as to any entitlement of such Lender or Agent to an exemption from, or reduction in, withholding tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender and Agent shall, whenever a lapse in time or change in circumstances renders such documentation obsolete or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent of

its inability to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrower, the Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Notwithstanding the foregoing, a Lender shall not be required to deliver any form pursuant to this clause (d) that such Lender is not legally able to deliver. In addition, each Lender and Agent shall deliver to the Borrower and the Administrative Agent such other tax forms or other documents as shall be 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 or Agent is subject to backup withholding or information reporting requirements. Without limiting the foregoing:

(i) Each Lender and Agent that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed executed copies of Internal Revenue Service Form W-9 certifying that such Lender or Agent (as the case may be) is exempt from federal backup withholding.

(ii) Each Lender and Agent that is not a United States person (as defined in Section 7701(a)(30) of the Code) which, for the avoidance of doubt, shall not include Treasury, shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement whichever of the following is applicable:

(A) two properly completed and duly signed executed copies of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(B) two properly completed and duly signed executed copies of Internal Revenue Service Form W-8ECI (or any successor forms) and, in the case of an Agent, a withholding certificate that satisfies the requirements of Treasury Regulation Sections 1.1441-1(b)(2)(iv) and 1.1441-1(e)(3)(v) as applicable to a U.S. branch that has agreed to be treated as a U.S. person for withholding tax purposes,

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (A) a certificate substantially in the form of Exhibit G-1, G-2, G-3 or G-4, as applicable (any such certificate a “**United States Tax Compliance Certificate**”) and (B) two properly completed and duly signed executed copies of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E, or

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a participant holding a participation granted by a participating Lender), Internal Revenue Service Form W-8IMY (or any

successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information from each beneficial owner, as applicable (*provided* that, if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owner). Each Lender and Agent shall deliver to the Borrower and the Administrative Agent two further executed copies of any previously delivered form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete or inaccurate and promptly after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower or the Administrative Agent, or promptly notify the Borrower and the Administrative Agent that it is unable to do so. Each Lender and Agent shall promptly notify the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered form or certification to the Borrower or the Administrative Agent.

(iii) Notwithstanding anything else herein, Treasury shall be entitled to the benefits of this Section 3.01 and all related provisions under this Agreement without regard to whether it provides any documentation described in Sections 3.01(d) or Section 3.01(g).

Any Lender or Agent claiming any additional amounts payable pursuant to this Section 3.01 shall use its reasonable efforts to change the jurisdiction of its lending office (or take any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the reasonable, good faith determination of such Lender, result in any unreimbursed cost or expense or be otherwise materially disadvantageous to such Lender.

If any Lender or Agent determines, in its reasonable, good faith discretion, that it has received a refund in respect of any Taxes as to which indemnification or additional amounts have been paid to it by the Borrower pursuant to this Section 3.01 (including by payment of additional amounts pursuant to this Section) it shall promptly remit such refund to the Borrower or Guarantor, net of all out-of-pocket expenses of the Lender or Agent, as the case may be and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund net of any Taxes payable by any Agent or Lender on such interest); *provided* that the Borrower and Guarantors, upon the request of the Lender or Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such party in the event such party is required to repay such refund to the relevant Governmental Authority. This section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Borrower or any other person.

If a payment made to a Lender or Agent under any Loan Document would be subject to withholding Tax imposed by FATCA if such Lender or Agent 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 or Agent 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 or Agent has complied with such Lender's or Agent's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 3.01(h), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For the avoidance of doubt, Treasury shall not be required to provide any documentation under this Section 3.01(g).

Each party's obligations under this Section 3.01 shall survive any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Each Lender (other than Treasury) shall indemnify each Agent, within 10 days following written demand therefor, for (i) the full amount of any Indemnified Taxes and Other Taxes attributable to such Lender (but only to the extent that such Agent has not already been indemnified by the Borrower and each Guarantor for such Indemnified Taxes and Other Taxes and without limiting the obligation of the Borrower and each Guarantor to do so), and (ii) any Taxes attributable to such Lender's failure to comply with the provision of Section 10.04(f) relating to the maintenance of a Participant Register, in each case, that are payable or paid by such Agent in connection with any Loan Documents, and any expenses arising therefrom or with respect thereto; *provided* that such Agent provides such lender with a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts.

#### Section 3.02. *Illegality*

If any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the LIBO Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Loans shall be suspended 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, the Borrower shall promptly following written demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all applicable Eurodollar Loans of such Lender to ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.04. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

#### Section 3.03. *Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Loans*

If ~~after~~ Lender reasonably determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the Effective Date, or such Lender's compliance therewith, there shall be any material increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Eurodollar Loans, or a material reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.03(a) any such increased costs or reduction in amount resulting from (i) Indemnified Taxes or Other Taxes for which additional amounts are payable pursuant to Section 3.01, or any Taxes excluded from the definition of Indemnified Taxes under exception (iii) thereof to the extent such Taxes are imposed on or measured by net income or profits or are franchise taxes (imposed in lieu of the foregoing taxes) and any Taxes excluded from the definition of Indemnified Taxes under exceptions (i), (ii), (iv), (v) and (vi) thereof or (ii) reserve requirements contemplated by Section 3.03(c) or reflected in the Adjusted LIBO Rate) and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligations to make any Loan), or to reduce the amount of any sum received or receivable by such Lender, then from time to time within fifteen (15) days after written demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such written demand to the Administrative Agent given in accordance with Section 3.05), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

If ~~after~~ Lender determines that the introduction of any Law regarding capital adequacy or liquidity or any change therein or in the interpretation thereof, in each case after the Effective Date, or compliance by such Lender (or its lending office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any entity controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and liquidity and such Lender's desired return on capital), then from time to time upon written demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such written demand to the Administrative Agent given in accordance with Section 3.05), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender or controlling entity for such reduction within fifteen (15) days after receipt of such written demand.

~~Except~~ to the extent already reflected in the Adjusted LIBO Rate, the Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurodollar funds or deposits, additional interest on the unpaid principal amount of each applicable Eurodollar Loan of the Borrower 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 in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurodollar Loans of the Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least fifteen (15) days' prior written notice (with a copy to the Administrative Agent)

of such additional interest or cost from such Lender. If a Lender fails to give written notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such written notice.

Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.03 shall not constitute a waiver of such Lender's right to demand such compensation.

If a Lender requests compensation under this Section 3.03, then such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another lending office for any Loan affected by such event; *provided* that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its lending office(s) to suffer no material economic, legal or regulatory disadvantage, and *provided further* that nothing in this Section 3.03(e) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.03(a), (b), (c) or (d).

#### Section 3.04. *Funding Losses*

Promptly following written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

(i) any continuation or conversion of any Eurodollar Loan of the Borrower on a day prior to the last day of the Interest Period for such Loan, or any payment or prepayment of any Eurodollar Loan of the Borrower on a day prior to the last day of the Interest Period for such Loan; or

(ii) 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 Eurodollar Loan of the Borrower on the date or in the amount notified by the Borrower;

including an amount equal to the excess, as reasonably determined by such Lender, of (1) its cost of obtaining funds for the Eurodollar Loan that is the subject of such event for the period from the date of such event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (2) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such event for such period, but excluding (a) loss of anticipated profits, and (b) any loss, cost or expense resulting from Indemnified Taxes or Other Taxes for which additional amounts are payable pursuant to Section 3.01, or any Taxes excluded from the definition of Indemnified Taxes under Section 3.01.

#### Section 3.05. *Matters Applicable to all Requests for Compensation*

Any Agent or any Lender claiming compensation under this Article 3 shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable and customary averaging and attribution methods.

With respect to any Lender's claim for compensation under Section 3.02 or 3.03, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; *provided* that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation by the Borrower under Section 3.03, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another any applicable Eurodollar Loan, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.05(c) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

If the obligation of any Lender to make or continue any Eurodollar Loan shall be suspended pursuant to Section 3.05(b) hereof, such Lender's applicable Eurodollar Loans shall be automatically converted into ABR Loans (or, if such conversion is not possible, repaid) on the last day(s) of the then current Interest Period(s) for such Eurodollar Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02 or 3.03 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurodollar Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurodollar Loans shall be applied instead to its ABR Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurodollar Loans shall be made or continued instead as ABR Loans (if possible).

If a Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02 or 3.03 hereof that gave rise to the conversion of any of such Lender's Eurodollar Loans pursuant to this Section 3.05 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Loans made by other Lenders under the applicable Facility are outstanding, if applicable, such Lender's ABR Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurodollar Loans under such Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

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 or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to have been adopted or made after the Effective Date, regardless of the date enacted or adopted.

If at any time (i) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01 or 3.03 as a result of any condition described in such Sections or any Lender ceases to make any Eurodollar Loans as a result of any condition described in Section 3.02 or Section 3.03 or (ii) any Lender becomes a Non-Consenting Lender, then the Borrower may, on prior written notice to the Administrative Agent and such Lender, (x) replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.04(b) (unless otherwise agreed, with the assignment fee to be paid by the Borrower in such instance) (it being understood that any such assignment shall become effective only in accordance with Section 10.04(e)), all of its rights and obligations under this Agreement (in respect of any applicable Facility only in the case of clause (i) or, with respect to a Class vote, clause (ii)) to one or more Eligible Assignees; *provided* that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; and *provided further* that (A) in the case of any such assignment resulting from a claim for compensation under Section 3.03 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments and (B) in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to, and shall be sufficient (together with all other consenting Lenders) to cause the adoption of, the applicable departure, waiver or amendment of the Loan Documents; or (y) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date; *provided* that in the case of any such termination of a Non-Consenting Lender, such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable departure, waiver or amendment of the Loan Documents and such termination shall be in respect of any applicable Facility only in the case of clause (i) or, with respect to a Class vote, clause (ii).

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, each directly and adversely affected Lender, each Lender with respect to a certain Class of Loans or each directly and adversely affected Lender with respect to a certain Class of Loans, in each case in accordance with Section 10.08, and (iii) the Required Lenders (or, in the case of a consent, waiver or amendment involving all Lenders or all directly and adversely affected Lenders of a certain Class, the Required Class Lenders) have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “**Non-Consenting Lender.**”

Any Lender being replaced pursuant to Section 3.06(a) above shall (i) execute and deliver an Assignment and Acceptance with respect to such Lender’s applicable Commitment and outstanding Loans, and (ii) deliver any Term Notes evidencing such Loans to the Borrower or Administrative Agent. Pursuant to such Assignment and Acceptance, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender’s outstanding Loans, (B) all obligations of the Borrower owing to the assigning Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Acceptance and (C) upon such payment and, if so

requested by the assignee Lender, delivery to the assignee Lender of the appropriate Term Note executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender. In connection with any such replacement, if any such Non-Consenting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Acceptance reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Acceptance to such Non-Consenting Lender, then such Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Acceptance without any action on the part of the Non-Consenting Lender.

Notwithstanding anything to the contrary contained above, any Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with Article 9.

Section 3.07. *Survival*

. All of the Borrower's obligations under this Article 3 shall survive termination of the Commitments and repayment of all other Obligations hereunder.

**ARTICLE 4**  
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Section 4.01. *Effective Date*

. This Agreement shall become effective on the first date on which the following conditions precedent have been satisfied (or waived in accordance with Article 9):

The Administrative Agent and the Required Lenders shall have received the following, each properly executed by a Responsible Officer of the signing Loan Party (or, in the case of the Borrower, each Responsible Officer of the Borrower), each dated as of the Effective Date:

- (i) executed counterparts of this Agreement duly executed by the Borrower and each Guarantor;
- (ii) the ABL Intercreditor Agreement duly executed by the parties thereto; and
- (iii) the Administrative Agent Fee Letter duly executed by the respective parties thereto.

Each of the ABL Credit Agreement and Tranche B-2 Term Loan Credit Agreement shall have been amended pursuant to amendment agreements, in form and substance reasonably satisfactory to the Required Lenders in their sole discretion.

Section 4.02. *Initial Funding Date*

. The obligation of each UST Tranche A Term Lender to make the UST Tranche A Term Loans on the Initial Funding Date shall be subject to the occurrence of the Effective Date and satisfaction (or waiver pursuant to Article 9) of the following conditions precedent:

Each Lender that has requested a Term Note at least two Business Days in advance of the Effective Date shall have received such Term Note executed by the Borrower in favor of such Lender, properly executed by each Responsible Officer of the Borrower, dated as of the Effective Date.

The Administrative Agent and the Required Lenders shall have received, on behalf of themselves, the Collateral Agent and the Lenders, an opinion of (i) Kirkland & Ellis LLP, counsel for the Loan Parties, and (ii) from each local counsel for the Loan Parties listed on Schedule 4.02(b), in each case, dated the Initial Funding Date and addressed to the Administrative Agent, the Collateral Agent and the Lenders and in customary form and substance, and the Borrower hereby requests such counsel to deliver such opinions.

The Administrative Agent and the Required Lenders shall have received (i) a copy of the certificate or articles of incorporation or organization or certificate of formation, including all amendments thereto, of each Loan Party, certified, if applicable, as of a recent date by the Secretary of State of the state of its organization, and a certificate as to the good standing (to the extent applicable) of each Loan Party as of a recent date, from such Secretary of State or similar Governmental Authority; (ii) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Initial Funding Date and certifying (A) that attached thereto is a true and complete copy of the by-laws or operating (or limited liability company) agreement of such Loan Party as in effect on the Initial Funding Date and at all times since a date prior to the date of the resolutions described in clause (B) below, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or equivalent governing body) of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Loan Party is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation or organization or certificate of formation of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to clause (i) above, (D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party on the Initial Funding Date, and (E) as to the absence of any proceeding for the dissolution or liquidation of such Loan Party; and (iii) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to clause (ii) above.

(i) ~~The~~ Administrative Agent and the Required Lenders shall have received the results of (x) searches of the Uniform Commercial Code filings (or equivalent filings) and (y) judgment and tax lien searches, made with respect to each Loan Party in the states or other jurisdictions of formation of such Loan Party and with respect to such other locations and names listed on the Perfection Certificate, together with copies of the financing statements (or similar documents) disclosed by such search and (ii) each of the Intellectual Property Security Agreement shall have been duly executed and delivered by each Loan Party that is to be a party thereto, together with (x) certificates, if any, representing the Equity Interests pledged by the Borrower and the Guarantors accompanied by undated stock powers executed in blank and (y) copies of documents and instruments to be recorded or filed that the Required Lenders may deem, subject to Section 6.13, reasonably necessary to satisfy the Collateral and Guarantee Requirement.

Principally or substantially concurrently with the funding of the Loans on the Initial Funding Date, the IBT Agreement shall be in full force and effect.

Immediately after giving effect to the transactions contemplated hereby, the Borrower and the Subsidiaries shall have outstanding no Indebtedness for borrowed money other than (i) Indebtedness outstanding under this Agreement, (ii) the ABL Facility Indebtedness, (iii) the Tranche B-2 Term Loan Facility Indebtedness, (iv) the UST Tranche B Term Loan Facility Indebtedness and (v) Indebtedness permitted pursuant to Section 7.03.

The Administrative Agent and the Required Lenders shall have received a solvency certificate, substantially in the form set forth in Exhibit H, from the chief financial officer or chief accounting officer or other officer with equivalent duties of the Borrower, or in lieu thereof at the option of the Borrower, an opinion of a nationally recognized valuation firm as to the solvency (on a consolidated basis) of the Borrower and its Subsidiaries as of the Initial Funding Date.

The Administrative Agent, the Collateral Agent and the Required Lenders shall have received all documentation and other information about the Borrower and the Guarantors required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, including without limitation, a duly executed W-9 tax form (or such other applicable IRS tax form) of the Borrower, that has been reasonably requested in writing at least five Business Days prior to the Initial Funding Date.

The Administrative Agent and the Required Lenders shall have received a certificate from an officer of the Borrower certifying that since December 31, 2019, there has not occurred any Material Adverse Effect.

The Administrative Agent, the Collateral Agent and the Required Lenders shall have received all applicable fees and other amounts due and payable on or prior to the Initial Funding Date, including, to the extent invoiced at least three Business Days prior to the Initial Funding Date (except as otherwise reasonably agreed by the Borrower), reimbursement or payment of all out-of-pocket expenses (including the fees and expenses of legal counsel) required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document on or prior to the Initial Funding Date; provided, that, Borrower hereby acknowledges and agrees that any such amounts which shall be due and payable to the Administrative Agent and the Collateral Agent shall be paid to the Administrative Agent and the Collateral Agent on or prior to the Initial Funding Date regardless of the date when such amounts are invoiced to the Borrower.

To the extent required by Section 6.07, the Administrative Agent shall have received evidence that the insurance required by Section 6.07 is in effect, for the benefit of the Collateral Agent, as additional insured on behalf of the Secured Parties or as loss payee thereunder.

The representations and warranties set forth in Article 5 and in each other Loan Document shall be true and correct in all material respects on and as of the Initial Funding Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; *provided*, that any such representation

and warranty that is qualified by "materiality", "material adverse effect" or similar language shall be true and correct in all respects (after giving effect to such qualification therein) on and as of the Initial Funding Date with the same effect as though made on and as of such date or such earlier date, as applicable.

(x) ~~(No)~~ Default shall exist or would result from the proposed Credit Extension on the Initial Funding Date or from the application of the proceeds therefrom and (y) no "default" (or similar event) under (i) the ABL Facility Documentation or any Permitted Refinancing thereof, (ii) the Tranche B-2 Term Loan Facility Documentation or any Permitted Refinancing thereof, (iii) the UST Tranche B Term Loan Facility Documentation or any Permitted Refinancing thereof or (iv) any other Indebtedness for borrowed money, with an aggregate principal amount (in the case of this clause (iv)) in excess of the Threshold Amount, in each case of clauses (i) through (iv), shall exist or would result from the proposed Credit Extension on the Initial Funding Date or from the application of the proceeds therefrom.

The ~~(A)~~ Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

The ~~(B)~~ Borrower shall have established the UST Tranche A Controlled Account.

The ~~(A)~~ Administrative Agent and the Required Lenders shall have received the following, each properly executed by a Responsible Officer of the signing Loan Party (or, in the case of the Borrower, each Responsible Officer of the Borrower), each dated as of the Effective Date:

- (i) the Security Agreement duly executed by the parties thereto; and
- (ii) the Custodial Administration Agreement duly executed by the parties thereto.

The Request for Credit Extension submitted by the Borrower in connection with the making of the UST Tranche A Term Loans on the Initial Funding Date shall be deemed to be a representation and warranty by the Borrower that the conditions specified in Sections 4.02(e), (f), (l) and (m) have been satisfied or waived on and as of the Initial Funding Date. Unless the Administrative Agent receives notice from the Required Lenders one Business Day prior to the Funding Date, it may conclusively assume that all conditions precedent in this Section have been met.

Section 4.03. *Conditions to each Funding Date after the Initial Funding Date and each Disbursement made on or after the Initial Funding Date*

. The obligation of each UST Tranche A Term Lender to make the UST Tranche A Term Loans on each Funding Date after the Initial Funding Date and the disbursement of amounts in the UST Tranche A Controlled Account on or after the Initial Funding Date shall be subject to the satisfaction (or waiver pursuant to Article 9) of the following conditions precedent:

The ~~(a)~~ representations and warranties set forth in Article 5 and in each other Loan Document shall be true and correct in all material respects on and as of such date with the same effect as though made on and as of such date, except to the extent such representations and

warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; *provided*, that any such representation and warranty that is qualified by “materiality”, “material adverse effect” or similar language shall be true and correct in all respects (after giving effect to such qualification therein) on and as of such date with the same effect as though made on and as of such date or such earlier date, as applicable.

(x) ~~(b)~~ Default shall exist or would result from the proposed funding or disbursement on such Funding Date or date of disbursement, as applicable, or from the application of the proceeds therefrom and (y) no “**default**” (or similar event) under (i) the ABL Facility Documentation or any Permitted Refinancing thereof, (ii) the Tranche B-2 Term Loan Facility Documentation or any Permitted Refinancing thereof, (iii) the UST Tranche B Term Loan Facility Documentation or any Permitted Refinancing thereof or (iv) any other Indebtedness for borrowed money, with an aggregate principal amount (in the case of this clause (iv)) in excess of the Threshold Amount, in each case of clauses (i) through (iv), shall exist or would result from such proposed funding or disbursement on such Funding Date or date of disbursement, as applicable, or from the application of the proceeds therefrom.

With respect to each Funding Date, the Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

With respect to any disbursement, the Administrative Agent shall have received a Request for Disbursement in accordance with the requirements hereof.

The consummation of the Treasury Equity Issuance pursuant to Section 6.18.

The receipt by the Treasury from the Borrower of a closing opinion reasonably satisfactory to the Treasury in customary form for a primary issuance of common stock.

Each Request for Credit Extension and each Request for Disbursement submitted by the Borrower shall be deemed to be a representation and warranty by the Borrower that the conditions specified in Sections 4.03(a) and (b) have been satisfied or waived on and as of the applicable Funding Date or date of the applicable disbursement, respectively. Unless the Administrative Agent receives notice from the Required Lenders one Business Day prior to the Funding Date, it may conclusively assume that all conditions precedent in this Section have been met.

#### ARTICLE 5 REPRESENTATIONS AND WARRANTIES

Each of the Borrower and each of the Guarantors party hereto represents and warrants to the Administrative Agent, the Collateral Agent and each of the Lenders that:

Section 5.01. *Existence, Qualification and Power; Compliance with Laws*

. Each Loan Party and each Restricted Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing (where relevant) under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite organizational power and authority to execute, deliver and perform its obligations under the Loan Documents to which it is a party and, in the case of the Borrower, to borrow hereunder, (c) is duly qualified and in good standing (where relevant) under

the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs and injunctions, and (e) has all requisite franchises, licenses, authorizations, qualifications, consents and approvals to operate its business as currently conducted; except in each case, referred to in clause (a) (other than with respect to any Loan Party), (c), (d) or (e), to the extent that failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

#### Section 5.02. *Authorization; No Contravention*

. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, (a) are within such Loan Party's organizational powers, (b) have been duly authorized by all necessary corporate or other organizational action, and (c) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any Lien under (other than as permitted by [Section 7.01](#)), or require any payment to be made under (x) any Indebtedness of such Person in excess of the Threshold Amount or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any material Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (c)(ii)(x), to the extent that such violation, conflict, breach, contravention or payment, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### Section 5.03. *Governmental Authorization; Other Consents*

. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority 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, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) to the extent required thereunder or (d) the exercise by the Administrative Agent, the Collateral Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) approvals, consents, exemptions, authorizations or other actions by, or notices to, or filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties (or release existing Liens), (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or to be in full force and effect pursuant to the Collateral and Guarantee Requirement) and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### Section 5.04. *Binding Effect*

. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of each such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity.

(i) ~~The~~ Audited Financial Statements fairly present in all material respects the financial condition of the Borrower and its consolidated Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(ii) ~~The~~ Unaudited Financial Statements fairly present in all material respects the financial condition of the Borrower and its consolidated Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein and the absence of footnotes.

~~The~~ recasts of income statements of the Borrower and its Subsidiaries which have been furnished to the Administrative Agent and the Required Lenders prior to the Effective Date have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such forecasts it being understood by the Agents and the Lenders that such projections as to future events (i) are not to be viewed as facts, (ii)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower and its Restricted Subsidiaries, (B) no assurance is given by the Borrower and its Restricted Subsidiaries that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

~~Since~~ December 31, 2019, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

Section 5.06. *Compliance With Laws*

Neither the Borrower nor any of the Restricted Subsidiaries or any of their respective properties or assets is in violation of, nor will the continued operation of their properties and assets as currently conducted violate, any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting the Mortgaged Property, or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where in each case such violation or default, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

Section 5.07. *Ownership of Property; Liens*

~~Schedule~~ 1.01(c) sets forth a true, complete and correct list of all Real Property owned (whether in fee or through a leasehold estate under any ground lease) by Borrower and the Restricted Subsidiaries as of the Effective Date.

~~Each~~ of the Borrower and the Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all its properties and assets (including all Mortgaged Property material to its business), free and clear of all Liens

except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and except where the failure to have such title or interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

As ~~(c)~~ the Effective Date, Schedule 9 to the Perfection Certificate dated the Effective Date contains a true and complete list of each Material Real Property owned by the Borrower each other Loan Party and its Restricted Subsidiaries.

As ~~(f)~~ the Effective Date, except as otherwise disclosed in writing to the Collateral Agent and the Required Lenders, no Mortgage encumbers improved Mortgaged Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards within the meaning of the Flood Laws unless Evidence of Flood Insurance has been delivered to the Collateral Agent.

Section 5.08. *Environmental Matters*

. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

Eac~~n~~ Loan Party and each Restricted Subsidiary is and has been in compliance with all Environmental Laws, which includes obtaining and maintaining all Environmental Permits required under such Environmental Laws to carry on the business of the Loan Parties and the Restricted Subsidiaries;

the ~~(b)~~ Loan Parties and the Restricted Subsidiaries have not received notice alleging any Environmental Liability or proposing or seeking to revoke, modify or deny the renewal of any Environmental Permit required to be held by the Loan Parties or the Restricted Subsidiaries, and neither the Loan Parties nor the Restricted Subsidiaries have become subject to any Environmental Liability;

the~~(c)~~ has been no Release, discharge or disposal of Hazardous Materials (i) on, to, at, under or from any Real Property or any vehicles or facilities owned or leased by any of the Loan Parties or the Restricted Subsidiaries, or, to the knowledge of the Borrower, formerly owned, operated or leased by any Loan Party or any Restricted Subsidiary, or (ii) arising out of the conduct of the Loan Parties or the Restricted Subsidiaries that, in the case of (i) or (ii), could reasonably be expected to require investigation, remedial activity or corrective action or cleanup by or on behalf of any Loan Party or any Restricted Subsidiary or for which any Loan Party or Restricted Subsidiary reasonably could be expected to otherwise incur any Environmental Liability; and

the~~(d)~~ are no facts, circumstances or conditions arising out of or relating to, and there are no pending or reasonably anticipated requirements under Environmental Law associated with, the operations of the Loan Parties or the Restricted Subsidiaries or any Real Property, vehicles or facilities currently or, to the knowledge of the Borrower, previously owned or leased by the Loan Parties or any Restricted Subsidiary that, in such case, are known to or would reasonably be likely to require investigation, remedial activity or corrective action or cleanup by or on behalf of any Loan Party or any Restricted Subsidiary or that are known to or would reasonably be likely to result in the Borrower or any other Loan Party or Restricted Subsidiary incurring any

Environmental Liability or capital expenditures to achieve or maintain compliance with Environmental Laws.

Section 5.09. *Taxes*

. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: each of the Loan Parties and their Restricted Subsidiaries have timely filed all tax returns required to be filed (taking into account any extensions), and have paid all Taxes levied or imposed upon them or their properties, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted if such contest shall have the effect of suspending enforcement or collection of such Taxes and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax deficiency or assessment known to any Loan Party against any Loan Party or any Restricted Subsidiary that would, if made, individually or in the aggregate, have a Material Adverse Effect.

Section 5.10. *ERISA Compliance*

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Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect:

Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws (and the regulations and published interpretations thereunder).

The Loan Parties, their Restricted Subsidiaries and their respective ERISA Affiliates may incur liability for ordinary course contributions to (and make payments in satisfaction of such liabilities) plans listed on Schedule 5.10(b), which are Multiemployer Plans.

No ERISA Event has occurred.

Section 5.11. *Subsidiaries*

. As of the Effective Date (after giving effect to the Transactions), no Loan Party has any direct or indirect Restricted Subsidiaries other than those specifically disclosed in Schedule 5.11, and all of the outstanding Equity Interests owned by the Loan Parties (or a Restricted Subsidiary of any Loan Party) in such Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable and all Equity Interests owned by a Loan Party (or a Restricted Subsidiary of any Loan Party) in such Subsidiaries are owned free and clear of all Liens except (a) those created under the Collateral Documents or under the ABL Facility Documentation, the Tranche B-2 Term Loan Facility Documentation and the UST Tranche B Term Loan Facility Documentation (which Liens shall be subject to the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement, as applicable) and (b) any other Lien that is permitted under Section 7.01. As of the Effective Date, (i) Section 2(c) of the Perfection Certificate sets forth the name and jurisdiction of each Loan Party and (ii) Schedule 5 to the Perfection Certificate sets forth the direct ownership interest of the Borrower and any Loan Party thereof in each such Subsidiary, including the percentage of such ownership.

Section 5.12. *Margin Regulations; Investment Company Act*

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No Loan Party or Restricted Subsidiary is engaged nor will it engage, principally, or as one of its important activities in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any

Neither the Borrower, nor any of the Restricted Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 5.13. *Disclosure*

No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, pro forma financial information, budgets, estimates and information of a general economic or industry nature) to any Agent or any Lender about the Borrower and its Subsidiaries in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains or will contain any material misstatement of fact or omits or will omit to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were or will be made, not materially misleading. With respect to projected financial information and pro forma financial information, the Borrower represents that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood and agreed by the Agents and the Lenders that such projections as to future events (i) are not to be viewed as facts, (ii) are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower and its Restricted Subsidiaries and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

Section 5.14. *Labor Matters*

- (a) Except as, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect: (i) there are no strikes or other labor disputes against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing; (ii) hours worked by and payment made to employees of the Borrower or any of its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters; and (iii) all payments due from the Borrower or any of its Restricted Subsidiaries on account of employee health and welfare insurance and pension obligations have been paid or accrued as a liability on the books of the relevant party. Except as disclosed on Schedule 5.14, as of the Effective Date no Loan Party is a party to or bound by any collective bargaining agreement or, with respect to any Foreign Subsidiary, any similar agreement. To the knowledge of any Loan Party, the consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party is bound to the extent that such would be reasonably expected to result in a Material Adverse Effect.
- (b) (i) The IBT Agreement is in full force and effect and (ii) other than as contemplated by the IBT Transactions, the IBT Agreement has not been amended, waived or otherwise modified in any respect materially adverse to the Borrower and its Subsidiaries (taken as a whole). For purposes of this Section 5.14(b), it is understood that the resolution in the ordinary course of

business of an employee grievance seeking to enforce the IBT Agreement terms will not be deemed to constitute an amendment, waiver or other modification to the IBT Agreement.

#### Section 5.15. *Insurance*

. Each of the Borrower and its Subsidiaries maintains, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations; *provided*, that each of the Borrower and its Subsidiaries may self-insure to the same extent as other companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or each such Subsidiary, as applicable, operates.

#### Section 5.16. *Solvency*

. As of each Funding Date and each date of disbursement of proceeds from the UST Tranche A Controlled Account, immediately after giving effect to the consummation of the Transactions to occur on such Funding Date, including the making of the Loans under this Agreement, and immediately after giving effect to the application of the proceeds of such Loans on the disbursement date, as applicable, (a) the fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis (on a going concern basis), exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the ordinary course of business; (c) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured; and (d) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital. For purposes of this Section 5.16, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability in the ordinary course of business.

#### Section 5.17. *No Other Borrowed Money Indebtedness*

. Immediately after giving effect to the consummation of the Transactions to occur on each Funding Date the Borrower and its Subsidiaries shall have outstanding no Indebtedness for borrowed money other than (a) Indebtedness outstanding under this Agreement, (b) the ABL Facility Indebtedness, (c) the Tranche B-2 Term Loan Facility Indebtedness, (d) the UST Tranche B Term Loan Facility Indebtedness, (e) Indebtedness set forth on Schedule 7.03(b) and (f) Indebtedness permitted pursuant to Section 7.03.

#### Section 5.18. *Collateral Documents*

~~Valid~~ **Liens**. The Collateral Documents are, or on execution and delivery thereof by the parties thereto will be, effective to create in favor of the Collateral Agent for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, the Collateral described therein to the extent intended to be created thereby, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity and (i) when financing statements and other filings in appropriate form are filed in the offices specified in Section 2 of the Perfection Certificate (and

payments of all fees) and (ii) upon the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent possession or control by the Collateral Agent is required by the Security Agreement), and (iii) upon the notating of the Lien of the Collateral Agent on all certificates of title in respect of any Collateral, the Liens created by the Collateral Documents (other than the Mortgages) shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors in such Collateral, in each case prior and superior in right to any other Person, other than Liens permitted by Section 7.01 (other than Liens securing Permitted Junior Priority Additional Debt or any Permitted Refinancing thereof and Liens securing ABL Facility Indebtedness or Permitted Refinancing thereof, that are intended to be junior to the Liens of the Collateral Documents).

**PT**o**Filing; Copyright Office Filing.** When the Security Agreement or a short form thereof is properly filed (and payments of all fees) in the United States Patent and Trademark Office and the United States Copyright Office, to the extent such filings may perfect such interests, the Liens created by such Security Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors thereunder in Patents and Trademarks (each as defined in the Security Agreement) registered or applied for with the United States Patent and Trademark Office or Copyrights (as defined in such Security Agreement) registered or applied for with the United States Copyright Office, as the case may be, in each case prior and superior in right to any other Person, other than Liens permitted by Section 7.01 (other than Liens securing Permitted Junior Priority Additional Debt or any Permitted Refinancing thereof and Liens securing ABL Facility Indebtedness or Permitted Refinancing thereof, that are intended to be junior to the Liens of the Collateral Documents) (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to establish a Lien on registered Patents, Trademarks and Copyrights acquired by the grantors thereof after the Effective Date).

**Mort**g**ages.** Upon recording thereof in the appropriate recording office (and payments of all applicable fees), each Mortgage (or, if applicable, each Existing Mortgage as amended by a Mortgage Amendment) is effective to create, in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, legal, valid and enforceable (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity) perfected Liens on, and a security interest in, all of the Loan Parties' right, title and interest in and to the Mortgaged Property thereunder and the proceeds thereof, subject only to Liens permitted hereunder, and when such Mortgage (or, if applicable, Mortgage Amendment) is filed in the offices specified in the local counsel opinion delivered with respect thereto in accordance with the provisions of Sections 6.11 and 6.13, such Mortgage (or Existing Mortgage, as amended by a Mortgage Amendment) shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Party to such Mortgage (or Existing Mortgage, as amended by a Mortgage Amendment) in the Mortgaged Property described therein and the proceeds thereof, in each case prior and superior in right to any other Person, other than Liens permitted by Section 7.01.

**Roll**ing** Stock.** Upon the recording thereof on the applicable certificate of title (and filing of financing statements and payment of applicable fees, which shall be for the account of the Borrower), the notation of the Administrative Agent's lien on any rolling stock or other goods

subject to a certificate of title is effective to create, in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, legal, valid and enforceable (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity) perfected Liens on, and a security interest in, all of the Loan Parties' right, title and interest in and to such Collateral and the proceeds thereof, subject only to Liens permitted hereunder, in each case prior and superior in right to any other Person, other than Liens permitted by [Section 7.01](#).

Notwithstanding anything herein (including this [Section 5.18](#) or [Section 5.04](#)) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to (A) [reserved], (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) on the Initial Funding Date and until required pursuant to [Section 6.13](#), the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Initial Funding Date pursuant to [Section 4.02\(d\)](#) or [Section 4.02\(o\)](#).

Section 5.19. *Compliance with Anti-Terrorism and Corruption Laws*

To ~~(a)~~ extent applicable, the Borrower and the Restricted Subsidiaries are in compliance, in all material respects, with (i) the Trading with the Enemy Act and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, and (ii) the USA PATRIOT Act.

Not~~(b)~~ of the Borrower or any Restricted Subsidiary nor, to the knowledge of the Borrower, any director, officer, agent, employee or controlled Affiliate of the Borrower or any Restricted Subsidiary, (i) is a Blocked Person or (ii) is currently subject to any U.S. sanctions administered by OFAC that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and none of the Borrower or any Restricted Subsidiary will use the proceeds of the Loans for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

No part of the proceeds of the Loans will be used by the Borrower or any of the Restricted Subsidiaries, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 5.20. *Real Property Permits*

Borrower has all Permits, all of which are in full force and effect as of the date hereof required by the applicable Governmental Authorities in connection with the ownership and operation of any Material Real Property, except to the extent that the failure to have any such Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.21. *Treasury Equity*

The Treasury Equity to be issued pursuant to the Treasury Equity Issuance shall (i) have been approved for listing on the NASDAQ Stock Market LLC, subject to notice of issuance and (ii) other than restrictions on transfer pursuant to applicable securities laws and the terms of the Voting Trust, be freely transferable, duly authorized, validly issued, fully paid and non-assessable, be free of any Liens, and will not be issued in violation of any options, warrants, convertible or exchangeable securities or other rights, however denominated, to subscribe for, purchase or otherwise acquire any security of any class, with or without payment of additional consideration in cash or property. The Treasury Equity Issuance (x) has been duly authorized by all necessary corporate or other organizational action of Borrower and (y) does not (i) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (a) any Indebtedness of such Person in excess of the Threshold Amount or (b) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (ii) violate any material Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (y)(i)(a), to the extent that such violation, conflict, breach, contravention or payment, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.22. *No Transaction Benefits*

Neither the execution or delivery of the Loan Documents (or any other instrument or document furnished pursuant the Loan Documents) nor the consummation of the Transactions will, alone or together with any other event, cause or result in any Transaction Benefit.

To the extent necessary, the Borrower and each Restricted Subsidiary have taken all actions required to ensure that the execution and delivery of the Loan Documents (and any other instrument or document furnished pursuant the Loan Documents) and the consummation of the Transactions shall not, alone or together with any other event, cause or result in any Transaction Benefit or provide a basis for any current or former employee, director or other service provider of the Borrower or any Restricted Subsidiary to allege entitlement to any Transaction Benefit, including, without limitation, by securing any appropriate written waivers or consents from any such current or former employees, directors or other service providers of the Borrower or any Restricted Subsidiary.

Section 5.23. *Statutory Conflicts*

The Borrower is not a covered entity, as such term is defined in Section 4019 of the CARES Act.

**ARTICLE 6**

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation (other than contingent indemnification or reimbursement obligations) hereunder which is accrued or payable shall remain unpaid or unsatisfied, then from and after the Effective Date, the Borrower shall and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.15) cause each of the Restricted Subsidiaries to:

. In the case of the Borrower, deliver to the Administrative Agent for prompt further distribution to each Lender:

with(iii) 90 days after the end of each fiscal year of the Borrower (beginning with the fiscal year ending December 31, 2019), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of 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 accompanied by a report and opinion of KPMG LLP, any other independent registered public accounting firm of nationally recognized standing or any other independent registered public accounting firm approved by the Administrative Agent and the Required Lenders (such approval not to be unreasonably withheld, conditioned or delayed), which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards, (ii) shall not be subject to qualifications or exceptions as to the scope of such audit, (iii) shall be without a "going concern" disclosure or like qualification or exception (other than with respect to, or disclosure or an exception or qualification solely resulting from, (x) the impending maturity of any Indebtedness, (y) any prospective or actual default under any financial covenant or (z) the impact of COVID 19 on the business of the Borrower and its Subsidiaries) and (iv) shall be accompanied with customary management discussion and analysis;

with(iii) 45 days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended September 30, 2019), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (x) consolidated statements of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (y) consolidated statements of cash flows for such fiscal quarter and the portion of the 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 and certified by each Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and accompanied by customary management discussion and analysis; and

with(iii) 90 days after the end of each fiscal year (commencing with the fiscal year ending December 31, 2019) of the Borrower, a reasonably detailed consolidated budget for the following fiscal year on a quarterly basis (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flows and projected income and a summary of the material underlying assumptions applicable thereto) (collectively, the "Projections"), which Projections shall in each case be accompanied by a certificate of each Responsible Officer of the Borrower stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood by the Agents and the Lenders that such projections as to future events (i) are not to be viewed as facts, (ii)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower and its Restricted Subsidiaries, (B) no assurance is given by the Borrower and its Restricted Subsidiaries that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such

projections and such differences may be material and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 or Section 6.02(b) may be satisfied with respect to information of the Borrower and the Subsidiaries by furnishing within the time period specified in the applicable paragraph (A) the applicable financial statements of the Borrower or (B) the Borrower's Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, with respect to clauses (A) and (B), to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are accompanied by a report and opinion of KPMG LLP, any other independent registered public accounting firm of nationally recognized standing or any other independent registered public accounting firm approved by the Required Lenders (such approval not to be unreasonably withheld, conditioned or delayed), which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards, (ii) shall not be subject to qualifications or exceptions as to the scope of such audit and (iii) shall be without a "going concern" disclosure or like qualification or exception (other than with respect to, or disclosure or an exception or qualification solely resulting from, (A) the impending maturity of any Indebtedness, (B) any prospective or actual default under any financial covenant or (C) the impact of COVID 19 on the business of the Borrower and its Subsidiaries).

Documents required to be delivered pursuant to Section 6.01(a), (b), (c) and (d) or Section 6.02(b) or (c) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the earliest date on which (i) Borrower posts such documents, or provides a link thereto on Borrower's website on the Internet and provides notice thereof to the Administrative Agent; (ii) such documents are posted on Borrower's behalf on IntraLinks/IntraAgency or another website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent), or (iii) such financial statements and/or other documents are posted on the SEC's website on the internet at [www.sec.gov](http://www.sec.gov); *provided* that: (i) promptly following written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent; *provided*, however, that if such Compliance Certificate is first delivered by electronic means, the date of such delivery by electronic means shall constitute the date of delivery for purposes of compliance with Section 6.02(a).

Section 6.02. *Certificates; Other Information*

- . Deliver to the Administrative Agent for prompt further distribution to each Lender:

no later than five (5) Business Days after the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(b) (or the date on which such delivery is required), commencing with the first full fiscal quarter completed after the Effective Date, a duly completed Compliance Certificate signed by each Responsible Officer of the Borrower; it being understood that, if applicable for such period of delivery, such Compliance Certificate shall include (i) information about Net Proceeds received in the period for individual amounts greater than \$5,000,000 and set forth statements of the Borrower's intention regarding the use of any portion of such Net Proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions or any acquisition permitted hereunder of all or substantially all the assets of, or all the Equity Interests (other than directors qualifying shares) in a Person, division or line of business previously acquired) and (ii) calculations setting forth in reasonable detail the amount of any Cumulative Credit available at the beginning of the applicable period and at the end of such period and the amount and application of any Cumulative Credit during such period (it being understood that the Borrower has the right to reallocate usage of the Cumulative Credit in accordance with Section 1.02(i) from time to time);

promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(i) promptly after the furnishing thereof, copies of any material notices of default received by any Loan Party or Restricted Subsidiary (other than in the ordinary course of business) or furnished to any holder of Indebtedness or debt securities of any Loan Party or of any of its Restricted Subsidiaries pursuant to the terms of the ABL Facility Documentation, the Tranche B-2 Term Loan Facility Documentation, the UST Tranche B Term Loan Facility Documentation, any Junior Financing Documentation, any Permitted Additional Debt or any Permitted Refinancing of any thereof, in each case in a principal amount in excess of the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to any clause of this Section 6.02 and (ii) promptly after the execution thereof, copies of any amendments, modifications or waivers to the ABL Facility Documentation and the Tranche B-2 Term Loan Facility Documentation;

together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), (i) in the case of annual Compliance Certificates only, a report setting forth the information required by sections of the Perfection Certificate describing the legal name and the jurisdiction of organization or formation of each Loan Party and the location of the chief executive office of each Loan Party or confirming that there has been no change in such information since the Effective Date or the date of the last such report, (ii) a description of each (x) event, condition or circumstance during the last fiscal quarter covered by such Compliance Certificate requiring a mandatory prepayment under Section 2.13(a) and (y) Disposition of owned Real Property on which sits a trucking terminal and adjacent/vacant land located nearby and (iii) a list of each

Subsidiary of the Borrower that identifies each Subsidiary as a Loan Party or a non-Loan Party as of the date of delivery of such Compliance Certificate;

promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Restricted Subsidiaries, including the business performance and tax and collateral due diligence of the Borrower and its Restricted Subsidiaries, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request;

promptly after the written request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act;

promptly after the receipt thereof by the Borrower or any of the Restricted Subsidiaries, a copy of any final "management letter" received by any such Person from its certified public accountants and the management's response thereto;

promptly following any request therefor by the Administrative Agent or any Lender, copies of (i) any material documents described in Section 101(k) of ERISA that any Loan Party may request with respect to any Multiemployer Plan and (ii) any material notices described in Section 101(l) of ERISA that any Loan Party may request with respect to any Plan or Multiemployer Plan, *provided* that if any Loan Party has not requested such material documents or material notices from the administrator or sponsor of the applicable Plan or Multiemployer Plan, such Loan Party shall make a request for such material documents or material notices from the such administrator or sponsor at the earliest date on which such Loan Party determines that it is commercially reasonable to so request in order to avoid the occurrence of an event that could reasonably be expected to result in a material liability, and shall provide copies of such material documents and material notices promptly after receipt thereof;

commencing as of the Effective Date and promptly after the written request by the Administrative Agent or any Lender, (i) such reasonably available information with respect to purchases of Rolling Stock exceeding \$5,000,000 after the Effective Date as the Administrative Agent or such Lender shall request, (ii) all invoices, receipts, agreements or other information detailing or otherwise relating to any Disposition by any Loan Party of Rolling Stock of such Loan Party, which Disposition or series of Dispositions, in each case, results in at least \$250,000 of aggregate Net Proceeds during any 12-month period,

(j) during the Specified Period, prior to 5:00 p.m. New York time on the third Business Day of every second week after the Effective Date (i.e., the first delivery date hereunder will be Wednesday July 15, 2020), deliver to the Lenders a liquidity report (each, a "**Liquidity Report**") setting forth the aggregate amount of Liquidity of the Loan Parties as of the end of the immediately preceding week (ending on the Sunday immediately preceding the applicable third Business Day reporting deadline; i.e. with respect to the reporting deadline occurring on Wednesday July 15, 2020, the week ending Sunday July 12, 2020) and a comparison of the amount set forth on the prior delivered Liquidity Report;

promptly after the furnishing thereof (and in no event later than three Business Days after the delivery thereof), a copy of each borrowing base certificate delivered under the ABL Credit Agreement; and

promptly after the furnishing thereof (and in no event later than three Business Days after the delivery thereof), a copy of each Cash Flow Forecast and Variance Report (each as defined in the Tranche B-2 Term Loan Credit Agreement) delivered under the Tranche B-2 Term Loan Credit Agreement.

Notwithstanding anything to the contrary, neither 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 trade secrets or proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their 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.

#### Section 6.03. *Notices*

. Promptly after the Borrower or any Guarantor has obtained knowledge thereof, notify the Administrative Agent (which shall provide notice to the Lenders):

of ~~the~~ occurrence of any Default;

of ~~a~~ matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

of ~~the~~ filing or commencement of, or any written threat or written notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority, against the Borrower or any of its Restricted Subsidiaries that has a reasonable likelihood of adverse determination and such determination could reasonably be expected to result in a Material Adverse Effect; and

of ~~the~~ occurrence of any ERISA Event following the Effective Date that, alone or together with any other ERISA Events that have occurred following the Effective Date, could reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a written statement of each Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a), (b), (c), or (d) (as applicable) and (y) setting forth details of the occurrence referred to in Section 6.03(a), (b), (c), or (d), as applicable, and stating what action the Borrower has taken and proposes to take with respect thereto.

#### Section 6.04. *Payment of Taxes*

. Promptly pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, to the extent any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP if such contest shall have the effect of suspending enforcement or collection of such Taxes or, where the failure to pay, discharge or otherwise satisfy the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.05. *Preservation of Existence, Etc*

. (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or Section 7.05 and (b) obtain, maintain, renew, extend and keep in full force and effect all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except, in the case of clause (a) (other than with respect to the Borrower) or (b), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.06. *Maintenance of Properties*

. Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in satisfactory working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted, and (b) make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with prudent industry practice and in the normal conduct of its business.

Section 6.07. *Maintenance of Insurance*

.  
*Generally.* Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business consistent in all material respects with the insurance maintained by Borrower and/or such Restricted Subsidiaries (as applicable) as of the Effective Date, which insurance shall insure against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, and which insurance shall be of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons in such similar or same locations.

*Requirements of Insurance.* Use commercially reasonable efforts to cause, not later than 30 days after the Effective Date (or such longer period as the Required Lenders may agree in writing in their reasonable discretion), all insurance required pursuant to Section 6.07(a) and (d) (x) to provide (and to continue to provide at all times thereafter) that it shall not be canceled, materially modified or not renewed (i) by reason of nonpayment of premium upon not less than 10 days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent or (ii) for any other reason upon not less than 20 days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent and (y) subject to the terms, conditions and provisions of the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement, to name the Collateral Agent as additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable (and to continue to so name the Collateral Agent at all times thereafter), (B) use commercially reasonable efforts to deliver, not later than 30 days after the Effective Date (or such longer period as the Required Lenders may agree in writing in their reasonable discretion), a copy of the policy (and to the extent any such policy is cancelled or not renewed, a renewal or replacement policy) or other evidence thereof to the Administrative Agent and the Collateral Agent, or insurance certificate with respect thereto, and (C) in the case of all property insurance policies located in the United States, not later than 30 days after the Effective Date (or such longer period as the Required

Lenders may agree in writing in their reasonable discretion) cause such policies to be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement, in form and substance reasonably satisfactory to the Required Lenders, which endorsement shall provide that, from and after such date, if the insurance carrier shall have received written notice from the Administrative Agent or the Collateral Agent of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower or the Loan Parties under such policies directly to the Collateral Agent during the continuance of such Event of Default.

**Flood Insurance.** Following the Effective Date, the Borrower shall deliver to the Collateral Agent and the Required Lenders annual renewals of the flood insurance policy under the property policy or annual renewals of a force-placed flood insurance policy.

**Environmental Insurance.** Maintain with financially sound and reputable insurance companies, a premises pollution liability portfolio insurance and storage tank third-party liability, corrective and clean-up insurance policy with respect to its properties and business for an initial three year policy period commencing on the date hereof and with limits not less than, and with terms and conditions comparable to, the limits, terms and conditions in such policies that are in effect as of the date hereof, and subject to annual renewals after such initial three year policy period, which insurance shall be reasonably satisfactory to the Required Lenders. The Borrower shall purchase such insurance required under this Section 6.07(d) within 30 days following the Effective Date and provide evidence thereof to the Administrative Agent.

**Notify** the Administrative Agent (for distribution to the Lenders) and the Collateral Agent promptly whenever any separate insurance concurrent in form or contributing in the event of material loss with that required to be maintained under this Section 6.07 is taken out by the Borrower or another Loan Party; and promptly deliver to the Administrative Agent and the Collateral Agent a duplicate original copy of such policy or policies, or an insurance certificate with respect thereto once available.

Section 6.08. *Compliance with Laws*

. Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.09. *Books and Records*

. Maintain proper books of record and account, in which entries are made that are full, true and correct in all material respects and are in conformity with GAAP (except as noted therein) and which reflect all material financial transactions and matters involving the assets and business of the Borrower or a Restricted Subsidiary, as the case may be.

Section 6.10. *Inspection Rights*

. Permit representatives and independent contractors of the Required Lenders to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and subject to *bona fide* confidentiality obligations, limitations imposed by law and attorney-client privilege and at such reasonable times during normal business hours and as often

as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that, excluding any such visits and inspections during the continuation of an Event of Default, the Required Lenders shall not exercise such rights more often than one time during any calendar year; *provided further* that when an Event of Default exists, 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 upon reasonable advance notice. The Required Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants.

Section 6.11. *Additional Collateral; Additional Guarantors*

. Subject to the terms, conditions and provisions of each Intercreditor Agreement, at the Borrower's expense, the Borrower shall take all reasonable actions which are necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

Up~~(a)~~(x) the formation or acquisition of any new direct or indirect Subsidiary (in each case, other than an Excluded Subsidiary) by the Borrower or (y) any Subsidiary that is an Excluded Subsidiary ceasing to be an Excluded Subsidiary:

(i) within 60 days after such formation, acquisition, designation or other event, or such longer period as the Required Lenders may agree in writing in their reasonable discretion (not to be unreasonably withheld, delayed, conditioned or denied):

- (A) causing each such Subsidiary to duly execute and deliver to the Administrative Agent or the Collateral Agent (as appropriate) joinders to this Agreement as Guarantors, Security Agreement Supplements, Intellectual Property Security Agreements, a counterpart of the Intercompany Note and other security agreements (including Mortgages) and documents (including, (I) with respect to any Foreign Subsidiary, local law security agreements and documents in each case consistent with market practice, and (II) with respect to such Mortgages, the documents described in the definition of Collateral and Guarantee Requirement, as reasonably requested by the Required Lenders and in form and substance reasonably satisfactory to the Required Lenders and the Borrower (consistent with the Mortgages (or Existing Mortgage, as amended), Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Effective Date), in each case granting Liens required by the Collateral and Guarantee Requirement;
- (B) causing each such Subsidiary (and the parent of each such Subsidiary that is a Loan Party) to deliver to the Collateral Agent any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;
- (C) taking and causing each such Restricted Subsidiary and each direct or indirect parent of such Restricted Subsidiary to take whatever action (including the recording of Mortgages, the filing of UCC financing statements and the delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the Required Lenders to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and

perfected Liens to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(ii) if reasonably requested by the Required Lenders, Administrative Agent or the Collateral Agent, within 45 days after such request (or such longer period as the Required Lenders may agree in writing in their reasonable discretion), delivering to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties as to such matters set forth in this Section 6.11(a) as the Administrative Agent and the Required Lenders may reasonably request; and

(iii) promptly after the reasonable request therefor by the Administrative Agent or Collateral Agent, delivering to the Collateral Agent with respect to each Material Real Property, any existing surveys, title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; *provided, however*, that there shall be no obligation to deliver to the Collateral Agent any existing environmental assessment report whose disclosure to the Collateral Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, and where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained.

if reasonably requested by the Required Lenders, Administrative Agent or the Collateral Agent, within 60 days after such request (or such longer period as the Required Lenders may agree in writing in their reasonable discretion), delivering to the Collateral Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to the validity, perfection, existence and priority of security interests with respect to property of any Guarantor acquired after the Effective Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii) or (iii) or clause (c) below.

not later than 120 days after (i) the acquisition by any Loan Party of Material Real Property or (ii) the release of any first lien security interest on any Real Property securing the obligations under the Contribution Deferral Agreement, in each case, that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement (or such longer period as the Required Lenders may agree in writing in their reasonable discretion), which Material Real Property would not be automatically subject to another Lien pursuant to pre-existing Collateral Documents, causing such property to be subject to a Lien in favor of the Collateral Agent for the benefit of the Secured Parties and taking, or causing the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Required Lenders, Administrative Agent or the Collateral Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of, the Collateral and Guarantee Requirement and to otherwise comply with the requirements of the Collateral and Guarantee Requirement.

#### Section 6.12. *Compliance with Environmental Laws*

. Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all Environmental Permits necessary for its

operations and properties; and, (c) in each case to the extent the Loan Parties or the Restricted Subsidiaries are required to do so by Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

Section 6.13. *Further Assurances and Post-Closing Conditions*

With~~(in)~~in the time periods after the Effective Date set forth in Schedule 6.13(a), deliver each Collateral Document set forth on Schedule 6.13(a), duly executed by each Loan Party party thereto, together with all documents and instruments required to perfect the security interest of the Collateral Agent in the Collateral free of any other pledges, security interests or mortgages, except Liens expressly permitted hereunder, to the extent required pursuant to the Collateral and Guarantee Requirement.

Pro~~(b)~~ably upon reasonable request by the Required Lenders, Administrative Agent or the Collateral Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral (including, without limitation, any defect or error related to certificates of title for vehicles and other rolling stock) as to which the Borrower reasonably agrees is a defect or error, and (ii) subject to the terms of the Collateral Documents, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Required Lenders, the Administrative Agent or the Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Loan Documents and to cause the Collateral and Guarantee Requirement to be and remain satisfied. If the Required Lenders, Administrative Agent or the Collateral Agent reasonably determines that it is required by applicable Law to have appraisals prepared in respect of any Material Real Property of any Loan Party subject to a Mortgage (or Existing Mortgage, as amended by a Mortgage Amendment), the Borrower shall cooperate with the Required Lenders, Administrative Agent and/or Collateral Agent, as applicable, in obtaining such appraisals and shall pay all reasonable out-of-pocket costs and expenses relating thereto.

Section 6.14. *[Reserved]*

Section 6.15. *Maintenance of Ratings*

In the case of the Borrower, use commercially reasonable efforts to maintain a public corporate rating from S&P and a public corporate family rating from Moody's, in each case in respect of the Borrower.

Section 6.16. *Use of Proceeds*

The Borrower shall use the proceeds of the Term Loans borrowed on each Funding Date solely to fund the UST Tranche A Controlled Account on such Funding Date, the disbursements from which shall be used solely to (w) satisfy certain of the Borrower's applicable contractual obligations with respect to certain (1) health insurance obligations, (2) real estate leases, (3) equipment leases, (4) pension obligations, (5) interest payments with respect to Indebtedness of the Borrower and (6) other expenditures (including a description of such other expenditures in reasonable detail), (x) for maintaining working capital, (y) finance technology and information technology infrastructure development and upgrades and (z) fund costs and expenses in connection with the Transactions, in each case in the amounts

approved by the Administrative Agent and the Required Lenders on or prior to the Effective Date or thereafter.

Section 6.17. *Compliance with Regulations*

. The Borrower shall comply with the provisions of 31 U.S.C. 1352, as amended, and with the regulations at 31 CFR Part 21.

Section 6.18. *Equity Issuance*

. (a) Prior to any disbursement of amounts in the UST Tranche A Controlled Account (other than any disbursement therefrom of up to \$200,000,000 on the Initial Funding Date), the Borrower shall (i) consummate the Treasury Equity Issuance, (ii) enter into a Voting Trust Agreement with the trustee thereunder and Treasury having substantially the terms set forth in Annex A attached hereto and (iii) enter into a Registration Rights Agreement with the Treasury with respect to the Treasury Equity having substantially the terms set forth in Annex B attached hereto.

(b) The Borrower shall cooperate with, and perform all acts necessary in connection with, any transfer of Treasury Equity made in accordance with the Voting Trust, including the issuance of instructions to the transfer agent for the shares of Common Stock.

Section 6.19. *Treasury Access*

. Provide Treasury, the Treasury Inspector General, and such other entities as authorized by Treasury timely and unrestricted access to all documents, papers, or other records, including electronic records, of the Borrower related to the Loans, to enable Treasury and the Treasury Inspector General to make audits, examinations, and otherwise evaluate the Borrower's compliance with the terms of this Agreement. This right also includes timely and reasonable access to the Lender's and its Affiliates' personnel for the purpose of interview and discussion related to such documents.

**ARTICLE 7**  
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation (other than contingent indemnification or reimbursement obligations) hereunder which is accrued or payable shall remain unpaid or unsatisfied, then from and after the Effective Date:

Section 7.01. *Liens*

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

~~Lien~~ created pursuant to any Loan Document;

~~Lien~~ existing or contemplated on the Effective Date and listed on ~~Schedule 7.01(b)~~; *provided* that, (i) the Lien does not extend to any additional property other than any replacements of such property or assets and additions and accessions thereto, after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property (it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition, or asset of the Borrower or any Restricted Subsidiary and the proceeds and the products thereof and customary security deposits in respect thereof and in the

case of multiple financings of equipment provided by any lender, other equipment financed by such lender), and (ii) such Lien does not secure any obligation (including unused commitments) other than those it secured on the Effective Date or, to the extent constituting Indebtedness, any Permitted Refinancing of the Indebtedness secured thereby on the Effective Date and any extensions, renewals, restructurings, refinancings and replacements thereof;

~~Lien(s)~~for unpaid utilities, taxes, assessments or governmental charges that are (i) not overdue for a period of more than thirty (30) days and are not otherwise delinquent, securing obligations in an amount not to exceed \$500,000, or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or (ii) otherwise not required to be paid pursuant to Section 6.04:

~~Statutory~~, lease or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, or other customary Liens (other than in respect of Indebtedness) in favor of landlords, in each case arising in the ordinary course of business that secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, that either secure obligations in an amount not to exceed \$1,000,000 or are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(i) ~~Liens~~ in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation (other than any Lien imposed pursuant to Section 430(k) of the Code or Section 303(k) of ERISA or a violation of Section 436 of the Code) and (ii) Liens in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any of its Restricted Subsidiaries; *provided* that this Section 7.01(e) shall not permit liens securing letters of credit;

~~Lien(s)~~to secure the performance of bids, trade contracts, governmental contracts and leases (in the case of each of the foregoing, other than for Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations), in each case incurred in the ordinary course of business; *provided* that this Section 7.01(f) shall not permit liens securing letters of credit;

(i) ~~Encumbrances~~, rights-of-way, restrictions (including zoning restrictions and other land use regulations), encroachments, protrusions, reservations and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower and the Restricted Subsidiaries, taken as a whole and (ii) ground leases in respect of Real Property on which facilities owned or leased by the Borrower or any of the Restricted Subsidiaries are located; *provided* in the case of this clause (ii) that such ground leases do not confer rights on the counter-party(ies) thereto superior to those of the Collateral Agent in the relevant property;

Lien~~(b)~~ securing judgments not constituting an Event of Default under Section 8.01(b);

Leas~~(e)~~ licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole, or (ii) secure any Indebtedness;

Lien~~(g)~~(i) in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or (ii) on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such person to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;

Lien~~(k)~~(i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) arising in the ordinary course of business in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to the general terms and conditions of such banking institutions;

Lien~~(s)~~(i) on cash earnest money deposits or other cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Sections 7.02(e)-(h)-(l)-(p)-(r)-or-(y), in each case to be applied against the purchase price for such Investment, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

Lien~~(m)~~(i) in favor of the Borrower or a Restricted Subsidiary on assets of a Restricted Subsidiary that is not a Loan Party securing Indebtedness permitted under Section 7.03 and (ii) in favor of the Borrower or any Guarantor;

any~~(n)~~ interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor, sublessor, licensor or sublicensor under leases, subleases, licenses or sublicenses entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business; *provided*, that no such lease or sublease shall constitute a Capitalized Lease;

Lien~~(d)~~ deemed to exist in connection with Investments in repurchase agreements permitted under Section 7.02(a);

Lien~~(p)~~ encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

Lien~~(q)~~ (including any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor or sublessor under Capitalized Leases) securing Indebtedness constituting Capital Leases and purchase money security interests permitted under

Section 7.03(e) or Section 7.03(ff); *provided* that (i) such Liens are created within 270 days of the acquisition, construction, repair, lease or improvement, as applicable, of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits, and (iii) such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to Capitalized Leases and the proceeds and products thereof and customary security deposits; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

Lien(s) on property (i) of any Foreign Subsidiary that is not a Loan Party and (ii) that does not constitute Collateral, which Liens secure Indebtedness of the applicable Foreign Subsidiary that is not a Loan Party permitted under Section 7.03;

Lien(s) existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary, in each case after the Effective Date; *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (iii) the Indebtedness secured thereby is permitted under Section 7.03;

Lien(s) arising from precautionary Uniform Commercial Code financing statements or similar filings;

Lien(s) on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto in the ordinary course of business;

Lien(s) on the Collateral (other than the UST Tranche A Only Collateral) securing Indebtedness permitted under Section 7.03(a) or other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness; *provided* that (A) in the case of Indebtedness permitted pursuant to Section 7.03(o)(x) and all other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness, the representative in respect thereof shall have entered into the ABL Intercreditor Agreement as the ABL Agent, on behalf of the holders of such Indebtedness, and such Indebtedness and other obligations shall at all times be subject to the ABL Intercreditor Agreement as "ABL Obligations"; (B) in the case of Indebtedness and all other obligations permitted pursuant to Section 7.03(a)(y) or other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness, the representative in respect thereof shall have entered into the ABL Intercreditor Agreement as the Tranche B-2 Term Agent, on behalf of the holders of such Indebtedness, and such Indebtedness and other obligations shall at all times be subject to the ABL Intercreditor Agreement as "Tranche B-2 Obligations"; and (C) in the case of Indebtedness or

other obligations permitted pursuant to Section 7.03(o)(z) and all other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness, the representative in respect thereof shall have entered into the ABL Intercreditor Agreement as the UST Tranche B Term Agent, on behalf of the holders of such Indebtedness, and such Indebtedness and other obligations shall at all times be subject to the ABL Intercreditor Agreement as "UST Tranche B Obligations";

~~Liens~~ on the Collateral securing Credit Agreement Refinancing Indebtedness that is Permitted Junior Priority Additional Debt and any Permitted Refinancing of the foregoing; *provided*, that any such Liens are secured on a junior lien basis to the Liens securing the Obligations pursuant to, and subject at all times to, the Junior Lien Intercreditor Agreement;

~~Liens~~ on the Equity Interests of any joint venture entity of the Borrower consisting of a transfer restriction, purchase option, call or similar right of a third party joint venture partner;

[~~reserved~~];

[~~reserved~~];

~~Liens~~ on (i) the Securitization Assets arising in connection with a Qualified Securitization Financing or (ii) the Receivables Assets arising in connection with a Receivables Facility;

~~Liens~~ (i) arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods or (ii) encumbering deposits made to secure obligations arising from contractual or warranty requirements;

~~Utility~~ and similar deposits in the ordinary course of business;

[~~reserved~~];

~~Liens~~ related to Sale and Leaseback Transactions in an aggregate amount of \$25,000,000; *provided* that, during the Specified Period (and during the continuance of an Event of Default at any time after the end of the Specified Period), this clause (ee) shall be unavailable for use under this Agreement and the dollar amount specified in this clause (ee) shall be \$0;

~~other~~ Liens with respect to property or assets securing obligations of the Borrower or any Restricted Subsidiary in an aggregate principal amount outstanding at any time not to exceed \$5,000,000; *provided* that such Liens do not secure Indebtedness for borrowed money and are not incurred in respect of any pension obligations of the Borrower or any of its Restricted Subsidiaries; and

~~Liens~~ on Pension Real Property related to or arising on account of Indebtedness in respect of Specified Pension Fund Obligations permitted pursuant to Section 7.03(u); *provided* that the aggregate amount of Indebtedness in respect of Specified Pension Fund Obligations permitted to be secured by such Liens on Pension Real Property under this Section 7.01(gg) shall not at any time exceed (x) the aggregate amount of Specified Pension Fund Obligations that are

secured by such Liens on Pension Real Property on the Effective Date less (y) payments of Specified Pension Fund Obligations after the Effective Date.

Section 7.02. *Investments*

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make or hold any Investments, except:

Investments by the Borrower or any of the Restricted Subsidiaries in cash or Cash Equivalents;

loans or advances to officers, directors and employees of any Loan Party or any of its Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, in each case, consistent with past practice (including pursuant to use of any credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services) and (ii) for any other corporate purposes not described in the foregoing clauses (i) and (ii); *provided* that the aggregate principal amount of loans and advances outstanding at any time under this Section 7.02(b)(ii) and (iii) shall not exceed \$2,000,000;

Investments (i) by the Borrower or any Restricted Subsidiary in any Loan Party (or any newly formed wholly owned Restricted Subsidiary that is not an Excluded Subsidiary and is to become a Loan Party in accordance with Section 6.11), (ii) by any Restricted Subsidiary that is not a Loan Party in any other Restricted Subsidiary that is not a Loan Party and (iii) by any Loan Party in a Restricted Subsidiary that is not a Loan Party; *provided*, that the aggregate amount of Investments at any time outstanding under this clause (iii) shall not exceed (x) during the Specified Period, \$5,000,000, and (y) after the Specified Period shall have ended, \$15,000,000, provided that, if after the end of the Specified Period an Event or Default shall occur and be continuing, such dollar amount in this clause (y) shall be reduced to \$5,000,000;

Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit or other credits to suppliers in the ordinary course of business;

Investments (i) existing or contemplated on the Effective Date and set forth on Schedule 7.02(e) (including unused commitments) and any modification, replacement, renewal or extension thereof and (ii) existing on the Effective Date by the Borrower or any other Restricted Subsidiary in any Restricted Subsidiary and any modification, replacement, renewal or extension thereof; *provided*, that in the case of clause (i) and clause (ii) the amount of the original Investment is not increased except by the terms of such original Investment as set forth on Schedule 7.02(e) or as otherwise permitted by this Section 7.02 (and in such case made in reliance on the other paragraph of this Section 7.02 so permitting such modification, replacement, renewal or extension thereof);

Investments in Swap Contracts permitted under Section 7.03;

promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.05;

any acquisition by the Borrower or any Restricted Subsidiary of all or substantially all the assets of, or all the Equity Interests (other than directors' qualifying shares, shares issued to foreign nationals as required by applicable law or any options for Equity Interests that cannot, as a matter of law, be cancelled, redeemed or otherwise extinguished without the express agreement of the holder thereof at or prior to acquisition) in, a Person or division, business unit or line of business of a Person (or any subsequent investment made in a Person, division, business unit or line of business previously acquired in a Permitted Acquisition), in each case in a single transaction or series of related transactions, if (i) no Event of Default shall have occurred and be continuing or would result therefrom at the time of entering in the agreement to consummate such acquisition; (ii) all transactions related thereto shall be consummated in all material respects in accordance with applicable Laws; (iii) as of the most recently ended fiscal quarter for which financial statements of the Borrower and the target are available, (A) the Borrower and the Restricted Subsidiaries shall be in compliance, on a Pro Forma Basis, with the covenant set forth in Section 7.10 and (B) the Total Leverage Ratio, on a Pro Forma Basis, for the Test Period most recently ended shall not be greater than 3.00:1.00, in each case, after giving effect to such acquisition or investment and any related transactions; (iv) any acquired or newly formed Restricted Subsidiary shall not be liable for any Indebtedness except for Indebtedness otherwise permitted by Section 7.03; (v) to the extent required by the Collateral and Guarantee Requirement, (A) the property, assets and businesses acquired in such purchase or other acquisition shall constitute Collateral and (B) any such newly created or acquired Subsidiary (other than an Excluded Subsidiary) shall become a Guarantor, in each case, to the extent required by and in accordance with Section 6.11; (vi) the businesses acquired in such purchase or other acquisition shall be in compliance with Section 7.07; and (vii) the Borrower shall have delivered to the Administrative Agent a certificate of each Responsible Officer of the Borrower certifying that the conditions set forth in the preceding clauses (i) through (v) have been satisfied (any such acquisition, a "Permitted Acquisition"); provided that the aggregate amount of Investments made by Loan Parties pursuant to this Section 7.02(h) in assets that are not (or do not become) owned by a Loan Party or in Equity Interests in Persons that do not become Loan Parties upon consummation of such Permitted Acquisition shall not exceed \$15,000,000 at any time outstanding; provided, further, that notwithstanding anything to the contrary, during the Specified Period, this clause (h) shall be unavailable under this Agreement and no Permitted Acquisitions may be made (and Permitted Acquisitions shall be disregarded in any reference in any other term or provision herein);

Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers;

advances of payroll payments to employees in the ordinary course of business;

Investments to the extent that payment for such Investments is made with Equity Interests (other than Disqualified Equity Interests) of the Borrower or the Net Proceeds received from the issuance thereof;

Investments of a Restricted Subsidiary acquired after the Effective Date pursuant to a Permitted Acquisition or of a corporation merged or amalgamated or consolidated into the Borrower or merged, amalgamated or consolidated with a Restricted Subsidiary, in each case in accordance with this Section 7.02 and Section 7.04 after the Effective Date, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger or consolidation;

Investments made by any Restricted Subsidiary that is not a Loan Party to the extent such Investments are financed with the proceeds received by such Restricted Subsidiary from an Investment in such Restricted Subsidiary made pursuant to Section 7.02(c)(iii) or Section 7.02(p);

Guarantees by the Borrower or any Restricted Subsidiary of operating leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness, in each case, which leases or other obligations are entered into by the Borrower or any Guarantor in the ordinary course of business;

Other Investments (including after the Specified Period for Permitted Acquisitions) in an aggregate amount outstanding pursuant to this clause (p) at any time not to exceed (x) together with (I) the aggregate amount of Restricted Payments made under sub-clause (x) of Section 7.06(e) and (II) the aggregate amount of prepayments, redemptions, purchases, defeasances and other payments made pursuant to sub-clause (x) of Section 7.13(a)(vi), (A) during the Specified Period, \$20,000,000, and (B) after the Specified Period shall have ended, \$30,000,000 plus, (y) the portion, if any, of the Cumulative Credit on the date of such election that the Borrower elects to apply to this subclause (y); *provided*, that with respect to any Investment made pursuant to this Section 7.02(p), (A) no Event of Default shall have occurred and be continuing or would result from the making of any such Investment and (B) with respect to Investments made in reliance on this subclause (y) (i) other than Investments made in Restricted Subsidiaries organized under the laws of Canada or Mexico or, in each case, any political subdivision thereof, on a Pro Forma Basis after giving effect thereto the Total Leverage Ratio is equal to or less than 2.00:1.00 or (ii) with respect to Investments in Restricted Subsidiaries organized under the laws of Canada or Mexico or, in each case, any political subdivision thereof, on a Pro Forma Basis after giving effect thereto the Total Leverage Ratio is equal to or less than 4.00:1.00;

(i) make lease, utility and other similar deposits or any other advance or deposit permitted by this Agreement in the ordinary course of business or (ii) make prepayments and deposits to suppliers in the ordinary course of business;

to the extent constituting Investments, capital expenditures otherwise permitted under this Agreement;

Investments in deposit accounts or securities accounts opened in the ordinary course of business;

repurchase, retirement or repayment of any Indebtedness to the extent not otherwise prohibited by this Agreement, including, without limitation, acquisitions of Tranche B-2 Term Loan Facility Indebtedness in accordance with the Tranche B-2 Term Loan Credit Agreement;

(a) Investments (including by consideration in the form of cash, Cash Equivalents, contributing receivables and through subordinated notes) in any Receivables Facility or any Securitization Subsidiary or other Subsidiary that in turn then transfers Securitization Assets to a Securitization Subsidiary in order to effectuate a Qualified Securitization Financing, including the ownership of Equity Interests in such Securitization Subsidiary and (b) distributions or payments of Securitization Fees and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Purchase Obligation in connection with a Qualified Securitization Financing or a Receivables Facility;

Investments consisting of or resulting from (i) Indebtedness permitted under Section 7.03, (ii) Liens permitted under Section 7.01, (iii) Restricted Payments permitted under Section 7.06, (iv) Dispositions permitted by Section 7.05 and (v) fundamental changes permitted by Section 7.04;

Investments solely to the extent such Investments reflect an increase in the value of Investments otherwise permitted under this Section 7.02;

loans and advances to Borrower in lieu of, and not in excess of the amount of (after giving effect to any other such loans or advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made in accordance with Section 7.06 (other than Section 7.06(i)); and

Guarantee obligations of the Borrower or any Restricted Subsidiary in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of any Restricted Subsidiary of the Borrower to the extent required by law or in connection with any statutory filing or the delivery of audit opinions performed in jurisdictions other than within the United States.

#### Section 7.03. *Indebtedness*

The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Indebtedness, except:

Indebtedness of any Loan Party under the Loan Documents;

(i) Indebtedness outstanding on the Effective Date and listed on Schedule 7.03(b) and any Permitted Refinancing thereof and (ii) intercompany Indebtedness outstanding on the Effective Date and any Permitted Refinancing thereof; *provided*, that (x) any intercompany Indebtedness shall be evidenced by an Intercompany Note and (y) any intercompany Indebtedness of any Loan Party owed to any Person that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to the subordination provisions reasonably acceptable to the Required Lenders;

Guarantees by the Borrower and any Restricted Subsidiary in respect of Indebtedness of the Borrower or any Restricted Subsidiary of the Borrower otherwise permitted

hereunder; *provided* that (i) no Guarantee by any Restricted Subsidiary of any ABL Facility Indebtedness, any Tranche B-2 Term Loan Facility Indebtedness, any UST Tranche B Term Loan Facility Indebtedness, any Junior Financing, any Permitted Additional Debt or any Permitted Refinancing of any of the foregoing shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein (*provided further* that, clause (i) shall not apply in the case of a Guarantee by any Foreign Subsidiary that is not a Loan Party of any Indebtedness of another Foreign Subsidiary that is not a Loan Party), and (ii) if the Indebtedness being Guaranteed is Junior Financing that is, or is required by this Agreement to be, Subordinated Indebtedness, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms (taken as a whole) at least as favorable to the Lenders as those contained in the subordination of such Junior Financing;

Indebtedness (other than Indebtedness permitted under Section 7.03(b)) of the Borrower or any Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or consisting of a Guaranty on behalf of any Loan Party or any other Restricted Subsidiary) to the extent constituting an Investment permitted by Section 7.02 (other than clause (v) thereof); *provided* that (x) all such Indebtedness shall be evidenced by an Intercompany Note and (y) all such Indebtedness of any Loan Party owed to any Person that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to the subordination provisions reasonably acceptable to the Required Lenders;

Attributable Indebtedness and other Indebtedness of the Borrower or any Restricted Subsidiary (including Capitalized Leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred prior to or within 270 days after the acquisition, lease or improvement of the applicable asset in an aggregate amount (together with any Permitted Refinancings thereof) not to exceed \$25,000,000 at any time outstanding;

Indebtedness in respect of Swap Contracts designed to hedge against the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities (including fuel) pricing risks incurred not for speculative purposes;

Indebtedness of the Borrower or any Restricted Subsidiary assumed in connection with any Permitted Acquisition or other Investment permitted hereunder, *provided*, that (w) such Indebtedness is not incurred in contemplation of such Permitted Acquisition or Investment, and any Permitted Refinancing thereof, (x) such Indebtedness and all Indebtedness resulting from a Permitted Refinancing thereof is unsecured (except for Liens permitted by Section 7.01(s)), and (y) both immediately prior and after giving effect thereto, (1) no Event of Default shall exist or result therefrom, and (2) immediately after giving effect to the related Permitted Acquisition or Investment and the assumption of Indebtedness, the Total Leverage Ratio, on a Pro Forma Basis, for the Test Period most recently ended shall not be greater than 3.00:1.00;

Indebtedness representing deferred compensation to employees of the Borrower or any of its Restricted Subsidiaries incurred in the ordinary course of business and other obligations and liabilities arising under employee benefit plans in the ordinary course of business;

[reserved];

Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition expressly permitted hereunder, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earnouts and holdbacks) or other similar adjustments;

Indebtedness in respect of treasury, depository, credit card, debit card and cash management services or automated clearinghouse transfer of funds, overdraft or any similar services incurred in the ordinary course of business or any similar cash management services relating or secured pursuant to the ABL Facility and any hedges related to the ABL Facility;

Indebtedness consisting of the financing of insurance premiums or take-or-pay obligations contained in supply arrangements that do not constitute Guarantees, in each case, in the ordinary course of business;

Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business and not in connection with the borrowing of money, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness incurred in the ordinary course of business with respect to reimbursement-type obligations regarding workers compensation claims;

obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice and not in connection with the borrowing of money or Swap Contracts;

(x) ~~(b)~~ ABL Facility Indebtedness and (ii) any Permitted Refinancing thereof, in each case, of the Loan Parties; *provided* that the aggregate principal amount outstanding at any time of all such Indebtedness under clauses (i) and (ii) of this Section 7.03(q)~~(x)~~ and Section 7.03(z) shall not exceed \$500,000,000, (y) (i) Tranche B-2 Term Loan Facility Indebtedness and (ii) any Permitted Refinancing thereof, in each case, of the Loan Parties; *provided* that the aggregate principal amount (excluding interest paid-in-kind or otherwise capitalized to principal) outstanding at any time of all such Indebtedness under clauses (i) and (ii) of this Section 7.03(q)~~(y)~~ shall not exceed \$615,000,000 and (z) (i) UST Tranche B Term Loan Facility Indebtedness and (ii) any Permitted Refinancing thereof, in each case, of the Loan Parties;

[re~~s~~erved];

(i) ~~C~~redit Agreement Refinancing Indebtedness (other than any Credit Agreement Refinancing Indebtedness incurred pursuant to a Refinancing Amendment) and (ii) any Permitted Refinancing thereof;

[re~~s~~erved];

[re~~s~~erved];

all premiums (if any), interest (including post-petition interest and interest paid in kind), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (q) above and (u) through (ff) below;

(i) Indebtedness in respect of the Specified Pension Fund Obligations and Guarantees thereof, to the extent existing on the Effective Date, in an aggregate principal amount at any time outstanding not to exceed the amount outstanding as of the Effective Date (and as adjusted from time to time pursuant to any audits), plus any interest paid in kind thereon and any accrued but unpaid interest thereon, and (ii) any Permitted Refinancing (disregarding clauses (b) and (c) of the definition of such term) thereof;

[reserved];

[reserved];

Indebtedness in respect of taxes, assessments or governmental charges to the extent that payment thereof shall not at the time be required to be made hereunder;

[reserved];

Indebtedness of (i) any Securitization Subsidiary arising under any Securitization Facility or (ii) the Borrower or any Restricted Subsidiary arising under any Receivables Facility or Qualified Securitization Financing; *provided* that the aggregate principal amount of Indebtedness permitted under this Section 7.03(z), together with the aggregate principal amount of Indebtedness permitted under Section 7.03(o)(x), shall not exceed \$500,000,000 at any one time outstanding;

Indebtedness in respect of Sale and Leaseback Transactions in an amount not to exceed \$25,000,000 at any time outstanding; *provided* that, during the Specified Period, this clause (aa) shall be unavailable for use under this Agreement and the dollar amount specified in this clause (aa) shall be \$0;

Indebtedness in respect of Investments not prohibited by Section 7.02 (other than clause (v) thereof);

[reserved];

Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services, in each case, incurred in the ordinary course of business consistent with past practice;

[reserved];

Other Indebtedness of the Borrower or any of its Restricted Subsidiaries, in an aggregate principal amount at any time outstanding not to exceed \$30,000,000; *provided* that the aggregate principal amount of Indebtedness of Restricted Subsidiaries that are not Guarantors permitted under this Section 7.03(ff) at any time outstanding shall not exceed \$5,000,000; and

obligations, charges or liabilities incurred in the ordinary course of business (and not representing Indebtedness for borrowed money) outstanding as of the Effective Date and in an aggregate amount not to exceed \$185,000,000.

#### Section 7.04. *Fundamental Changes*

The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of related transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

any Restricted Subsidiary may merge, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that (w) no Event of Default exists or would result therefrom, (x) the Borrower shall be the continuing or surviving Person, (y) such transaction does not result in the Borrower ceasing to be organized under the laws of the United States, any State thereof or the District of Columbia and (z) such transaction does not have an adverse effect in any material respect on the perfection or priority of the Liens granted under the Collateral Documents or (ii) one or more other Restricted Subsidiaries; *provided*, in the case of this clause (ii), that when such transaction involves a Loan Party, a Loan Party shall be the continuing or surviving Person except to the extent otherwise constituting an Investment permitted by Section 7.02;

(i) any Restricted Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Restricted Subsidiary that is not a Loan Party and (ii) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interest of the Borrower and the Restricted Subsidiaries and is not disadvantageous to the Lenders in any material respect (it being understood that (other than a transaction constituting a permitted Investment under Section 7.02 or involving an Excluded Subsidiary) in the case of any liquidation or dissolution of a Guarantor, such Guarantor shall transfer its assets to a Loan Party, and in the case of any change in legal form, a Restricted Subsidiary that is a Guarantor will remain a Guarantor and such transaction shall not have an adverse effect on the perfection or priority of the Liens granted under the Collateral Documents);

any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Guarantor, then (i) the transferee must be a Guarantor or the Borrower or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in or Indebtedness of a Restricted Subsidiary which is not a Loan Party in accordance with Sections 7.02 and 7.03, respectively;

so long as no Event of Default exists or would result therefrom, the Borrower may merge with any other Person; *provided* that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the "**Successor Borrower**"). (A) the Successor Borrower shall be an entity organized or existing under the Laws of the United States, any state thereof or the District of Columbia and such transaction shall not have an adverse effect in any material respect on the perfection or priority of the Liens granted under the Collateral Documents, (B) the Successor Borrower shall expressly assume all the obligations of the Borrower under this Agreement and the

other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor Borrower's obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that the collateral granted by it to secure its obligations thereunder shall apply to secure its and the Successor Borrower's obligations under the Loan Documents, (E) if reasonably requested by the Collateral Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Collateral Agent) confirmed that the collateral granted by it to secure its obligations thereunder shall apply to secure its and the Successor Borrower's obligations under the Loan Documents, and (F) the Borrower shall have delivered to the Administrative Agent an officer's certificate and an opinion, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; *provided further*, that if the foregoing are satisfied (or waived), the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement; *provided further* that the Borrower agrees to provide any documentation and other information about the Successor Borrower as shall have been reasonably requested in writing by the Administrative Agent, the Collateral Agent or any Lender through the Administrative Agent that is required by regulatory authorities or under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA Patriot Act;

any ~~R~~ Restricted Subsidiary may merge, amalgamate or consolidate with any other Person (other than the Borrower) in order to effect an Investment permitted pursuant to Section 7.02; *provided* that either (x) the continuing or surviving Person shall be a Restricted Subsidiary, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of Section 6.11 to the extent required pursuant to the Collateral and Guarantee Requirement or (y) the transaction shall otherwise constitute a permitted Investment;

any ~~R~~ Restricted Subsidiary may effect a merger, dissolution, liquidation or consolidation, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05; and

any ~~R~~ Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the extent that such Disposition (or series of related Dispositions) is not prohibited under Section 7.05.

#### Section 7.05. *Dispositions*

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make any Disposition, except:

(i) ~~D~~ Dispositions (including abandonment) of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business, (ii) Dispositions (including abandonment) in the ordinary course of business of surplus property or property no longer used or useful in the conduct of the business of the Borrower or any of the Restricted Subsidiaries, (iii) Dispositions of immaterial assets (considered in the aggregate) in the ordinary course of business

and (iv) Dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business;

Dispositions of property to the extent that (i) such property or an interest therein is exchanged for credit against the purchase price of similar replacement property, (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property, or (iii) such property is swapped in exchange for services or other assets of comparable or greater value or usefulness to the business of the Borrower and the Subsidiaries as a whole, as determined in good faith by the management of the Borrower;

Dispositions of property to the Borrower or any Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party and if such property constitutes Collateral, it shall continue to constitute Collateral after such Disposition or (ii) if such transaction constitutes an Investment, such transaction is permitted under Section 7.02;

Dispositions of cash and Cash Equivalents;

leases) subleases, licenses, sublicenses (including the provision of software under an open source license) or any abandonment thereof, in each case (i) in the ordinary course of business and (ii) without interfering in any material respect with the business of the Borrower or any of its Restricted Subsidiaries;

transfers of property subject to Casualty Events upon the receipt (where practical) of the Net Proceeds of such Casualty Event;

Dispositions (including write-offs, discounts, and compromises in clause (b) above) or discounts without recourse of accounts receivable and related assets in connection with the compromise or collection thereof in the ordinary course of business;

[reserved];

[reserved];

Dispositions of Investments in joint ventures or other non-wholly owned Subsidiaries to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

the unwinding of any Swap Contract or cash management agreement;

Dispositions of property not otherwise permitted under this Section 7.05; *provided* that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default exists), no Event of Default shall exist or would result from such Disposition, (ii) any prepayment required to be made in connection with the receipt of Net Proceeds in respect of such Disposition pursuant to Section 2.13 shall be made in accordance therewith, (iii) the Borrower or any of the Restricted Subsidiaries shall receive not less than 75% of the consideration for such Disposition in the form of cash or

Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(a), (c), (d), (f), (i), (j), (k), (l), (o), (p), (v), (w), (z), (aa), (bb), (cc) and (ee), (iv) any portion of the consideration for such Disposition that is not in the form of cash or Cash Equivalents shall become Collateral, (v) this Section 7.05(l) shall not permit the Disposition of all or substantially all of the assets of the Borrower and its Subsidiaries (taken as a whole), and (vi) during the Specified Period, (A) no Dispositions shall be permitted under this Section 7.05(l) except for (1) Dispositions of Real Property specified in Schedule 7.05(l)(i) (such Real Property, “**Scheduled Property**”) to the extent (x) such Real Property is subject to a bona fide sale agreement with a third party purchaser entered into prior to March 23, 2020 and (y) the Disposition of such Real Property shall be made for gross consideration not less than the amount specified for such Scheduled Property identified to the Lenders as of the Effective Date (subject to customary purchase price adjustments and working capital adjustments), (2) Dispositions of property (other than Real Property), *provided* that the aggregate fair market value of property Disposed of pursuant to this clause (vi)(A)(2) shall not exceed \$10,000,000 in the aggregate during the Specified Period, and (3) Dispositions of Pension Real Property set forth on Schedule 7.05(l)(ii) and (B) the Net Proceeds of each Disposition permitted under the foregoing clause (vi)(A) shall be applied to the prepayment of the Term Loans in accordance with Section 2.13(a)(ii) without giving effect to any thresholds or reinvestment rights;

(i) ~~any~~ Disposition of Securitization Assets or Receivables Assets, or participations therein, in connection with any Qualified Securitization Financing or Receivables Facility, in the case of this clause (i) to the extent permitted under Section 7.03(z), or (ii) the Disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with past practice;

[~~reser~~ved];

~~dispo~~sitions from and after the Effective Date of non-core or obsolete assets acquired in connection with any Permitted Acquisition or other permitted Investments; *provided* that, during the Specified Period, no Dispositions shall be permitted under this clause (o);

the ~~pu~~rrence of Liens permitted hereunder;

~~sale~~ or dispositions of Equity Interests of any Subsidiary (other than the Borrower) in order to qualify members of the governing body of such Subsidiary if required by applicable law;

[~~reser~~ved];

Res~~tr~~icted Payments made pursuant to Section 7.06; and

Sale~~and~~ Leaseback Transactions in an aggregate principal amount not to exceed \$25,000,000 during the term of this Agreement; *provided* that, during the Specified Period, this clause (t) shall be unavailable for use under this Agreement and the dollar-amount specified in the clause (t) shall be \$0.

provided that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(a), (c), (e), (f), (g), (i), (j), (k), (m), (n), (o), (p), (q), (r) and (s)) and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than a Loan Party, such Collateral shall be automatically sold free and clear of the Liens created by the Loan Documents, and, if requested by the Borrower, upon the certification delivered to the Administrative Agent by the Borrower that such Disposition is permitted by this Agreement, the Administrative Agent or the Collateral Agent, as applicable, shall be authorized to take, and shall take, any actions reasonably requested by the Borrower in order to effect the foregoing (at the Borrower's expense) and/or to expressly subordinate any Lien in favor of the Collateral Agent on such Collateral that is disposed of.

Notwithstanding anything herein to the contrary in this Agreement, (i) during the Specified Period, the Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make any Disposition of Real Property (other than (a) Dispositions of Scheduled Property pursuant to Section 7.05(l), (b) leases of Real Property entered into in the ordinary course of business (excluding Sale and Leaseback Transactions), (c) transfers of property subject to condemnation and Casualty Events) and (d) Dispositions of Pension Real Property set forth on Schedule 7.05(l)(ii) so long as the proceeds thereof are applied to repay CDA First Lien Obligations (or, if the CDA First Lien Obligations shall have been paid in full, to prepay the Term Loans in accordance with Section 2.13(a)(ii) without giving effect to any thresholds or reinvestment rights), (ii) notwithstanding anything to the contrary in this Agreement, during the Specified Rolling Stock Prepayment Period, all Net Proceeds from any Disposition of Rolling Stock in excess of the Specified Rolling Stock Reinvestment Threshold in any fiscal year shall be applied (x) with respect to any Rolling Stock constituting UST Tranche B Priority Collateral to prepay the UST Tranche B Term Loan Facility in accordance with the UST Tranche B Term Loan Credit Agreement, (y) with respect to any Rolling Stock constituting UST Tranche B Joint Collateral 67% to prepay the UST Tranche B Term Loan Facility in accordance with the UST Tranche B Term Loan Credit Agreement and 33% to prepay the Tranche B-2 Term Loan Facility in accordance with the Tranche B-2 Term Loan Credit Agreement and (z) with respect to any Rolling Stock constituting Non-UST Tranche B Term Priority Collateral to prepay the Tranche B-2 Term Loan Facility in accordance with the Tranche B-2 Term Loan Credit Agreement, in each case of clauses (x), (y) and (z) above, without giving effect to any thresholds (other than such Specified Rolling Stock Reinvestment Threshold) or reinvestment rights, (iii) pending reinvestment in accordance with this proviso, (A) proceeds from the Disposition of Rolling Stock constituting (x) Non-UST Tranche B Term Priority Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited and maintained in a Non-UST Tranche B Priority Account (as defined in the ABL Intercreditor Agreement), (y) UST Tranche B Priority Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited and maintained in a UST Tranche B Priority Account (as defined in the ABL Intercreditor Agreement) and (z) UST Tranche B Joint Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited and maintained in a UST Tranche B Joint Account (as defined in the ABL Intercreditor Agreement), (iv) the Borrower shall not, nor shall it permit any Restricted Subsidiary to, Dispose of Rolling Stock that does not constitute UST Tranche B Priority Collateral or UST Tranche B Joint Collateral with an aggregate fair market

value in any fiscal year in excess of \$5,000,000 without the prior consent of the Required Lenders and (v) any Disposition of Rolling Stock shall be for no less than the fair market value of such property at the time of such Disposition.

Section 7.06. *Restricted Payments*

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, declare or make, directly or indirectly, any Restricted Payment, except:

each Restricted Subsidiary may make Restricted Payments to the Borrower or any other Restricted Subsidiary (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

the Borrower and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in the Equity Interests (other than Disqualified Equity Interests unless such Disqualified Equity Interests would be permitted by Section 7.03) of such Person;

(i) repurchases of Equity Interests in the Borrower deemed to occur upon the exercise of stock options or warrants or the settlement or vesting of other equity awards if such Equity Interests represent a portion of the exercise price of such options or warrants, (ii) cash payments in lieu of the issuance of fractional shares in connection with the exercise of stock options, warrants or other securities convertible into or exchangeable for Equity Interests of the Borrower or (iii) Restricted Payments made in respect of any other transaction involving fractional shares; *provided, however*, that any such cash payment shall not be for the purpose of evading the limitations of this Agreement;

the Borrower may pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of the Borrower held by any present or former employee, officer, director or consultant of the Borrower or any Restricted Subsidiary or equity based awards held by such Persons, in each case, upon the death, disability, retirement or termination of employment of any such Person or pursuant to any employee or director equity plan, employee or director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, officer or consultant of the Borrower or any Restricted Subsidiary; *provided*, that the aggregate amount of Restricted Payments made pursuant to this clause (d) shall not exceed (i) \$7,500,000 in any fiscal year plus (ii) the then applicable Cumulative Credit plus (iii) the proceeds of any key man insurance policies; *provided, further*, that to the extent that the aggregate amount of Restricted Payments made by the Borrower and the Restricted Subsidiaries pursuant to this clause (d) in any fiscal year is less than the amount set forth above, 100% of the amount of such difference may be carried forward and used to make such Restricted Payments pursuant to this clause (d) in the next two succeeding fiscal years (*provided*, that any such amount carried forward shall be deemed to be used to make such Restricted Payments in any fiscal year after the amount set forth above for such fiscal year shall be deemed to be used to make such Restricted Payments for such fiscal year);

the Borrower may make Restricted Payments in an aggregate amount not to exceed (x) together with (I) the aggregate amount of Investments made under sub-clause (x) of Section 7.02(p) and (II) the aggregate amount of prepayments, redemptions, purchases, defeasances and other payments made pursuant to sub-clause (x) of Section 7.13(a)(vi), \$30,000,000, plus (y) the portion, if any, of the Cumulative Credit on such date that the Borrower elects to apply to this subclause (y); *provided* that (A) with respect to any Restricted Payment made pursuant to this Section 7.06(e), (1) no Event of Default has occurred and is continuing or would result therefrom and (2) on a Pro Forma Basis after giving effect thereto the Total Leverage Ratio is equal to or less than 2.00:1.00, and (B) no Restricted Payments shall be permitted under this clause (e) until the Specified Period shall have ended;

distributions or payments of Securitization Fees, sales, contributions and other transfers of Securitization Assets or Receivables Assets and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Purchase Obligations, in each case in connection with a Qualified Securitization Financing or a Receivables Facility;

[reserved];

the Restricted Subsidiaries may make a Restricted Payment in connection with the acquisition of additional Equity Interests in any Restricted Subsidiary from minority shareholders (in accordance with Section 7.08, if applicable);

Restricted Payments made (i) in respect of working capital adjustments or purchase price adjustments pursuant to any Permitted Acquisition or other permitted Investments (other than pursuant to Section 7.02(x)) and (ii) to satisfy indemnity and other similar obligations under the Permitted Acquisitions or other permitted Investments; *provided* that no Restricted Payments shall be permitted under this clause (i) during (x) the Specified Period and (y) during the continuance of an Event of Default at any time after the end of the Specified Period;

[reserved]; and

Restricted Payments in respect of transactions related to (i) fundamental changes permitted under Section 7.04 and (ii) Investments permitted under Section 7.02 (other than clause (v) thereof).

*Section 7.07. Change in Nature of Business; Organization Documents*

The Borrower shall not, nor shall the Borrower permit any of the Restricted Subsidiaries to, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Effective Date or any business reasonably related, complementary, synergistic or ancillary thereto or reasonable extensions thereof.

The Borrower shall not, nor shall the Borrower permit any of the Restricted Subsidiaries to, amend, restate, supplement or otherwise modify to, or waive of any of its rights under, its Organization Documents to the extent any of the foregoing could reasonably be expected to be material and adverse to the Lenders (in their capacities as such).

Section 7.08. *Transactions with Affiliates*

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into any transaction of any kind with any of its Affiliates, whether or not in the ordinary course of business, other than (a) transactions between or among Loan Parties or any entity that becomes a Loan Party as a result of such transaction and transactions between or among Restricted Subsidiaries that are not Loan Parties, (b) on terms (taken as a whole) substantially not less favorable to the Borrower in any material respect or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (c) the Transactions and the payment of fees and expenses (including Transaction Expenses) as part of or in connection with the Transactions, (d) the issuance of Equity Interests or equity based awards to any officer, director, employee or consultant of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business, (e) Investments made pursuant to Section 7.02, Indebtedness incurred pursuant to Section 7.03 and Restricted Payments permitted under Section 7.06, (f) customary employment, consulting and severance arrangements between the Borrower and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and similar arrangements in the ordinary course of business, (h) the payment of customary fees and reasonable out of pocket costs to, and customary indemnities provided on behalf of, directors, officers, employees and consultants of the Borrower and the Restricted Subsidiaries in the ordinary course of business, (i) any customary transaction with a Receivables Facility or a Securitization Subsidiary effected as part of a Qualified Securitization Financing, (j) transactions pursuant to registration rights agreements and similar arrangements, (k) transactions in which the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent and the Required Lenders a letter from an independent financial advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) of this Section 7.08 and (l) transactions pursuant to agreements in existence on the Effective Date and set forth on Schedule 7.08 or any amendment thereto to the extent such an amendment (taken as a whole) is not adverse to the Lenders in any material respect.

Section 7.09. *Burdensome Agreements*

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into or permit to exist any Contractual Obligation (other than (i) this Agreement or any other Loan Document, (ii) any ABL Facility Documentation, (iii) any Tranche B-2 Term Loan Facility Documentation, (iv) any UST Tranche B Term Loan Facility Documentation, (v) any documents governing Credit Agreement Refinancing Indebtedness, or a Permitted Refinancing of (ii)-(v) or (vi) any Treasury Equity Documents or documents governing Treasury Equity) that limits the ability of (a) any Restricted Subsidiary that is not a Guarantor to make Restricted Payments to the Borrower or any Guarantor or to make or repay loans or advances to or otherwise transfer assets to or make Investments in the Borrower or any Restricted Subsidiary that is a Guarantor or (b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person to secure the Obligations; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which (i) (x) exist on the Effective Date and (to the extent not otherwise permitted by this Section 7.09) are listed on Schedule 7.09 hereto and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation in any material respect (as determined in good faith by the

Borrower), (ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such Contractual Obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary, (iii) represent Indebtedness of a Restricted Subsidiary which is not a Loan Party which is permitted by Section 7.03, (iv) arise in connection with any Disposition permitted by Section 7.04 or 7.05 and relate solely to the assets or Person subject to such Disposition, (v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures or other non-wholly owned Subsidiaries permitted under Section 7.02 and applicable solely to such joint venture or other non-wholly owned Subsidiaries and are entered into in the ordinary course of business, (vi) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness (other than any Junior Financing) permitted under Section 7.03(e) or (g) but solely to the extent any negative pledge relates to the property financed by such Indebtedness, (vii) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto, (viii) comprise restrictions imposed by any agreement governing secured Indebtedness permitted pursuant to Section 7.03 to the extent that such restrictions apply only to the property or assets securing such Indebtedness, (ix) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary entered into in the ordinary course of business, (x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (xi) are customary restrictions contained in the ABL Facility Documentation, any Qualified Securitization Financing, the Tranche B-2 Term Loan Facility Documentation and the UST Tranche B Term Loan Facility Documentation, (xii) arise in connection with cash or other deposits permitted under Sections 7.01 and 7.02 and limited to such cash or deposit or (xiii) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Effective Date and permitted under Section 7.03 if the restrictions contained in any such agreement taken as a whole (a) are not materially less favorable to the Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by the Borrower) or (b) either (I) the Borrower determines at the time of entry into such agreement or instrument that such encumbrances or restrictions will not adversely affect, in any material respect, the Borrower's ability to make principal or interest payments required hereunder or (II) such encumbrance or restriction applies only during the continuance of a default relating to such agreement or instrument.

Section 7.10. *Financial Covenant*

The Borrower shall not permit Consolidated EBITDA for any Test Period, commencing with the Test Period ending as of the end of the fiscal quarter ending December 31, 2021, to be less than the amount set forth for such Test Period, below:

<u>Test Period Ending</u>	<u>Minimum EBITDA</u>
December 31, 2021	\$100,000,000
March 31, 2022	\$150,000,000
June 30, 2022 and the last day of each Fiscal Quarter thereafter	\$200,000,000

Section 7.11. *Minimum Liquidity*

. During the Liquidity Test Period, the Borrower shall not permit Liquidity to be less than \$125,000,000 on Tuesday and Friday of each week (or if any such day is not a Business Day, then the next succeeding Business Day) during the Liquidity Test Period.

Section 7.12. *Fiscal Year*

. The Borrower shall not make any change in its fiscal year or fiscal quarters (it being understood that the Borrower's fiscal year ends on December 31 of each year, and that each of the first three fiscal quarters of each fiscal year of the Borrower ends on the March 31, June 30 and September 30, respectively); *provided, however*, that the Borrower may, upon written notice to the Administrative Agent and the Required Lenders, change its fiscal year and fiscal quarters to any other fiscal year (and any other fiscal quarters) reasonably acceptable to the Administrative Agent and the Required Lenders, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such changes.

Section 7.13. *Prepayments, Etc. of Indebtedness*

The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled interest shall be permitted unless such payments violate any subordination terms of any Junior Financing Documentation) (x) any Permitted Additional Debt (or any Permitted Refinancing thereof) or (y) any Junior Financing that constitutes Subordinated Indebtedness (or any Permitted Refinancing thereof), or make any payment in violation of any subordination terms of any Junior Financing Documentation, if any, except (i) any Permitted Refinancing permitted in respect thereof (including any Permitted Refinancing set forth in Section 7.03(u) hereof), (ii) the conversion of any Permitted Additional Debt (or any Permitted Refinancing thereof) or Junior Financing that constitutes Subordinated Indebtedness (or any Permitted Refinancing thereof) to Equity Interests (other than Disqualified Equity Interests) of the Borrower, (iii) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary to the Borrower or any Restricted Subsidiary to the extent not prohibited by applicable subordination provisions, (iv) prepayments, redemptions, purchases, defeasances and other payments or satisfaction from the proceeds of equity issuances by the Borrower, (v) AHYDO "catch up" payments, and (vi) prepayments, redemptions, purchases, defeasances and other payments in respect of Permitted Additional Debt (or any Permitted Refinancing thereof) and Junior Financings that constitutes Subordinated Indebtedness (or any Permitted Refinancing thereof) prior to their scheduled maturity in an aggregate amount not to exceed (x) together with (I) the aggregate amount of Investments made under sub-clause (x) of Section 7.02(p) and (II) the aggregate amount of Restricted Payments made pursuant to sub-clause (x) of Section 7.06(e), \$15,000,000, *plus* (y) the portion, if any, of the Cumulative Credit on such date that the Borrower elects to apply to this subclause (y); *provided* that (A) no prepayment, redemption, purchase, defeasance or other payment shall be made pursuant to this clause (vi) if an Event of Default has occurred and is continuing or would result therefrom and (B) no prepayments, redemptions, purchases, defeasances and other payments in respect of Permitted Additional Debt shall be permitted under this clause (vi) until the Specified Period shall have ended. For greater certainty, nothing in this Section 7.13(a) or elsewhere in this Agreement shall limit or restrict the ability of the Borrower or any Restricted Subsidiary to prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof (x) any ABL Facility

Indebtedness or other obligations also secured pursuant to the ABL Credit Agreement, (y) any Tranche B-2 Term Loan Facility Indebtedness or other obligations also secured pursuant to the Tranche B-2 Term Loan Credit Agreement or (z) any UST Tranche B Term Loan Facility Indebtedness or other obligations also secured pursuant to the UST Tranche B Term Loan Credit Agreement.

The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, amend, modify, change, terminate or release in any manner materially adverse to the interests of the Lenders any term or condition of any Junior Financing Documentation or the documentation governing any Permitted Additional Debt (or any Permitted Refinancing thereof) if the effect thereof would be to cause such Junior Financing or Permitted Additional Debt to no longer constitute Junior Financing or Permitted Additional Debt, as the case may be, without the consent of the Required Lenders (which consent shall not be unreasonably withheld, conditioned or delayed); *provided*, that none of the ABL Facility Indebtedness, the Tranche B-2 Term Loan Facility Indebtedness or the UST Tranche B Term Loan Facility Indebtedness shall be subject to this clause (b) unless expressly designated as Permitted Junior Priority Additional Debt.

Section 7.14. *Prepayments, Etc. of Single-Employer Plans.* The Borrower shall not, except to the extent required by ERISA or other applicable Law, make any early lump sum payment to satisfy any liability under any Single-Employer Plan, in each case, directly from the cash or Cash Equivalents of the Borrower or the Restricted Subsidiaries (including, for the avoidance of doubt, the proceeds of any borrowing under the ABL Facility).

**ARTICLE 8**  
EVENTS OF DEFAULT AND REMEDIES

Section 8.01. *Events of Default*

. Any of the following from and after the Effective Date shall constitute an event of default (an “**Event of Default**”):

*Nonpayment.* Any Loan Party fails to pay (i) when and as required to be paid herein or in any other Loan Document, any amount of principal of any Loan, (ii) within five (5) Business Days after the same becomes due, any interest on any Loan, or (iii) within ten (10) days after the same becomes due, any other amount payable hereunder or with respect to any other Loan Document; or

*Specific Covenants.* The Borrower fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a) (*provided* that the delivery of a notice of Default or Event of Default at any time will cure an Event of Default under Section 6.03(a) arising from the failure of the Borrower to timely deliver such notice of Default or Event of Default), 6.05(a) (solely with respect to the Borrower), 6.18 (and, in the case of Section 6.18(b), such failure continues for five (5) Business Days after receipt by the Borrower of written notice thereof from the Administrative Agent or the Required Lenders), Article 7 or Article 12; or

*Other Defaults.* Any Loan Party fails to perform or observe any other term, 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 thirty (30) days

after receipt by the Borrower of written notice thereof from the Administrative Agent or the Required Lenders; or

~~Representations and Warranties.~~ Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any Compliance Certificate or other document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

~~Cross-Default.~~ Any Loan Party or any Restricted Subsidiary (i) fails to make any payment after the applicable grace period with respect thereto, if any, (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of (x) any other Indebtedness (other than Indebtedness hereunder ) having an outstanding aggregate principal amount of not less than the Threshold Amount, (y) the Tranche B-2 Term Loan Facility Indebtedness or (z) the UST Tranche B Term Loan Facility Indebtedness or (ii) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts and not as a result of any other default thereunder by any Loan Party), after all grace periods having expired and all required notices having been given, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, after all grace periods having expired and all required notices having been given, such Indebtedness 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; *provided* that any such failure or the occurrence of any such other event referred to in subclause (ii) relating to Indebtedness under the ABL Credit Agreement or the Tranche B-2 Term Loan Credit Agreement, or, in each case, any Permitted Refinancing thereof shall not constitute an Event of Default under this Section 8.01(e) until the earlier of (x) thirty days after the expiration of all grace periods relating to such failure or occurrence thereunder and (y) any acceleration of the ABL Obligations (as defined in the ABL Intercreditor Agreement) outstanding under the ABL Credit Agreement or the Tranche B-2 Obligations (as defined in the ABL Intercreditor Agreement) outstanding under the Tranche B-2 Term Loan Credit Agreement, as applicable, whether automatic or otherwise; *provided* further that this clause (e)(ii) shall not apply to (I) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (II) Indebtedness which is convertible into Equity Interest and converts to Equity Interests in accordance with its terms or (III) any breach or default that (X) is remedied by the Borrower or the applicable Restricted Subsidiary or (Y) waived (including in the form of amendment) by the requisite holders of the applicable item of Indebtedness, in either case, prior to the acceleration of all the Loans pursuant to this Section 8.01; or

~~Insolvency Proceedings, Etc.~~ Any Loan Party or any Restricted Subsidiary institutes or consents to the institution of any voluntary or involuntary proceeding under any Debtor Relief Law, or makes a general assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or substantially all of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator,

administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) consecutive calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or substantially all of its property is instituted without the consent of such Person and continues undischarged or unstayed for sixty (60) consecutive calendar days, or an order for relief is entered in any such proceeding; or

*Inability to Pay Debts; Attachment.* Any Loan Party or any Restricted Subsidiary becomes generally unable or admits in writing its general inability or fails generally to pay its debts as they become due, or any writ or warrant of attachment or execution or similar process is issued or levied against all or substantially all of the property of the Borrower and the Restricted Subsidiaries, taken as a whole, and is not released, vacated or fully bonded within sixty (60) consecutive days after its issue or levy; or

*Judgments.* There is entered against any Loan Party or any Restricted Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance or indemnity as to which the insurer or third party indemnitor has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

*Invalidity of Loan Documents.* Any material provision of the Loan Documents, at any time after their execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the Administrative Agent or Collateral Agent or any Lender or the satisfaction in full of all the Obligations (other than other than contingent obligations), ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations), or purports in writing to revoke or rescind any Loan Document; or

*Change of Control.* There occurs any Change of Control; or

*Collateral Documents.* The Collateral Documents after delivery thereof pursuant to Sections 4.02, 6.11 or 6.13 shall for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction permitted under Section 7.04 or 7.05) cease to create, or shall be asserted by any Loan Party not to create, a valid and perfected Lien, with the priority required by the Collateral Documents on and security interest in Collateral purported to be covered thereby with an aggregate value equal to or greater than \$25,000,000, subject to Liens permitted under Section 7.01, (i) except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Administrative Agent or the Collateral Agent to maintain possession or control of certificates representing securities, other collateral requiring possession or control, or motor vehicle certificates of title (or notation thereon) pledged under the Collateral Documents, in each case actually delivered to it and (ii) except as to Collateral consisting of Real Property to the extent that

such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

~~ERISA.~~ (i) An ERISA Event that occurs after the Effective Date that, alone or together with any other ERISA Events that have occurred after the Effective Date, has resulted or could reasonably be expected to result in liability of a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates in an aggregate amount at any particular time that would reasonably be expected to have a Material Adverse Effect, or (ii) a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount, that, alone or together with any other such failures to pay, has resulted or would reasonably be expected to result in a Material Adverse Effect; or (iii) as of any date, a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates (x) shall have made contributions to any Multiemployer Plan during the immediately preceding twelve month period ending on such date that exceed in value in the aggregate among all such Persons the Pension Contribution Cap for such period or (y) is projected or reasonably expected (in each case by the Borrower in good faith) to make contributions to any Multiemployer Plan in the next twelve month period that exceed in the aggregate among all such Persons the Pension Contribution Cap for such period (provided that such Pension Contribution Cap may be exceeded solely to facilitate a compromise, settlement, rearrangement or other restructuring of liabilities under such Multiemployer Plan with the consent of the Required Lenders (such consent not to be unreasonably withheld, delayed or conditioned or denied)); provided that this clause (iii) shall not apply if on the applicable date of determination Consolidated EBITDA for the most recent Test Period ending prior to such date of determination as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a) on or prior to such date of determination exceeds \$400,000,000; or

~~Junior Financing Documentation.~~ (i) Any of the Obligations of the Loan Parties under the Loan Documents for any reason shall cease to be, or shall be asserted by any Loan Party not to be, "Senior Indebtedness" (or any comparable term) or "Senior Secured Financing" (or any comparable term) under, and as defined in, any Junior Financing Documentation in respect of any Junior Financing that is, or is required by this Agreement to be, Subordinated Indebtedness or (ii) the subordination provisions set forth in any Junior Financing Documentation in respect of any Junior Financing that is, or is required by this Agreement to be, Subordinated Indebtedness shall, in whole or in part, cease to be, or shall be asserted by any Loan Party not to be, effective or legally valid, binding and enforceable against the holders of any such Junior Financing, if applicable (other than as a result of acts or omissions by the Administrative Agent or Collateral Agent or the satisfaction in full of all the Obligations (other than contingent obligations)); or

~~IBT Agreement.~~ The IBT Agreement shall be declared invalid or illegal, shall be terminated, or shall no longer be in full force and effect.

#### Section 8.02. Remedies Upon Event of Default

. If any Event of Default occurs and is continuing the Administrative Agent, at the request of the Required Lenders shall, take any or all of the following actions:

(i) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, premium and all other amounts owing or payable or accrued 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 (to the extent permitted by applicable law) by the Borrower and each other Loan Party; and

(iii) subject to the terms, conditions and provisions of any Intercreditor Agreement, exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

*provided* 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, premium and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender, and without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived (to the extent permitted by applicable law) by the Borrower and each other Loan Party.

#### Section 8.03. *Exclusion of Immaterial Subsidiaries*

. Solely for the purpose of determining whether a Default or an Event of Default has occurred under clause (f) or (g) of Section 8.01, any reference in any such clause to any Restricted Subsidiary or Loan Party shall be deemed not to include any Restricted Subsidiary affected by any event or circumstances referred to in any such clause that was, as of the last day of the most recent completed fiscal quarter of the Borrower, an Immaterial Subsidiary.

#### Section 8.04. *Application of Funds*

. Subject to the terms, conditions and provisions of each Intercreditor Agreement, 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 be applied by the Administrative Agent in the following order (to the fullest extent permitted by mandatory provisions of applicable Law):

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.05 and amounts payable under Article 3) payable to the Administrative Agent or the Collateral Agent in its capacity as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities, premium and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.05 and amounts payable under Article 3), ratably among them in proportion to the 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, ratably among the Secured Parties 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, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Fourth* held by them;

*Fifth*, to the payment of all other Obligations of the Borrower that are due and payable to the Administrative Agent, the Collateral Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

*Last*, the balance, if any, after all of the Obligations (other than contingent obligations) have been paid in full, to the Borrower or as otherwise required by Law.

#### ARTICLE 9

##### THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Each Lender hereby irrevocably appoints the Administrative Agent and the Collateral Agent (for purposes of this Article 9, the Administrative Agent and the Collateral Agent are referred to collectively as the "**Agents**") its agent and authorizes the Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental or related thereto. Without limiting the generality of the foregoing, the Agents are hereby expressly authorized to (i) execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents (including, for the avoidance of doubt, (x) the ABL Intercreditor Agreement, including any amendment or supplement expressly contemplated thereby and (y) upon the incurrence of any Permitted Junior Priority Additional Debt, a Junior Lien Intercreditor Agreement) and (ii) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the direction of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Lender.

The institution serving as the Administrative Agent and/or the Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender, if it is a Lender, as any other Lender and may exercise the same as though it were not an Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not an Agent hereunder. The Agents 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 Loan Party that is communicated or obtained by the Person serving as Administrative Agent or Collateral Agent, as applicable, or any of their Affiliates in any capacity.

Neither Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) neither Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and

is continuing, except that The Bank of New York Mellon shall always have a fiduciary duty to the Department of the Treasury while serving as its Agent, (b) neither Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that such Agent is instructed in writing to exercise by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in [Section 10.08](#)), and (c) except as expressly set forth in the Loan Documents, neither Agent shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to the Borrower or any of the Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent and/or Collateral Agent or any of its Affiliates in any capacity. Neither Agent shall be required to expend or risk its own funds or otherwise incur liability in the performance of any of its duties hereunder or under any other Loan Document or in the exercise of any of its rights or powers. Notwithstanding anything in any Loan Document to the contrary, prior to taking any action under this Agreement or any other Loan Document, each Agent shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses in connection with taking such action. Neither Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in [Section 10.08](#)) or in the absence of its own gross negligence or willful misconduct as determined by the final non-appealable judgment of a court of competent jurisdiction. Notwithstanding the foregoing, no action nor any omission to act, taken by either Agent at the direction of the Required Lenders (or such other number or percentage of Lenders as shall be expressly provided for herein or in the other Loan Documents) shall constitute gross negligence or willful misconduct. Neither Agent shall be deemed to have knowledge of any Default unless and until written notice thereof, conspicuously labeled as a "notice of default" and specifically describing such Default, is given to an Agent Responsible Officer by the Borrower or a Lender, and neither Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in [Article 4](#) or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent.

Notwithstanding anything to the contrary in any Loan Document, the Agent shall not be responsible for the existence, genuineness or value of any of the Collateral; for filing any financing or continuation statements or recording any documents or instruments in any public office or otherwise perfecting or maintaining the perfection of any security interest in the Collateral; for the validity, perfection, priority or enforceability of the Liens in any of the Collateral; for the validity or sufficiency of the Collateral or any agreement or assignment contained therein; for the validity of the title of any grantor to the Collateral; for insuring the Collateral; or for the payment of taxes, charges or assessments on the Collateral.

In no event shall either Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder or under any other Loan Document arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes,

work stoppages, epidemics, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services (it being understood that such Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances).

Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, opinion, consent, statement, instrument, document or other writing believed by it in good faith to be genuine and to have been signed or sent by the proper Person. Each Agent may also rely upon any statement made to it orally or by telephone and believed by it in good faith to have been made by the proper Person, and shall not incur any liability for relying thereon. Delivery of reports, information and documents to an Agent is for informational purposes only and an Agent's receipt of the foregoing will not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Borrower's compliance with any of its covenants hereunder. Each 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. The Agents shall not be liable for any errors of judgment made in good faith by an Agent Responsible Officer, unless it shall be proved that the Agent Responsible Officer was grossly negligent in ascertaining the pertinent facts. Any funds held by an Agent shall, unless otherwise agreed in writing with the Borrower, be held uninvested in a non-interest bearing account.

The calculation of any ratio, including the Total Leverage Ratio, shall not be a duty or obligation of either Agent.

Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents or attorneys appointed by it and will not be responsible for the misconduct or negligence of any agent appointed with due care. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related Parties (other than Disqualified Lenders). The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties (other than Disqualified Lenders) of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the arrangement of the Facilities as well as activities as Agent.

Either Agent may resign at any time by notifying the Lenders and the Borrower in writing, and either Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to the Borrower and such Agent and signed by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right, with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g)), to appoint a successor. If no successor shall have been so appointed by the Required Lenders (with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g))) and shall have accepted such appointment within 30 days after (i) the retiring Agent gives notice of its resignation or (ii) the Required Lenders delivers removal instructions, then the retiring or removed Agent may, on behalf of the Lenders (with the consent of the Borrower (which consent

shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f), or (g)), appoint a successor Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. If no successor Agent has been appointed pursuant to the immediately preceding sentence, such Agent's resignation or removal shall become effective and the Required Lenders shall thereafter perform all the duties of such Agent hereunder and/or under any other Loan Document until such time, if any, as the Required Lenders (with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f), or (g))) appoint a successor Administrative Agent and/or Collateral Agent, as the case may be. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of its predecessor Agent, and its predecessor Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article and Section 10.05 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties (other than Disqualified Lenders) in respect of any actions taken or omitted to be taken by any of them while acting as Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

Each Lender acknowledges and agrees that The Bank of New York Mellon or one or more of its Affiliates may (but is not obligated to) act as collateral agent or representative for the holders of ABL Facility Indebtedness, Tranche B-2 Term Loan Facility Indebtedness, UST Tranche B Term Loan Facility Indebtedness, Permitted Junior Priority Additional Debt, any Extended Term Loan or any Permitted Refinancing thereof under the collateral agreements with respect thereto and/or under the ABL Intercreditor Agreement or any Junior Lien Intercreditor Agreement. Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against The Bank of New York Mellon or any of its Affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

In case of the pendency of any case or proceeding under any insolvency or other similar 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 (but not obligated) 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 Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their

respective agents and counsel and all other amounts due the Lenders, the Agents under Section 2.05, Section 3.01, and Section 10.05) 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, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agents 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 to the Agents under Section 2.05 and Section 10.05. 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 or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Lenders 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 amounts owed to the Agents 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 stock 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 stock thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination 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 stock 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 the Administrative Agent 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 each Lenders pro rata and the stock 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 the Administrative Agent or any acquisition vehicle to take any further action.

**ARTICLE 10**  
MISCELLANEOUS

Section 10.01. *Notices; Electronic Communications*

. 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 email or fax, as follows:

(a) if to the Borrower or any other Loan Party, to it at:

YRC Worldwide Inc.  
Attention of Chief Financial Officer and General Counsel  
10990 Roe Avenue  
Overland Park, Kansas 66211  
Fax No. 913-696-6116  
Tel. No. 913-696-6529 or 913-696-6132  
Email: stephanie.fisher@yrcw.com and jim.fry@yrcw.com

With copy to:

Kirkland & Ellis LLP  
Attention of Michelle Kilkenney, P.C., Esq.  
300 North LaSalle  
Chicago, Illinois 60654  
Fax No. 312-862-2200  
Tel. No. 312-862-2487  
Email: michelle.kilkenney@kirkland.com

(b) if to the Administrative Agent or the Collateral Agent, to:

The Bank of New York Mellon  
240 Greenwich Street 7th Floor  
New York, NY 10286  
Attention: Joanna Shapiro, Managing Director  
Tel. No: 212-815-4949  
[joanna.g.shapiro@bnymellon.com](mailto:joanna.g.shapiro@bnymellon.com) with a copy to [UST.Cares.Program@bnymellon.com](mailto:UST.Cares.Program@bnymellon.com)

With a copy to (which shall not constitute notice):

Hogan Lovells US LLP  
390 Madison Avenue  
New York, New York 10017  
Fax No.: 212-918 3100  
Tel. No.: 212-909 0616  
Attention: Robert A. Ripin

With a copy to (which shall not constitute notice):

United States Department of the Treasury  
1500 Pennsylvania Ave., NW,  
Washington, D.C. 20220  
Attention: Eric Froman  
Assistant General Counsel (Banking & Finance)  
e-mail: [Eric.Froman@treasury.gov](mailto:Eric.Froman@treasury.gov)

With a copy to (which shall not constitute notice):

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017  
Attention: James A. Florack  
e-mail: [james.florack@davispolk.com](mailto:james.florack@davispolk.com)

if to Lender, to it at its address (email address or fax number) set forth on [Schedule 2.01](#) or in the Assignment and Acceptance or Refinancing Amendment pursuant to which such Lender shall have become a party hereto.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or on the date three Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this [Section 10.01](#) or in accordance with the latest unrevoked direction from such party given in accordance with this [Section 10.01](#). As agreed to among the Borrower, the Administrative Agent, the Collateral Agent and the applicable Lenders from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable Person provided from time to time by such Person.

The Borrower hereby agrees, unless directed otherwise by the Required Lenders, the Administrative Agent, the Collateral Agent or unless the electronic mail address referred to below has not been provided by the Administrative Agent or the Collateral Agent to the Borrower, that it will, or will cause its Restricted Subsidiaries to, provide to the Administrative Agent, the Collateral Agent and/or the Required Lenders all information, documents and other materials that it is obligated to furnish to the Administrative Agent, the Collateral Agent and/or the Required Lenders pursuant to the Loan Documents or to the Lenders under Article 6, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) is or relates to a Request for Credit Extension or a notice pursuant to [Section 2.10](#), (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, or (iii) provides notice of any Default or Event of Default under this Agreement or any other Loan Document, (all such non-excluded communications being referred to herein collectively as “**Communications**”), by transmitting the Communications in an electronic/soft medium that is properly identified in a

format reasonably acceptable to the Administrative Agent, the Collateral Agent and/or the Required Lenders to an electronic mail address as directed by the Administrative Agent, the Collateral Agent and/or the Required Lenders. In addition, the Borrower agrees, and agrees to cause its Restricted Subsidiaries, to continue to provide the Communications to the Administrative Agent, the Collateral Agent, the Required Lenders or the Lenders, as the case may be, in the manner specified in the Loan Documents but only to the extent requested by the Administrative Agent.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, the "**Borrower Materials**") by posting the Borrower Materials on Intralinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower, its Restricted Subsidiaries or any of their respective securities) (each, a "**Public Lender**"). The Borrower hereby agrees (w) to use commercially reasonable effort to make all Borrower Materials that are to be made available to Public Lenders clearly and conspicuously "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or any of its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.16); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor;" and (z) the Administrative Agent 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 marked as "Public Investor." Notwithstanding the foregoing, the following Borrower Materials shall be marked "PUBLIC", unless the Borrower notifies the Administrative Agent promptly that any such document contains material non-public information: (1) the Loan Documents, (2) financial statements and related documentation, in each case, provided pursuant to Section 6.01(a) or 6.01(b) and (3) notification of changes in the terms of the Facilities.

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 Communications 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, its Restricted Subsidiaries or any of their respective securities for purposes of United States Federal or state securities laws.

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY,

FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY, ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL NON-APPEALABLE RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BAD FAITH, IN EACH CASE, AS DETERMINED BY THE FINAL NON-APPEALABLE JUDGMENT OF A COURT OF COMPETENT JURISDICTION AND SHALL HAVE NO LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON FOR DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE).

The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such e-mail address.

Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 10.02. *Survival of Agreement*

. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans, regardless of any investigation made by the Lenders or on their behalf or that any Agent or Lender may have had notice of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Commitments have not been terminated. The provisions of Sections 3.01, 3.03, 3.04 and 10.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent or any Lender.

Section 10.03. *Binding Effect*

. This Agreement shall become effective when it shall have been executed and delivered by the Borrower, each other Loan Party party hereto on the Effective Date, the Collateral Agent and the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto.

Section 10.04. *Successors and Assigns*

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Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower, the Administrative Agent, the Collateral Agent or the Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns.

Each Lender may assign to one or more Eligible Assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it), with the prior written consent of the Administrative Agent (not to be unreasonably withheld, conditioned or delayed); *provided, however*, that (i) if the approval of the Borrower is required for any such assignment pursuant to the definition of "Eligible Assignee", then the Borrower must also give its prior written consent to such assignment (which consent shall not be unreasonably withheld, conditioned or delayed), and the Borrower shall be deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the Administrative Agent within three (3) Business Days after the Borrower having received written notice thereof, (ii) the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall be in an integral multiple of, and not less than, \$1,000,000 (or, if less, the entire remaining amount of such Lender's Commitment or Loans of the relevant Class) unless the Administrative Agent otherwise agrees; *provided* that simultaneous assignments by two or more Related Funds shall be combined for purposes of determining whether the minimum assignment requirement is met, (iii) the parties to each assignment shall (A) execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent or (B) if previously agreed with the Administrative Agent, manually execute and deliver to the Administrative Agent an Assignment and Acceptance, and, in each case, shall pay to the Administrative Agent a processing and recordation fee of \$3,500; *provided* that (x) simultaneous assignments by two or more Related Funds shall require the payment of a single processing and recordation fee of \$3,500 and (y) such processing and recordation fee may be waived or reduced in the sole discretion of the Administrative Agent and (iv) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire (in which the assignee shall designate one or more credit contacts to whom all Lender-level information (which may contain material non-public information about the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable Laws, including Federal and state securities laws), all documentation and other information reasonably determined by the Administrative Agent or the Collateral Agent to be required by applicable regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, and all applicable tax forms (including such documentation

required under Section 3.01(d)). Upon acceptance and recording pursuant to paragraph (e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.03, 3.04 and 10.05). Upon request and the surrender by the assigning Lender of its Term Note (if any), the Borrower (at its expense) shall execute and deliver a Term Note to the assignee Lender.

By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and the outstanding balances of its Term Loans without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance; (ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is an Eligible Assignee legally authorized to enter into such Assignment and Acceptance; (iv) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with copies of the most recent financial statements referred to in Section 5.05 or delivered pursuant to Section 6.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon the Administrative Agent, the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vi) such assignee appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent and the Collateral Agent, respectively, by the terms hereof or thereof, together with such powers as are reasonably incidental or related thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of and the 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, the Collateral 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, the Collateral Agent and, as to entries pertaining to it, any Lender, at any reasonable time and from time to time upon reasonable prior written notice. Upon reasonable request by a Lender, the Administrative Agent shall make available to such Lender a schedule of Disqualified Lenders, to the extent the Borrower has provided such a schedule to the Administrative Agent. This [Section 10.04\(d\)](#) shall be construed so that all Loans are at all times maintained in “registered form” within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

Upon its receipt of, and consent to, a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) above, if applicable, and the written consent of the Administrative Agent and, if required, the Borrower, to such assignment, and “know your customer” information requested by the Administrative Agent and the Collateral Agent, and any applicable tax forms (including such documentation required under [Section 3.01\(d\)](#)), the Administrative Agent shall promptly (i) accept such Assignment and Acceptance and (ii) record the information contained therein in the Register. No assignment shall be effective unless it has been recorded in the Register as provided in this paragraph (e).

Each Lender may without the consent of the Borrower or the Administrative Agent sell participations to one or more banks or other Persons (other than Disqualified Lenders) in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided, however*, that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participating banks or other Persons shall be entitled to the benefit of the cost protection provisions contained in [Sections 3.01, 3.03 and 3.04](#) (subject to the requirements and limitations therein, including the requirements under [Section 3.01\(d\)](#) (it being understood that the documentation required under [Section 3.01\(d\)](#) shall be delivered to the participating Lender)) to the same extent as if they were Lenders (but with respect to any particular participant, to no greater extent than the Lender that sold the participation to such participant and only if such participant has complied with the requirements of such provisions as if it were a Lender) and (iv) the Borrower, the Administrative Agent, the Collateral 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, and such Lender shall retain the sole right to enforce the obligations of the Borrower relating to the Loans and to approve any amendment, modification or waiver of (or consent under) any provision of this Agreement or any other Loan Document (*provided* that the agreement or instrument pursuant to which such Lender has sold a participation may provide that such Lender shall not agree to the following amendments without the consent of such participating bank or Person hereunder: amendments, modifications or waivers decreasing any fees payable to such participating bank or Person hereunder or the amount of principal of or the rate at which interest is payable on the Loans in which such participating bank has an interest; extending any scheduled principal payment date or scheduled date fixed for the payment of interest on the Loans in which such participating bank or Person has

an interest; increasing or extending the Commitments in which such participating bank or Person has an interest; releasing all or substantially all of the Guarantors (other than in connection with the sale of any such Guarantor in a transaction permitted by [Section 7.05](#)) releasing all or substantially all of the Collateral or the Term Priority Collateral or reductions in the voting thresholds; or modifying the pro rata requirements of [Section 2.13\(b\)](#), [Section 2.13\(c\)](#) or [Section 2.14](#), in each case, which directly and adversely affects such participants; *provided, further*, that, notwithstanding the foregoing, only the consent of the Required Lenders shall be required in respect of any amendment, modification or waiver of (i) the payment of default interest, (ii) the occurrence of a default or an Event of Default, (iii) the mandatory prepayment requirements of [Section 2.13](#) or (iv) the payment or receipt of the fee or premium pursuant to [Section 2.12\(d\)](#)). To the extent permitted by law, each participating bank or other Person also shall be entitled to the benefits of [Section 10.06](#) as though it were a Lender, *provided* such participating bank or other Person agrees to be subject to [Section 2.15](#) as though it were a Lender. Each Lender that sells a participation or exercises its option under section 10.04(i) with respect to an SPV 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 SPV (other than any SPV that is treated as a disregarded entity of the Granting Lender for U.S. federal income tax purposes) and the principal amounts (and interest thereon) of each participant's interest in the Loans or other Obligations under this Agreement (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 SPV or any information relating to a Participant's or a SPV'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 in connection with a Tax audit or other proceeding to establish that such commitment, loan, letter of credit or other obligation is in registered form under United States Treasury Regulations Section 5f.103-1(c) and proposed United States Treasury Regulations Section 1.163-5(b) (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and the Borrower, the Lenders and each Agent 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 notice to the contrary.

Any ~~(g)~~ lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this [Section 10.04](#), disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; *provided* that (except during the arrangement by the Required Lenders when customary confidentiality arrangements shall apply), prior to any such disclosure of Information, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree to preserve the confidentiality of such confidential information on terms no less restrictive in any material respect than those applicable to the Lenders pursuant to [Section 10.16](#) for the benefit of (and enforceable by) the Borrower.

Any ~~(h)~~ lender may at any time assign all or any portion of its rights under this Agreement to secure extensions of credit to such Lender or in support of obligations owed by such Lender; *provided* that no such assignment shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

Notwithstanding anything to the contrary contained herein, any Lender (a “Granting Lender”) may grant to a special purpose funding vehicle (an “SPV”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPV to make any Loan, (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof, and (iii) the Granting Lender shall for all purposes remain the Lender hereunder. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, it will not institute against, or join any other Person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 10.04, any SPV may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPV to support the funding or maintenance of Loans, and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV.

The Borrower (except as expressly permitted by clause (ii) of Section 7.04(d)) shall not assign or delegate any of its rights or duties hereunder without the prior written consent of the Administrative Agent and each Lender, and any attempted assignment without such consent shall be null and void.

#### Section 10.05. Expenses; Indemnity

The Borrower agrees (i) promptly following (and in any event within thirty (30) days of) written demand (including documentation reasonably supporting such request) therefor, to pay or reimburse the Administrative Agent, the Collateral Agent and the Lenders for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby (including Attorney Costs which shall be limited to Attorney Costs of one counsel to the Agents, and one counsel to the Lenders (and one local counsel in each applicable jurisdiction for each group and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel of each type to similarly situated parties)) and (ii) from and after the Effective Date, promptly following (and in any event within thirty (30) days of) written demand (including documentation reasonably

supporting such request) therefor, to pay or reimburse the Administrative Agent and the Collateral Agent and each Lender promptly following written demand for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of any rights or remedies under this Agreement or the other Loan Documents (including all such out-of-pocket costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective Attorney Costs which shall be limited to Attorney Costs of one counsel to the Agents and one counsel to the Lenders (and one local counsel in each applicable jurisdiction for each group and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel of each type to similarly situated parties)). To the extent otherwise reimbursable by the foregoing sentence of this section, the foregoing costs and expenses shall include all reasonable search, filing, recording, title insurance, survey, environmental, property condition report and zoning report charges and fees related thereto, and other reasonable and documented out of pocket expenses incurred by any Agent. The foregoing costs and expenses shall also include all mortgage recording, recording and filing fees charged by governmental authorities to record and/or file Collateral Documents.

Whether or not the transactions contemplated hereby are consummated, the Loan Parties shall, jointly and severally, indemnify and hold harmless the Administrative Agent, the Collateral Agent and their respective Affiliates, successors and permitted assigns (or the directors, officers, employees, agents, advisors and members of each of the foregoing) (each an "**Agent Indemnitee**" and collectively, the "**Agent Indemnitees**") and each Lender and their respective Affiliates, successors and permitted assigns (or the directors, officers, employees, agents, advisors and members of each of the foregoing) (each a "**Lender Indemnitee**" and collectively, the "**Lender Indemnitees**"; together with, the Agent Indemnitees, collectively the "**Indemnitees**") from and against any and all actual losses, damages, claims, liabilities and reasonable documented out-of-pocket costs and expenses (including Attorney Costs which shall be limited to Attorney Costs of one outside counsel for the Agent Indemnitees and Attorney Costs of one outside counsel for the Lender Indemnitees (and, if necessary, one local counsel in each applicable jurisdiction and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel in each jurisdiction for each type of similarly situated affected Indemnitees)) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any Agent Indemnitee or Lender Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the Transactions or the other transactions contemplated thereby, (ii) any Commitment or 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 from any property, vehicle or facility currently or formerly owned, leased or operated by the Loan Parties or any Subsidiary, or any other Environmental Liability related in any way to any Loan Parties or any Subsidiary, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Agent Indemnitee or Lender Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of its Affiliates or equityholders in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of any such Agent Indemnitee or Lender Indemnitee; *provided that*,

notwithstanding the foregoing, such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, damages, claims, liabilities and expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee, as determined by the final non-appealable judgment of a court of competent jurisdiction or (y) any dispute solely among the Indemnitees other than (1) any claim against an Indemnitee in its capacity or in fulfilling its role as Administrative Agent, Collateral Agent or similar role and (2) any claim arising out of any act or omission of the Borrower or any of its Affiliates, as determined by the final non-appealable judgment of a court of competent jurisdiction. No Indemnitee or any other party hereto shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement except to the extent that such damages resulted from the (A) gross negligence, bad faith or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee, as determined by the final non-appealable judgment of a court of competent jurisdiction or (B) the material breach by such Indemnitee of its or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee's obligations under the Loan Documents, as determined by the final non-appealable judgment of a court of competent jurisdiction. In the case of a claim, investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such claim, investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, any Loan Party's directors, stockholders or creditors or other Affiliates or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. For the avoidance of doubt, this paragraph shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

Each Lender (other than Treasury) shall indemnify and hold harmless the Agent Indemnitees (to the extent not indefeasibly and timely indemnified by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), based on and to the extent of such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), from and against any and all losses, claims, damages, liabilities and related expenses (including reasonable and documented or invoiced out-of-pocket fees and expenses of a primary counsel for the Agent Indemnitees, taken as a whole (and, if necessary, one local counsel in each applicable jurisdiction) and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel in each jurisdiction for the conflicted Agent Indemnitees, and excluding any allocated costs of in-house legal counsel and any other third parties and consultants) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any Agent Indemnitee in any way relating to or arising out of or in connection with this Agreement or any other Loan Document or any action taken or omitted to be taken by any Agent Indemnitee (solely to the extent, in each case, that the Borrower is required to so indemnify and hold harmless the Administrative Agent Indemnitees pursuant to (and subject to the limitations of) this Section 10.05). Without limiting the foregoing, each Lender (other than Treasury) shall promptly following written demand therefor, pay or reimburse the Administrative Agent based on and to the extent of such Lender's pro rata share of all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of any rights or remedies under this Agreement or the other Loan Documents including all such out-of-pocket costs and expenses incurred during

any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective fees, charges and disbursements of a primary counsel and local counsel for the Agent Indemnitees, to the extent that the Agent Indemnitees are not timely reimbursed for such expenses by or on behalf of the Borrower. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the outstanding Loans and unused Commitments at such time (or, if such indemnity payment is sought after the date on which the Loans have been paid in full and the Commitments are terminated, in accordance with such Lender's pro rata share immediately prior to the date on which the Loans are paid in full and the Commitments are terminated). Each Lender (other than Treasury) hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any source against any amount due to the Administrative Agent under this paragraph (c).

To the extent permitted by applicable Law, (i) no Loan Party shall assert, and each hereby waives, any claim against any Indemnitee and (ii) no Indemnitee shall assert, and each hereby waives, any claim against any Loan Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions or any Loan or the use of the proceeds thereof (whether before or after the Effective Date); *provided* that the foregoing shall in no event limit the Borrower's indemnification obligations under clause (b) above.

The provisions of this Section 10.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, any investigation made by or on behalf of the Administrative Agent, the Collateral Agent or any Lender or the resignation or removal of any Agent. All amounts due under this Section 10.05 shall be payable within 30 days after written demand therefor (including documentation reasonably supporting such request).

#### Section 10.06. *Right of Setoff*

In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Agents, in respect of any unpaid fees, costs, expenses, indemnities and other amounts payable hereunder) is authorized at any time and from time to time (with the prior consent of the Administrative Agent), without prior notice to any Loan Party, any such notice being waived by each Loan Party (on its own behalf and on behalf of each of its Subsidiaries), 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) (other than payroll accounts, trust accounts, escrow accounts, employee benefits accounts or petty cash accounts) at any time held by, and other indebtedness at any time owing by, such Lender and its Affiliates or the Administrative Agent or Collateral Agent to or for the credit or the account of the respective Loan Parties against any and all matured Obligations owing to such Lender and its Affiliates or the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be denominated in a currency different from that of the applicable deposit or

Indebtedness. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided*, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent, the Collateral Agent and each Lender under this Section 10.06 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent, the Collateral Agent and such Lender may have at Law.

Section 10.07. *Applicable Law*

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE FEDERAL LAW OF THE UNITED STATES. INsofar AS THERE MAY BE NO APPLICABLE FEDERAL LAW, THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

Section 10.08. *Waivers; Amendment*

No failure or delay of the Administrative Agent, the Collateral Agent or any Lender in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

Except as provided in Section 2.18, with respect to any Refinancing Amendment, in Section 2.19 with respect to an Extension Offer or as otherwise provided herein or in a Loan Document, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders and (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto with the consent of the Required Lenders (*provided*, that amendments to the ABL Intercreditor Agreement or any Junior Lien Intercreditor Agreement shall require the agreement of the Loan Parties (or any of them) only to the extent required pursuant to the terms thereof); *provided, however*, that no such agreement shall (i) decrease the principal amount of, or extend the maturity of or any scheduled principal payment date or date for the payment of any fee or any interest on any Loan, or waive or excuse any such payment or any part thereof (other than with respect to any default interest), or decrease the amount of any fee or the rate of interest on any Loan (other than with respect to any default interest), without the prior written consent of each Lender directly and adversely affected thereby (it being understood that

(x) the waiver 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, (y) any change to the definition of "Consolidated EBITDA" or in the component definitions thereof shall not constitute a reduction or forgiveness in any rate of interest pursuant to this clause (i), (ii) increase or extend the Commitment of any Lender without the prior written consent of such Lender (it being understood that a waiver of any condition precedent or of any Default or Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender), (iii) amend or modify the pro rata requirements of Section 2.13(b), Section 2.13(c) or Section 2.14, the provisions of Section 10.04(j) or the provisions of this Section or release all or substantially all of the Guarantors (other than in connection with the sale of such Guarantors in a transaction permitted by Sections 7.04 or 7.05) or all or substantially all of the Collateral (other than as permitted hereby), without the prior written consent of each Lender directly and adversely affected thereby (or, in the case of Section 10.04(j), each Lender), (iv) change the provisions of any Loan Document in a manner that by its terms materially and adversely affects the rights of Lenders holding Loans of one Class differently from the rights of Lenders holding Loans of any other Class without the prior written consent of the Required Class Lenders with respect to each materially and adversely affected Class, (v) modify the protections afforded to an SPV pursuant to the provisions of Section 10.04(i) without the written consent of such SPV (vi) reduce the percentage contained in the definition of the term "Required Lenders" without the prior written consent of each Lender (it being understood that, with the consent of the Required Lenders (if such consent is otherwise required), additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loan Commitments on the Effective Date) or (vii) modify the definition of "Required Class Lenders" without the consent of the Required Class Lenders with respect to each Class of Loans or Commitments; *provided further* that (w) no Lender consent is required to effect a Refinancing Amendment or an Extension (except as expressly provided in 2.18 or 2.19, as applicable) or to effect any amendment expressly contemplated by Section 7.12, (x) [reserved], (y) modifications to Section 2.14, 2.15 or any other provision requiring pro rata payments or sharing of payments in connection with (I) [reserved], (II) [reserved] or (III) any Extension, shall only require approval (to the extent any such approval is otherwise required) of the Lenders participating and (z) no Lender consent other than the consent of the Required Lenders is required to effect any amendment or supplement to the ABL Intercreditor Agreement or any Junior Lien Intercreditor Agreement (I) that the Administrative Agent is otherwise authorized to enter into with only the consent of the Required Lenders by Section 10.23, (II) that is for the purpose of adding the holders of Permitted Junior Priority Additional Debt, (or a Junior Representative with respect thereto) as parties thereto, as expressly contemplated by the Junior Lien Intercreditor Agreement (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided*, that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (III) that is expressly contemplated by Section 5.2(c) or the second paragraph of Section 7.4 of the ABL Intercreditor Agreement (or the comparable provisions, if any, of any Junior Lien Intercreditor Agreement); *provided further* that no such agreement shall amend, modify or otherwise adversely affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Required Lenders, Administrative Agent or the Collateral Agent, as applicable.

Notwithstanding any other language to the contrary contained herein, with respect to any amendment, waiver or modification to which the Administrative Agent's consent is not required, the parties agree to deliver to the Administrative Agent and the Collateral Agent a copy of each such amendment, waiver or modification; provided that, (i) no party shall be liable for its failure to comply with this sentence and (ii) each of the Administrative Agent and the Collateral Agent shall not be bound by any such amendment unless and until it has received a copy thereof.

Notwithstanding the foregoing, this Agreement and any other Loan Document may be amended solely with the consent of the Administrative Agent, the Required Lenders and the Borrower without the need to obtain the consent of any other Lender if such amendment is delivered in order to (a) correct or cure (x) ambiguities, errors, omissions, defects, (y) to effect administrative changes of a technical or immaterial nature or (z) incorrect cross references or similar inaccuracies in this Agreement or the applicable Loan Document. This Agreement, guarantees, collateral documents, security documents, intercreditor agreements, and related documents executed in connection with this Agreement may be in a form reasonably determined by the Administrative Agent or Collateral Agent, as applicable, and may be amended, modified, terminated or waived, and consent to any departure therefrom may be given, without the consent of any Lender if such amendment, modification, waiver or consent is given in order to (x) comply with local law or advice of counsel or (y) cause such guarantee, collateral document, security document or related document to be consistent with this Agreement and the other Loan Documents. The Borrower, the Required Lenders and the Administrative Agent may, without the consent of any other Lender, effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Borrower, the Required Lenders and the Administrative Agent to effect the provisions of Section 2.05, Section 2.17, Section 2.18 and Section 2.19. Notwithstanding anything to the contrary contained herein, such amendment shall become effective without any further consent of any other party to such Loan Document.

#### Section 10.09. *Interest Rate Limitation*

. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable Law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or participation in accordance with applicable Law, the rate of interest payable in respect of such Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or participation but were not payable as a result of the operation of this Section 10.09 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

#### Section 10.10. *Entire Agreement*

. This Agreement and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any Person (other than the parties

hereto and thereto, their respective successors and assigns permitted hereunder and, to the extent expressly contemplated hereby, the Related Parties of each of the Required Lenders, Administrative Agent, the Collateral Agent and the Lenders) any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

Section 10.11. *WAIVER OF JURY TRIAL*

. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

Section 10.12. *Severability*

. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 10.13. *Counterparts; Electronic Signatures*

. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 10.03. Delivery of an executed signature page to this Agreement by facsimile or other electronic imaging transmission shall be as effective as delivery of a manually signed counterpart of this Agreement. For all purposes of this Agreement and any document to be signed or delivered in connection with or pursuant to this Agreement, the words "execution," "signed," "signature," "delivery," and words of like import shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, as the case may be, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery or the use of a paper-based recordkeeping system, as the case may be.

Section 10.14. *Headings*

. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 10.15. *Jurisdiction; Consent to Service of Process*

.

Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the District of Columbia or the United States Court of Federal Claims, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such Federal court. Each of the parties hereto hereby agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any such Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

#### Section 10.16. Confidentiality

Each of the Administrative Agent, the Collateral Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' officers, directors, employees and agents, including accountants, financing sources, legal counsel and other advisors involved in the Transaction on a "need to know" basis (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 requested by any regulatory authority or quasi-regulatory authority (such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations (including in connection with any reporting obligations under the CARES Act or Congressional inquiries, as determined in the sole discretion of the Secretary of the Treasury) or by any subpoena or similar legal process, or if otherwise consistent with the purposes of the CARES Act, as determined in the sole discretion of the Secretary of the Treasury (and in each such case, such Person shall promptly notify the Borrower of such disclosure), (d) in connection with the exercise of any remedies hereunder or under the other Loan Documents or any suit, action or proceeding relating to the enforcement of its rights hereunder or thereunder, (e) subject to an agreement containing provisions substantially the same as those of this Section 10.16, to (i) any actual or prospective assignee of or participant in any of its rights or obligations under this Agreement and the other Loan Documents or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any Subsidiary or any of their respective obligations, (f) with the prior written consent of the Borrower, (g) on a confidential basis to (x) any rating agency in connection with rating the Borrower or its Subsidiaries or the Facility or (y) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facility, or (h) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.16 or other confidentiality obligation owed to the Borrower or any of its Subsidiaries. For the purposes of this Article, "**Information**" shall mean all information received

from the Borrower and related to the Borrower, its business, other than any such information that was available to the Administrative Agent, the Collateral Agent or any Lender on a nonconfidential basis prior to its disclosure by the Borrower not in violation of any confidentiality or obligation owed to the Borrower and the Subsidiaries. In addition, each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents. Any Person required to maintain the confidentiality of Information as provided in this Section 10.16 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 its own confidential information.

*Section 10.17. Lender Action*

. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, unless expressly provided for herein or in any other Loan Document, without the prior written consent of the Administrative Agent (which shall be given at the direction of the Required Lenders).

*Section 10.18. USA PATRIOT Act Notice*

. Each Lender and the Agents (for themselves and not on behalf of any Lender) hereby notifies the Borrower and, in the case of the Agents, the Lenders, that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower, and, in the case of the Agents, the Lenders, which information includes the name and address of the Borrower and, in the case of the Agents, the Lenders and other information that will allow such Lender or the Agents, as applicable, to identify the Borrower and, in the case of the Agents, the Lenders, in accordance with the USA PATRIOT Act.

*Section 10.19. Collateral And Guaranty Matters*

. The Lenders irrevocably agree:

that any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document shall be automatically released (i) upon termination of all Commitments hereunder and payment in full of all Obligations (other than contingent obligations not yet accrued or payable), (ii) at the time the property subject to such Lien is disposed as part of or in connection with any disposition permitted hereunder or under any other Loan Document to any Person other than a Person required to grant a Lien to the Administrative Agent or the Collateral Agent under the Loan Documents (or, if such transferee is a Person required to grant a Lien to the Administrative Agent or the Collateral Agent on such asset, at the option of the applicable Loan Party, such Lien on such asset may still be released in connection with the transfer so long as (x) the transferee grants a new Lien to the Administrative Agent or Collateral Agent on such asset substantially concurrently with the transfer of such asset, (y) the transfer is between parties organized under the laws of different jurisdictions and at least one of such parties is a Foreign Subsidiary and (z) the priority of the new Lien is the same as that of the original Lien), (iii) subject to Section 10.08, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) if the property subject to such Lien is owned by a Guarantor,

upon release of such Guarantor from its obligations under its Guaranty pursuant to Section 11.10, (v) any such property constitutes Excluded Property or (vi) in accordance with any Intercreditor Agreement;

to release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.01(b), 7.01(g), 7.01(q) or 7.01(s) (in the case of Section 7.01(s)), to the extent required by the terms of the obligations secured by such Liens); and

that ~~(a)~~ Guarantor shall be automatically released from its obligations under the Guaranty as provided in Section 11.10.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's or the Collateral 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 10.19. In each case as specified in this Section 10.19, the Administrative Agent or the Collateral Agent will (and each Lender irrevocably authorizes the Administrative Agent and the Collateral Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as the Borrower may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 10.19.

Section 10.20. *Limitation on Liability*

. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS: (A) NO INDEMNITEE SHALL BE LIABLE TO ANY PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THEIR RESPECTIVE ACTIVITIES RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, THE TRANSACTIONS CONTEMPLATED THEREBY, THE TERM LOANS, OR OTHERWISE IN CONNECTION WITH THE FOREGOING; (B) WITHOUT LIMITING THE FOREGOING, NO INDEMNITEE SHALL BE SUBJECT TO ANY EQUITABLE REMEDY OR RELIEF, INCLUDING SPECIFIC PERFORMANCE OR INJUNCTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY; (C) NO INDEMNITEE SHALL HAVE ANY LIABILITY TO THE LOAN PARTIES, FOR DAMAGES OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY UNTIL THE EFFECTIVE DATE HAS OCCURRED; AND (D) IN NO EVENT SHALL ANY INDEMNITEE'S LIABILITY TO THE LOAN PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY EXCEED ACTUAL DIRECT DAMAGES INCURRED BY THE LOAN PARTIES OF UP TO \$10,000,000 IN THE AGGREGATE; *PROVIDED THAT THE FOREGOING SHALL IN NO EVENT LIMIT THE LENDERS' INDEMNIFICATION OBLIGATIONS TO THE AGENT INDEMNITEES UNDER SECTION 10.05 OF THIS AGREEMENT; PROVIDED FURTHER THAT SUCH*

Section 10.21. *Payments Set Aside*

To the extent that any payment by or on behalf of the Borrower or any other Loan Party is made to any Agent or any Lender, or any 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 such 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, to the fullest extent possible under provisions of applicable Law, 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 of any amount so recovered from or repaid by any 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 applicable Federal Funds Effective Rate from time to time in effect.

Section 10.22. *No Advisory or Fiduciary Responsibility*

In connection with all aspects of each transaction contemplated hereby, each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower and its Subsidiaries, on the one hand, and the Agents and the Lenders, on the other hand, and the Borrower and its Subsidiaries are capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof), (ii) the Agents, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Borrower and its Affiliates, and none of the Agents or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship, and (iii) the Agents and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

Each Loan Party acknowledges and agrees that each Lender and any of its affiliates may lend money to, invest in, and generally engage in any kind of business with, the Borrower, any of its Affiliates or any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lender or Affiliate thereof were not a Lender (or an agent or any other person with any similar role under the Facilities) and without any duty to account therefor to any other Lender, the Borrower or any Affiliate of the foregoing. Each Lender and any of its Affiliates may accept fees and other consideration from the Borrower or any of its Affiliates for services in connection with this Agreement, the Facilities, the commitment letter or otherwise

without having to account for the same to any other Lender, the Borrower or any Affiliate of the foregoing.

Section 10.23. *Intercreditor Agreements*

The Administrative Agent and the Collateral Agent are authorized and directed to become a party to the ABL Intercreditor Agreement (and enter into the ABL Intercreditor Agreement in respect of any Permitted Refinancing of ABL Facility Indebtedness), and each of the parties hereto acknowledges that it has received a copy of the ABL Intercreditor Agreement and that the ABL Intercreditor Agreement is binding upon it. Each Lender (a) hereby consents to the subordination of the Liens on the ABL Priority Collateral securing the Obligations on the terms set forth in the ABL Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the ABL Intercreditor Agreement and (c) hereby authorizes and instructs the Administrative Agent and the Collateral Agent to enter into the ABL Intercreditor Agreement and any amendments or supplements expressly contemplated thereby, and to subject the Liens on the ABL Priority Collateral securing the Obligations to the provisions of the ABL Intercreditor Agreement. The foregoing provisions are intended as an inducement to the ABL Secured Parties to extend credit to the borrowers under the ABL Credit Agreement and such ABL Secured Parties are intended third-party beneficiaries of such provisions and the provisions of the ABL Intercreditor Agreement.

The Administrative Agent and the Collateral Agent are authorized and directed to enter into the Junior Lien Intercreditor Agreement, and each of the parties hereto acknowledges that such agreement shall be binding upon it. Each Lender (a) hereby consents to the intercreditor agreements in respect of the Collateral securing the Obligations on the terms set forth in the Junior Lien Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Junior Lien Intercreditor Agreement and (c) hereby authorizes and instructs the Administrative Agent and the Collateral Agent to enter into the Junior Lien Intercreditor Agreement and, without the further consent, direction or other action of any Lender, to enter into any amendments or supplements thereto, in each case solely if the form of the agreement as so amended or supplemented would constitute the Junior Lien Intercreditor Agreement, as applicable, if being entered into as an original agreement. The foregoing provisions are intended as an inducement to the parties providing any Permitted Junior Priority Additional Debt to extend credit to the borrowers thereof and such parties are intended third-party beneficiaries of such provisions and the provisions of the Junior Lien Intercreditor Agreement.

The extent of any conflict between the Loan Documents, on the one hand, and the ABL Intercreditor Agreement or other intercreditor agreement contemplated by this Section 10.23, on the other hand, such intercreditor agreement shall control.

Section 10.24. *Alternative Interest Rates*

If at least two (2) Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing, the Required Lenders reasonably determine that for any reason, adequate and reasonable means do not exist for determining the Adjusted LIBO Rate for any requested Interest Period with respect to a proposed Eurodollar Loan, or that the Adjusted LIBO Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not

adequately and fairly reflect the cost to such Lenders of funding such Loan, or that deposits are not being offered to banks in the relevant interbank market for the applicable amount and the Interest Period of such Eurodollar Loan, the Required Lenders shall notify the Administrative Agent in writing, and thereafter the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Adjusted LIBO Rate component of the Alternate Base Rate, the utilization of the Adjusted LIBO Rate component in determining the Alternate Base Rate shall be suspended, in each case until the Administrative Agent (upon the written instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of or continuation of Eurodollar Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans (determined without reference to the Adjusted LIBO Rate component thereof) in the amount specified therein; provided, that such ABR Loans will be deemed "Eurodollar Loans" for purposes of Article 2 hereof.

If ~~(b)~~ Required Lenders and the Borrower shall reasonably agree that either (i) the circumstances set forth in clause (a) of this Section 10.24 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a) of this Section 10.24 have not arisen but the supervisor for the administrator of the LIBO Rate (or any component thereof) or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate (or any component thereof) shall no longer be published for use in determining interest rates for loans (in the case of either such clause (i) or (ii), an "**Alternative Interest Rate Election Event**"), then then the LIBO Rate, for any day, shall mean the rate per annum equal to the Federal Funds Rate in effect on such day plus one half of one percent (0.50%) (subject at all times to the requirement that such rate per annum shall not be less than one percent (1.00%) per annum).

Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to 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.

In connection with the implementation of a Benchmark Replacement, the Required Lenders 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 or any other Loan Document.

The Required Lenders will promptly notify the Administrative Agent of, and the Administrative Agent will, following receipt of such notice, promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Required Lenders or, if applicable, any Lender (or group of Lenders) pursuant to this Section 10.24(e) including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 10.24(e). Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent will promptly inform the Required Lenders if any change to be made is not administratively feasible. If the Required Lenders are so notified, such change will not be implemented and the Required Lenders shall substitute such change with a change that is administratively feasible.

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

Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Borrowing of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any

Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

Section 10.25. *Investment Purpose*

. Treasury acknowledges that the Treasury Equity has not been registered under the Securities Act of 1933, as amended (the "Securities Act") or under any state securities laws. Treasury (a) is acquiring the Treasury Equity pursuant to an exemption from registration under the Securities Act solely for investment without a view to sell and with no present intention to distribute them to any person in violation of the Securities Act or any applicable U.S. state securities laws; (b) will not sell or otherwise dispose of any of the Treasury Equity, except in compliance with the registration requirements or exemption provisions of the Securities Act and any applicable U.S. state securities laws; and (c) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of the Treasury Equity and of making an informed investment decision.

**ARTICLE 11**

**GUARANTEE**

Section 11.01. *The Guarantee*

. Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not as a surety to each Secured Party and their respective permitted successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of (i) Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws, whether or not such items are allowed or allowable as a claim in any applicable proceeding) on the Loans made by the Lenders to, and the Term Notes (if any) issued hereunder and held by each Lender of, the Borrower, and all other Obligations from time to time owing to the Secured Parties by any Loan Party under any Loan Document strictly in accordance with the terms thereof (such obligations being herein collectively called the "**Guaranteed Obligations**"). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 11.02. *Obligations Unconditional*

. The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower or any other Guarantor under this Agreement, any Term Notes issued under this Agreement, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations,

and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

at ~~(a)~~ time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

any ~~(b)~~ the acts mentioned in any of the provisions of this Agreement or the Term Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

the ~~(m)~~aturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

any ~~(l)~~ien or security interest granted to, or in favor of, any Secured Party or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

the ~~(e)~~lease of any other Guarantor pursuant to Section 11.10.

#### Section 11.03. *Certain Waivers*

. *Etc.* The Guarantors hereby expressly waive (to the extent permitted by applicable Law) diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Term Notes issued hereunder; if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against the Borrower or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and permitted assigns thereof, and shall inure to the benefit of the

Secured Parties, and their respective successors and permitted assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding. Each Guarantor waives (to the extent permitted by Law) any rights and defenses that are or may become available to it by reason of §§ 2787 to 2855, inclusive, and §§ 2899 and 3433 of the California Civil Code. As provided in [Section 10.07](#), the provisions of this [Article 11](#) shall be governed by, and construed in accordance with, the laws of the State of New York. The foregoing waivers and the provisions hereinafter set forth in this [Article 11](#) which pertain to California law are included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this [Article 11](#), to any other provision of this Agreement or to the Obligations.

*Section 11.04. Reinstatement*

. The obligations of the Guarantors under this [Article 11](#) shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

*Section 11.05. Subrogation; Subordination*

. Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations (other than contingent obligations) and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in [Section 11.01](#), whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party to any Person that is not a Loan Party permitted pursuant to [Section 7.03\(b\)](#) or [7.03\(d\)](#), shall be subordinated to such Loan Party's Obligations in a manner reasonably acceptable to the Required Lenders.

*Section 11.06. Remedies*

. The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Term Notes issued hereunder, if any, may be declared to be forthwith due and payable as provided in [Section 8.02](#) (and shall be deemed to have become automatically due and payable in the circumstances provided in [Section 8.02](#)) for purposes of [Section 11.01](#), notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of [Section 11.01](#).

*Section 11.07. Instrument for the Payment of Money*

. Each Guarantor hereby acknowledges that the guarantee in this [Article 11](#) constitutes an instrument for the payment of money, and consents and agrees that any Secured Party or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

*Section 11.08. Continuing Guarantee*

. The guarantee in this [Article 11](#) is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

Section 11.09. *General Limitation on Guarantee Obligations*

. In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other Person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.11) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 11.10. *Release of Guarantors*

. If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests or property of any Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party or (ii) any Guarantor becomes an Excluded Subsidiary (any such Guarantor, and any Guarantor referred to in clause (i), a "**Transferred Guarantor**"), such Transferred Guarantor shall, upon (x) the consummation of such sale or transfer or other transaction or (y) becoming an Excluded Subsidiary pursuant to clause (e) of the definition thereof, be automatically released from its obligations under this Agreement (including under Section 10.05 hereof) and its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Collateral Agent pursuant to the Collateral Documents shall be automatically released, and, the Collateral Agent shall, at the cost and direction of the Borrower, take such actions as are reasonably necessary to effect each release described in this Section 11.10 in accordance with the relevant provisions of the Collateral Documents; *provided*, that no Guarantor shall be released as provided in this paragraph if such Guarantor continues to be a guarantor in respect of any Indebtedness incurred pursuant to Section 7.03(a), any Permitted Additional Debt, any Junior Financing, any Tranche B-2 Term Loan Facility Indebtedness, UST Tranche B Term Loan Facility Indebtedness or any Permitted Refinancing of any of the foregoing. Notwithstanding anything herein to the contrary, if any Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall only be permitted to be released from its Guarantee so long as the fair market value of any and all Investments then held by the Loan Parties in such Person are permitted as an Investment under Section 7.02(c)(iii) and Section 7.02(p) at the time such Person becomes an Excluded Subsidiary pursuant to clause (a) of the definition of "Excluded Subsidiary".

When all Commitments hereunder have terminated, and all Loans or other Obligations hereunder which are accrued and payable have been paid or satisfied, this Agreement and the Guarantees made herein shall automatically terminate with respect to all Obligations, except with respect to Obligations that expressly survive such repayment pursuant to the terms of this Agreement.

Section 11.11. *Right of Contribution*

. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each

Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.05. The provisions of this Section 11.11 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent, the Collateral Agent and the Secured Parties, and each Guarantor shall remain liable to the Administrative Agent, the Collateral Agent and the Secured Parties for the full amount guaranteed by such Guarantor hereunder.

Section 11.12. *Additional Guarantor Waivers and Agreements*

Each Guarantor understands and acknowledges that if the Collateral Agent or any other Secured Party forecloses judicially or nonjudicially against any real property security for the Obligations, that foreclosure could impair or destroy any ability that such Guarantor may have to seek reimbursement, contribution, or indemnification from the Borrower or others based on any right such Guarantor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by such Guarantor under the Guaranty. Each Guarantor further understands and acknowledges that in the absence of this paragraph, such potential impairment or destruction of such Guarantor's rights, if any, may entitle such Guarantor to assert a defense to this Guaranty based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968). By executing this Guaranty, each Guarantor freely, irrevocably, and unconditionally: (i) waives (to the extent permitted by Law) and relinquishes that defense and agrees that such Guarantor will be fully liable under this Guaranty even though the Collateral Agent or any other Secured Party may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations; (ii) agrees that such Guarantor will not assert that defense in any action or proceeding which the Administrative Agent, the Collateral Agent or any other Secured Party may commence to enforce this Guaranty; (iii) acknowledges and agrees that the rights and defenses waived by such Guarantor in this Guaranty include any right or defense that such Guarantor may have or be entitled to assert based upon or arising out of any one or more of §§ 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or § 2848 of the California Civil Code; and (iv) acknowledges and agrees that the Secured Parties are relying on this waiver in creating the Obligations, and that this waiver is a material part of the consideration which the Secured Parties are receiving for creating the Obligations.

Each Guarantor waives (to the extent permitted by Law) all rights and defenses that such Guarantor may have because any of the Obligations is secured by real property. This means, among other things: (i) the Administrative Agent, the Collateral Agent and the other Secured Parties may collect from such Guarantor without first foreclosing on any real or personal property Collateral pledged by the other Loan Parties; and (ii) if the Collateral Agent or any other Secured Party forecloses on any real property Collateral pledged by the other Loan Parties: (A) the amount of the Obligations may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Administrative Agent, the Collateral Agent and the other Secured Parties may collect from such Guarantor even if the Secured Parties, by foreclosing on the real property Collateral, have destroyed any right such Guarantor may have to collect from the Borrower. This is an unconditional and irrevocable waiver of any rights and defenses such Guarantor may have because any of the Obligations is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon § 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

Each Guarantor waives (to the extent permitted by Law) any right or defense it may have at law or equity, including California Code of Civil Procedure § 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

Section 11.13. *Parallel Debt*

. In this Section 11.13, (x) “Corresponding Liabilities” means the Obligations of a Loan Party, but excluding its Parallel Liability and (y) “Parallel Liability” means a Loan Party’s undertaking pursuant to this Section 11.13. Each Loan Party irrevocably and unconditionally undertakes to pay to the Collateral Agent an amount equal to the aggregate amount of its Corresponding Liabilities (as these may exist from time to time). For purposes of this Section 11.13: (a) a Loan Party’s Parallel Liability is due and payable at the same time as, for the same amount of and in the same currency as its Corresponding Liabilities; (b) a Loan Party’s Parallel Liability is decreased to the extent that its Corresponding Liabilities have been irrevocably paid or discharged and its Corresponding Liabilities are decreased to the extent that its Parallel Liability has been irrevocably paid or discharged; (c) a Loan Party’s Parallel Liability is independent and separate from, and without prejudice to, its Corresponding Liabilities, and constitutes a single obligation of that Loan Party to the Collateral Agent (even though that Loan Party may owe more than one Corresponding Liability to the Secured Parties under the Loan Documents) and an independent and separate claim of the Collateral Agent to receive payment of that Parallel Liability (in its capacity as the independent and separate creditor of that Parallel Liability and not as a co-creditor in respect of the Corresponding Liabilities); and (d) for purposes of this Section 11.13, the Collateral Agent acts in its own name and not as agent, representative or trustee of the Secured Parties and accordingly holds neither its claim resulting from a Parallel Liability nor any Lien securing a Parallel Liability on trust.

**ARTICLE 12**

CARES ACT REQUIREMENTS

Section 12.01. *CARES Act Compliance*

. The Borrower hereby represents, warrants and covenants that the Borrower and each of its Affiliates are in compliance, and will at all times comply, with all applicable requirements under Title IV of the CARES Act, including any applicable requirements pertaining to the Borrower’s eligibility to receive the Loan. The Borrower will provide any information requested by the Lenders or Agents to assess the compliance by the Borrower and its Affiliates with the applicable requirements under Title IV of the CARES Act or the Borrower’s eligibility to receive the Loan under the CARES Act.

Section 12.02. *Dividends and Buybacks*

.  
Until the date that is 12 months after the date on which the Loan is no longer outstanding, neither the Borrower nor any of its Affiliates (other than an Affiliate that is a natural person) shall, in any transaction, purchase an equity security of the Borrower or of any direct or indirect parent company of the Borrower or of any Subsidiary of the Borrower, in each case, that is listed on a national securities exchange, except to the extent required under a contractual obligation in effect as of the date of enactment of the CARES Act.

Until the date that is 12 months after the date on which the Loan is no longer outstanding, the Borrower shall not pay dividends, or make any other capital distributions, with respect to the common stock of the Borrower.

Section 12.03. *Maintenance of Employment Levels*

. Until the date that is 12 months after the Initial Funding Date, the Borrower shall maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case shall not reduce its employment levels by more than ten (10) percent from the levels on March 24, 2020.

Section 12.04. *United States Business*

. The Borrower hereby represents that it is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States.

Section 12.05. *Limitations on Certain Compensation*

.  
Beginning on the Effective Date and ending on the date that is one year after the date on which the Loan is no longer outstanding, the Borrower and its Affiliates shall not pay any of the Borrower's Corporate Officers or Employees whose Total Compensation exceeded \$425,000 in calendar year 2019 or the Subsequent Reference Period (other than an Employee whose compensation is determined through an existing collective bargaining agreement entered into before March 1, 2020):

(i) Total Compensation which exceeds, during any 12 consecutive months of the period beginning on the Effective Date, and ending on the date that is one year after the date on which the Loan is no longer outstanding, the Total Compensation the Corporate Officer or Employee received in calendar year 2019 or the Subsequent Reference Period; or

(ii) Severance Pay or Other Benefits in connection with a termination of employment with the Borrower which exceed twice the maximum Total Compensation received by such Corporate Officer or Employee in calendar year 2019 or the Subsequent Reference Period.

Beginning on the Effective Date, and ending on the date that is one year after the date on which the Loan is no longer outstanding, the Borrower and its Affiliates shall not pay any of the Borrower's Corporate Officers or Employees whose Total Compensation exceeded \$3,000,000 in calendar year 2019 or the Subsequent Reference Period Total Compensation in excess of the sum of:

(i) \$3,000,000; and

(ii) 50 percent of the excess over \$3,000,000 of the Total Compensation received by such Corporate Officer or Employee in calendar year 2019 or the Subsequent Reference Period.

For purposes of determining applicable amounts under this Section 12.05 with respect to any Corporate Officer or Employee who was employed by the Borrower or any of its Affiliates for less than all of calendar year 2019, the amount of Total Compensation in calendar year 2019 shall mean such Corporate Officer's or Employee's Total Compensation on an annualized basis.

. As used in this Article 12, the following terms have the meanings specified below:

“**Benefits**” means, without duplication of any amounts counted as Salary or Wages, pension expenses (including company retirement or 401(k) plan contributions and direct annuity payments) in respect of Employees, all expenses for accident, sickness, hospital, and death benefits to Employees, and the cost of insurance (or self-insured costs) to provide such benefits; any Severance Pay or Other Benefits payable to Employees pursuant to a bona fide voluntary early retirement program or voluntary furlough; and any other similar expenses paid by the Borrower for the benefit of Employees, including other fringe benefit expenses (such as those relating to travel, meals, lodging, trade memberships, dues and registrations, tools or uniforms, moving and relocation costs, education, medical and recreational programs, and company contributions for group accident, health or life insurance) but excluding any Federal, state, or local payroll taxes paid by the Borrower.

“**Corporate Officer**” means, with respect to the Borrower, its president; any vice president in charge of a principal business unit, division, or function (such as sales, administration or finance); any other officer who performs a policy-making function; or any other person who performs similar policy making functions for the Borrower. Executive officers of subsidiaries or parents of the Borrower may be deemed Corporate Officers of the Borrower if they perform such policy-making functions for the Borrower.

“**Employee**” has the meaning given to the term in section 2 of the National Labor Relations Act (29 U.S.C. 152 and includes any individual employed by an employer subject to the Railway Labor Act (45 U.S.C. 151 et seq.), and for the avoidance of doubt includes all individuals who are employed by the Borrower who are not Corporate Officers.

“**Salary**” means, without duplication of any amounts counted as Benefits, a predetermined regular payment, typically paid on a weekly or less frequent basis but which may be expressed as an hourly, weekly, annual or other rate, as well as cost-of-living differentials, vacation time, paid time off, sick leave, and overtime pay, paid by the Borrower to its Employees, but excluding any Federal, state, or local payroll taxes paid by the Borrower.

“**Severance Pay or Other Benefits**” means any severance payment or other similar benefits, including cash payments, health care benefits, perquisites, the enhancement or acceleration of the payment or vesting of any payment or benefit or any other in-kind benefit payable (whether in lump sum or over time, including after March 24, 2022) by the Borrower to a Corporate Officer or Employee in connection with any termination of such Corporate Officer’s or Employee’s employment (including, without limitation, resignation, severance, retirement, or constructive termination), which shall be determined and calculated in respect of any Employee or Corporate Officer of the Borrower in the manner prescribed in 17 CFR 229.402(j) (without regard to its limitation to the five most highly compensated executives and using the actual date of termination of employment rather than the last business day of the Borrower’s last completed fiscal year as the trigger event).

“**Subsequent Reference Period**” means (i) for a Corporate Officer or Employee whose employment with the Borrower or an Affiliate started during 2019 or later, the 12-month period

starting from the end of the month in which the officer or employee commenced employment, if such officer's or employee's total compensation exceeds \$425,000 (or \$3,000,000) during such period and (ii) for a Corporate Officer or Employee whose Total Compensation first exceeds \$425,000 during a 12-month period ending after 2019, the 12-month period starting from the end of the month in which the Corporate Officer's or Employee's Total Compensation first exceeded \$425,000 (or \$3,000,000).

**"Total Compensation"** means Salary, bonuses, awards of stock and other financial benefits provided by the Borrower to a Corporate Officer or Employee of the Borrower.

**"Wage"** means, without duplication of any amounts counted as Benefits, a payment, typically paid on an hourly, daily, or piecework basis, including cost-of-living differentials, vacation, paid time off, sick leave, and overtime pay, paid by the Borrower to its Employees, but excluding any Federal, state, or local payroll taxes paid by the Borrower.

YRC WORLDWIDE INC.  
as Borrower

By: /s Darren D. Hawkins  
Name: Darren D. Hawkins  
Title: Chief Executive Officer

By: /s Jamie G. Pierson  
Name: Jamie G. Pierson  
Title: Chief Financial Officer

EXPRESS LANE SERVICE, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

NEW PENN MOTOR EXPRESS LLC  
(F/K/A NEW PENN MOTOR EXPRESS INC.)

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

ROADWAY EXPRESS INTERNATIONAL, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

ROADWAY LLC

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

ROADWAY NEXT DAY CORPORATION

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

HENRY LOGISTICS, INC.

By: /s/ Jason W. Bergman  
Name: Jason W. Bergman  
Title: President

USF BESTWAY INC.

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF DUGAN INC.

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF GLEN MOORE INC.

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF HOLLAND LLC  
(F/K/A USF HOLLAND INC.)

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF REDSTAR LLC

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF REDDAWAY INC.

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC ASSOCIATION SOLUTIONS, INC.

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President and Treasurer

YRC INC.

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President

YRC INTERNATIONAL INVESTMENTS, INC.

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President

YRC LOGISTICS SERVICES, INC.

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President

YRC MORTGAGES, LLC

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President

YRC ENTERPRISE SERVICES, INC.

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President

YRC REGIONAL TRANSPORTATION, INC.

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President

REIMER HOLDING B.V.

By: /s M.F.A. van Schijndel  
Name: M.F.A. van Schijndel  
Title: Director A

By: /s Terry Gerrond  
Name: Terry Gerrond  
Title: Director B

1105481 ONTARIO INC.

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President and Treasurer

YRC LOGISTICS INC.

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President and Treasurer

USF HOLLAND INTERNATIONAL SALES  
CORPORATION

By: /s Thomas J. O'Connor

Name: Thomas J. O'Connor

Title: President

YRC FREIGHT CANADA COMPANY

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President and Treasurer

[Signature Page to Credit Agreement]

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THE BANK OF NEW YORK  
MELLON, as Administrative Agent and Collateral Agent

By: /s/ Bret S. Derman  
Name: Bret S. Derman Title: Vice President

---

UNITED STATES DEPARTMENT OF THE TREASURY, as Lender

By: /s/ Brent J. McIntosh

Name: Brent J. McIntosh

Title: Under Secretary for International Affairs

United States Department of the Treasury

UST TRANCHE B TERM LOAN CREDIT AGREEMENT

dated as of

July 7, 2020

among

YRC WORLDWIDE INC.,

THE OTHER GUARANTORS PARTY HERETO FROM TIME TO TIME  
THE LENDERS PARTY HERETO

and

THE BANK OF NEW YORK MELLON  
as Administrative Agent and Collateral Agent

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Annex A	Voting Trust Agreement
Annex B	Registration Rights Agreement

UST TRANCHE B TERM LOAN CREDIT AGREEMENT, dated as of July 7, 2020 (this “**Agreement**”), among YRC WORLDWIDE INC., a Delaware corporation (the “**Borrower**”), the Guarantors party hereto from time to time, the Lenders (such term and each other capitalized term used but not defined in this introductory statement having the meaning given it in Article 1), and THE BANK OF NEW YORK MELLON, as administrative agent (in such capacity, including any permitted successor or assign thereto, the “**Administrative Agent**”) and as collateral agent (in such capacity, including any permitted successor or assign thereto, the “**Collateral Agent**”) for the Lenders.

WHEREAS, the Borrower has requested that the Lenders extend credit as is permissible under the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (Mar. 27, 2020), as the same may be amended from time to time (the “**CARES Act**”) to the Borrower, and the Lenders are willing to do so on the terms and conditions set forth herein.

WHEREAS, pursuant to Section 4003(h)(1) of the CARES Act, for purposes of the Code, the Loans shall be treated for U.S. federal income tax purposes as indebtedness and as having been issued for their stated principal amount, and the interest payable pursuant to Section 2.06 shall be treated as qualified stated interest for U.S. federal income tax purposes.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree as follows:

**ARTICLE 1**  
DEFINITIONS

Section 1.01. *Defined Terms*

. As used in this Agreement, the following terms shall have the meanings specified below:

“**ABL Agent**” shall mean, as the context may require, Citizens Business Capital (a division of Citizens Asset Finance, Inc., a subsidiary of Citizens, N.A.), in its capacity as administrative agent under the ABL Facility Documentation, Citizens Business Capital (a division of Citizens Asset Finance, Inc., a subsidiary of Citizens, N.A.), in its capacity as collateral agent under the ABL Facility Documentation, such agents collectively or any permitted successor or assignee administrative agent or collateral agent under the ABL Facility Documentation.

“**ABL Credit Agreement**” shall mean that certain asset-based revolving credit agreement dated as of February 13, 2014, among the Borrower, YRC Inc., a Delaware corporation, USF Reddaway Inc., an Oregon corporation, USF Holland LLC, a Delaware limited liability company (as successor to USF Holland, Inc., a Michigan corporation) and New Penn Motor Express, LLC, a Delaware limited liability company (as successor to New Penn Motor Express, Inc., a Pennsylvania corporation), the other subsidiaries of the Borrower party thereto, the lenders party thereto and the ABL Agent, as amended by that certain Amendment No. 1, dated September 23, 2015, Amendment No. 2, dated June 28, 2016, Amendment No. 3 and Limited Consent, dated January 30, 2018, Amendment No. 4, dated February 12, 2019, Amendment No. 5, dated September 11, 2019 and Amendment No. 6, dated July 7, 2020, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, refunded, replaced

or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents and resulting in a financing that constitutes (or that would constitute if incurred as a new financing) a Permitted Refinancing of the ABL Facility Indebtedness), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof), in each case as and to the extent permitted by this Agreement and, if applicable, the ABL Intercreditor Agreement; *provided* that any such amendment, restatement, modification supplement, extension, renewal, restructuring, refunding, replacement or refinancing shall be permitted hereunder only if not less than a majority of its aggregate commitments are provided by lenders who are third party commercial banks or other financial institutions that customarily provide asset based lending credit facilities and other financial institutions consented to by the Administrative Agent (such consent not to be unreasonably withheld or delayed).

“**ABL Facility**” shall mean the asset-based revolving credit facility made available to the Borrower and certain of its Subsidiaries pursuant to the ABL Credit Agreement.

“**ABL Facility Documentation**” shall mean the ABL Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith and including all “Loan Documents” (as defined in the ABL Credit Agreement) or similar term.

“**ABL Facility Indebtedness**” shall mean Indebtedness of the Borrower or any Restricted Subsidiary outstanding under the ABL Facility Documentation, including Bank Product Debt (as defined in the ABL Credit Agreement).

“**ABL Intercreditor Agreement**” shall mean the Amended and Restated ABL Intercreditor Agreement dated as of July 7, 2020 among the Administrative Agent and/or Collateral Agent, the ABL Agent, the Tranche B-2 Term Agent, the UST Tranche A Term Agent and the Loan Parties, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, waived or replaced from time to time.

“**ABL Priority Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**ABL Secured Parties**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**ABR**”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“**Additional Lender**” shall mean, with respect to any Refinancing Amendment or in respect of any bank, financial institution or investor not theretofor a Lender that agrees to provide an Other Term Loan pursuant thereto, *provided* that the Administrative Agent shall have consented (not to be unreasonably withheld, conditioned or delayed) to such bank, financial institution or investor as would be required under Section 10.04(b) for an assignment of Loans to such bank, financial institution or investor.

“**Adjusted LIBO Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum equal to the greater of (a) 1.00% per annum and (b) the product of (i) the LIBO Rate in effect for such Interest Period and (ii) Statutory Reserves.

“**Administrative Account**” means the account opened with the Administrative Agent in the name of the United States Department of the Treasury with account number 4314148400, or such other account as the Administrative Agent shall advise the Borrower and each Lender from time to time.

“**Administrative Agent**” shall have the meaning assigned to such term in the introductory statement to this Agreement, together with its successors and any replacement designated pursuant to Article 9 of this Agreement.

“**Administrative Agent Fee Letter**” means that certain fee letter dated on or around the date hereof, by and between Borrower, the Collateral Agent and the Administrative Agent, as amended, amended and restated, supplemented, waived, replaced or otherwise modified from time to time.

“**Administrative Questionnaire**” shall mean an Administrative Questionnaire in the form of Exhibit A, or such other form as may be supplied from time to time by the Administrative Agent and approved by the Borrower (such approval not to be unreasonably withheld, conditioned or delayed).

“**Affiliate**” shall mean, 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; provided, that, with respect to the Borrower and its Subsidiaries, in no case shall any Governmental Authority constitute an “Affiliate”. “**Control**” shall mean 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.

“**Agent Indemnitees**” shall have the meaning assigned to such term in Section 10.05(b).

“**Agent Responsible Officer**” means, when used with respect to an Agent, any vice president, assistant vice president, assistant treasurer or trust officer in the corporate trust and agency administration of the Agent or any other officer of the Agent customarily performing functions similar to those performed by any of the above-designated officers, and, in each case, who shall have direct responsibility for the administration of this Agreement and also means, with respect to a particular agency matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

“**Agents**” shall have the meaning assigned to such term in Article 9.

“**Agreement**” shall have the meaning assigned to such term in the introductory statement to this Agreement.

“**Alternate Base Rate**” shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day

plus 1/2 of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%; *provided* that (i) for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the rate published on the Bloomberg "LIBOR01" screen page (or any successor or replacement screen on such service) on such day at approximately 11 a.m. (London time) for deposits in Dollars and (ii) in no event shall the Alternate Base Rate be less than 2.00% per annum. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective on the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, as the case may be.

"**Alternative Interest Rate Election Event**" shall have the meaning assigned to such term in Section 10.24.

"**Applicable Margin**" shall mean, with respect to any Loan, a percentage per annum equal to (a) 3.50% per annum for Eurodollar Term Loans and (b) 2.50% per annum for ABR Term Loans.

"**Approved CapEx Plan**" shall have the meaning assigned to such term in Section 6.02(l).

"**Assignment and Acceptance**" shall mean an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in the form of Exhibit B or such other form as shall be approved by the Administrative Agent and the Borrower (such approval of the Borrower shall not be unreasonably withheld, conditioned or delayed).

"**Attorney Costs**" shall mean and shall include all reasonable and documented fees, expenses and disbursements of any law firm or other external legal counsel.

"**Attributable Indebtedness**" shall mean, 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.

"**Audited Financial Statements**" shall mean the audited consolidated balance sheets of the Borrower and its consolidated subsidiaries for the fiscal years ending December 31, 2019 and December 31, 2018 and the related consolidated statements of operations, changes in shareholders' equity and cash flows of the Borrower and its consolidated subsidiaries.

"**Availability Period**" means the period following the execution and delivery of this Agreement by the parties hereto until the Maturity Date.

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for

the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to [Section 10.24\(f\)](#).

**"Benchmark"** means, initially, USD LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to [Section 10.24\(c\)](#).

**"Benchmark Replacement"** means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Required Lenders for the applicable Benchmark Replacement Date:

- (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;
- (3) the sum of: (a) the alternate benchmark rate that has been selected by the Required Lenders and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Required Lenders in their reasonable discretion and is available to the Administrative Agent. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

**"Benchmark Replacement Adjustment"** means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

- (1) for purposes of clauses (1) and (2) of the definition of "Benchmark Replacement," the first alternative set forth in the order below that can be determined by the Required Lenders:
  - (a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the

Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

- (b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and
- (2) for purposes of clause (3) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Required Lenders and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar- denominated syndicated credit facilities;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Required Lenders in their reasonable discretion and is available to the Administrative Agent.

**"Benchmark Replacement Conforming Changes"** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "ABR," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Required Lenders decide 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 Required Lenders decide (or are notified by the Administrative Agent) that adoption of any portion of such market practice is not administratively feasible or if the Required Lenders determine that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Required Lenders decide is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**"Benchmark Replacement Date"** means the earliest to occur of the following events with respect to the then-current Benchmark, as determined by the Required Lenders and notified to the Administrative Agent and the Borrower:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or
- (3) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders by the Administrative Agent (acting at the direction of the Required Lenders).

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means the occurrence of one or more of the following events with respect to the then-current Benchmark, as determined by the Required Lenders and notified to the Administrative Agent and the Borrower:

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

administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

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

**"Benchmark Unavailability Period"** means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Agreement and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Agreement.

**"Blocked Person"** shall mean any Person that is publicly identified on the most current list of "Specially Designated Nationals and Blocked Persons" published by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**").

**"Board"** shall mean the Board of Governors of the Federal Reserve System of the United States of America.

**"Borrower"** shall have the meaning assigned to such term in the introductory statement to this Agreement.

**"Borrower Materials"** shall have the meaning assigned to such term in Section 10.01.

**"Borrowing"** shall mean Loans of the same Class and Type made or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

**"Business Day"** shall mean any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close; *provided, however*, that when used in connection with a Eurodollar Loan, the term "**Business Day**" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

**"Canadian Subsidiary"** shall mean any Subsidiary that is organized under the Laws of Canada or any state or province thereof.

**"Capital Expenditures"** shall mean, for any period, the aggregate of (a) all amounts that would be reflected as additions to property, plant or equipment on a consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries in accordance with GAAP and (b) the value of all assets under Capitalized Leases incurred by the Borrower and its Restricted Subsidiaries during such period.

**"Capitalized Leases"** shall mean all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided that*, subject to Section 1.11, for

all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“**Cash Collateral Account**” shall mean a blocked account at a commercial bank reasonably satisfactory to the Required Lenders and the Administrative Agent, in the name of the Borrower and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“**Cash Equivalents**” shall mean any of the following types of Investments, to the extent owned by the Borrower or any Restricted Subsidiary:

- (a) Dollars and, to the extent consistent with past practice, Canadian Dollars;
- (b) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of issuance thereof;
- (c) investments in commercial paper maturing within 270 days from the date of issuance thereof and having, at such date of acquisition, rated at least A-2 or P-2 by S&P or Moody’s;
- (d) investments in demand deposits, certificates of deposit, banker’s acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Administrative Agent, the ABL Agent, the Tranche B-2 Term Agent, the UST Tranche A Term Agent or any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000 and that issues (or the parent of which issues) commercial paper rated at least “Prime 1” (or the then equivalent grade) by Moody’s or “A 1” (or the then equivalent grade) by S&P;
- (e) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (b) above and entered into with a financial institution satisfying the criteria of clause (d) above;
- (f) investments in “money market funds” within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (e) above; and
- (g) other short-term investments entered into in accordance with normal investment policies and practices of any Foreign Subsidiary consistent with past practices for cash management and constituting investments in governmental obligations and investment funds analogous to and having a credit risk not greater than investments of the type described in clauses (a) through (f) above.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than set forth in clause (a) above; *provided* that such amounts are converted into currencies listed in clause (a) within ten Business Days following the receipt of such amounts.

“**Casualty Event**” shall mean any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Property (including any improvements thereon) to replace or repair such equipment, fixed assets or Real Property or as compensation for such condemnation event.

“**CDA First Lien Obligations**” shall have the meaning assigned to such term in the definition of “Net Proceeds”.

“**Change of Control**” shall mean:

- (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof), in each case other than the United States federal government or any other Governmental Authority on behalf thereof (or, in each case, any agent, trustee or other Person on behalf thereof, including, for the avoidance of doubt, any voting trust and the trustee thereof created to hold the Equity Interests for the benefit of the United States federal government or any other Governmental Authority), of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower;
- (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated or approved by the board of directors of the Borrower nor (ii) appointed by directors so nominated or approved; or
- (c) a “**change of control**” (or similar event) shall occur under (i) the ABL Facility Documentation or any Permitted Refinancing thereof, (ii) the Tranche B-2 Term Loan Facility Documentation or any Permitted Refinancing thereof, (iii) the UST Tranche A Term Loan Facility Documentation or any Permitted Refinancing thereof or (iv) any other Indebtedness for borrowed money, with an aggregate principal amount (in the case of this clause (iv)) in excess of the Threshold Amount;

provided, that, notwithstanding anything in this definition to the contrary, in no event shall the Transactions constitute a Change of Control.

“**Charges**” shall have the meaning assigned to such term in [Section 10.09](#).

“**Class**” when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are UST Tranche B Term Loans, Other Term Loans or Extended Term Loans, (b) any Commitment, refers to whether such Commitment is a Term Loan Commitment, Other Term Loan Commitment (and, in the case of an Other Term Loan Commitment, the Class of Term Loans to which such commitment relates), or a commitment in respect of Term Loans to be made pursuant to an Extension Offer and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments. Other Term Loan Commitments, Other Term Loans and Extended Term Loans that have different terms and conditions, and each tranche of Extended Term Loans, shall be construed to be in different Classes.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” shall mean all the “**Collateral**” as defined in any Collateral Document and shall also include the Mortgaged Properties.

“**Collateral Agent**” shall have the meaning assigned to such term in the introductory statement to this Agreement.

“**Collateral and Guarantee Requirement**” shall mean, at any time, the requirement that:

- (a) on the Effective Date the Administrative Agent and the Collateral Agent shall have received each Collateral Document to the extent required to be delivered on the Effective Date pursuant to Section 4.02(d), subject to the limitations and exceptions of this Agreement, duly executed by each Loan Party that is a party thereto;
- (b) in each case subject to the limitations and exceptions set forth in this Agreement and the Collateral Documents, the Obligations shall have been secured by:
  - (i) a perfected third priority security interest (subject to Liens permitted by Section 7.01) in all personal property of the Borrower and each Guarantor consisting of all accounts receivable, cash and Cash Equivalents, deposit accounts (other than the UST Tranche B Priority Accounts (as defined in the ABL Intercreditor Agreement), the UST Tranche B Joint Accounts (as defined in the ABL Intercreditor Agreement) and the UST Tranche B Controlled Account) and supporting obligations and books and records related to the foregoing and, in each case, proceeds thereof;
  - (ii) a perfected third priority pledge (subject to Liens permitted by Section 7.01) of all Equity Interests directly held by the Borrower or any Guarantor;
  - (iii) with respect to each Material Real Property, (1) either (x) an amendment to the Existing Mortgage encumbering such Material Real Property (each, a “**Mortgage Amendment**”) amending the obligations secured thereby to include the Obligations or (y) a separate third priority mortgage, deed of trust or deed to secure debt (as applicable) (in each case, subject to Liens permitted by Section 7.01) on such Material Real Property pursuant to Mortgages that satisfy the requirements of clause (c) (i) below and (2) a perfected third priority security interest (subject to Liens permitted by Section 7.01) in all personal property relating to such Material Real Property and all fixtures thereon, provided, that, to the extent the opinion delivered to the Mortgage Collateral Agent confirms that the filing of the applicable Mortgage itself perfects the Mortgage Collateral Agent’s third priority security interest in such fixtures, no separate fixture filing shall be required; and
  - (iv) within one hundred twenty (120) days following the repayment in full of the CDA First Lien Obligations (or, if the proviso to this clause (iv) applies, the date the Requisite CDA Consent is obtained, as applicable), a third priority mortgage, deed of trust or deed to secure debt (as applicable) on each Pension Real Property (such mortgage, deed of trust or deed, a “**Pension Property Mortgage**”) pursuant to Mortgages that satisfy the requirements of clause (c)(i) below (subject to Liens permitted by Section 7.01) and a perfected third priority security interest (subject to Liens permitted by Section 7.01) in all personal property relating to such Pension

Real Property and all fixtures thereon; *provided* that to the extent such Pension Property Mortgage is prohibited under the terms of the Contribution Deferral Agreement (as in effect as of the date hereof), the Loan Parties shall use commercially reasonable efforts to obtain the necessary consents under the Contribution Deferral Agreement to permit such Pension Property Mortgage (the "Requisite CDA Consent") and if after using such commercially reasonable efforts, such consent is not obtained, the Loan Parties shall not be required to deliver such Pension Property Mortgage until all obligations under the Contribution Deferral Agreement to the extent permitted under Section 7.03(u) shall have been paid in full; and

- (v) a perfected third priority security interest (subject to Liens permitted by Section 7.01) in substantially all other personal property of the Borrower and each Guarantor (other than the UST Tranche B Only Collateral, the UST Tranche B Priority Collateral (including the UST Tranche B Priority Accounts (as defined in the ABL Intercreditor Agreement)) and UST Tranche B Joint Collateral (including the UST Tranche B Joint Accounts (as defined in the ABL Intercreditor Agreement))), including investment property, contracts, patents, copyrights, trademarks and other general intangibles (subject to a license in favor of the ABL Agent and/or the UST Tranche A Term Agent and/or the Tranche B-2 Term Agent, as applicable, to use intellectual property, subject to the ABL Intercreditor Agreement), commercial tort claims, letter of credit rights, intercompany notes and proceeds of the foregoing; and
  - (vi) a perfected first priority security interest in the UST Tranche B Priority Collateral (including the UST Tranche B Priority Accounts (as defined in the ABL Intercreditor Agreement)) and the UST Tranche B Joint Collateral (including the UST Tranche B Joint Accounts (as defined in the ABL Intercreditor Agreement));
  - (vii) a perfected first priority security interest in the UST Tranche B Only Collateral (including the UST Tranche B Controlled Account);
- (c) subject to the limitations and exceptions set forth in this Agreement and the Collateral Documents, to the extent a security interest in and mortgage lien on any Material Real Property (or, solely with respect to clause (b)(iv) above, any Pension Real Property) is required under Section 4.02, 6.11 or 6.13 (together with any Material Real Property that is subject to an Existing Mortgage, as amended by a Mortgage Amendment or by a Mortgage on the Effective Date pursuant to clause (b)(iii) above, each, a "**Mortgaged Property**"), the Administrative Agent and the Collateral Agent shall have received:
- (i) counterparts of either a Mortgage Amendment or a Mortgage with respect to such Real Property duly executed and delivered by the record owner of such property as filed or recorded in all filing or recording offices reasonably necessary or desirable in order to continue or create (as applicable) a valid and subsisting perfected Lien on the property and/or rights described therein in favor of the Mortgage Collateral Agent for the benefit of the Secured Parties, and evidence that all filing and recording taxes and fees have been paid or otherwise provided for in a manner

reasonably satisfactory to the Required Lenders (it being understood that if a mortgage tax will be owed on the entire amount of the indebtedness evidenced hereby, then the amount secured by the Existing Mortgage as amended by a Mortgage Amendment or the Mortgage (as applicable) shall be limited to 120% (or, in the case of Real Property located in the state of New York, 100%) of the fair market value of the property at the time the Mortgage Amendment or Mortgage (as applicable) is entered into if such limitation results in such mortgage tax being calculated based upon such fair market value);

- (ii) if a Mortgage Amendment is delivered with respect to such Real Property, a fully paid bringdown and modification endorsement to the existing lender's title insurance policy insuring the Lien of the Existing Mortgage, and if a Mortgage is delivered with respect to such Real Property, a fully paid policy of title insurance (or marked-up title insurance commitments having the effect of a policy of title insurance) issued by the Title Company or another nationally recognized title insurance company reasonably acceptable to the Required Lenders in form and in an amount reasonably acceptable to the Required Lenders (not to exceed 100% of the fair market value of such Material Real Property (or interest therein, as applicable) covered thereby), in each case, insuring the Existing Mortgage, as amended by the Mortgage Amendment, or the Mortgage (as applicable) to be a valid, subsisting Lien on the property described therein, free and clear of all Liens other than Liens permitted pursuant to Section 7.01 (such existing policies, as endorsed, or such policies (as applicable), "**Mortgage Policies**"), each of which shall (A) to the extent reasonably necessary, include such reinsurance arrangements (with provisions for direct access, if reasonably necessary) as shall be reasonably acceptable to the Required Lenders, (B) contain a "tie-in" or "cluster" endorsement, if available under applicable law (i.e., policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), (C) have been supplemented by such endorsements (or where such endorsements are not available, customary opinions of special counsel, architects or other professionals reasonably acceptable to the Collateral Agent and the Required Lenders) as shall be reasonably requested by the Collateral Agent or the Required Lenders (including endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity, revolving credit (if available after the applicable Loan Party uses commercially reasonable efforts), doing business, public road access, variable rate, environmental lien, subdivision, mortgage recording tax, separate tax lot and so-called comprehensive coverage over covenants and restrictions);
- (iii) either (1) an American Land Title Association/National Society for Professional Surveyors (ALTA/NSPS) form of survey for which all charges have been paid, dated a date, containing a certification and otherwise being in form and substance reasonably satisfactory to the Collateral Agent (a "**Survey**") or (2) such documentation ("**Other Survey Documentation**") as may be required by the Title Company to omit the standard survey exception to coverage under the Mortgage Policy with respect to such Material Real Property and issue affirmative

endorsements reasonably requested by the Collateral Agent at the direction of the Required Lenders, including "same as" survey and comprehensive endorsements;

- (iv) a customary legal opinion, addressed to the Mortgage Collateral Agent, the Collateral Agent and the Secured Parties with respect to the Existing Mortgage, as amended by the Mortgage Amendment, or the Mortgage (as applicable) on such Material Real Property; provided, however, with respect to any Material Real Property as of the Effective Date, Borrower shall only be required to deliver a legal opinion if such Material Real Property is located in a Required Opinion State; and
- (v) in order to comply with the Flood Laws, the following documents: (A) a completed standard "life of loan" flood hazard determination form (a "**Flood Determination Form**"); (B) if any of the material improvement(s) to the improved Material Real Property is located in a special flood hazard area, a notification thereof to the Borrower ("**Borrower Notice**") and, if applicable, notification to the Borrower that flood insurance coverage under the National Flood Insurance Program ("**NFIP**") is not available because the community in which the property is located does not participate in the NFIP; (C) documentation evidencing the Borrower's receipt of the Borrower Notice (e.g., a countersigned Borrower Notice or return receipt of certified U.S. Mail or overnight delivery); and (D) if the Borrower Notice is required to be given and flood insurance is available in the community in which such Material Real Property is located, a copy of one of the following: the flood insurance policy, the Borrower's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued or such other evidence of flood insurance reasonably satisfactory to the Required Lenders (any of the foregoing being "**Evidence of Flood Insurance**");

- (d) after the Effective Date, each Restricted Subsidiary of the Borrower that is not an Excluded Subsidiary shall become a Guarantor and signatory to this Agreement pursuant to a joinder agreement in accordance with Section 6.11 or 6.13; *provided* that, notwithstanding the foregoing provisions, any Subsidiary of the Borrower that would otherwise constitute an Excluded Subsidiary that Guarantees any ABL Facility Indebtedness, any Tranche B-2 Term Loan Facility Indebtedness, any UST Tranche A Term Loan Facility Indebtedness, any Junior Financing, Permitted Additional Debt, or any Permitted Refinancing of any Indebtedness thereof, or that is a borrower under the ABL Facility (or any Permitted Refinancing thereof), the Tranche B-2 Term Loan Facility (or any Permitted Refinancing thereof) or the UST Tranche A Term Loan Facility (or any Permitted Refinancing thereof) shall be a Guarantor hereunder for so long as it Guarantees such Indebtedness (or is a borrower with respect thereto).

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary:

- (A) the foregoing definition shall not require, unless otherwise stated in this clause (A), the creation or perfection of pledges of, security interests in, Mortgages on, the obtaining of title insurance with respect to or the taking of any other actions with respect to: (i) any fee owned Real Property that is not Material Real Property (other than Pension Property Mortgages solely to the extent required to be delivered pursuant to clause (b)(iv) of this definition) and any Leasehold

Property (it being understood there shall be no requirement to obtain any landlord waivers, estoppels or collateral access letters), (ii) motor vehicles (other than tractors, trucks, trailers and other rolling stock) consisting of an employee or light vehicle and other assets subject to certificates of title with an individual fair market value of less than \$40,000, *provided* that the aggregate fair market value of all assets excluded from the Collateral and Guarantee Requirement pursuant to this sub-clause (ii) of this clause (A), together with the aggregate book value of all assets excluded from the Collateral and Guarantee Requirement pursuant to sub-clause (xiv) of this clause (A), shall not exceed \$5,000,000 in the aggregate at any time outstanding, (iii) letter of credit rights (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a UCC financing statement) of an amount less than \$5,000,000 and commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than \$5,000,000, (iv) any governmental licenses or state or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby (except to the extent such prohibition or restriction is rendered ineffective under the UCC or other applicable law), (v) Collateral in which pledges or security interests are prohibited or restricted by applicable law or require the consent of any governmental authority or third party, which consent has not been obtained, (vi) Margin Stock, (vii) Equity Interests in a bona fide joint venture formed after the Effective Date with any Person that is not an Affiliate of any Loan Party (but only to the extent that the organizational documents of such Subsidiaries or agreements with other equity holders prohibit or restrict the pledge thereof without the consent of the other equity holders under restrictions that are enforceable under the UCC or other applicable law and such consent has not been obtained), (viii) Equity Interests of (or held as assets by) Immaterial Subsidiaries, or captive insurance Subsidiaries, (ix) any lease, license or agreement or any property to the extent a grant of a security interest therein would violate or invalidate such lease, license or agreement or similar arrangement or create a right of termination in favor of any other party thereto after giving effect to the applicable anti-assignment provisions of the UCC or other applicable law, other than proceeds and receivables thereof, the assignment of which is deemed effective under the UCC or other applicable law, notwithstanding such prohibition, (x) any assets or rights subject to a purchase money security interest, Capitalized Lease or similar arrangement, other than in each case, the UST Tranche B Priority Collateral and UST Tranche B Joint Collateral, (xi) the UST Tranche A Only Collateral, (xii) any assets to the extent a security interest in such assets could result in adverse Tax consequences as reasonably determined by the Borrower, in consultation with the Required Lenders, (xiii) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable Federal law, (xiv) any equipment or other collateral with a net book value in an aggregate amount not to exceed \$5,000,000 for all such equipment or other collateral (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a UCC financing statement); *provided* that the aggregate fair market value of all assets excluded from the Collateral and Guarantee Requirement pursuant to this sub-clause (xiv), together with the aggregate net book value of all assets excluded from the Collateral and Guarantee Requirement pursuant to sub-clause (ii) of this clause (A), shall not exceed \$5,000,000 in the aggregate at any time outstanding, and (xv) other assets not specifically included in the Collateral in circumstances where the cost of obtaining a security interest in such assets exceeds the practical

benefit to the Lenders afforded thereby as reasonably determined by the Required Lenders in consultation with the Borrower.

(B) (i) the foregoing definition shall not require perfection by “**control**” except with respect to (1) Equity Interests or Indebtedness represented or evidenced by certificates or instruments and (2) deposit accounts and security accounts (which are required to be subject to Control Agreements pursuant to Section 3.04 of the Security Agreement, including the UST Tranche B Controlled Account), other than Excluded Accounts; (ii) perfection by possession or control shall not be required with respect to (x) any intercompany notes in an aggregate principal amount not to exceed \$5,000,000 and (y) any other notes or other evidence of Indebtedness in an aggregate principal amount not to exceed \$5,000,000; (iii) except in the case of (A) Canadian Subsidiaries, (B) Dutch Subsidiaries and (C) other Foreign Subsidiaries that are not Excluded Foreign Subsidiaries, no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the United States (including the Equity Interests of any Foreign Subsidiary) or to perfect such security interests (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction); and (iv) except to the extent that perfection and priority may be achieved (w) by the filing of a financing statement under the Uniform Commercial Code with respect to the Borrower or a Guarantor, (x) with respect to Real Property and the recordation of Mortgages in respect thereof, as contemplated by clauses (b)(iii) and (c) above, (y) with respect to Equity Interests or Indebtedness, by the delivery of certificates or instruments representing or evidencing such Equity Interests or Indebtedness along with appropriate undated instruments of transfer executed in blank or (z) by notation of liens on certificate of title, the Loan Documents shall not contain any requirements as to perfection or priority with respect to any assets or property described in clause (A) above and this clause (B);

(C) the Collateral Agent, acting at the direction of the Required Lenders, may grant extensions of time for the creation or perfection of security interests in, and Mortgages (or Mortgage Amendments, if applicable) on, or obtaining of title insurance policies (or title endorsements, if applicable) or taking of other actions with respect to, particular assets (including extensions beyond the Effective Date) or any other compliance with the requirements of this definition (or any similar requirements set forth herein or in any other Loan Documents) where the Required Lenders reasonably determines, in consultation with the Borrower, that such creation or perfection of security interests or Mortgages, or such obtaining of title insurance policies (or endorsements) or taking of other actions, or any other compliance with the requirements of this definition cannot be accomplished without undue delay, burden or expense by the time or times at which such act would otherwise be required by this Agreement or any Collateral Documents; *provided* that the Collateral Agent shall have received on or prior to the Effective Date (or within the time period described in Schedule 6.13, if applicable), (i) UCC financing statements as filed under the UCC in the jurisdiction of incorporation or organization of each Loan Party, (ii) any certificates or instruments representing or evidencing Equity Interests of each direct wholly owned Subsidiary of the Borrower or any Guarantor, in each case accompanied by undated instruments of transfer and stock powers endorsed in blank and (iii) Mortgages (or Mortgage Amendments) and Mortgage Policies (or endorsements to existing title insurance policies) for each Material Real Property; and

(D) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to the exceptions and limitations set forth in this Agreement and the Collateral Documents.

“**Collateral Documents**” shall mean, collectively, the Security Agreement, the Mortgage Collateral Agency Agreement, each of the Mortgages, collateral assignments, security agreements, pledge agreements, intellectual property security agreements, Control Agreements or other similar agreements delivered to the Administrative Agent or the Collateral Agent pursuant to [Section 4.02](#), [Section 6.11](#) or [Section 6.13](#), each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties, the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement.

“**Commitment**” shall mean, with respect to any Lender, such Lender’s Term Loan Commitment (including pursuant to any Refinancing Amendment or Extension Amendment).

“**Common stock**” means the common stock, par value \$0.01 per share, of Borrower.

“**Communications**” shall have the meaning assigned to such term in [Section 10.01](#).

“**Compliance Certificate**” shall mean a certificate substantially in the form of [Exhibit E](#).

“**Consolidated EBITDA**” shall mean, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income (other than clauses (viii) or (xi)), the sum of the following amounts for such period with respect to Borrower and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, any expenses or losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations or other derivative obligations, letter of credit fees, costs of surety bonds in connection with financing activities and any bank fees and financing fees (including commitment, underwriting, funding, “rollover” and similar fees and commissions, discounts, yields and other fees, charges and amounts incurred in connection with the issuance or incurrence of Indebtedness and all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Contracts entered into for the purpose of hedging interest or commodity rate risk) and annual agency, unused line, facility or similar fees paid under definitive documentation related to Indebtedness (whether amortized or immediately expensed),

(ii) provision for taxes based on income, profits or capital gains of the Borrower and the Restricted Subsidiaries, including, without limitation, federal, state, local, franchise and similar taxes and foreign withholding taxes paid or accrued during such period,

(iii) depreciation and amortization,

(iv) extraordinary, unusual or non-recurring charges, expenses or losses, *provided* that the aggregate amount added to "Consolidated EBITDA" pursuant to this clause (a)(iv) in any period, together with the aggregate amount added to Consolidated EBITDA pursuant to clause (a)(vi) of the definition of "Consolidated EBITDA", shall not exceed in the aggregate 10.0% of Consolidated EBITDA for such period (as calculated prior to giving effect to any such adjustments),

(v) non-cash expenses, charges and losses (including reserves, impairment charges or asset write-offs, write-offs of deferred financing fees, losses from investments recorded using the equity method, purchase accounting adjustments and stock-based awards compensation expense), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to accounts receivable in the normal course or inventory; *provided* that if any of the non-cash charges referred to in this clause (v) represents an accrual or reserve for potential cash items in any future period, (1) the Borrower may determine not to add back such non-cash charge in the current period and (2) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to the extent paid,

(vi) restructuring costs and charges, integration costs, retention, recruiting, relocation and signing bonuses and expenses, and severance costs (including, for the avoidance of doubt, any bonuses payable in connection with the IBT Transactions); *provided* that the aggregate amount added to "Consolidated EBITDA" pursuant to this clause (a)(vi) in any period, together with the aggregate amount added to Consolidated EBITDA pursuant to clause (a)(iv) of the definition of "Consolidated EBITDA", shall not exceed in the aggregate 10.0% of Consolidated EBITDA for such period (as calculated prior to giving effect to any such adjustments),

(vii) Transaction Expenses, and any fees, costs and expenses in connection with any amendment, negotiation, modification, restatement, waiver, forbearance or other transaction in connection with the Transactions provided that the aggregate amount added to "Consolidated EBITDA" pursuant to this clause (a)(vii) with respect to the Transactions shall not exceed \$20,000,000,

(viii) pro forma cost savings for acquisitions (including the commencement of activities constituting such business), material dispositions (including the termination or discontinuance of activities constituting such business) of business entities or properties or assets, constituting a division or line of business of any business entity, division or line of business that is the subject of any such acquisition or disposition and operational changes and operational initiatives (collectively, "**Cost Savings**"), scheduled to be executed and realized (in the good faith determination of a Senior Financial Officer of the Borrower) in connection with any such transaction permitted hereunder, net of the amount of actual Cost Savings realized from such actions during such period; *provided* that (A) such Cost Savings are factually supportable and specifically identified, (B) such Cost Savings are scheduled to be executed and realized within twelve (12) months after the consummation of such transaction, (C) the Administrative Agent and the Required Lenders shall have received a

certificate of a Senior Financial Officer of the Borrower, certifying the foregoing requirements and accompanied by a reasonably detailed statement or schedule of such Cost Savings; (D) the actions responsible for any expected Cost Savings are actually taken within twelve (12) months of the consummation of the relevant transaction, (E) any projected Cost Savings in respect of actions which are not actually taken within such twelve (12)-month period or have not been realized within such (12)-month period may no longer be added back in calculating Consolidated EBITDA pursuant to this clause (viii) for the applicable periods, (F) such Cost Savings are not duplicative of any other adjustments to Consolidated EBITDA pursuant to this definition and (G) the aggregate amount added to Consolidated EBITDA pursuant to this clause (a)(viii) in any period, together with the aggregate amount of all adjustments pursuant to Section 1.10(c), shall not exceed in the aggregate 5.0% of Consolidated EBITDA for such period (as calculated prior to giving effect to any such adjustments),

(ix)[reserved],

(x)other transaction specific accruals, costs, charges, fees and expenses (including legal, tax, structuring and other costs and expenses) related to the Transactions, acquisitions, investments, restricted payments, dispositions or issuances, amendments, waivers or modifications of debt or equity (whether or not consummated) reasonably expected to be permitted under this Agreement or the consummation of which would result in the repayment in full of the Obligations (other than unasserted contingent indemnity and reimbursement obligations) (it being understood and agreed that this clause (a)(x) shall not permit adjustments of the type specified in clauses (a)(iv), (vi) or (viii)),

(xi)to the extent not already included in Consolidated Net Income, proceeds of business interruption insurance (other than business interruption insurance relating to COVID 19 (or any related virus) or any related events) received or reasonably expected to be received within 365 days after the end of such period; *provided* that any such expected proceeds that are not actually received in such 365 day period shall be deducted from Consolidated EBITDA in the fiscal quarter immediately following such 365 day period,

(xii)charges, losses or expenses to the extent indemnified or insured or reimbursed or reasonably expected to be indemnified, insured or reimbursed by a third party within 365 days after the end of such period; *provided* that any such expected amounts that are not actually received in such 365 day period shall be deducted from Consolidated EBITDA in the fiscal quarter immediately following such 365 day period,

(xiii)the amount of any minority interest expense attributable to minority interests of third parties in the positive income of any non-wholly owned Restricted Subsidiary,

(xiv)any net loss from disposed, abandoned or discontinued operations,

(xv)the amount of loss on sale of Securitization Assets and related assets to the Securitization Subsidiary in connection with a Qualified Securitization Financing,

(xvi) net realized losses under any Swap Contract or embedded derivatives that require similar accounting treatment and the application of Accounting Standard Codification Topic 815 and related pronouncements,

(xvii) the cumulative effect of a change in accounting principles,

(xviii) realized non-cash foreign exchange losses resulting from the impact of foreign currency changes on the valuation of assets or liabilities on the balance sheet of the Borrower and its Restricted Subsidiaries,

(xix) any losses attributable to Dispositions of Real Property,

less (b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period) and all other non-cash items of income for such period, (ii) any gains and income from investments recorded using the equity method, (iii) extraordinary, unusual or non-recurring gains, (iv) non-cash gains representing adjustments to pension assets, (v) any gains attributable to Dispositions of Real Property and (vi) any gains arising out of transactions of the types described in clauses (a)(xii), (xiii), (xiv), (xv) and (xvi) above; *provided* that, for the avoidance of doubt, any gain representing the reversal of any non-cash charge referred to in clause (a)(v)(B) above for a prior period shall be added (together with, without duplication, any amounts received in respect thereof to the extent not increasing Consolidated Net Income) to Consolidated EBITDA in any subsequent period to such extent so reversed (or received).

Notwithstanding the foregoing, Consolidated Net Income and Consolidated EBITDA shall be calculated to exclude any amounts otherwise increasing or included in Consolidated Net Income and/or Consolidated EBITDA relating to (x) business interruption insurance relating to COVID 19 (or any related virus) or any related events or (y) any assistance programs provided by Governmental Agencies (or the equivalent).

“**Consolidated Net Income**” shall mean, with reference to any period, the net income (or loss) of the Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP on a consolidated basis (without duplication) for such period (without deduction for minority interests); *provided* that in determining Consolidated Net Income, (a) the net income of any other Person which is not a Subsidiary of the Borrower or is accounted for by the Borrower by the equity method of accounting shall be included only to the extent of the payment of cash dividends or cash distributions by such other Person to the Borrower or a Guarantor that could be made during such period; *provided, however*, that for purposes of calculating the Cumulative Credit for purposes of Section 7.06(e)(y), such income shall only be included (directly or indirectly) to the extent such cash dividends or other cash distributions are actually received from such other Person by the Borrower or a Guarantor, (b) the net income of any Subsidiary of the Borrower shall be excluded to the extent that the declaration or payment of cash dividends or similar cash distributions by that Subsidiary of that net income is not at the date of determination permitted by operation of its charter or any agreement, instrument or law applicable to such Subsidiary (other than (i) restrictions that have been waived or otherwise released, (ii) restrictions pursuant to the Loan Documents, the ABL Facility Documentation, the

Tranche B-2 Term Loan Facility Documentation or the UST Tranche A Term Loan Facility Documentation or the Treasury Equity Documents and (iii) restrictions arising pursuant to an agreement or instrument if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by the Borrower in good faith)), and (c) the income or loss of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any Subsidiary or the date that such Person's assets are acquired by the Borrower or any Subsidiary shall be excluded.

**"Consolidated Total Assets"** shall mean the total assets of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the consolidated balance sheet of the Borrower for the most recently completed fiscal quarter for which financial statements have been delivered pursuant to Section 6.01(a) or (b).

**"Consolidated Total Debt"** shall mean, as of any date of determination, the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries (on a consolidated basis) outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP as long as such amount is no less than the aggregate face amount of such Indebtedness on such date, consisting of Indebtedness for borrowed money, Attributable Indebtedness or purchase money Indebtedness, debt obligations evidenced by bonds, debentures, promissory notes, loan agreements or similar instruments, and all Guarantees of any of the foregoing; *provided* that (i) Consolidated Total Debt shall not include Indebtedness in respect of letters of credit, bankers' acceptances and other similar contingent obligations, except to the extent of unreimbursed amounts thereunder, and (ii) Consolidated Total Debt shall not include obligations under Swap Contracts permitted hereunder.

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

**"Contribution Deferral Agreement"** means that certain Second Amended and Restated Contribution Deferral Agreement, dated as of January 31, 2014, by and between YRC Inc., USF Holland LLC (*f/k/a* USF Holland Inc.), New Penn Motor Express LLC (*f/k/a* New Penn Motor Express, Inc.), USF Reddaway Inc., certain other of the Subsidiaries of the Borrower, the Trustees for the Central States, Southeast and Southwest Areas Pension Fund, the Pension Fund Entities and each other pension fund from time to time party thereto and Wilmington Trust Company, all as the same may be amended, amended and restated, restated, supplemented or otherwise modified in accordance with the terms hereof.

**"Control"** shall have the meaning specified in the definition of "Affiliate".

**"Control Agreement"** means an agreement, in form and substance reasonably satisfactory to the Required Lenders, which provides for the Collateral Agent to have "control" (for purposes of this definition, as defined in Section 9 104 of the UCC of the State of New York or Section 8-106 of the UCC of the State of New York, as applicable) of Cash Collateral Accounts, Deposit Accounts or Securities Accounts, as applicable.

“**Corresponding Tenor**” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“**Credit Agreement Refinancing Indebtedness**” shall mean Permitted Additional Debt or Indebtedness incurred pursuant to a Refinancing Amendment, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, restructure or refinance, in whole or part, existing Term Loans (including any successive Credit Agreement Refinancing Indebtedness) (“**Refinanced Debt**”); *provided* that (i) such extending, renewing, replacing, restructuring or refinancing Indebtedness is in an original aggregate principal amount (or accreted value, if applicable) not greater than the aggregate principal amount (or accreted value, if applicable) of the Refinanced Debt, except by an amount equal to accrued but unpaid interest, premiums and fees payable by the terms of such Indebtedness and reasonable fees, expenses, original issue discount and upfront fees incurred in connection with such exchange, modification, refinancing, refunding, renewal, restructuring, replacement or extension, (ii) such Refinanced Debt shall be repaid, defeased or satisfied and discharged with 100% of the Net Proceeds of the applicable Credit Agreement Refinancing Indebtedness and all accrued, due and payable interest, fees and premiums (if any) in connection therewith shall be paid promptly upon receipt of the proceeds of such Credit Agreement Refinancing Indebtedness, (iii) such Indebtedness does not have an earlier maturity and has a Weighted Average Life to Maturity equal to or greater than the Refinanced Debt; and (iv) and, in the case of any high yield notes constituting Credit Agreement Refinancing Indebtedness, such Indebtedness will not have mandatory prepayment provisions (other than related to customary asset sale and change of control and similar offers and AHYDO “catch up” payments) that would result in mandatory prepayment of such Indebtedness prior to the Refinanced Debt.

“**Credit Extension**” shall mean a Borrowing.

“**Cumulative Credit**” shall mean, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) the Cumulative Retained Excess Cash Flow Amount at such time, plus

(b) the cumulative amount of cash and Cash Equivalent proceeds from the sale of Equity Interests of the Borrower or of any direct or indirect parent of the Borrower after September 11, 2019 to the extent Not Otherwise Applied, plus

(c) the aggregate amount of Declined Proceeds at such time that have been retained by the Borrower in accordance with Section 2.13(d), plus

(d) to the extent not already included in the Cumulative Retained Excess Cash Flow Amount, an amount equal to any returns in cash and Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Borrower or any Restricted Subsidiary after the Effective Date in respect of any Investments made pursuant to Section 7.02(p)(y), and *provided* in each case that such amount does not exceed the amount of the original Investment made pursuant to Section 7.02(p)(y); minus

(e) any amount of the Cumulative Credit used to make Investments pursuant to Section 7.02(p)(y) after September 11, 2019 and prior to such time, minus

(f) any amount of the Cumulative Credit used to pay dividends or make distributions or other Restricted Payments pursuant to Section 7.06(d)(ii) or Section 7.06(e)(y) after September 11, 2019 and prior to such time, minus

(g) any amount of the Cumulative Credit used to make payments or distributions in respect of Permitted Additional Debt or Junior Financing (or any Permitted Refinancing thereof) pursuant to Section 7.13(a)(vi) after September 11, 2019 and prior to such time.

Notwithstanding anything to the contrary in this Agreement, during the Specified Period, the Cumulative Credit shall be unavailable for use under this Agreement and shall be disregarded in any calculation of or reference to any other term or provision herein.

“**Cumulative Retained Excess Cash Flow Amount**” shall mean “Cumulative Retained Excess Cash Flow Amount” as defined in the Tranche B-2 Term Loan Credit Agreement.

“**Custodial Administration Agreement**” shall mean the Amended and Restated Custodial Administration Agreement, dated as of the Effective Date, by and among the Borrower, the Subsidiaries from time to time parties thereto, VINtek, Inc., as custodial administrator, the Collateral Agent, as administrative and collateral agent for the benefit of the Secured Parties, the ABL Agent, as administrative and collateral agent for the benefit of the ABL Secured Parties, the Tranche B-2 Term Agent, as administrative and collateral agent for the benefit of the Tranche B-2 Secured Parties, the UST Tranche A Term Agent, as administrative and collateral agent for the benefit of the UST Tranche A Secured Parties and the Collateral Agent, as collateral agent for the benefit of the Secured Parties, the Tranche B-2 Secured Parties, the UST Tranche A Secured Parties and the ABL Secured Parties.

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

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

“**Declined Proceeds**” shall have the meaning assigned to such term in Section 2.13(d).

“**Default**” shall mean any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of any grace period, or both, without cure or waiver hereunder, would be an Event of Default.

“**Deposit Account**” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“**Disposition**” or “**Dispose**” shall mean the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“**Disqualified Equity Interests**” shall mean any Equity Interest that, 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 Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (c) provides for 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 ninety-one (91) days after the then Latest Maturity Date; *provided* that if such Equity Interests are issued pursuant to, or in accordance with a plan for the benefit of employees of the Borrower or the Restricted Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability.

“**Disqualified Lenders**” shall mean (i) each of those banks, financial institutions and other entities identified in writing prior to the Effective Date by the Borrower to the Administrative Agent and the Required Lenders, (ii) competitors of the Borrower or the Guarantors identified in writing from time to time by the Borrower to the Administrative Agent, and (iii) any known affiliates of the Persons identified pursuant to clause (i) or (ii); provided that a “competitor” or an affiliate of a competitor or an entity referenced in clause (i) shall not include any bona fide debt fund or investment vehicle (other than a Person which is excluded pursuant to clause (i) above) that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business and whose managers are not involved with any equity or equity-like investments or other investments with an equity component or characteristic managed by any Person described in clause (i) or (ii) above.

“**Dollars**” or “**\$**” shall mean lawful money of the United States of America.

“**Domestic Subsidiary**” shall mean any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“**Dutch Subsidiary**” shall mean any Subsidiary that is organized under the Laws of the Netherlands or any state or province thereof.

**“Early Opt-in Election”** means, if the then-current Benchmark is USD LIBOR, the occurrence of:

- (1) a notification by the Required Lenders to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and
- (2) the joint election by the Required Lenders and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent, acting at the direction of the Required Lenders, of written notice of such election to the Lenders.

**“Effective Date”** means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Article 9), which date is July 7, 2020.

**“Eligible Assignee”** shall mean (i) a Lender, (ii) an Affiliate of a Lender, (iii) a Related Fund of a Lender, and (iv) any other Person (other than a natural person) approved by the Administrative Agent and, unless an Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld, conditioned or delayed and the Borrower’s approval being deemed to have been given in the event that the Borrower does not object in writing to an assignment within three (3) Business Days after receipt of written notice of such assignment); *provided that*, notwithstanding the foregoing, (A) **“Eligible Assignee”** shall not include the Borrower or any other Controlled Affiliate of the Borrower and (B) no Borrower consent shall be required if any Lender is required to assign all or any portion of its Loans by any Governmental Authority. **“Eligible Assignee”** shall not include any Disqualified Lender without the prior written consent of the Borrower (which may be withheld in the Borrower’s sole discretion). Notwithstanding the foregoing or anything else to the contrary in this Agreement, each of the parties hereto acknowledges and agrees that the Administrative Agent (in its capacity as such) (x) shall not have any responsibility or obligation to determine whether any Lender or any potential assignee Lender is a Disqualified Lender and (y) shall not have any liability with respect to any assignment or participation made to a Disqualified Lender.

**“Environmental Laws”** shall mean all federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), and agreements in each case, relating to protection of the environment, natural resources, human health and safety (with respect to exposure to hazardous or toxic substances or wastes) or the presence, Release of, or exposure to, hazardous or toxic substances or wastes, or the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or the arrangement for such activities with respect to, hazardous or toxic substances or wastes.

**“Environmental Liability”** shall mean all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses and costs (including administrative oversight costs, capital and operating costs, injunctive relief, costs associated with

financial assurance, permitting or closure requirements, natural resource damages and investigation or remediation costs), whether contingent or otherwise, arising out of or relating to (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release 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**” shall mean, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities) but excluding in each case any debt security that is convertible into, or exchanged for, Equity Interests.

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

“**ERISA Affiliate**” shall mean any Person, any trade or business (whether or not incorporated) that, together with a Loan Party or any Restricted Subsidiary, is or, within the six year period immediately preceding February 13, 2014, was treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“**ERISA Event**” shall mean (a) a Reportable Event; (b) the failure to satisfy the minimum funding standard with respect to a Plan within the meaning of Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA, whether or not waived (unless such failure is corrected by the final due date for the plan year for which such failure occurred), (c) a determination that a Plan is, or is expected to be, in “at risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (d) the receipt by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of notice pursuant to Section 305(b)(3)(D) of ERISA that a Multiemployer Plan is or will be in “endangered status” or “critical status” (as defined in Section 305(b) of ERISA), or is, or is expected to be, “insolvent” (within the meaning of Section 4245 of ERISA); (e) the filing pursuant to Section 431 of the Code or Section 304 of ERISA of an application for the extension of any amortization period; (f) the failure to timely make a contribution required to be made with respect to any Plan or Multiemployer Plan; (g) the filing of a notice to terminate any Plan if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA; (h) the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Plan or the termination of any Plan under Section 4041(c) of ERISA; (i) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (j) the incurrence by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (k) the receipt by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates from the

PBGC or a plan administrator of any notice of an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (l) the receipt by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability; (m) the occurrence of any event or condition that would reasonably be expected to result in the termination of a Plan or the appointment of a trustee to administer a Plan; (n) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to any Plan which could result in liability to a Loan Party or any Restricted Subsidiary or with respect to which a Loan Party or any Restricted Subsidiary is a "disqualified person" (as defined in Section 4975 of the Code) or a "party in interest" (as defined in Section 3(14) of ERISA); (o) the incurrence of any liability with respect to any Plan or Multiemployer Plan under Title IV of ERISA (other than premiums due and not delinquent under Section 4007 of ERISA); or (p) engagement in any transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

"**Eurodollar**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate (other than the Alternate Base Rate) determined by reference to the Adjusted LIBO Rate.

"**Event of Default**" shall have the meaning assigned to such term in Article 8.

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

"**Excluded Account**" means (i) any Deposit Account specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Loan Parties' salaried employees, (ii) any petty cash account to the extent the balance therein does not exceed (x) \$1,000,000 in the aggregate for more than five (5) Business Days, and/or (y) \$5,000,000 in the aggregate for more than one (1) Business Day, (iii) any zero-balance account, (iv) any account specifically and exclusively used to maintain cash collateral required pursuant to the ABL Credit Agreement, (v) any escrow account, (vi) the UST Tranche A Controlled Account and (vii) the UST Tranche B Controlled Account.

"**Excluded CDA Proceeds**" shall have the meaning assigned to such term in the definition of "Net Proceeds".

"**Excluded Foreign Subsidiary**" shall mean any Foreign Subsidiary (other than any Canadian Subsidiary or Dutch Subsidiary) of the Borrower that does not individually have total assets or revenues (for the period of four fiscal quarters most recently ended) that exceed 3.0% of the Borrower's total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* that the aggregate amount of assets or revenues (for the period of four fiscal quarters most recently ended) of such Subsidiaries shall not at any time exceed 7.0% of the Borrower's total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* further that if, as of the date the financial statements for any fiscal quarter of the Borrower are delivered or required to be delivered hereunder, the consolidated assets or revenues of all Excluded Foreign Subsidiaries shall have, as of the last day of such fiscal quarter, exceeded the

limits set forth above, then within sixty (60) days (or such later date as agreed by the Administrative Agent and the Required Lenders in their reasonable discretion) after the date such financial statements are so delivered (or so required to be delivered), the Borrower shall cause one or more Foreign Subsidiaries to comply with Section 6.11 such that, as a result thereof, the consolidated assets and revenues of all Excluded Foreign Subsidiaries do not exceed such limits. For the avoidance of doubt, no Canadian Subsidiary or Dutch Subsidiary shall constitute an Excluded Foreign Subsidiary.

“**Excluded Property**” shall have the meaning assigned to such term in the Security Agreement.

“**Excluded Real Property**” shall mean (a) any Real Property set forth on Schedule 1.01(a) and (b) any Pension Real Property.

“**Excluded Subsidiary**” shall mean (a) any bona fide joint venture formed after the Effective Date with any Person that is not an Affiliate of any Loan Party, (b) any Immaterial Subsidiary, (c) any Subsidiary that is prohibited by applicable Law whether or not existing on the Effective Date or Contractual Obligations existing on the Effective Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from Guaranteeing the Obligations or if Guaranteeing the Obligations would require governmental (including regulatory) consent, approval, license or authorization (unless such contractual obligation is waived or otherwise removed or such consent, approval, license or authorization has been obtained), (d) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent (at the direction of the Required Lenders), in consultation with the Borrower, the burden or cost or other consequences (other than adverse tax consequences) of providing a Guarantee of the Obligations shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (e) any other Subsidiary with respect to which, in the reasonable judgment of the Borrower, the tax consequences of providing a Guarantee could be adverse in consultation the Administrative Agent (provided that the Borrower shall give notice of such determination to the Required Lenders and, at the request of the Required Lenders, shall consult with the Required Lenders), (f) any Excluded Foreign Subsidiary of the Borrower, and (g) any Securitization Subsidiary, captive insurance company or non-profit Subsidiary; provided that no Person shall be an Excluded Subsidiary to the extent it guarantees or pledges any of its assets to secure, directly or indirectly, any other Indebtedness of any Loan Party in excess of the Threshold Amount; provided, further, that in the event that any Excluded Subsidiary guarantees or otherwise becomes an obligor under any Indebtedness, the aggregate principal amount of which exceeds the Threshold Amount, then such Excluded Subsidiary shall, notwithstanding the foregoing, no longer constitute an Excluded Subsidiary, and shall become a Loan Party hereunder. If any Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall only be permitted to be released from its Guarantee so long as the fair market value of any and all Investments then held by the Loan Parties in such Person are permitted as an Investment under Section 7.02(c)(iii) and Section 7.02(p) at the time such Person becomes an Excluded Subsidiary pursuant to clause (a) of the definition of “Excluded Subsidiary”.

“**Existing Mortgage**” shall mean, with respect to each Material Real Property as of the Effective Date, either Mortgage in favor of the Collateral Agent securing the obligations under the Tranche B-2 Term Credit Agreement or the ABL Credit Agreement (as applicable).

“**Extended Term Loans**” shall have the meaning assigned to such term in [Section 2.19\(a\)](#).

“**Extension**” shall have the meaning assigned to such term in [Section 2.19\(a\)](#).

“**Extension Amendment**” shall have the meaning assigned to such term in [Section 2.19\(c\)](#).

“**Extension Offer**” shall have the meaning assigned to such term in [Section 2.19\(a\)](#).

“**Facility**” shall mean the UST Tranche B Term Loans, the Extended Term Loans or the Other Term Loans, as the context may require.

“**FATCA**” shall mean Sections 1471 through 1474 of the Code, as in effect on the Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“**Federal Funds Effective Rate**” shall mean, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“**Fees**” shall have the meaning assigned to such term in [Section 2.05](#).

“**Flood Laws**” shall mean the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board).

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

“**Foreign Disposition**” shall have the meaning set forth in [Section 2.13\(f\)](#).

“**Foreign Subsidiary**” shall mean any direct or indirect Subsidiary of the Borrower which is not a Domestic Subsidiary.

“**Funding Date**” shall have the meaning set forth in [Section 2.01](#).

“**GAAP**” shall mean generally accepted accounting principles in the United States of America, as in effect from time to time, subject to [Section 1.11](#); *provided, however*, that if the

Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

**“Governmental Authority”** shall mean any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, the Treasury).

**“Granting Lender”** shall have the meaning assigned to such term in Section 10.04(i).

**“Guarantee”** shall mean, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the **“primary obligor”**) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness of the payment or performance of such Indebtedness, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of any other Person, whether or not such Indebtedness is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include (i) endorsements for collection or deposit, in either case in the ordinary course of business, (ii) customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness) or (iii) product warranties. 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.

**“Guaranteed Obligations”** shall have the meaning specified in Section 11.01.

**“Guarantors”** shall mean (i) each Domestic Subsidiary of the Borrower as of the Effective Date (other than an Excluded Subsidiary), (ii) each Canadian Subsidiary and Dutch Subsidiary of the Borrower that issues a Guarantee of the Obligations after the Effective Date pursuant to

Schedule 6.13(a) and (iii) each Subsidiary that issues a Guarantee of the Obligations after the Effective Date pursuant to Section 6.11 (which Section 6.11, for the avoidance of doubt, does not require that any Excluded Subsidiary provide such a Guarantee) or otherwise. For avoidance of doubt, the Borrower may cause any Restricted Subsidiary that is not (and is not required to be) a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent, and any such Restricted Subsidiary shall be treated as a Guarantor hereunder for all purposes (each such Subsidiary, an “Electing Guarantor”) and may also cause the Guaranty of any such Electing Guarantor, and any Liens securing such Guaranty, to be released upon providing written notice to the Administrative Agent and the Collateral Agent that such Electing Guarantor shall be treated as an Excluded Subsidiary to the extent consistent with the definition of Excluded Subsidiary. The Guarantors as of the Effective Date are (A) set forth on Schedule 1.01(b) and (B) not Electing Guarantors.

“**Guaranty**” shall mean, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

“**Hazardous Materials**” shall mean (a) any petroleum products, distillates or byproducts and all other hydrocarbons, coal ash, radon gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, chlorofluorocarbons and all other ozone-depleting substances and (b) any chemical, material, substance or waste that is prohibited, limited or regulated by or pursuant to any Environmental Law.

“**IBT**” shall mean the International Brotherhood of Teamsters.

“**IBT Agreement**” shall mean that certain National Master Freight Agreement, effective April 1, 2019, among the IBT, YRC Inc. (formerly, Yellow Transportation, Inc. and Roadway Express, Inc.), USF Holland LLC and New Penn Motor Express LLC, as amended, restated, modified, supplemented, extended, renewed or replaced from time to time.

“**IBT Extension Agreement**” shall mean that certain Extension of the Agreement for the Restructuring of the YRC Worldwide Inc. Operating Companies, by and among YRC Inc., USF Holland, Inc., New Penn Motor Express, Inc., USF Reddaway and the Teamsters National Freight Industry Negotiating Committee of the IBT.

“**IBT Transactions**” shall mean the modification and extension through March 31, 2024 or any date thereafter, including pursuant to a subsequent modification, extension, approval and ratification, of the IBT Agreement, and the approval and ratification of the IBT Extension Agreement by the members of the IBT in accordance in all material respects with all applicable laws, rules, regulations and other requirements relating thereto.

“**Immaterial Subsidiary**” shall mean any Subsidiary of the Borrower that does not individually have total assets or revenues (for the period of four fiscal quarters most recently ended) that exceed 1.0% of the Borrower’s total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* that the aggregate amount of assets or revenues (for the period of four fiscal quarters most recently ended) of such Subsidiaries shall not at any time exceed 2.5% of the Borrower’s total assets or

revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided further* that if, as of the date the financial statements for any fiscal quarter of the Borrower are delivered or required to be delivered hereunder, the consolidated assets or revenues of all Restricted Subsidiaries so designated by the Borrower as “Immaterial Subsidiaries” shall have, as of the last day of such fiscal quarter, exceeded the limits set forth above, then within 10 Business Days (or such later date as agreed by the Administrative Agent and the Required Lenders in their reasonable discretion) after the date such financial statements are so delivered (or so required to be delivered), the Borrower shall redesignate one or more Immaterial Subsidiaries, in each case in a written notice to the Required Lenders and Administrative Agent, such that, as a result thereof, the consolidated assets and revenues of all Restricted Subsidiaries that are still designated as “Immaterial Subsidiaries” do not exceed such limits. Upon any such Restricted Subsidiary ceasing to be an Immaterial Subsidiary pursuant to the preceding sentence, such Restricted Subsidiary, to the extent not otherwise qualifying as an Excluded Subsidiary, shall comply with Section 6.11, to the extent applicable.

“**Indebtedness**” shall mean, as to any Person at a particular time, without duplication and without reference to what constitutes indebtedness or a liability in accordance with GAAP, all of the following:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;
- (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;
- (e) indebtedness (excluding prepaid interest thereon) described in clauses (a) through (d) and (f) through (h) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness;
- (g) all obligations of such Person to purchase, redeem, retire or otherwise acquire for value any Disqualified Equity Interests (but solely to the extent required to occur on or prior to the Latest Maturity Date (other than as a result of a change of control, asset sale or similar event)); and
- (h) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person (i) 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 joint venturer, except to the extent such Person's liability for such Indebtedness is otherwise expressly contractually limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Debt and (ii) shall exclude (A) trade accounts payable in the ordinary course of business, (B) any earn-out obligation until such earn-out obligation has become due and payable, (C) any current and undeferred pension contributions or health and welfare contributions due from such Person and/or its applicable Subsidiaries to any Pension Fund Entity, (D) liabilities accrued in the ordinary course, (E) deferred revenues, liabilities associated with customer prepayments and deposits and any such obligations incurred under ERISA, and other accrued obligations (including transfer pricing), in each case incurred in the ordinary course of business, (F) operating leases, (G) customary obligations under employment agreements and deferred compensation and (H) deferred tax liabilities. 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. The amount of Indebtedness of any Person for purposes of clause (e) that is limited in recourse to the property encumbered thereby shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

**"Indemnified Taxes"** shall have the meaning assigned to such term in [Section 3.01\(a\)](#).

**"Indemnitee"** shall have the meaning assigned to such term in [Section 10.05\(b\)](#).

**"Information"** shall have the meaning assigned to such term in [Section 10.16](#).

**"Initial Capex Plan"** shall have the meaning assigned to such term in [Section 4.02\(p\)](#).

**"Initial Funding Date"** means the date on which the conditions specified in Section 4.02 are satisfied (or waived in accordance with Article 9).

**"Intellectual Property Security Agreement"** shall have the meaning assigned to such term "Grant of Security Interest" in the Security Agreement.

**"Intercompany Note"** shall mean (i) for existing promissory notes as of the Effective Date, each promissory note (or amended and restated promissory note) with subordination language reasonably acceptable to the Required Lenders and (ii) for promissory notes issued after the Effective Date, a promissory note substantially in the form of [Exhibit E](#).

**"Intercreditor Agreement"** shall include all permitted intercreditor agreements (including the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement).

**"Interest Payment Date"** shall mean (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months' duration been applicable to such Borrowing.

**“Interest Period”** shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last Business Day) in the calendar month that is 1, 2, 3 or 6 (or, if agreed by all applicable Lenders, 12) months thereafter (or any shorter period agreed by all applicable Lenders), as the Borrower may elect; *provided, however*, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period and (c) no Interest Period for any Loan shall extend beyond the maturity date of such Loan. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

**“Internally Generated Cash”** shall mean cash resulting from operations of the Borrower and the Restricted Subsidiaries and not constituting (x) proceeds of the issuance of (or contributions in respect of) Equity Interests, (y) proceeds of Dispositions (other than in the ordinary course of business) and Casualty Events or (z) proceeds of the incurrence of Indebtedness.

**“Investment”** shall mean, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of related transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, (i) the amount of any Investment shall equal (A) the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment minus, except for purposes of calculating the Cumulative Credit, (B) the aggregate amount of dividends, distributions or other payments received in cash in respect of such Investment (including by way of a sale or other disposition of such Investment) but not in excess of the original amount invested and (ii) the fair market value of any and all Investments (which for the avoidance of doubt shall include all debt, equity and other items described in the foregoing provisions of this definition) held by any Loan Party in any Guarantor that becomes an Excluded Subsidiary pursuant to clause (a) of the definition of “Excluded Subsidiary” shall be deemed to be an Investment incurred on the date such Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of “Excluded Subsidiary”.

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

“**Junior Financing**” shall mean any unsecured Indebtedness incurred by the Borrower or a Guarantor in the form of one or more series of unsecured notes or loans having an outstanding aggregate principal amount of not less than the Threshold Amount and any Subordinated Indebtedness (for greater certainty, not including the ABL Facility Indebtedness, the UST Tranche A Term Loan Facility Indebtedness and the Tranche B-2 Term Loan Facility Indebtedness).

“**Junior Financing Documentation**” shall mean any documentation governing any Junior Financing.

“**Junior Lien Intercreditor Agreement**” shall mean a “junior lien” intercreditor agreement among the Collateral Agent and one or more Junior Lien Representatives for holders of Permitted Junior Priority Additional Debt, in form and substance reasonably satisfactory to the Required Lenders and the Borrower.

“**Junior Lien Representative**” shall mean, with respect to any series of Permitted Junior Priority Additional Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Latest Maturity Date**” shall mean, at any date of determination, the latest maturity or expiration date applicable to any Loan hereunder at such time, including the latest maturity or expiration date of any UST Tranche B Term Loan, any Other Term Loan or any Extended Term Loan, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” shall mean, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, requirements, and agreements with, any Governmental Authority.

“**Leasehold Property**” shall mean any leasehold interest of any Loan Party as lessee under any lease of Real Property.

“**Lender**” shall mean each lender from time to time party hereto. For avoidance of doubt, each Additional Lender is a Lender to the extent any such Person has executed and delivered a Refinancing Amendment, as the case may be, and to the extent such Refinancing Amendment shall have become effective in accordance with the terms hereof and thereof. As of the Effective Date, Schedule 2.01 sets forth the name of each Lender.

“**Lender Indemnitees**” shall have the meaning assigned to such term in Section 10.05(b).

“**LIBO Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate per annum determined by the Administrative Agent by reference to the Bloomberg “LIBOR01” screen page (or any successor or replacement screen on such service) at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the commencement of such Interest Period for deposits in Dollars for a period equal to such Interest Period; *provided* that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of

this definition, and except as set forth in Section 10.24, the “**LIBO Rate**” shall be the LIBO Rate for the immediately preceding Interest Period.

“**Lien**” shall mean any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease or financing lease having substantially the same economic effect as any of the foregoing).

“**Liquidity**” shall mean, as of any date of determination, the sum of (A) unrestricted cash and Cash Equivalents of the Loan Parties as of such date and (B) the aggregate amount of “Availability” under the ABL Credit Agreement (as such term is defined in the ABL Credit Agreement as in effect as of the date hereof and without giving effect to proviso in such definition) so long the conditions for utilizing have been satisfied other than with respect to the delivery of a borrowing request or similar funding notice, which the Borrower is permitted to deliver. Liquidity shall not include cash and Cash Equivalents held in the UST Tranche A Controlled Account or the UST Tranche B Controlled Account.

“**Liquidity Test Period**” shall mean the period commencing on the Effective Date and ending on the first date after for which Consolidated EBITDA for a Test Period ending on the last day of a fiscal quarter ending on or after September 30, 2020 is greater than \$200,000,000 and the Borrower shall have delivered a Compliance Certificate to the Administrative Agent showing such calculation in reasonable detail.

“**Loan**” shall mean any Term Loan.

“**Loan Documents**” shall mean this Agreement (including, without limitation, any amendments to this Agreement), the Collateral Documents, the Custodial Administration Agreement, the Administrative Agent Fee Letter, each Refinancing Amendment, each Extension Offer and each amendment of any Loan Document in connection therewith, and the Term Notes, if any, executed and delivered pursuant to Section 2.04(e).

“**Loan Parties**” shall mean, collectively, the Borrower and each Guarantor.

“**Margin Stock**” shall have the meaning assigned to such term in Regulation U.

“**Master Agreement**” shall have the meaning specified in the definition of “**Swap Contract**”.

“**Material Adverse Effect**” shall mean a (a) material adverse effect on the business, operations, assets, liabilities (actual or contingent), operating results or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform their payment obligations under the Loan Documents to which the Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the rights and remedies available to the Lenders, the Administrative Agent or the Collateral Agent under any Loan Document (other than due to the action or inaction of any Agent or any Lender); provided, that with respect to the foregoing clause (a), the impacts of COVID 19

on the business, operations, assets, liabilities (actual or contingent), operating results or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole, will be disregarded.

“**Material Real Property**” shall mean each Real Property that is (i) owned in fee by a Loan Party, (ii) located in the United States and (iii) not an Excluded Real Property.

“**Maturity Date**” shall mean, (i) with respect to the UST Tranche B Term Loans, September 30, 2024, (ii) with respect to any tranche of Extended Term Loans, the final maturity date as specified in the applicable Extension Offer accepted by the respective Lender or Lenders and (iii) with respect to any Other Term Loans, the final maturity date as specified in the applicable Refinancing Amendment; *provided* that if any such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

“**Maximum Rate**” shall have the meaning assigned to such term in [Section 10.09](#).

“**Minimum Extension Condition**” shall have the meaning assigned to such term in [Section 2.19\(b\)](#).

“**MNPI**” shall mean material information concerning the Borrower, Subsidiary or Controlled Affiliate of any of the foregoing or their securities that has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD under the Securities Act and the Exchange Act. For purposes of this definition, “material information” means information concerning the Borrower, the Subsidiaries or any Controlled Affiliate of any of the foregoing or any of their securities that could reasonably be expected to be material for purposes of the United States Federal and State securities laws and, where applicable, foreign securities laws.

“**Moody’s**” shall mean Moody’s Investors Service, Inc., or any successor thereto.

“**Mortgage Collateral Agency Agreement**” shall mean the Mortgage Collateral Agency Agreement, dated as of the date of the Mortgages, among the Collateral Agent, as mortgage collateral agent, the Collateral Agent, as UST Tranche A term loan representative, the UST Tranche B Term Agent, as UST Tranche B term loan representative and the Borrower and the other Loan Parties party thereto, as each of the same may be further amended, restated, modified, supplemented, extended, renewed, restructured or replaced.

“**Mortgage Collateral Agent**” shall mean The Bank of New York Mellon, as mortgage collateral agent pursuant to the Mortgage Collateral Agency Agreement.

“**Mortgage Policies**” shall have the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“**Mortgaged Property**” shall have the meaning specified in the definition of “Collateral and Guarantee Requirement.” The Mortgaged Properties as of the Effective Date are set forth on [Schedule 1.01\(c\)](#).

“**Mortgages**” shall mean, collectively, the mortgages, deeds of trust, trust deeds, hypothecs deeds to secure debt and similar instruments (including any Existing Mortgage, as amended by a

Mortgage Amendment) by the Loan Parties in favor or for the benefit of the Mortgage Collateral Agent on behalf of the Secured Parties (as defined in the Mortgage Collateral Agency Agreement) creating and evidencing a Lien on a Mortgaged Property in form and substance reasonably satisfactory to the Required Lenders, Collateral Agent and the Borrower, and any other mortgages executed and delivered pursuant to Section 4.02, 6.11 or 6.13.

“**Multiemployer Plan**” shall mean any multiemployer plan as defined in Section 4001(a)(3) of ERISA subject to the provisions of Title IV of ERISA to which a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates is an “employer” as defined in Section 3(5) of ERISA.

“**Net Equity Proceeds**” shall mean 50% of the cash proceeds from the issuance or sale by the Borrower (or contributions in respect) of any Equity Interests issued after the Effective Date, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale, provided, that, if the amount of any estimated taxes exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid.

“**Net Proceeds**” shall mean:

- (a) 100% of the cash proceeds actually received by the Borrower or any Restricted Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation and similar awards, but in each case only as and when received) from any Disposition or Casualty Event, net of the following:
- (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes,
  - (ii) other than with respect to a Pension Real Property Event, required debt payments and required payments (including principal amount, premium or penalty, if any, interest, fees and expenses and other amounts) of other obligations that are secured by the applicable asset or property (other than pursuant to the Loan Documents, the ABL Facility Documentation (other than in respect of ABL Priority Collateral and Non-UST Tranche B Term Priority Collateral), the Tranche B-2 Term Loan Facility Documentation (other than in respect of ABL Priority Collateral and Non-UST Tranche B Term Priority Collateral), the UST Tranche A Term Loan Facility Documentation, (other than in respect of the UST Tranche A Only Collateral) or any Permitted Junior Priority Additional Debt),
  - (iii) in the case of a Disposition or a Casualty Event with respect to any Pension Real Property (a “**Pension Real Property Event**”), to the extent the Contribution Deferral Agreement (as in effect as of the date hereof) requires the repayment or prepayment with the Net Proceeds of such Pension Real Property Event of any Specified Pension Fund Obligations which are secured on a first lien basis by such Pension Real Property (such obligations, “**CDA First Lien Obligations**”), the Net Proceeds of such Pension Real

Property Event shall be reduced by an amount equal to the amount of such Specified Pension Fund Obligations that are so repaid or prepaid with such proceeds and have not been declined by the holders thereof,

(iv) in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iv)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof,

(v) taxes paid or reasonably estimated to be payable as a result thereof (provided, that if the amount of any such estimated taxes exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition or Casualty Event, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid),

(vi) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) or (v) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Restricted Subsidiaries with respect to the assets subject to the Disposition or Casualty Event including, without limitation, liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction), and

(vii) any funded escrow established pursuant to the documents evidencing any such sale or disposition to secure any indemnification obligations or adjustments to the purchase price associated with any such sale or disposition;

*provided*, that if no Event of Default exists such proceeds, other than Real Property Disposition Proceeds, may be applied by the Borrower or any Restricted Subsidiary to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions or any acquisition permitted hereunder of all or substantially all the assets of, or all the Equity Interests (other than directors' qualifying shares) in, a Person or division or line of business of a Person (or any subsequent investment made in a Person, division or line of business previously acquired) that in each case become Collateral (or, in the case of the acquisition of the Equity Interests of a Person, such Person becomes a Loan Party under the Loan Documents), in each case within 270 days of such receipt, and such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 270 days of such receipt, so used or contractually committed with a third party to be so used (it being understood that if any portion of such proceeds are not so used within such 270 day period but within such 270 day period are contractually committed with a third party to be used, then upon the termination of such contract or if such Net Proceeds are not so used within the later of such 270 day period and 180 days from the entry into such contractual commitment, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso; it being understood that such proceeds shall constitute Net

Proceeds if there is a Specified Default at the time of a proposed reinvestment unless such proposed reinvestment is made pursuant to a binding commitment with a third party entered into at a time when no Specified Default was continuing); *provided, further* that, (i) except with respect to (I) Real Property Disposition Proceeds and (II) at any time during the Specified Period, any other Net Proceeds, no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless the aggregate net proceeds exceeds \$7,500,000 in any fiscal year, commencing upon the expiration of the Specified Period (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (a)), (ii) notwithstanding anything to the contrary in this Agreement, during the Specified Rolling Stock Prepayment Period, all Net Proceeds from any Disposition of Rolling Stock in excess of the Specified Rolling Stock Reinvestment Threshold in any fiscal year shall be applied (x) with respect to any Rolling Stock constituting UST Tranche B Priority Collateral to prepay the Term Loans in accordance with this Agreement, (y) with respect to any Rolling Stock constituting UST Tranche B Joint Collateral 67% to prepay the Term Loans in accordance with this Agreement and 33% to prepay the Tranche B-2 Term Loan Facility in accordance with the Tranche B-2 Term Loan Credit Agreement and (z) with respect to any Rolling Stock constituting Non-UST Tranche B Term Priority Collateral to prepay the Tranche B-2 Term Loan Facility in accordance with the Tranche B-2 Term Loan Credit Agreement, in each case of clauses (x), (y) and (z) above, without giving effect to any thresholds (other than such Specified Rolling Stock Reinvestment Threshold) or reinvestment rights, (iii) pending reinvestment in accordance with this proviso, (A) proceeds from the Disposition of Rolling Stock constituting (x) Non-UST Tranche B Term Priority Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited and maintained in a Non-UST Tranche B Priority Account (as defined in the ABL Intercreditor Agreement), (y) UST Tranche B Priority Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited and maintained in a UST Tranche B Priority Account (as defined in the ABL Intercreditor Agreement) and (z) UST Tranche B Joint Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited and maintained in a UST Tranche B Joint Account (as defined in the ABL Intercreditor Agreement) and (iv) the Borrower shall not, nor shall it permit any Restricted Subsidiary to, Dispose of Rolling Stock that does not constitute UST Tranche B Priority Collateral or UST Tranche B Joint Collateral with an aggregate fair market value in any fiscal year in excess of \$5,000,000 without the prior consent of the Required Lenders.

- (b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale, *provided*, that if the amount of any estimated taxes exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Borrower or the Restricted Subsidiaries shall be disregarded.

“**Non-Consenting Lender**” has the meaning set forth in [Section 3.06\(b\)](#).

“**Non-UST Tranche B Term Priority Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**Not Otherwise Applied**” shall mean, with reference to any amount of net proceeds of any transaction or event, that such amount (a) was not required to be applied to prepay the Loans pursuant to [Section 2.13\(a\)](#) and (b) was not previously applied in determining the permissibility of a transaction under the Loan Documents where such permissibility was (or may have been) pursuant to [Section 7.02\(p\)\(y\)](#), [Section 7.03\(ee\)](#), [Section 7.06\(e\)\(y\)](#) or [7.13\(a\)\(vi\)](#).

“**Obligations**” shall mean 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, 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 (or would accrue but for the operation of applicable Debtor Relief Laws), regardless of whether such interest and fees are allowed or allowable claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents include (a) the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party to the Agents, the Lenders or other Persons under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Agent or Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

“**OFAC**” shall have the meaning assigned to such term in the definition of “Blocked Person”.

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

“**Other Survey Documentation**” shall have the meaning specified in the definition of “Collateral and Guarantee Requirement”.

“**Other Taxes**” shall have the meaning assigned to such term in [Section 3.01\(b\)](#).

“**Other Term Loan Commitments**” shall mean one or more Classes of term loan commitments hereunder that result from a Refinancing Amendment entered into after the Effective Date.

“**Other Term Loans**” shall mean one or more Classes of Term Loans that result from a Refinancing Amendment entered into after the Effective Date.

“**Participant Register**” shall have the meaning assigned to such term in Section 10.04(f).

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**Pension Fund Entities**” shall mean those entities identified on Schedule 1.01(d) hereto.

“**Pension Contribution Cap**” means, as of any date of determination, (i) for any such date of determination occurring from and after September 11, 2019 and on or prior to September 11, 2020, \$150,000,000, (ii) for any such date of determination occurring after September 11, 2020 but on or prior to September 11, 2021, \$153,000,000, (iii) for any such date of determination occurring after September 11, 2021 but on or prior to September 11, 2022, \$156,060,000, (iv) for any such date of determination occurring after September 11, 2022 but on or prior to September 11, 2023, \$159,181,200 and (v) for any such date of determination occurring thereafter, \$162,364,824.

“**Pension Real Property**” shall mean any Real Property for so long as such Real Property secures the obligations of the Borrower under the Contribution Deferral Agreement on a first lien basis on the Effective Date, as set forth on Schedule 1.01(a).

“**Pension Real Property Event**” shall have the meaning assigned to such term in the definition of “Net Proceeds”.

“**Perfection Certificate**” shall mean a certificate substantially in the form of Exhibit II to the Security Agreement or any other form reasonably approved by the Collateral Agent and the Borrower, as the same shall be supplemented from time to time.

“**Permits**” shall mean all necessary certificates, licenses, permits, franchises, trade names, certificates of occupancy, consents and other approvals required under applicable Laws for the operation of any Real Property.

“**Permitted Acquisition**” shall have the meaning assigned to such term in Section 7.02(b).

“**Permitted Acquisition Provisions**” shall have the meaning assigned to such term in Section 2.17(c).

“**Permitted Additional Debt**” shall mean Indebtedness incurred by the Borrower or any Guarantor, which Indebtedness may be (x) in the form of one or more series of notes or in the form of bank loans and, in either case, secured by the Collateral on a junior basis to the Obligations (“**Permitted Junior Priority Additional Debt**”) or (y) in the form of one or more series of notes or in the form of bank loans and unsecured; *provided* that (i) such Indebtedness is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, (ii) the other terms and conditions of such Indebtedness (excluding pricing, fees, rate floors and optional prepayment or redemption terms), if different from the Term Loans, are customary market terms for Indebtedness of such type but in no event shall such terms and conditions (taken as a whole) be materially more restrictive to the Borrower and its Subsidiaries than the terms and conditions hereof *provided*, that the financial maintenance covenant on the then outstanding Term Loans shall be amended to provide the Lenders the benefit of any financial maintenance covenant of such Permitted

Additional Debt that is in addition to or more restrictive in any material manner than the financial maintenance covenant on the then outstanding Term Loans) (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 (or such shorter period as the Administrative Agent with the consent of the Required Lenders may agree in their sole discretion), 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 of this clause (ii) shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent or the Required Lenders notify the Borrower within such five Business Day period (or such shorter period as the Administrative Agent with the consent of the Required Lenders may agree in its sole discretion) that the Required Lenders disagree with such determination (including a reasonable description of the basis upon which the Required Lenders disagree)), (iii) [reserved], (iv) no Default shall exist immediately prior to or after giving effect to such incurrence and (v) if such Indebtedness is Permitted Additional Debt that is secured, a Junior Representative acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of the Junior Lien Intercreditor Agreement. Permitted Additional Debt will include any Registered Equivalent Notes issued in exchange therefor.

**“Permitted Junior Priority Additional Debt”** shall have the meaning assigned to such term in the definition of “Permitted Additional Debt”.

**“Permitted Refinancing”** shall mean, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; provided that (a) the original aggregate principal amount (or accreted value, if applicable) does not exceed the aggregate principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except (i) by an amount equal to accrued but unpaid interest, premiums and fees payable by the terms of such Indebtedness and reasonable fees, expenses, original issue discount and upfront fees incurred in connection with such modification, refinancing, refunding, renewal, replacement or extension and (ii) by an amount equal to any existing available commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement 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 greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), at the time thereof, no Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is Indebtedness permitted pursuant to Section 7.03(b), 7.03(p) or 7.03(g), or is otherwise a Junior Financing, (i) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment or in lien priority to the Obligations, the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment or in lien priority, as applicable, to the Obligations on terms (taken as a whole) (x) at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended (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 (or such shorter period as the Administrative Agent with the consent of the Required Lenders may agree in its sole discretion), 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 foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent or the Required Lenders notify the Borrower within such five Business Day period that the Required Lenders disagree with such determination (including a reasonable description of the basis upon which the Required Lenders disagree) or (y) otherwise reasonably acceptable to the Required Lenders)), and (ii) the obligors (including any guarantors) in respect of the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement or extension shall not include any Person other than the obligors (including any guarantors) of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended unless otherwise permitted hereby, (e) in the case of any Permitted Refinancing in respect of the ABL Facility, such Permitted Refinancing is a revolving working capital facility and is secured only by all or any portion of the collateral securing the ABL Facility (but not by any other assets) pursuant to one or more security agreements subject, in the case of assets constituting (or required to constitute) Collateral, to the ABL Intercreditor Agreement, (f) in the case of any Credit Agreement Refinancing Indebtedness, the Permitted Refinancing shall constitute Credit Agreement Refinancing Indebtedness and (g) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is unsecured, the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement or extension must be unsecured. When used with respect to any specified Indebtedness, "**Permitted Refinancing**" shall mean the Indebtedness incurred to effectuate a Permitted Refinancing of such specified Indebtedness.

"**Permitted Repricing Amendment**" shall have the meaning set forth in [Section 10.08\(b\)](#).

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

"**Plan**" shall mean any employee pension benefit plan within the meaning of Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Sections 412 and 430 of the Code or Sections 302 and 303 of ERISA and in respect of which a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates is, or if such plan were terminated would under Section 4069 of ERISA be deemed to be, or within the six year period immediately preceding the date hereof was, a "contributing sponsor" as defined in Section 4001(a)(13) of ERISA or an "employer" as defined in Section 3(5) of ERISA.

"**Platform**" shall have the meaning assigned to such term in [Section 10.01](#).

"**Prime Rate**" shall mean, as of any day, the rate last quoted by The Wall Street Journal as the "Prime Rate" in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by the

Required Lenders) or any similar release by the Federal Reserve Board (as reasonably determined by the Required Lenders).

**“Pro Forma Basis”** shall mean, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with [Section 1.10](#).

**“Pro Rata Share”** shall mean, with respect to each Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments (or, if Commitments have been terminated, the principal amount of the Loans) under the applicable Facility or Facilities of such Lender at such time and the denominator of which is the amount of the aggregate Commitments (or, if the Commitments have been terminated, the principal amount of the Loans) under the applicable Facility or Facilities at such time.

**“Projections”** shall have the meaning set forth in [Section 6.01\(c\)](#).

**“Public Lender”** shall have the meaning assigned to such term in [Section 10.01](#).

**“Qualified Equity Interests”** shall mean any Equity Interests that are not Disqualified Equity Interests.

**“Qualified Securitization Financing”** means any Securitization Facility of a Securitization Subsidiary that meets the following conditions: (i) the Borrower shall have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and its Restricted Subsidiaries party to the Securitization Facility; (ii) all sales of Securitization Assets and related assets by the Borrower or any Restricted Subsidiary to the Securitization Subsidiary or any other Person are made at fair market value (as determined in good faith by the Borrower); (iii) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings; and (iv) the obligations under such Securitization Facility are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Borrower or any of its Restricted Subsidiaries (other than a Securitization Subsidiary).

**“Real Property”** shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

**“Real Property Disposition Proceeds”** shall mean any Net Proceeds realized from a Disposition of, or Sale and Leaseback Transaction with respect to, any Real Property, including, for the avoidance of doubt, any Pension Real Property (in each case, consummated on or after the Effective Date), other than, in each case, leases of Real Property entered into in the ordinary course of business (excluding Sale and Leaseback Transactions).

“**Receivables Assets**” shall mean (a) any accounts receivable owed to the Borrower or a Restricted Subsidiary subject to a Receivables Facility and the proceeds thereof and (b) all collateral securing such accounts receivable, all contracts and contract rights, in each case, of the type which would constitute ABL Priority Collateral, guarantees or other obligations in respect of such accounts receivable, all records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in connection with a non-recourse accounts receivable factoring arrangement, except for Standard Securitization Undertakings, assigned or otherwise transferred or pledged by the Borrower in connection with a Receivables Facility.

“**Receivables Facility**” shall mean an arrangement between the Borrower or a Restricted Subsidiary and another Person pursuant to which (a) the Borrower or such Restricted Subsidiary, as applicable, sells (directly or indirectly) in the ordinary course of business to such Person accounts receivable owing by customers, together with Receivables Assets related thereto, (b) the obligations of the Borrower or such Restricted Subsidiary, as applicable, thereunder are non-recourse (except for Securitization Purchase Obligations) to the Borrower and such Restricted Subsidiary and (c) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings.

“**Reconciliation Report**” shall have the meaning specified in Section 6.02(k).

“**Reference Time**” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Required Lenders in their reasonable discretion and notified to the Administrative Agent.

“**Refinanced Debt**” shall have the meaning specified in the definition of “Credit Agreement Refinancing Indebtedness”.

“**Refinancing Amendment**” shall mean an amendment to this Agreement executed by each of (a) the Borrower, (b) the Administrative Agent, (c) each Additional Lender that will make an Other Term Loan pursuant to such Refinancing Amendment and (d) each existing Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with [Section 2.18](#).

“**Register**” shall have the meaning assigned to such term in [Section 10.04\(d\)](#).

“**Registered Equivalent Notes**” shall mean, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Regulation T**” shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Rejection Notice**” shall have the meaning assigned to such term in [Section 2.13\(d\)](#).

“**Related Fund**” shall mean, with respect to any Lender that is a fund or commingled investment vehicle that invests in loans, any other fund that invests in loans and is managed or advised by the same investment advisor/manager as such Lender or by an Affiliate of such investment advisor/manager.

“**Related Parties**” shall mean, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“**Release**” shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment or from, within or upon any vessel, vehicle, building, structure, facility or fixture.

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

“**Reportable Event**” shall mean any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived with respect to a Plan.

“**Request for Credit Extension**” shall mean a request by the Borrower in accordance with the terms of [Section 2.03\(a\)](#) or [Section 2.10](#), as applicable, and substantially in the form of [Exhibit C](#), or such other form as shall be approved by the Administrative Agent.

“**Request for Disbursement**” shall mean a request by the Borrower in accordance with the terms of [Section 2.03\(b\)](#) and substantially in the form of [Exhibit D](#), or such other form as shall be approved by the Administrative Agent.

“**Required Class Lenders**” shall mean, as of any date of determination, Lenders of a Class having more than 50% of the sum of the outstanding Loans and unused Commitments of the applicable Class.

“**Required Lenders**” shall mean, at any time, Lenders having Loans and unused Term Loan Commitments representing more than 50% of the sum of all Loans outstanding and unused Term Loan Commitments at such time.

“**Required Opinion State**” shall mean each of the following states: Pennsylvania, California, Ohio, New York, Illinois, New Jersey, Texas, Michigan, Tennessee, North Carolina, Oregon, Georgia, Maryland, Indiana, Missouri, Wisconsin, South Carolina, Nevada, Minnesota and Utah.

“**Responsible Officer**” shall mean the chief executive officer, president, vice president, chief financial officer, treasurer, assistant treasurer, director of treasury or other similar officer of a Loan Party and, as to any document delivered on the Effective Date, any secretary or assistant secretary of such Loan Party; provided that with respect to the Borrower, “Responsible Officer” shall mean only the chief executive officer and chief financial officer. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed by the recipient of such document 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 by the recipient of such document to have acted on behalf of such Loan Party.

“**Restricted Payment**” shall mean any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest of the Borrower or any Restricted Subsidiary, or on account of any return of capital to the Borrower’s or a Restricted Subsidiary’s stockholders, partners or members (or the equivalent Persons thereof).

“**Restricted Subsidiary**” shall mean each Subsidiary of the Borrower.

“**Rolling Stock**” shall mean any vehicles, tractors, trucks, trailers, tank trailer and other trailers, or similar vehicles and trailers, railroad cars, locomotives, stacktrains and other rolling stock and accessories used on such railroad cars, locomotives or other rolling stock (including superstructures and racks).

“**S&P**” shall mean Standard & Poor’s Ratings Service, or any successor thereto.

“**Sale and Leaseback Transaction**” shall mean any arrangement, directly or indirectly, whereby a seller or transferor shall sell or otherwise transfer any real or personal property and then or thereafter lease, or repurchase under an extended purchase contract, conditional sales or other title retention agreement, the same property.

“**Scheduled Property**” shall have the meaning assigned to such term in [Section 7.05\(l\)](#).

“**SEC**” shall mean the Securities and Exchange Commission or any Governmental Authority that is the successor thereto.

“**Secured Parties**” shall have the meaning assigned to such term in the Security Agreement.

“**Securities Account**” as defined in the UCC.

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**Securitization Asset**” shall mean (a) any accounts receivable or related assets and the collections and proceeds thereof, in each case subject to a Securitization Facility and (b) all collateral securing such receivable or asset, all contracts and contract rights in each case, of the

type which would constitute ABL Priority Collateral, guaranties or other obligations in respect of such receivable or asset, lockbox accounts, books and records with respect to such account or asset and any other assets customarily transferred (or in respect of which security interests are customarily granted) together with accounts or assets in a securitization financing and which in the case of clause (a) and (b) above are sold, conveyed, assigned or otherwise transferred or pledged by any Loan Party in connection with a Qualified Securitization Financing.

“**Securitization Facility**” shall mean any transaction or series of securitization financings that may be entered into by the Borrower or any of its Restricted Subsidiaries pursuant to which the Borrower or any of its Restricted Subsidiaries may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) any Person that is not a Restricted Subsidiary or (b) any other Subsidiary of the Borrower (that in turn sells such Securitization Assets to a Securitization Subsidiary) or a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries; *provided* that, it is understood and agreed that the ABL Facility is deemed a Securitization Facility.

“**Securitization Fees**” shall mean distributions or payments made directly or by means of discounts with respect to any Securitization Asset or participation interest therein issued or sold in connection with, and other fees and expenses (including fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Financing or a Receivables Facility.

“**Securitization Purchase Obligation**” shall mean any obligation of the Borrower or a Restricted Subsidiary in respect of Securitization Assets or Receivables Assets in a Qualified Securitization Financing or a Receivables Facility to purchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including, without limitation, as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to such party.

“**Securitization Subsidiary**” shall mean any Subsidiary of the Borrower in each case formed for the purpose of and that solely engages in one or more Qualified Securitization Financings and other activities reasonably related thereto or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers Securitization Assets and related assets.

“**Security Agreement**” shall mean, except as the context may otherwise require, both (a) the Security Agreement dated on or around the Effective Date among the Borrower, the Guarantors party thereto and the Collateral Agent and (b) the Security and Collateral Agency Agreement, dated on or around the Effective Date, among the Collateral Agent, as collateral agent and term loan representative, the ABL Agent, as ABL representative, the Tranche B-2 Term Agent, as Tranche B-2 term loan representative, the UST Tranche A Term Agent, as UST Tranche A term loan representative and the Borrower and the other Loan Parties party thereto, as each of the same may be further amended, restated, modified, supplemented, extended, renewed, restructured or replaced.

“**Security Agreement Supplement**” shall have the meaning specified in the Security Agreement.

“**Senior Financial Officer**” of any Person shall mean the chief financial officer, principal accounting officer, treasurer, controller or other similar officer of such Person.

“**Single-Employer Plans**” shall mean the Roadway LLC Pension Plan, the Yellow Corporation Pension Plan and the YRC Retiree Pension Plan or any other Plans sponsored or maintained by the Borrower or any Restricted Subsidiary.

“**SOFR**” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.

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

“**SOFR Administrator’s Website**” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**Specified Default**” shall mean an Event of Default under [Section 8.01\(a\)](#), (f) or (g).

“**Specified Pension Fund Obligations**” shall mean the payment obligations due from the Borrower and/or its applicable Subsidiaries to the Pension Fund Entities under the terms and conditions of the Contribution Deferral Agreement.

“**Specified Period**” shall mean the period commencing on the Effective Date and ending on the first date after for which Consolidated EBITDA for a Test Period ending on the last day of a fiscal quarter ending on or after June 30, 2022 is greater than \$200,000,000 and the Borrower shall have delivered a Compliance Certificate to the Administrative Agent and the Lenders showing such calculation in reasonable detail.

“**Specified Rolling Stock Prepayment Period**” means the period commencing on the Effective Date and ending on the first date after for which Consolidated EBITDA for a Test Period ending on the last day of a fiscal quarter ending on or after September 30, 2020 is greater than \$200,000,000 and the Borrower shall have delivered a Compliance Certificate to the Administrative Agent and the Lenders showing such calculation in reasonable detail.

“**Specified Rolling Stock Reinvestment Threshold**” means, with respect to Dispositions of Rolling Stock in any fiscal year, the first \$500,000 of Net Proceeds received by the Borrower and its Subsidiaries with respect to such Dispositions in such fiscal year to the extent such Net Proceeds are reinvested in accordance with the proviso to clause (a) of the definition of “Net Proceeds”.

“**Specified Transaction**” shall mean any Investment that results in a Person becoming a Restricted Subsidiary, any Permitted Acquisition, any Disposition that results in a Restricted

Subsidiary ceasing to be a Subsidiary of the Borrower, any Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person or any Disposition of a business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case consummated after the Effective Date and whether by merger, consolidation, amalgamation or otherwise, and any incurrence or repayment of Indebtedness or Restricted Payment, in each case, that by the terms of this Agreement requires a financial ratio or test to be calculated on a "Pro Forma Basis".

"SPV" shall have the meaning assigned to such term in [Section 10.04\(i\)](#).

"Standard Securitization Undertakings" shall mean representations, warranties, covenants, guarantees and indemnities entered into by the Borrower or any Subsidiary of the Borrower which the Borrower has determined in good faith to be customary in a Securitization Facility, it being understood that any Securitization Purchase Obligation shall be deemed to be a Standard Securitization Undertaking or, in the case of a Receivables Facility, a non-credit related recourse accounts receivable factoring arrangement.

"Statutory Reserves" shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate or other fronting office making or holding a Loan) is subject for Eurocurrency Liabilities (as defined in Regulation D of the Board). Eurodollar Loans shall be deemed to constitute Eurocurrency Liabilities (as defined in Regulation D of the Board) and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Indebtedness" shall mean any Indebtedness that is, or is required to be, subordinated in right of payment to the Obligations (for greater certainty, not including the ABL Facility Indebtedness, the UST Tranche A Term Loan Facility Indebtedness and the Tranche B-2 Term Loan Facility Indebtedness).

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

"Successor Borrower" shall have the meaning specified in [Section 7.04\(d\)](#).

"Survey" shall have the meaning assigned to such term in the definition of "Collateral and Guarantee Requirement".

“**Swap Contract**” shall mean (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, 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 Termination Value**” shall mean, 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**” shall have the meaning assigned to such term in [Section 3.01\(a\)](#).

“**Term Borrowing**” shall mean a Borrowing comprised of Term Loans.

“**Term Lender**” shall mean a Lender with a Term Loan Commitment or an outstanding Term Loan.

“**Term Loan Commitment**” shall mean the UST Tranche B Term Loan Commitment.

“**Term Loans**” shall mean the UST Tranche B Term Loans, Extended Term Loans and Other Term Loans.

“**Term Note**” shall mean a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of [Exhibit J](#) hereto, evidencing the aggregate indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

“**Term Priority Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**Term SOFR**” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“**Test Period**” shall mean, for any date of determination under this Agreement, the most recent period as of such date of four consecutive fiscal quarters of the Borrower for which financial statements have been delivered (or were required to have been delivered) pursuant to Section 6.01(a) or 6.01(b), as applicable, or, prior to the first such requirement, the four fiscal quarter period ended March 31, 2020.

“**Threshold Amount**” shall mean \$30,000,000.

“**Title Company**” shall mean Chicago Title Insurance Company.

“**Total Leverage Ratio**” shall mean, as of any date, the ratio of (a) Consolidated Total Debt as of such date to (b) Consolidated EBITDA for the Test Period applicable as of such date.

“**tranche**” shall have the meaning assigned to such term in Section 2.19(a).

“**Tranche B-2 Secured Parties**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**Tranche B-2 Term Agent**” shall mean, as the context may require, Alter Domus Products Corp. (formerly known as Cortland Products Corp.), in its capacity as administrative agent under the Tranche B-2 Term Loan Facility Documentation, Alter Domus Products Corp. (formerly known as Cortland Products Corp.), in its capacity as collateral agent under the Tranche B-2 Term Loan Facility Documentation, such agents collectively or any permitted successor or assignee administrative agent or collateral agent under the Tranche B-2 Term Loan Facility Documentation.

“**Tranche B-2 Term Loan Credit Agreement**” shall mean that certain Amended and Restated Credit Agreement dated as of September 11, 2019, among the Borrower, the guarantors party thereto from time to time, the lenders party thereto and Alter Domus Products Corp. (formerly known as Cortland Products Corp.), as administrative agent and collateral agent, as amended by that certain Amendment No. 1 dated April 7, 2020 and Amendment No. 2 dated July 7, 2020, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents and resulting in a financing that constitutes (or that would constitute if incurred as a new financing) a Permitted Refinancing of the Tranche B-2 Term Loan Facility Indebtedness), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof), in each case as and to the extent permitted by this Agreement and, if applicable, the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement.

“**Tranche B-2 Term Loan Facility**” shall mean the term loans made available to the Borrower pursuant to the Tranche B-2 Term Loan Credit Agreement.

“**Tranche B-2 Term Loan Facility Documentation**” shall mean the Tranche B-2 Term Loan Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith.

“**Tranche B-2 Term Loan Facility Indebtedness**” shall mean Indebtedness of the Borrower or any Restricted Subsidiary outstanding under the Tranche B-2 Term Loan Facility Documentation.

“**Transaction Benefit**” means any (i) entitlement to any change in control or transaction-related bonus, severance pay, termination benefits or any other similar employment or severance pay or benefit, (ii) acceleration of the time of payment or vesting, or increase in the amount of, any cash or equity incentive or other compensation or benefits, or (iii) increase, enhancement or funding of any benefits or amounts payable under any employee compensation or benefit arrangement (including any employee benefit plan within the meaning of Section 3(3) of ERISA), in each case for or to the benefit of any current or former employee, director or other service provider of the Borrower or any Restricted Subsidiary.

“**Transaction Expenses**” shall mean any costs, fees or expenses incurred or paid by the Borrower or any of its Subsidiaries in connection with the Transactions, this Agreement and the other Loan Documents.

“**Transactions**” shall mean, collectively, (a) the negotiation, execution and delivery by the Loan Parties of the Loan Documents to which they are a party and the making of the Borrowings hereunder on each Funding Date, (b) the execution and delivery by the Borrower and the Subsidiaries party thereto of an amendment to the ABL Facility Documentation, an amendment to the Tranche B-2 Term Loan Facility Documentation, in each case in connection with the matters described in clause (a) and effecting certain other amendments in connection therewith or herewith, (c) the execution and delivery by the Loan Parties of the UST Tranche A Term Loan Facility Documentation to which they are a party, (d) the Treasury Equity Issuance and the negotiation, execution and delivery of the Treasury Equity Documents and (e) the payment of the Transaction Expenses.

“**Transferred Guarantor**” shall have the meaning specified in the [Section 11.10](#).

“**Treasury**” means the United States Department of the Treasury.

“**Treasury Equity**” means the 15,943,753 shares of Common Stock of the Borrower issued and delivered pursuant to this Agreement, directly or indirectly, to the United States federal government or any Governmental Authority on behalf thereof (including, in each case, any agent, trust or Person on behalf thereof, including, for the avoidance of doubt, any voting trust and the trustee thereof created to hold the Treasury Equity for the benefit of the United States federal government or any other Governmental Authority).

“**Treasury Equity Documents**” means (i) the Share Issuance Agreement, dated as of June 30, 2020, between the Borrower and the Treasury, (ii) the Voting Trust Agreement, by and among the Borrower, Treasury and the trustee thereunder to be entered into on or before the Treasury Equity Issuance and having substantially the terms set forth in Annex A attached hereto and (iii) the Registration Rights Agreement, by and between the Borrower and Treasury to be entered into on or before the Treasury Equity Issuance and having substantially the terms set forth in Annex B attached hereto.

“**Treasury Equity Issuance**” means the issuance and delivery of the Treasury Equity to a voting trust having substantially the terms set forth in Annex A attached hereto (the “**Voting Trust**”) created to hold the Treasury Equity for the benefit of Treasury in connection with the Transactions, and which Treasury Equity shall be (i) issued in book entry form, registered in the name of the Voting Trust or as directed by the Treasury and (ii) equal to 42% of the Borrower’s Common Stock outstanding immediately prior to such issuance, including any shares of Common Stock issuable upon conversion, exchange or exercise of any outstanding security convertible, exchangeable or exercisable into shares of Common Stock (including any warrants, rights or options to purchase or other arrangements or rights to acquire shares of Common Stock) (“**fully diluted Common Stock outstanding**”) and 29.58% of fully diluted Common Stock outstanding on a pro forma basis reflecting the Treasury Equity Issuance.

“**Type**”, when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term “**Rate**” shall mean the Adjusted LIBO Rate and the Alternate Base Rate.

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

“**Unaudited Financial Statements**” shall mean the unaudited consolidated balance sheets and related statements of operations and cash flows of the Borrower and its consolidated Subsidiaries as at the end of and for the fiscal quarter ended March 31, 2020.

“**Uniform Commercial Code**” or “**UCC**” shall mean the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

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

“**United States Tax Compliance Certificate**” shall have the meaning assigned to such term in Section 3.01(d).

“**USA PATRIOT Act**” shall mean The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“**USD LIBOR**” means the London interbank offered rate for U.S. dollars.

“**UST Tranche A Controlled Account**” shall have the meaning assigned to such term in the UST Tranche A Term Loan Credit Agreement.

“**UST Tranche A Only Collateral**” shall mean the UST Tranche A Controlled Account and all Money (as defined in the UCC) and all cash, checks, other negotiable instruments, funds and other evidences of loan proceeds properly held therein.

“**UST Tranche A Secured Parties**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**UST Tranche A Term Agent**” shall mean, as the context may require, The Bank of New York Mellon, in its capacity as administrative agent under the UST Tranche A Term Loan Facility Documentation, The Bank of New York Mellon, in its capacity as collateral agent under the UST Tranche A Term Loan Facility Documentation, such agents collectively or any permitted successor or assignee administrative agent or collateral agent under the UST Tranche A Term Loan Facility Documentation.

“**UST Tranche A Term Loan Credit Agreement**” shall mean that certain UST Tranche A Term Loan Credit Agreement dated as of July 7, 2020, among the Borrower, the guarantors party thereto from time to time, the lenders party thereto from time to time, and The Bank of New York Mellon, as administrative agent and collateral agent, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents and resulting in a financing that constitutes (or that would constitute if incurred as a new financing) a Permitted Refinancing of the UST Tranche A Term Loan Facility Indebtedness), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof), in each case as and to the extent permitted by this Agreement and, if applicable, the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement.

“**UST Tranche A Term Loan Facility**” shall mean the commitments and term loans made available to the Borrower pursuant to the UST Tranche A Term Loan Credit Agreement.

“**UST Tranche A Term Loan Facility Documentation**” shall mean the UST Tranche A Term Loan Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith and including all “Loan Documents” (as defined in the UST Tranche A Term Loan Credit Agreement) or similar term.

“**UST Tranche A Term Loan Facility Indebtedness**” shall mean Indebtedness of the Borrower or any Restricted Subsidiary outstanding under or secured by the UST Tranche A Term Loan Facility Documentation.

“**UST Tranche B Controlled Account**” shall mean a blocked account at a commercial bank reasonably satisfactory to the Required Lenders and the Administrative Agent in the name of the Borrower and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent and the Required Lenders. It is understood and agreed that any amounts on deposit in the UST Tranche B Controlled Account not disbursed and used in accordance with the terms of this Agreement shall be returned to Treasury.

“**UST Tranche B Joint Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**UST Tranche B Only Collateral**” shall mean the UST Tranche B Controlled Account and all Money (as defined in the UCC) and all cash, checks, other negotiable instruments, funds and other evidences of loan proceeds properly held therein.

“**UST Tranche B Priority Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**UST Tranche B Term Lender**” shall mean a Lender with a UST Tranche B Term Loan Commitment or an outstanding UST Tranche B Term Loan.

“**UST Tranche B Term Loan Commitment**” shall mean, with respect to each Lender, the commitment, if any, of such Lender to make a UST Tranche B Term Loan hereunder, expressed as an amount representing the maximum principal amount of the UST Tranche B Term Loan to be made by such Lender hereunder. The initial aggregate amount of the UST Tranche B Term Loan Commitments as of the Effective Date is \$400,000,000; provided that the Lenders and the Borrower may agree to decrease the aggregate amount of the UST Tranche B Term Loan Commitments and correspondingly increase the aggregate amount of the UST Tranche A Term Loan Facility by an equal amount.

“**UST Tranche B Term Loans**” shall mean the term loans made by the Lenders from time to time to the Borrower pursuant to Section 2.01(b). For the avoidance of doubt, a Term Loan shall no longer be a “UST Tranche B Term Loan” when it shall have become an “Extended Term Loan”.

“**Weighted Average Life to Maturity**” shall mean, 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 scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled 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 for purposes of determining the Weighted Average Life to Maturity of any Refinanced Debt or any Indebtedness that is being modified, refinanced, refunded, renewed, replaced, restructured or extended (the “**Applicable Indebtedness**”), the effects of any amortization of or prepayments made on such Applicable Indebtedness prior to the date of the applicable modification, refinancing, restructuring, refunding, renewal, replacement or extension shall be disregarded.

“**wholly owned**” shall mean, 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) 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.

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

Section 1.02. *Other Interpretive Provisions*

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

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) (i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(iii) The term “including” is by way of example and not limitation.

(c) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(d) 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.”

(e) The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(f) All references to “knowledge” or “awareness” of any Loan Party or a Restricted Subsidiary thereof means the actual knowledge of a Responsible Officer of a Loan Party or such Restricted Subsidiary.

(g) 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.

(h) The word “or” is not exclusive.

(i) For purposes of determining compliance with any one of Sections 7.01, 7.02, 7.03, 7.05, 7.06, 7.08, 7.09 and 7.13, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of more than one of the categories of transactions permitted pursuant to any clause of such Section, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower (and the Borrower shall be entitled to redesignate use of any such clauses from time to time) in its sole discretion at such time; *provided* that the Borrower shall not be permitted to subsequently reclassify any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Indebtedness as having been incurred under a Non-Fixed Basket if such Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Indebtedness was originally incurred under a Fixed Basket or any other Basket that is not a Non-Fixed Basket. For all purposes hereunder, (x) “**Fixed Basket**” shall mean any Basket that is subject to a fixed-dollar limit and (y) “**Non-Fixed Basket**” shall mean any Basket that is subject to compliance with a financial ratio or test (including Total Net Leverage Ratio) or based on a percentage of Consolidated EBITDA or total assets.

(j) The usage of the term "written" includes electronic messages, including e-mail.

(k) Any reference herein or in any other Loan Document to (i) a transfer, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company, as if it were a transfer, assignment, sale or transfer, or similar term, as applicable, to a separate Person, and (ii) a merger, consolidation, amalgamation or consolidation, or similar term, shall be deemed to apply to the unwinding of such a division or allocation, as if it were a merger, consolidation, amalgamation or consolidation or similar term, as applicable, with a separate Person.

Section 1.03. *Certifications*

. All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such a Person in his or her capacity solely as an officer or representative of such Loan Party, on such Loan Party's behalf and not in such Person's individual capacity.

Section 1.04. *Accounting Terms*

. 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, except as otherwise specifically prescribed herein or therein.

Section 1.05. *Rounding*

. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under 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).

Section 1.06. *References to Agreements, Laws, Etc*

. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements, replacements, extensions, renewals, refinancings, restructurings and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements, replacements, extensions, renewals, refinancings, restructurings and other modifications are not prohibited by hereby; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.07. *Times of Day*

. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.08. *Timing of Payment or Performance*

. Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Credit immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

Section 1.10. *Pro Forma Calculations*

(a) Notwithstanding anything to the contrary herein, the Total Leverage Ratio shall be calculated in the manner prescribed by this Section 1.10.

(b) For purposes of calculating the Total Leverage Ratio, Specified Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (i) during the applicable Test Period or (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made 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 therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.10, then the Total Leverage Ratio shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.10.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Senior Financial Officer of the Borrower and may include, for the avoidance of doubt, Cost Savings to the extent permitted by, and subject to the requirements of, clause (a)(viii) of the definition of "Consolidated EBITDA". Notwithstanding the foregoing, all *pro forma* adjustments under this clause (c) shall not, taken together with those added pursuant to clause (a)(viii) of the definition of "Consolidated EBITDA", increase *pro forma* Consolidated EBITDA by more than 5% for any Test Period (calculated prior to giving effect to any addback pursuant to this clause (c) or clause (a)(viii) of the definition of "Consolidated EBITDA").

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of the Total Leverage Ratio (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes and not incurred in reliance on Section 7.03(f)), (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Total Leverage Ratio shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period of the Total Leverage Ratio. Interest on a Capitalized Lease shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Borrower to be the rate of interest implicit in such Capitalized Lease in accordance with GAAP.

Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or Restricted Subsidiary may designate.

(e) Whenever any provision of this Agreement requires the Borrower to have a Total Leverage Ratio on a Pro Forma Basis in connection with any action to be taken by the Borrower hereunder, the Borrower shall deliver to the Administrative Agent a certificate of each Responsible Officer of the Borrower setting forth in reasonable detail the calculations demonstrating such compliance or such Total Leverage Ratio.

Section 1.11. *Certain Accounting Matters*

. Notwithstanding any other provision contained herein or in any other Loan Document, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, (a) without giving effect to any election under Statement of Financial Accounting Standards 159 or Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any of its Restricted Subsidiaries at "fair value", as defined therein; and (b) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 and/or Statement of Financial Accounting Standards 150 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. Furthermore, unless the Borrower elects otherwise, notwithstanding any other provision contained herein or in any other Loan Document, for all purposes under this Agreement and the other Loan Documents, including negative covenants, financials covenants and component definitions, operating leases and Capitalized Leases will be deemed to be treated in a manner consistent with their current treatment under GAAP as in effect on December 31, 2018, notwithstanding any modifications or interpretive changes thereto that may occur thereafter. For the avoidance of doubt, the principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP, except as expressly set forth in clauses (a) and (b) of this Section 1.11.

Section 1.12. *Classification of Loans and Borrowings*

. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "UST Tranche B Term Loan") or by Type (e.g., a "Eurodollar Loan") or by Class and Type (e.g., a "Eurodollar Term Loan"). Borrowings also may be classified and referred to by Class (e.g., a "Term Borrowing") or by Type (e.g., a "Eurodollar Borrowing") or by Class and Type (e.g., a "Eurodollar Term Borrowing").

Section 1.13. *Currency Equivalents Generally*

(a) For purposes of determining compliance with Sections 7.01, 7.02, 7.03, 7.05, 7.06, 7.08, 7.09 and 7.13 with respect to any amount of Indebtedness, Lien, Asset Sale, Restricted Payment, Capital Expenditure, affiliate transaction, Contractual Obligation, prepayment of Indebtedness or Investment in a currency other than Dollars, no Default or Event of Default shall

be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder) and once incurred or made, the amount of such Indebtedness, Lien, Asset Sale, Restricted Payment, Capital Expenditure, affiliate transaction, Contractual Obligation, prepayment of Indebtedness or Investment, shall be always deemed to be at the Dollar amount on such date, regardless of later changes in currency exchange rates.

(b) For purposes of determining the Total Leverage Ratio, amounts denominated in a currency other than Dollars will be converted to Dollars at the currency exchange rates used in preparing the Borrower's financial statements corresponding to the Test Period with respect to the applicable date of determination and will, in the case of Indebtedness, reflect the currency translation effects, determined in accordance with GAAP, of Swap Contracts permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

**ARTICLE 2**  
THE CREDITS

Section 2.01. *UST Tranche B Term Loan Commitments*

(a) [Reserved].

(b) Subject to the terms and conditions and relying upon the representations and warranties set forth herein, each UST Tranche B Term Lender agrees, severally and not jointly, to provide all or a portion of the UST Tranche B Term Loans to the Borrower from time to time during the Availability Period (each such date of funding, a "**Funding Date**"). The aggregate principal amount of the UST Tranche B Term Loans funded by each UST Tranche B Term Lender shall not to exceed its UST Tranche B Term Loan Commitment. Amounts repaid or prepaid in respect of the UST Tranche B Term Loan may not be reborrowed. All proceeds of the UST Tranche B Term Loan shall be deposited by the Administrative Agent into the UST Tranche B Controlled Account and shall only be disbursed therefrom upon instruction from the Required Lenders to the Administrative Agent following the satisfaction (or waiver pursuant to Article 9) of the conditions set forth in Section 4.03.

Section 2.02. *Loans*

(a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments; *provided, however*, that in no event shall the Borrower request more than two Borrowings in any calendar month; *provided further, however* that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). The Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$1,000,000 and not less than \$25,000,000 (except, with respect to any Other Term Loans, to the extent otherwise provided in the applicable Refinancing Amendment) or (ii) equal to the remaining available balance of the applicable Commitments.

(b) Subject to Section 3.02 each Borrowing shall be comprised entirely of Eurodollar Loans. Borrowings of more than one Type may be outstanding at the same time; *provided* that the total number of such additional Interest Periods does not exceed 10 at any one time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Each Lender shall make each UST Tranche B Term Loan required to be made by it hereunder on each Funding Date by wire transfer of immediately available funds to the Administrative Account not later than 12:00 p.m., New York City time on such date, and upon receipt of all requested funds the Administrative Agent shall promptly credit the amounts so received to the UST Tranche B Controlled Account.

Section 2.03. *Borrowing and Disbursement Procedure*

(a) In order to request a Borrowing, the Borrower shall notify the Administrative Agent of such request in writing not later than 12:00 p.m., New York City time, (i) with respect to the Initial Funding Date, two (2) Business Days prior to such Borrowing and (ii) for any Borrowing following the Initial Funding Date, five (5) Business Days before such Borrowing. Each such Request for Credit Extension shall be irrevocable and signed by each Responsible Officer of the Borrower and shall specify the following information: (i) the Class of Loans to be borrowed; (ii) the date of such Borrowing (which shall be a Business Day); (iii) the amount of such Borrowing; *provided* that the aggregate amount of such Borrowings in any fiscal quarter shall not exceed the amount of capital expenditures allocated to such fiscal quarter for the purchase of Rolling Stock with the proceeds of the Term Loans pursuant to the most recent Approved CapEx Plan; and (iv) the Interest Period with respect thereto; *provided, however*, that, notwithstanding any contrary specification in any Request for Credit Extension, each requested Borrowing shall comply with the requirements set forth in Section 2.02. Each requested Borrowing shall be a Eurodollar Borrowing. If no Interest Period with respect to any Eurodollar Borrowing is specified in any such Request for Credit Extension, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall promptly advise the applicable Lenders of any Request for Credit Extension given pursuant to this Section 2.03(a) (and the contents thereof), and of each Lender's portion of the requested Borrowing.

(b) In order to request a disbursement from the UST Tranche B Controlled Account, the Borrower shall notify the Administrative Agent of such request in writing not later than 1:00 p.m., New York City time, (i) with respect to any disbursement on the Initial Funding Date, three (3) Business Days prior to such disbursement and (ii) for any disbursement following the Initial Funding Date, three (3) Business Days before such disbursement; *provided*, that any disbursement request delivered hereunder may be delivered contemporaneously with the Request for Credit Extension delivered pursuant to Section 2.03(a) above. Each such Request for Disbursement shall be irrevocable and signed by each Responsible Officer of the Borrower and shall specify the following information: (i) the date of such disbursement (which shall be a Business Day); (ii) the number and location of the account to which funds are to be disbursed; (iii) the amount of such disbursement; and (iv) a certification that the proceeds of such disbursement shall be used solely for the purposes specified in Section 6.16. The Administrative Agent shall promptly advise the applicable Lenders of any notice given pursuant to this Section 2.03(b) (and the contents thereof). Following the satisfaction (or waiver pursuant to Article 9) of the conditions precedent to disbursement set forth in Section 4.03, the Administrative Agent shall instruct the Account Bank

to make disbursements from the UST Tranche B Controlled Account in the amounts and to the accounts specified in the Request for Disbursement.

Section 2.04. *Evidence of Debt; Repayment of Loans*

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(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the principal amount of each Term Loan of such Lender as provided in Section 2.11 (or, in the case of Extended Term Loans or Other Term Loans, as provided for in the applicable Extension Offer, Refinancing Amendment or other governing documentation).

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Class and Type thereof and, if applicable, the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower or any Guarantor and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be prima facie evidence of the existence and amounts of the obligations therein recorded; *provided, however*, that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms and (ii) in the event of any conflict between the accounts set forth in paragraphs (b) and (c) above, the amounts set forth in the accounts maintained pursuant to paragraph (c) shall prevail.

(e) Any Lender may request that Loans made by it hereunder be evidenced by a Term Note. In such event, the Borrower shall promptly execute and deliver to such Lender a Term Note payable to such Lender and its registered assigns in accordance with Section 10.04. Notwithstanding any other provision of this Agreement, in the event any Lender shall request and receive a Term Note, the interests represented by such Term Note shall at all times (including after any assignment of all or part of such interests pursuant to Section 10.04) be represented by one or more promissory notes payable to the payee named therein or its registered assigns, unless such Term Note is duly cancelled.

(f) This Section 2.04 shall at all times be interpreted and administered in such a way that the Term Notes will be issued in "registered form" within the meaning of Treasury Regulation Section 5f.163-1(a).

Section 2.05. *Fees*

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(a) The Borrower agrees to pay to the Administrative Agent, for its own account, the administrative agent fees applicable to the Facilities payable in the amounts and at the times agreed

upon between the Borrower and the Administrative Agent as set forth in the Administrative Agent Fee Letter (the "Fees").

(b) All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent. Once paid, none of the Fees shall be refundable under any circumstances.

Section 2.06. *Interest on Loans*

.

(a) Subject to the provisions of Section 2.07, the Loans comprising each ABR Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, and calculated from and including the date of such Borrowing to but excluding the date of repayment thereof) at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin; provided, that no Borrowings hereunder shall be made in ABR except as set forth in Section 10.24.

(b) Subject to the provisions of Section 2.07, the Loans comprising each Eurodollar Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan except as otherwise provided in this Agreement. The applicable Alternate Base Rate or Adjusted LIBO Rate for each Interest Period or day within an Interest Period, as the case may be, shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(d) All interest payable on each Interest Payment Date shall be payable in cash.

Section 2.07. *Default Interest*

. Automatically from and after the occurrence and during the continuance of an Event of Default under Section 8.01(a), (f) or (g) or at the election of the Required Lenders during the continuance of any other Event of Default, the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder, shall thereafter, after as well as before judgment, bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on written demand at a rate that is 2.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2.0% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans); *provided* that in the case of Eurodollar Term Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, if such Eurodollar Rate Loans shall become ABR Loans in accordance with Section 2.10(e), such Loans shall thereafter bear interest payable upon written demand at a rate which is 2.0% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans.

Section 2.08. [Reserved]

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Section 2.09. *Termination and Reduction of Commitments*

.

(a) All or a portion of the Term Loan Commitment for the UST Tranche B Term Loan shall automatically terminate upon the making of the UST Tranche B Term Loans on each Funding Date in an amount equal to the amount of UST Tranche B Term Loans so funded on such Funding Date.

(b) Upon at least one Business Days' prior irrevocable written or fax notice to the Administrative Agent, the Borrower may at any time in whole permanently terminate, or from time to time in part permanently reduce, any Class of unfunded Term Loan Commitments; *provided, however*, that each partial reduction of any Class of Term Loan Commitments shall be in an integral multiple of \$1,000,000 and in a minimum amount of \$1,000,000; provided further that, a notice of termination of the Commitments of any Class delivered by the Borrower may state that such notice is conditioned upon the consummation of an acquisition or sale transaction or upon the effectiveness of other credit facilities or the receipt of proceeds from the issuance of other Indebtedness or any other specified event, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(c) Each reduction in the Term Loan Commitments hereunder shall be made ratably among the Lenders in accordance with their respective applicable Commitments.

Section 2.10. *Conversion and Continuation of Borrowings*

The Borrower shall have the right at any time upon prior irrevocable written notice to the Administrative Agent not later than 1:00 p.m., New York City time, three Business Days prior to conversion, to convert the Interest Period with respect to any Eurodollar Borrowing to another permissible Interest Period, subject in each case to the following:

(i)[reserved];

(ii)each conversion or continuation shall be made pro rata among the Lenders in accordance with the respective principal amounts of the Loans comprising the converted or continued Borrowing;

(iii)if less than all the outstanding principal amount of any Borrowing shall be converted or continued, then each resulting Borrowing shall satisfy the limitations specified in Sections 2.02(a) and 2.02(b) regarding the principal amount and maximum number of Borrowings of the relevant Type;

(b) each conversion shall be effected by each Lender and the Administrative Agent by recording for the account of such Lender the new Loan of such Lender resulting from such conversion and reducing the Loan (or portion thereof) of such Lender being converted by an equivalent principal amount; accrued interest on any Eurodollar Loan (or portion thereof) being converted shall be paid by the Borrower at the time of conversion;

(i)if any Eurodollar Borrowing is converted on a day prior to the last day of the Interest Period applicable thereto, the Borrower shall pay, upon demand, any amounts due to the Lenders pursuant to Section 3.04;

(c) any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a Eurodollar Borrowing, unless agreed by all applicable Lenders;

(d) any portion of a Eurodollar Borrowing that cannot be converted into or continued as a Eurodollar Borrowing by reason of the immediately preceding clause shall be automatically converted at the end of the Interest Period in effect for such Borrowing into an ABR Borrowing; and

(e) upon notice to the Borrower from the Administrative Agent given at the request of the Required Lenders, after the occurrence and during the continuance of an Event of Default, no outstanding Loan may be converted into, or continued as, a Eurodollar Loan.

Each such Request for Credit Extension shall (except as set forth herein) be irrevocable and shall refer to this Agreement and specify (i) the identity and amount of the Borrowing that the Borrower requests be converted or continued, (ii) if such Request for Credit Extension requests a conversion, the date of such conversion (which shall be a Business Day) and (iii) the Interest Period with respect thereto. If no Interest Period is specified in any such Request for Credit Extension with respect to any conversion to or continuation as a Eurodollar Borrowing, the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall promptly advise the Lenders of any Request for Credit Extension and of each Lender's portion of any converted or continued Borrowing. If the Borrower shall not have given a Request for Credit Extension in accordance with this Section 2.10 to continue any Borrowing into a subsequent Interest Period (and shall not otherwise have given notice in accordance with this Section 2.10 to convert such Borrowing), such Borrowing shall, at the end of the Interest Period applicable thereto (unless repaid pursuant to the terms hereof), automatically be continued or converted into a Eurodollar Borrowing with a one month Interest Period.

#### Section 2.11. *Repayment of Term Borrowings*

(a) The Borrower shall repay to the Administrative Agent for the ratable account of the applicable Term Lenders on the Maturity Date for such UST Tranche B Term Loans, the aggregate principal amount of such UST Tranche B Term Loans outstanding on such date, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment. Upon the conversion of UST Tranche B Term Loans to Extended Term Loans or the refinancing of UST Tranche B Term Loans with Credit Agreement Refinancing Indebtedness, all scheduled amortization payments, if any, shall be reduced ratably by the aggregate principal amount of the UST Tranche B Term Loans so converted, refinanced or replaced. The Borrower shall repay Extended Term Loans and Other Term Loans in such amounts and on such date or dates as shall be specified therefor in the applicable Extension Offer, Refinancing Amendment or other governing documentation.

(b) To the extent not previously paid, all Term Loans (including, for avoidance of doubt, Term Loans that are not UST Tranche B Term Loans) shall be due and payable on the applicable Maturity Date, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

(c) All repayments pursuant to this Section 2.11 shall be subject to Section 3.04, but shall otherwise be without premium or penalty.

Section 2.12. *Voluntary Prepayment*

.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, upon at least three Business Days' prior written (email) notice in the case of Eurodollar Loans, or written (email) notice at least one Business Day prior to the date of prepayment in the case of ABR Loans, to the Administrative Agent before 12:00 p.m., New York City time; *provided, however*, that each partial prepayment shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$2,000,000.

(b) Except as may otherwise be set forth in any Extension Offer or any Refinancing Amendment, voluntary prepayments of Term Loans pursuant to this Section 2.12 shall be applied ratably to each Class of Term Loans then outstanding.

(c) Each notice of prepayment shall specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid shall be irrevocable and shall commit the Borrower to prepay such Borrowing by the amount stated therein on the date stated therein; *provided, however*, that a notice of prepayment delivered by the Borrower may state that such notice is conditioned upon the consummation of an acquisition or sale transaction or upon the effectiveness of other credit facilities or the receipt of proceeds from the issuance of other Indebtedness or any other specified event, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied (*provided*, that the provisions of Section 3.04 shall apply to any prepayment that is not made as a result of the failure of such condition). All prepayments under this Section 2.12 shall be subject to Section 2.12(d) (to the extent applicable) and Section 3.04 but otherwise without premium or penalty. All prepayments under this Section 2.12 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment.

Section 2.13. *Mandatory Prepayments*

.

(a) (i) Subject to Section 7.05, the Borrower shall cause to be prepaid on or prior to the date which is five (5) Business Days after the end of each calendar month an aggregate principal amount of Term Loans in an amount equal to 100% of the Net Proceeds realized or received by the Borrower or any Restricted Subsidiary during such calendar month as a result of any Disposition by the Borrower or any Restricted Subsidiary of any UST Tranche B Priority Collateral. Each prepayment of Term Loans pursuant to this Section 2.13(a)(i) shall be applied ratably to each Class of Term Loans then outstanding.

(ii) Subject to Section 2.13(g), if (1) the Borrower or any Restricted Subsidiary Disposes of any Real Property, Rolling Stock or Disposes of any other property or assets pursuant to Section 7.05 (j), (l) or (t) or under any transaction that would be prohibited by Section 7.05 (other than (w) so long as the ABL Credit Agreement is in effect, any Disposition of ABL Priority Collateral, (x) any Disposition of UST Tranche B Priority Collateral, UST Tranche B Joint Collateral or UST Tranche B Only Collateral, (y) so long as the UST Tranche A Term Loan Credit

Agreement is in effect, any Disposition of UST Tranche A Only Collateral and (z) leases of Real Property entered into in the ordinary course of business (excluding Sale and Leaseback Transactions)), or (2) any Casualty Event occurs, which, in each case, results in the realization or receipt by the Borrower or a Restricted Subsidiary of Net Proceeds, the Borrower shall cause to be prepaid on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or any Restricted Subsidiary of such Net Proceeds an aggregate principal amount of Term Loans in an amount equal to 100% of the Net Proceeds (or, in the case of any Disposition of, or Sale and Leaseback Transaction, with respect to Real Property, 100% of the Real Property Disposition Proceeds) realized or received.

(iii) Subject to Section 2.13(g), if the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness after the Effective Date (other than Indebtedness permitted under Section 7.03 (other than any Credit Agreement Refinancing Indebtedness)), the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after (or, in the case of Credit Agreement Refinancing Indebtedness, one Business Day after) the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(iv) Subject to Section 2.13(g), if the Borrower issues any Subordinated Indebtedness after the Effective Date, the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 33% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower of such Net Proceeds.

(v) Subject to Section 2.13(g), if the Borrower issues any Equity Interests after the Effective Date (excluding the Treasury Equity Issuance), the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 50% of all Net Equity Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower of such Net Equity Proceeds; provided, that the Borrower shall only be required to apply up to \$30,000,000 in the aggregate of Net Equity Proceeds pursuant to this Section 2.13(a)(v).

(b) Except as may otherwise be set forth in any Extension Offer, any Refinancing Amendment, any Permitted Repricing Amendment or any other governing documentation, each prepayment of Term Loans pursuant to Section 2.13(a)(ii) through (v) shall be applied ratably to each Class of Term Loans then outstanding and the UST Tranche A Term Loan Facility; *provided*, that any prepayment of Term Loans pursuant to Section 2.13(a)(iii) in respect of Credit Agreement Refinancing Indebtedness shall be applied solely to each applicable Class of Refinanced Debt.

(c) With respect to each Class of Term Loans, each prepayment pursuant to Section 2.13(a) shall be paid to the Lenders in accordance with their respective Pro Rata Shares, subject to Section 2.13(d). For the avoidance of doubt, this Section 2.13(c) is applicable to any prepayment made with the Net Proceeds of Credit Agreement Refinancing Indebtedness.

(d) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to Section 2.13 by 1:00 p.m., New York City time, least three (3) Business Days prior to the date of such prepayment. Each such notice

shall specify the date of such prepayment, provide a reasonably detailed calculation of the amount of such estimated prepayment and specify to which Loan such prepayment shall apply. The Administrative Agent will promptly notify each applicable Lender of the contents of the Borrower's prepayment notice and of such Lender's Pro Rata Share or other applicable share of the prepayment. Each Term Lender may reject all of its Pro Rata Share or other applicable share of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Term Loans required to be made pursuant to Section 2.13 by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 5:00 p.m., New York City time, one Business Day prior to the date of such prepayment; *provided* that, for the avoidance of doubt, no Lender may reject any prepayment made with proceeds of Credit Agreement Refinancing Indebtedness. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans unless the Borrower and the Administrative Agent, with the consent of the Required Lenders, agree to an extension of time for such failure to be corrected. Any Declined Proceeds shall be retained by the Borrower.

(e) *Funding Losses, Etc.* All prepayments under this Section 2.13 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment and shall be made together with, in the case of any such prepayment of a Eurodollar Loan on a day prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurodollar Loan pursuant to Section 3.04. All prepayments under Section 2.13(a)(iii) shall be subject to Section 2.12(d) (to the extent applicable). Notwithstanding any of the other provisions of Section 2.13(a), so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurodollar Loans is required to be made under Section 2.13(a) prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit the amount of any such prepayment otherwise required to be made thereunder (including accrued interest to the last day of such Interest Period) into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.13. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with Section 2.13(a).

(f) *Foreign Dispositions.* Notwithstanding any other provisions of this Section 2.13, (A) to the extent that any or all of the Net Proceeds of any Disposition by a Foreign Subsidiary ("**Foreign Disposition**") are (x) prohibited or delayed by applicable local law or (y) restricted by applicable organizational or constitutive documents or any agreement, from being repatriated to the United States, in each case the portion of such Net Proceeds so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.13 but may be retained by the applicable Foreign Subsidiary (the Borrower hereby agreeing to use reasonable efforts (as determined in the Borrower's reasonable business judgment) to otherwise cause the applicable Foreign Subsidiary to within one year following the date on which the respective payment would otherwise have been required, promptly take all actions reasonably required by the applicable local law, applicable organizational or constitutive document impediment to permit such repatriation), and if within one year following the date on which the respective payment would otherwise have been required, such repatriation of any of such affected Net Proceeds is permitted under the

applicable local law, applicable organizational or constitutive document impediment, such repatriation will be promptly effected and such repatriated Net Proceeds will be promptly (and in any event not later than 5 Business Days after such repatriation could be made) applied (net of additional taxes, costs and expenses payable or reserved against as a result thereof) (whether or not repatriation actually occurs) to the repayment of the Term Loans pursuant to this Section 2.13 and (B) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Disposition could cause adverse tax consequences to the Borrower, such Net Proceeds so affected may be retained by the applicable Foreign Subsidiary. The non-application of any prepayment amounts as a consequence of the foregoing provisions will not, for the avoidance of doubt, constitute a Default or an Event of Default.

(g) Notwithstanding anything to the contrary set forth in any other clause in this Section 2.13, no mandatory prepayments of Term Loans that would have otherwise been required under Section 2.13(a)(ii) through (v) shall be required to be made until the Tranche B-2 Term Loan Facility Indebtedness (other than contingent indemnification or reimbursement obligations) shall have been paid or satisfied in full; provided that the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received from any Credit Agreement Refinancing Indebtedness.

(h) Subject to Section 7.05, the Borrower shall cause to be prepaid on or prior to the date which is five (5) Business Days after the end of each calendar month (x) so long as the Tranche B-2 Term Loan Credit Agreement is in effect, an aggregate principal amount of Term Loans in an amount equal to 67% of the Net Proceeds realized or received by the Borrower or any Restricted Subsidiary during such calendar month as a result of any Disposition by the Borrower or any Restricted Subsidiary of any UST Tranche B Joint Collateral (with the remaining 33% of such Net Proceeds to be applied to prepay the Tranche B-2 Term Loan Facility pursuant to the Tranche B-2 Term Loan Credit Agreement) and (y) otherwise, an aggregate principal amount of Term Loans in an amount equal to 100% of the Net Proceeds realized or received by the Borrower or any Restricted Subsidiary during such calendar month as a result of any Disposition by the Borrower or any Restricted Subsidiary of any UST Tranche B Joint Collateral.

(i) Notwithstanding the foregoing to the contrary, with respect to proceeds of any ABL Priority Collateral and Term Priority Collateral that is required to be applied to the ABL Facility Indebtedness pursuant to the ABL Facility Documentation, the Lenders hereby agree that such proceeds shall be applied in the manner set forth in the ABL Facility Documentation prior to application to the Obligations hereunder pursuant to this Section 2.13.

#### Section 2.14. *Pro Rata Treatment*

. Except as required under Section 3.02, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each reduction of the Term Loan Commitments and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Lenders of the applicable Class in accordance with their respective applicable Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans); *provided* that the provisions of this Section 2.14 shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in

its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole Dollar amount.

#### Section 2.15. *Sharing of Setoffs*

. Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Borrower or any other Loan Party, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any Loan or Loans as a result of which the unpaid principal portion of its Loans shall be proportionately less than the unpaid principal portion of the Loans of any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Loans of such other Lender, so that the aggregate unpaid principal amount of the Loans and participations in Loans held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Loans then outstanding as the principal amount of its Loans prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Loans outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; *provided, however*, that (i) if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.15 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest, and (ii) the provisions of this Section 2.15 shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower as to which the provisions of this Section 2.15 shall apply (*provided*, that if the applicable payment, assignment, sale or participation to the Borrower is expressly permitted under Section 10.04, the provisions of this Section 2.15 shall not be construed to apply). The Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in a Loan deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by the Borrower to such Lender by reason thereof as fully as if such Lender had made a Loan directly to the Borrower in the amount of such participation. For the avoidance of doubt, neither this Section nor Section 2.14 shall limit the ability of the Borrower to pay principal, fees, premiums and interest with respect to Other Term Loans following the effectiveness of any Refinancing Amendment or any Extension Offer, as applicable, on a basis different from the Loans of such Class that will continue to be held by Lenders that were not Extending Lenders or Lenders pursuant to such Refinancing Amendment, as applicable.

#### Section 2.16. *Payments*

(a) The Borrower shall make each payment (including principal of or interest on any Borrowing or any Fees or other amounts due and payable) hereunder and under any other Loan Document not later than 12:00 p.m., New York City time, on the date when due in immediately available Dollars, without setoff, defense or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. Each such payment shall be made to the Administrative

Account. The Administrative Agent shall promptly distribute to each Lender any payments received by the Administrative Agent on behalf of such Lender.

(b) Except as otherwise expressly provided herein, whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder or under any other Loan Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or Fees, if applicable.

Section 2.17. *[Reserved]*

Section 2.18. *Refinancing Amendments*

(a) At any time after the Effective Date, the Borrower may obtain, from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness (other than Permitted Additional Debt) in respect of all or any portion of the Term Loans then outstanding under this Agreement, in the form of Other Term Loans or Other Term Loan Commitments pursuant to a Refinancing Amendment; *provided that* (A) such Credit Agreement Refinancing Indebtedness will rank *pari passu* in right of payment and of security with the other Loans and Commitments hereunder, (B) such Credit Agreement Refinancing Indebtedness will have such pricing, fees, interest, premiums and optional prepayment terms as may be agreed by the Borrower and the Lenders thereof (*provided, that* such Credit Agreement Refinancing Indebtedness may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory prepayments hereunder, as specified in the applicable Refinancing Amendment), (C) such Credit Agreement Refinancing Indebtedness will have a maturity date later than the maturity date of, and will have a Weighted Average Life to Maturity that is not shorter than, the Refinanced Debt, (D) the covenants, events of default and guarantees of such Credit Agreement Refinancing Indebtedness, if not consistent with the terms of the UST Tranche B Term Loans, shall be on customary market terms for Indebtedness of such type (as determined by the Borrower in good faith) (*provided, that* the financial maintenance covenant on the then outstanding Term Loans shall be amended to provide the Lenders the benefit of any financial maintenance covenant of such Credit Agreement Refinancing Indebtedness that is in addition to or more restrictive in any material manner than the financial maintenance covenant on the then outstanding Term Loans)), (E) the proceeds of such Credit Agreement Refinancing Indebtedness shall be applied, substantially concurrently with the incurrence thereof, to the prepayment of outstanding Term Loans being so refinanced and (F) other than in the case of Credit Agreement Refinancing Indebtedness the proceeds of which are applied to pay all outstanding Term Loans and other Obligations in full in cash, the Borrower shall have obtained the consent of the Required Lenders. The effectiveness of any Refinancing Amendment shall be subject to the satisfaction (or waiver) on the date thereof of each of the conditions set forth in Section 4.01 (and for purposes thereof the incurrence of the Credit Agreement Refinancing Indebtedness shall be deemed to be a Request for Credit Extension) and, to the extent reasonably requested by the Administrative Agent and the Required Lenders, receipt by the Administrative Agent of customary legal opinions, board resolutions, officers' certificates

and a solvency certification or representation, in each case materially consistent with those delivered on the Effective Date under Section 4.02 (other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent), and customary reaffirmation agreements. Each Class of Credit Agreement Refinancing Indebtedness incurred under this Section 2.18(a) shall be in an aggregate principal amount that is (x) not less than \$40,000,000 and (y) an integral multiple of \$1,000,000 in excess thereof. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment.

(b) Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to a Refinancing 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 Credit Agreement Refinancing Indebtedness incurred pursuant thereto and (ii) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Required Lenders and the Borrower, to effect the provisions of this Section 2.18, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Refinancing Amendment. Without limiting the foregoing, in connection with any Refinancing Amendment, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the Latest Maturity Date after giving effect to such Refinancing Amendment so that such maturity date is extended to the then Latest Maturity Date (or such later date as may be advised by local counsel to the Required Lenders).

(c) This Section 2.18 shall supersede any provisions in Section 2.14, 2.15 or 10.08 to the contrary.

Section 2.19. *Extensions of Term Loans*

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "**Extension Offer**") made from time to time by the Borrower to all Lenders of a Class of Term Loans with a like Maturity Date on a pro rata basis (based on the aggregate outstanding principal amount of the respective Term Loans of such Class with the same Maturity Date) and on the same terms to each such Lender, the Borrower may from time to time with the consent of any Lender that shall have accepted such offer extend the maturity date of any Term Loans and otherwise modify the terms of such Term Loans of such Lender pursuant to the terms of the relevant Extension Offer (including, without limitation, by increasing the interest rate or fees payable in respect of such Term Loans and/or modifying the amortization schedule in respect of such Term Loans) (each, an "**Extension**", and each group of Term Loans as so extended, as well as the group of original Term Loans not so extended, being a "**tranche**"; any Extended Term Loans shall constitute a separate tranche of Term Loans from the tranche of Term Loans from which they were converted and a separate Class of Term Loans), so long as the following terms are satisfied (or waived): (i) no Event of Default shall exist at the time the notice in respect of an Extension Offer is delivered to the Lenders, and no Event of Default shall exist immediately prior to or after giving effect to the effectiveness of any Extended Term Loans, (ii) except

as to interest rates, fees, amortization, final maturity date, premium, AHYDO “catch up” payments, required prepayment dates and participation in prepayments (which shall, subject to immediately succeeding clauses (iii), (iv) and (v), be determined by the Borrower and set forth in the relevant Extension Offer), the Term Loans of any Term Lender extended pursuant to any Extension (“**Extended Term Loans**”) shall have the same terms and conditions that are substantially identical to, or less favorable to the lenders or investors providing such Extended Term Loans as the tranche of Term Loans subject to such Extension Offer, (iii) the final maturity date of any Extended Term Loans shall be no earlier than the then Latest Maturity Date and the amortization schedule, if any, applicable to Term Loans for periods prior to the then applicable Latest Maturity Date may not be increased, (iv) the Weighted Average Life to Maturity of any Extended Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans extended thereby, (v) any Extended Term Loans may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory prepayments hereunder, as specified in the applicable Extension Offer, (vi) if the aggregate principal amount of Term Loans (calculated on the face amount thereof) in respect of which Term Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans of such Term Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Term Lenders have accepted such Extension Offer, (vii) all documentation in respect of such Extension shall be consistent with the foregoing, and (viii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower.

(b) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.19, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.12, 2.13 or 2.15 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment, *provided* that the Borrower may at its election specify as a condition (a “**Minimum Extension Condition**”) to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower’s sole discretion and may be waived by the Borrower) of Term Loans of any or all applicable Classes be tendered. The Administrative Agent and the Lenders hereby consent to the Extensions and the other transactions contemplated by this Section 2.19 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.12, 2.13, 2.14 and 2.15) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.19.

(c) Each of the parties hereto hereby (A) agrees that this Agreement and the other Loan Documents may be amended to give effect to each Extension (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 Term Loans incurred pursuant thereto, (ii) modify the scheduled repayments set forth in Section 2.11 with respect to any Class of Term Loans subject to an Extension to reflect a reduction in the principal

amount of the Term Loans thereunder in an amount equal to the aggregate principal amount of the Extended Term Loans amended pursuant to the applicable Extension (with such amount to be applied ratably to reduce scheduled repayments of such Term Loans required pursuant to Section 2.11), (iii) modify the prepayments set forth in Sections 2.12 and 2.13 to reflect the existence of the Extended Term Loans and the application of prepayments with respect thereto, and (iv) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Required Lenders and the Borrower, to effect the provisions of this Section 2.19, and the Required Lenders hereby expressly and irrevocably, for the benefit of all parties hereto, authorize the Administrative Agent to enter into any such Extension Amendment and (B) consent to the transactions contemplated by this Section 2.19 (including, for the avoidance of doubt, payment of interest, fees or premiums in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Amendment). Without limiting the foregoing, in connection with any Extension, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the then Latest Maturity Date so that such maturity date is extended to the Latest Maturity Date after giving effect to such Extension (or such later date as may be advised by local counsel to the Required Lenders).

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five (5) Business Days' (or such shorter period as may reasonably be agreed by the Administrative Agent at the direction of the Required Lenders) prior written notice thereof, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.19.

(e) This Section 2.19 shall supersede any provisions in Section 2.14, 2.15 or 10.08 to the contrary.

### ARTICLE 3

#### TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

##### Section 3.01. Taxes

(a) Except as provided in this Section 3.01, any and all payments made by or on account of the Borrower or any Guarantor under any Loan Document to any Lender or Agent shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, assessments, withholdings (including backup withholding), fees or similar charges imposed by any Governmental Authority including interest, penalties and additions to tax (collectively "Taxes"), excluding (i) Taxes imposed on or measured by net income, however denominated, and franchise (and similar) Taxes imposed on it in lieu of net income Taxes, (ii) Taxes attributable to the failure by the relevant Lender or Agent to deliver the documentation required to be delivered pursuant to clause (d) of this Section 3.01, (iii) Taxes imposed by a jurisdiction as a result of any connection between such Lender or Agent and such jurisdiction other than any connection arising from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, or enforcing any Loan Document, (iv) any branch profits Taxes imposed by the United States or any similar Tax imposed by any other

jurisdiction in which the Borrower or any Guarantor (as appropriate) is located, (v) any U.S. federal withholding tax imposed on amounts payable hereunder pursuant to a law in effect at such time the Lender or Agent becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower under Section 3.06), or designates a new lending office, except in each case to the extent such Lender (or its assignor, if any) was entitled at the time of designation of a new lending office (or assignment) to receive additional amounts with respect to such withholding tax pursuant to this Section 3.01 and (vi) any Tax imposed under FATCA (all such non-excluded Taxes imposed on such payments, being hereinafter referred to as “**Indemnified Taxes**”). If the Borrower, any Guarantor or other applicable withholding agent shall be required by any Laws to deduct any Indemnified Taxes or Other Taxes (as defined below) from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) the sum payable by the Borrower or Guarantor shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), such Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions, (iii) the applicable withholding agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), if the Borrower or any Guarantor is the applicable withholding agent, the applicable withholding agent shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise, property, intangible or mortgage recording taxes, or charges or levies of the same character, imposed by any Governmental Authority, which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (including additions to tax, penalties and interest related thereto) (including any Mortgage Amendment) excluding, in each case, such amounts that result from an Agent or Lender’s Assignment and Acceptance, grant of a Participation, transfer or assignment to or designation of a new applicable lending office or other office for receiving payments under any Loan Document (collectively, “**Assignment Taxes**”) except for Assignment Taxes resulting from assignment or participation that is requested or required in writing by the Borrower (all such non-excluded taxes described in this Section 3.01(b) being hereinafter referred to as “**Other Taxes**”).

(c) Without duplication of Section 3.01(a) or (b), the Borrower and each Guarantor agree to indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes and Other Taxes paid by such Agent or Lender (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and (ii) any expenses arising therefrom or with respect thereto, *provided* such Agent or Lender, as the case may be, provides Borrower or Guarantor with a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts.

(d) Each Lender and Agent shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law certifying as to any entitlement of such Lender or Agent to

an exemption from, or reduction in, withholding tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender and Agent shall, whenever a lapse in time or change in circumstances renders such documentation obsolete or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent of its inability to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrower, the Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Notwithstanding the foregoing, a Lender shall not be required to deliver any form pursuant to this clause (d) that such Lender is not legally able to deliver. In addition, each Lender and Agent shall deliver to the Borrower and the Administrative Agent such other tax forms or other documents as shall be 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 or Agent is subject to backup withholding or information reporting requirements. Without limiting the foregoing:

(i) Each Lender and Agent that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed executed copies of Internal Revenue Service Form W-9 certifying that such Lender or Agent (as the case may be) is exempt from federal backup withholding.

(ii) Each Lender and Agent that is not a United States person (as defined in Section 7701(a)(30) of the Code) which, for the avoidance of doubt, shall not include Treasury, shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement whichever of the following is applicable:

(A) two properly completed and duly signed executed copies of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(B) two properly completed and duly signed executed copies of Internal Revenue Service Form W-8ECI (or any successor forms) and, in the case of an Agent, a withholding certificate that satisfies the requirements of Treasury Regulation Sections 1.1441-1(b)(2)(iv) and 1.1441-1(e)(3)(v) as applicable to a U.S. branch that has agreed to be treated as a U.S. person for withholding tax purposes,

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (A) a certificate substantially in the form of Exhibit G-1, G-2, G-3 or G-4, as applicable (any such certificate a “**United States Tax Compliance Certificate**”) and (B) two properly completed

and duly signed executed copies of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E, or

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a participant holding a participation granted by a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information from each beneficial owner, as applicable (*provided* that, if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owner). Each Lender and Agent shall deliver to the Borrower and the Administrative Agent two further executed copies of any previously delivered form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete or inaccurate and promptly after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower or the Administrative Agent, or promptly notify the Borrower and the Administrative Agent that it is unable to do so. Each Lender and Agent shall promptly notify the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered form or certification to the Borrower or the Administrative Agent.

(iii) Notwithstanding anything else herein, Treasury shall be entitled to the benefits of this Section 3.01 and all related provisions under this Agreement without regard to whether it provides any documentation described in Sections 3.01(d) or Section 3.01(g).

(e) Any Lender or Agent claiming any additional amounts payable pursuant to this Section 3.01 shall use its reasonable efforts to change the jurisdiction of its lending office (or take any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the reasonable, good faith determination of such Lender, result in any unreimbursed cost or expense or be otherwise materially disadvantageous to such Lender.

(f) If any Lender or Agent determines, in its reasonable, good faith discretion, that it has received a refund in respect of any Taxes as to which indemnification or additional amounts have been paid to it by the Borrower pursuant to this Section 3.01 (including by payment of additional amounts pursuant to this Section) it shall promptly remit such refund to the Borrower or Guarantor, net of all out-of-pocket expenses of the Lender or Agent, as the case may be and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund net of any Taxes payable by any Agent or Lender on such interest); *provided* that the Borrower and Guarantors, upon the request of the Lender or Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such party in the event such party is required to repay such refund to the relevant Governmental Authority. This section shall not be construed to require the

Administrative Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Borrower or any other person.

(g) If a payment made to a Lender or Agent under any Loan Document would be subject to withholding Tax imposed by FATCA if such Lender or Agent 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 or Agent 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 or Agent has complied with such Lender's or Agent's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 3.01(h), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For the avoidance of doubt, Treasury shall not be required to provide any documentation under this Section 3.01(g).

(h) Each party's obligations under this Section 3.01 shall survive any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Each Lender (other than Treasury) shall indemnify each Agent, within 10 days following written demand therefor, for (i) the full amount of any Indemnified Taxes and Other Taxes attributable to such Lender (but only to the extent that such Agent has not already been indemnified by the Borrower and each Guarantor for such Indemnified Taxes and Other Taxes and without limiting the obligation of the Borrower and each Guarantor to do so), and (ii) any Taxes attributable to such Lender's failure to comply with the provision of Section 10.04(f) relating to the maintenance of a Participant Register, in each case, that are payable or paid by such Agent in connection with any Loan Documents, and any expenses arising therefrom or with respect thereto; *provided* that such Agent provides such lender with a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts.

#### Section 3.02. *Illegality*

. If any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the LIBO Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Loans shall be suspended 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, the Borrower shall promptly following written demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all applicable Eurodollar Loans of such Lender to ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.04. Each Lender agrees to designate a

different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.03. *Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Loans*

(a) If any Lender reasonably determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the Effective Date, or such Lender's compliance therewith, there shall be any material increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Eurodollar Loans, or a material reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.03(a) any such increased costs or reduction in amount resulting from (i) Indemnified Taxes or Other Taxes for which additional amounts are payable pursuant to Section 3.01, or any Taxes excluded from the definition of Indemnified Taxes under exception (iii) thereof to the extent such Taxes are imposed on or measured by net income or profits or are franchise taxes (imposed in lieu of the foregoing taxes) and any Taxes excluded from the definition of Indemnified Taxes under exceptions (i), (ii), (iv), (v) and (vi) thereof or (ii) reserve requirements contemplated by Section 3.03(c) or reflected in the Adjusted LIBO Rate) and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligations to make any Loan), or to reduce the amount of any sum received or receivable by such Lender, then from time to time within fifteen (15) days after written demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such written demand to the Administrative Agent given in accordance with Section 3.05), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or liquidity or any change therein or in the interpretation thereof, in each case after the Effective Date, or compliance by such Lender (or its lending office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any entity controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and liquidity and such Lender's desired return on capital), then from time to time upon written demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such written demand to the Administrative Agent given in accordance with Section 3.05), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender or controlling entity for such reduction within fifteen (15) days after receipt of such written demand.

(c) Except to the extent already reflected in the Adjusted LIBO Rate, the Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurodollar funds or deposits, additional interest on the unpaid principal amount of each applicable Eurodollar Loan of the Borrower 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 in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurodollar Loans of the

Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least fifteen (15) days' prior written notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give written notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such written notice.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this [Section 3.03](#) shall not constitute a waiver of such Lender's right to demand such compensation.

(e) If any Lender requests compensation under this [Section 3.03](#), then such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another lending office for any Loan affected by such event; *provided* that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its lending office(s) to suffer no material economic, legal or regulatory disadvantage, and *provided further* that nothing in this [Section 3.03\(e\)](#) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to [Section 3.03\(a\)](#), (b), (c) or (d).

#### Section 3.04. *Funding Losses*

. Promptly following written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

(i) any continuation or conversion of any Eurodollar Loan of the Borrower on a day prior to the last day of the Interest Period for such Loan, or any payment or prepayment of any Eurodollar Loan of the Borrower on a day prior to the last day of the Interest Period for such Loan; or

(ii) 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 Eurodollar Loan of the Borrower on the date or in the amount notified by the Borrower;

including an amount equal to the excess, as reasonably determined by such Lender, of (1) its cost of obtaining funds for the Eurodollar Loan that is the subject of such event for the period from the date of such event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (2) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such event for such period, but excluding (a) loss of anticipated profits, and (b) any loss, cost or expense resulting from Indemnified Taxes or Other Taxes for which additional amounts are payable pursuant to [Section 3.01](#), or any Taxes excluded from the definition of Indemnified Taxes under [Section 3.01](#).

#### Section 3.05. *Matters Applicable to all Requests for Compensation*

(a) Any Agent or any Lender claiming compensation under this Article 3 shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable and customary averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.02 or 3.03, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; *provided* that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation by the Borrower under Section 3.03, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another any applicable Eurodollar Loan, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.05(c) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue any Eurodollar Loan shall be suspended pursuant to Section 3.05(b) hereof, such Lender's applicable Eurodollar Loans shall be automatically converted into ABR Loans (or, if such conversion is not possible, repaid) on the last day(s) of the then current Interest Period(s) for such Eurodollar Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02 or 3.03 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurodollar Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurodollar Loans shall be applied instead to its ABR Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurodollar Loans shall be made or continued instead as ABR Loans (if possible).

(d) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02 or 3.03 hereof that gave rise to the conversion of any of such Lender's Eurodollar Loans pursuant to this Section 3.05 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Loans made by other Lenders under the applicable Facility are outstanding, if applicable, such Lender's ABR Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurodollar Loans under such Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

(e) 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 or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to have been adopted or made after the Effective Date, regardless of the date enacted or adopted.

Section 3.06. *Replacement of Lenders under Certain Circumstances*

(a) If at any time (i) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01 or 3.03 as a result of any condition described in such Sections or any Lender ceases to make any Eurodollar Loans as a result of any condition described in Section 3.02 or Section 3.03 or (ii) any Lender becomes a Non-Consenting Lender, then the Borrower may, on prior written notice to the Administrative Agent and such Lender, (x) replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.04(b) (unless otherwise agreed, with the assignment fee to be paid by the Borrower in such instance) (it being understood that any such assignment shall become effective only in accordance with Section 10.04(e)), all of its rights and obligations under this Agreement (in respect of any applicable Facility only in the case of clause (i) or, with respect to a Class vote, clause (ii)) to one or more Eligible Assignees; *provided* that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; and *provided further* that (A) in the case of any such assignment resulting from a claim for compensation under Section 3.03 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments and (B) in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to, and shall be sufficient (together with all other consenting Lenders) to cause the adoption of, the applicable departure, waiver or amendment of the Loan Documents; or (y) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date; *provided* that in the case of any such termination of a Non-Consenting Lender, such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable departure, waiver or amendment of the Loan Documents and such termination shall be in respect of any applicable Facility only in the case of clause (i) or, with respect to a Class vote, clause (ii).

(b) In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, each directly and adversely affected Lender, each Lender with respect to a certain Class of Loans or each directly and adversely affected Lender with respect to a certain Class of Loans, in each case in accordance with Section 10.08, and (iii) the Required Lenders (or, in the case of a consent, waiver or amendment involving all Lenders or all directly and adversely affected Lenders of a certain Class, the Required Class Lenders) have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “**Non-Consenting Lender.**”

(c) Any Lender being replaced pursuant to Section 3.06(a) above shall (i) execute and deliver an Assignment and Acceptance with respect to such Lender's applicable Commitment and

outstanding Loans, and (ii) deliver any Term Notes evidencing such Loans to the Borrower or Administrative Agent. Pursuant to such Assignment and Acceptance, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's outstanding Loans, (B) all obligations of the Borrower owing to the assigning Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Acceptance and (C) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate Term Note executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender. In connection with any such replacement, if any such Non-Consenting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Acceptance reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Acceptance to such Non-Consenting Lender, then such Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Acceptance without any action on the part of the Non-Consenting Lender.

(d) Notwithstanding anything to the contrary contained above, any Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with Article 9.

Section 3.07. *Survival*

. All of the Borrower's obligations under this Article 3 shall survive termination of the Commitments and repayment of all other Obligations hereunder.

**ARTICLE 4**

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Section 4.01. *Effective Date*

. This Agreement shall become effective on the first date on which the following conditions precedent have been satisfied (or waived in accordance with Article 9):

(a) The Administrative Agent and the Required Lenders shall have received the following, each properly executed by a Responsible Officer of the signing Loan Party (or, in the case of the Borrower, each Responsible Officer of the Borrower), each dated as of the Effective Date:

(i)executed counterparts of this Agreement duly executed by the Borrower and each Guarantor;

(ii)the ABL Intercreditor Agreement duly executed by the parties thereto; and

(iii)the Administrative Agent Fee Letter duly executed by the respective parties thereto.

(b) Each of the ABL Credit Agreement and Tranche B-2 Term Loan Credit Agreement shall have been amended pursuant to amendment agreements, in form and substance reasonably satisfactory to the Required Lenders in their sole discretion.

. The obligation of each UST Tranche B Term Lender to make the UST Tranche B Term Loans on the Initial Funding Date shall be subject to the occurrence of the Effective Date and satisfaction (or waiver pursuant to Article 9) of the following conditions precedent:

(a) Each Lender that has requested a Term Note at least two Business Days in advance of the Effective Date shall have received such Term Note executed by the Borrower in favor of such Lender, properly executed by each Responsible Officer of the Borrower, dated as of the Effective Date.

(b) The Administrative Agent and the Required Lenders shall have received, on behalf of themselves, the Collateral Agent and the Lenders, an opinion of (i) Kirkland & Ellis LLP, counsel for the Loan Parties, and (ii) from each local counsel for the Loan Parties listed on Schedule 4.02(b), in each case, dated the Initial Funding Date and addressed to the Administrative Agent, the Collateral Agent and the Lenders and in customary form and substance, and the Borrower hereby requests such counsel to deliver such opinions.

(c) The Administrative Agent and the Required Lenders shall have received (i) a copy of the certificate or articles of incorporation or organization or certificate of formation, including all amendments thereto, of each Loan Party, certified, if applicable, as of a recent date by the Secretary of State of the state of its organization, and a certificate as to the good standing (to the extent applicable) of each Loan Party as of a recent date, from such Secretary of State or similar Governmental Authority; (ii) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Initial Funding Date and certifying (A) that attached thereto is a true and complete copy of the by-laws or operating (or limited liability company) agreement of such Loan Party as in effect on the Initial Funding Date and at all times since a date prior to the date of the resolutions described in clause (B) below, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or equivalent governing body) of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Loan Party is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation or organization or certificate of formation of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to clause (i) above, (D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party on the Initial Funding Date, and (E) as to the absence of any proceeding for the dissolution or liquidation of such Loan Party; and (iii) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to clause (ii) above.

(d) (i) The Administrative Agent and the Required Lenders shall have received the results of (x) searches of the Uniform Commercial Code filings (or equivalent filings) and (y) judgment and tax lien searches, made with respect to each Loan Party in the states or other jurisdictions of formation of such Loan Party and with respect to such other locations and names listed on the Perfection Certificate, together with copies of the financing statements (or similar documents) disclosed by such search and (ii) each of the Intellectual Property Security Agreement shall have been duly executed and delivered by each Loan Party that is to be a party thereto,

together with (x) certificates, if any, representing the Equity Interests pledged by the Borrower and the Guarantors accompanied by undated stock powers executed in blank and (y) copies of documents and instruments to be recorded or filed that the Required Lenders may deem, subject to [Section 6.13](#), reasonably necessary to satisfy the Collateral and Guarantee Requirement.

(e) Prior to or substantially concurrently with the funding of the Loans on the Initial Funding Date, the IBT Agreement shall be in full force and effect.

(f) Immediately after giving effect to the transactions contemplated hereby, the Borrower and the Subsidiaries shall have outstanding no Indebtedness for borrowed money other than (i) Indebtedness outstanding under this Agreement, (ii) the ABL Facility Indebtedness, (iii) the Tranche B-2 Term Loan Facility Indebtedness, (iv) the UST Tranche A Term Loan Facility Indebtedness and (v) Indebtedness permitted pursuant to [Section 7.03](#).

(g) The Administrative Agent and the Required Lenders shall have received a solvency certificate, substantially in the form set forth in [Exhibit H](#), from the chief financial officer or chief accounting officer or other officer with equivalent duties of the Borrower, or in lieu thereof at the option of the Borrower, an opinion of a nationally recognized valuation firm as to the solvency (on a consolidated basis) of the Borrower and its Subsidiaries as of the Initial Funding Date.

(h) The Administrative Agent, the Collateral Agent and the Required Lenders shall have received all documentation and other information about the Borrower and the Guarantors required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, including without limitation, a duly executed W-9 tax form (or such other applicable IRS tax form) of the Borrower, that has been reasonably requested in writing at least five Business Days prior to the Initial Funding Date.

(i) The Administrative Agent and the Required Lenders shall have received a certificate from an officer of the Borrower certifying that since December 31, 2019, there has not occurred any Material Adverse Effect.

(j) The Administrative Agent, the Collateral Agent and the Required Lenders shall have received all applicable fees and other amounts due and payable on or prior to the Initial Funding Date, including, to the extent invoiced at least three Business Days prior to the Initial Funding Date (except as otherwise reasonably agreed by the Borrower), reimbursement or payment of all out-of-pocket expenses (including the fees and expenses of legal counsel) required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document on or prior to the Initial Funding Date; provided, that, Borrower hereby acknowledges and agrees that any such amounts which shall be due and payable to the Administrative Agent and the Collateral Agent shall be paid to the Administrative Agent and the Collateral Agent on or prior to the Initial Funding Date regardless of the date when such amounts are invoiced to the Borrower.

(k) To the extent required by [Section 6.07](#), the Administrative Agent shall have received evidence that the insurance required by [Section 6.07](#) is in effect, for the benefit of the Collateral Agent, as additional insured on behalf of the Secured Parties or as loss payee thereunder.

(l) The representations and warranties set forth in Article 5 and in each other Loan Document shall be true and correct in all material respects on and as of the Initial Funding Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; *provided*, that any such representation and warranty that is qualified by “materiality”, “material adverse effect” or similar language shall be true and correct in all respects (after giving effect to such qualification therein) on and as of the Initial Funding Date with the same effect as though made on and as of such date or such earlier date, as applicable.

(m) (x) No Default shall exist or would result from the proposed Credit Extension on the Initial Funding Date or from the application of the proceeds therefrom and (y) no “**default**” (or similar event) under (i) the ABL Facility Documentation or any Permitted Refinancing thereof, (ii) the Tranche B-2 Term Loan Facility Documentation or any Permitted Refinancing thereof, (iii) the UST Tranche A Term Loan Facility Documentation or any Permitted Refinancing thereof or (iv) any other Indebtedness for borrowed money, with an aggregate principal amount (in the case of this clause (iv)) in excess of the Threshold Amount, in each case of clauses (i) through (iv), shall exist or would result from the proposed Credit Extension on the Initial Funding Date or from the application of the proceeds therefrom.

(n) The Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

(o) The Borrower shall have established the UST Tranche B Controlled Account.

(p) The Administrative Agent and the Required Lenders shall have received a capital expenditure plan in reasonable detail describing the Borrower’s plan to borrow the full amount of the UST Tranche B Term Loan Commitments and to fully utilize the UST Tranche B Term Loans to finance the purchase of Rolling Stock, in each case within two years following the Effective Date (together with the financial information and projections delivered in connection therewith, the “**Initial CapEx Plan**”).

(q) The Administrative Agent and the Required Lenders shall have received the most recent Approved CapEx Plan for the quarter during which the Initial Funding Date shall occur pursuant to Section 6.02(l).

(r) The aggregate amount of the Borrowing on the Initial Funding Date shall not exceed the amount of capital expenditures allocated to the fiscal quarter in which the Initial Funding Date occurs for the purchase of Rolling Stock with the proceeds of the Term Loans pursuant to the most recent Approved CapEx Plan.

(s) The Administrative Agent and the Required Lenders shall have received the following, each properly executed by a Responsible Officer of the signing Loan Party (or, in the case of the Borrower, each Responsible Officer of the Borrower), each dated as of the Effective Date:

(i) the Security Agreement duly executed by the parties thereto; and

(ii) the Custodial Administration Agreement duly executed by the parties thereto.

The Request for Credit Extension submitted by the Borrower in connection with the making of the UST Tranche B Term Loans on the Initial Funding Date shall be deemed to be a representation and warranty by the Borrower that the conditions specified in Sections 4.02(e), (f), (l) and (m) have been satisfied or waived on and as of the Initial Funding Date. Unless the Administrative Agent receives notice from the Required Lenders one Business Day prior to the Funding Date, it may conclusively assume that all conditions precedent in this Section have been met.

Section 4.03. *Conditions to each Funding Date after the Initial Funding Date and each Disbursement made on or after the Initial Funding Date*

The obligation of each UST Tranche B Term Lender to make the UST Tranche B Term Loans on each Funding Date after the Initial Funding Date and the disbursement of amounts in the UST Tranche B Controlled Account on or after the Initial Funding Date shall be subject to the satisfaction (or waiver pursuant to Article 9) of the following conditions precedent:

(a) The representations and warranties set forth in Article 5 and in each other Loan Document shall be true and correct in all material respects on and as of such date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; *provided*, that any such representation and warranty that is qualified by “materiality”, “material adverse effect” or similar language shall be true and correct in all respects (after giving effect to such qualification therein) on and as of such date with the same effect as though made on and as of such date or such earlier date, as applicable.

(b) (x) No Default shall exist or would result from the proposed funding or disbursement on such Funding Date or date of disbursement, as applicable, or from the application of the proceeds therefrom and (y) no “**default**” (or similar event) under (i) the ABL Facility Documentation or any Permitted Refinancing thereof, (ii) the Tranche B-2 Term Loan Facility Documentation or any Permitted Refinancing thereof, (iii) the UST Tranche A Term Loan Facility Documentation or any Permitted Refinancing thereof or (iv) any other Indebtedness for borrowed money, with an aggregate principal amount (in the case of this clause (iv)) in excess of the Threshold Amount, in each case of clauses (i) through (iv), shall exist or would result from such proposed funding or disbursement on such Funding Date or date of disbursement, as applicable, or from the application of the proceeds therefrom.

(c) With respect to each Funding Date, the Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) With respect to any disbursement, the Administrative Agent shall have received a Request for Disbursement in accordance with the requirements hereof and the amount of such disbursement shall be consistent with the most recent Approved Capex Plan.

(e) The consummation of the Treasury Equity Issuance pursuant to Section 6.18.

(f) The receipt by the Treasury from the Borrower of a closing opinion reasonably satisfactory to the Treasury in customary form for a primary issuance of common stock.

(g) The Administrative Agent and the Required Lenders shall have received the most recent Approved CapEx Plan for the quarter during which such Funding Date or date of disbursement shall occur pursuant to Section 6.02(l).

(h) The aggregate amount of any Borrowing on such Funding Date shall not exceed, together with the aggregate amount of all other Borrowings during the fiscal quarter in which such Funding Date occurs, the amount of capital expenditures allocated to such fiscal quarter for the purchase of Rolling Stock with the proceeds of the Term Loans pursuant to the most recent Approved CapEx Plan

Each Request for Credit Extension and each Request for Disbursement submitted by the Borrower shall be deemed to be a representation and warranty by the Borrower that the conditions specified in Sections 4.03(a) and (b) have been satisfied or waived on and as of the applicable Funding Date or date of the applicable disbursement, respectively. Unless the Administrative Agent receives notice from the Required Lenders one Business Day prior to the Funding Date, it may conclusively assume that all conditions precedent in this Section have been met.

**ARTICLE 5**  
REPRESENTATIONS AND WARRANTIES

Each of the Borrower and each of the Guarantors party hereto represents and warrants to the Administrative Agent, the Collateral Agent and each of the Lenders that:

*Section 5.01. Existence, Qualification and Power; Compliance with Laws*

. Each Loan Party and each Restricted Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing (where relevant) under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite organizational power and authority to execute, deliver and perform its obligations under the Loan Documents to which it is a party and, in the case of the Borrower, to borrow hereunder, (c) is duly qualified and in good standing (where relevant) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs and injunctions, and (e) has all requisite franchises, licenses, authorizations, qualifications, consents and approvals to operate its business as currently conducted; except in each case, referred to in clause (a) (other than with respect to any Loan Party), (c), (d) or (e), to the extent that failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

*Section 5.02. Authorization; No Contravention*

. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, (a) are within such Loan Party's organizational powers, (b) have been duly authorized by all necessary corporate or other organizational action, and (c) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any Lien under (other than as

permitted by Section 7.01), or require any payment to be made under (x) any Indebtedness of such Person in excess of the Threshold Amount or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any material Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (c)(ii)(x), to the extent that such violation, conflict, breach, contravention or payment, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.03. *Governmental Authorization; Other Consents*

. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority 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, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) to the extent required thereunder or (d) the exercise by the Administrative Agent, the Collateral Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) approvals, consents, exemptions, authorizations or other actions by, or notices to, or filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties (or release existing Liens), (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or to be in full force and effect pursuant to the Collateral and Guarantee Requirement) and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.04. *Binding Effect*

. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of each such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity.

Section 5.05. *Financial Statements; No Material Adverse Effect*

(a) (i) The Audited Financial Statements fairly present in all material respects the financial condition of the Borrower and its consolidated Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(ii) The Unaudited Financial Statements fairly present in all material respects the financial condition of the Borrower and its consolidated Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein and the absence of footnotes.

(b) The forecasts of income statements of the Borrower and its Subsidiaries which have been furnished to the Administrative Agent and the Required Lenders prior to the Effective Date have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such forecasts it being understood by the Agents and the Lenders that such projections as to future events (i) are not to be viewed as facts, (ii)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower and its Restricted Subsidiaries, (B) no assurance is given by the Borrower and its Restricted Subsidiaries that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

(c) Since December 31, 2019, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

Section 5.06. *Compliance With Laws*

. Neither the Borrower nor any of the Restricted Subsidiaries or any of their respective properties or assets is in violation of, nor will the continued operation of their properties and assets as currently conducted violate, any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting the Mortgaged Property, or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where in each case such violation or default, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

Section 5.07. *Ownership of Property; Liens*

(a) Schedule 1.01(c) sets forth a true, complete and correct list of all Real Property owned (whether in fee or through a leasehold estate under any ground lease) by Borrower and the Restricted Subsidiaries as of the Effective Date.

(b) Each of the Borrower and the Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all its properties and assets (including all Mortgaged Property material to its business), free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and except where the failure to have such title or interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) As of the Effective Date, Schedule 9 to the Perfection Certificate dated the Effective Date contains a true and complete list of each Material Real Property owned by the Borrower each other Loan Party and its Restricted Subsidiaries.

(d) As of the Effective Date, except as otherwise disclosed in writing to the Collateral Agent and the Required Lenders, no Mortgage encumbers improved Mortgaged Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as

an area having special flood hazards within the meaning of the Flood Laws unless Evidence of Flood Insurance has been delivered to the Collateral Agent.

Section 5.08. *Environmental Matters*

. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) Each Loan Party and each Restricted Subsidiary is and has been in compliance with all Environmental Laws, which includes obtaining and maintaining all Environmental Permits required under such Environmental Laws to carry on the business of the Loan Parties and the Restricted Subsidiaries;

(b) the Loan Parties and the Restricted Subsidiaries have not received notice alleging any Environmental Liability or proposing or seeking to revoke, modify or deny the renewal of any Environmental Permit required to be held by the Loan Parties or the Restricted Subsidiaries, and neither the Loan Parties nor the Restricted Subsidiaries have become subject to any Environmental Liability;

(c) there has been no Release, discharge or disposal of Hazardous Materials (i) on, to, at, under or from any Real Property or any vehicles or facilities owned or leased by any of the Loan Parties or the Restricted Subsidiaries, or, to the knowledge of the Borrower, formerly owned, operated or leased by any Loan Party or any Restricted Subsidiary, or (ii) arising out of the conduct of the Loan Parties or the Restricted Subsidiaries that, in the case of (i) or (ii), could reasonably be expected to require investigation, remedial activity or corrective action or cleanup by or on behalf of any Loan Party or any Restricted Subsidiary or for which any Loan Party or Restricted Subsidiary reasonably could be expected to otherwise incur any Environmental Liability; and

(d) there are no facts, circumstances or conditions arising out of or relating to, and there are no pending or reasonably anticipated requirements under Environmental Law associated with, the operations of the Loan Parties or the Restricted Subsidiaries or any Real Property, vehicles or facilities currently or, to the knowledge of the Borrower, previously owned or leased by the Loan Parties or any Restricted Subsidiary that, in such case, are known to or would reasonably be likely to require investigation, remedial activity or corrective action or cleanup by or on behalf of any Loan Party or any Restricted Subsidiary or that are known to or would reasonably be likely to result in the Borrower or any other Loan Party or Restricted Subsidiary incurring any Environmental Liability or capital expenditures to achieve or maintain compliance with Environmental Laws.

Section 5.09. *Taxes*

. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: each of the Loan Parties and their Restricted Subsidiaries have timely filed all tax returns required to be filed (taking into account any extensions), and have paid all Taxes levied or imposed upon them or their properties, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted if such contest shall have the effect of suspending enforcement or collection of such Taxes and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax deficiency or assessment known to any Loan Party against any Loan Party or any Restricted Subsidiary that would, if made, individually or in the aggregate, have a Material Adverse Effect.

Section 5.10. *ERISA Compliance*

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect:

- (a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws (and the regulations and published interpretations thereunder).
- (b) The Loan Parties, their Restricted Subsidiaries and their respective ERISA Affiliates may incur liability for ordinary course contributions to (and make payments in satisfaction of such liabilities) plans listed on Schedule 5.10(b), which are Multiemployer Plans.
- (c) No ERISA Event has occurred.

Section 5.11. *Subsidiaries*

. As of the Effective Date (after giving effect to the Transactions), no Loan Party has any direct or indirect Restricted Subsidiaries other than those specifically disclosed in Schedule 5.11, and all of the outstanding Equity Interests owned by the Loan Parties (or a Restricted Subsidiary of any Loan Party) in such Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable and all Equity Interests owned by a Loan Party (or a Restricted Subsidiary of any Loan Party) in such Subsidiaries are owned free and clear of all Liens except (a) those created under the Collateral Documents or under the ABL Facility Documentation, the Tranche B-2 Term Loan Facility Documentation and the UST Tranche A Term Loan Facility Documentation (which Liens shall be subject to the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement, as applicable) and (b) any other Lien that is permitted under Section 7.01. As of the Effective Date, (i) Section 2(c) of the Perfection Certificate sets forth the name and jurisdiction of each Loan Party and (ii) Schedule 5 to the Perfection Certificate sets forth the direct ownership interest of the Borrower and any Loan Party thereof in each such Subsidiary, including the percentage of such ownership.

Section 5.12. *Margin Regulations; Investment Company Act*

- (a) No Loan Party or Restricted Subsidiary is engaged nor will it engage, principally, or as one of its important activities in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of the provisions of the Regulations of the Board, including Regulation T, U or X.
- (b) Neither the Borrower, nor any of the Restricted Subsidiaries is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

Section 5.13. *Disclosure*

. No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, pro forma financial information, budgets, estimates and information of a general economic or industry nature) to any Agent or any Lender about the Borrower and its Subsidiaries in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains or will contain any material

misstatement of fact or omits or will omit to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were or will be made, not materially misleading. With respect to projected financial information and pro forma financial information, the Borrower represents that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood and agreed by the Agents and the Lenders that such projections as to future events (i) are not to be viewed as facts, (ii) are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower and its Restricted Subsidiaries and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

#### Section 5.14. *Labor Matters*

- (a) Except as, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect: (i) there are no strikes or other labor disputes against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing; (ii) hours worked by and payment made to employees of the Borrower or any of its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters; and (iii) all payments due from the Borrower or any of its Restricted Subsidiaries on account of employee health and welfare insurance and pension obligations have been paid or accrued as a liability on the books of the relevant party. Except as disclosed on Schedule 5.14, as of the Effective Date no Loan Party is a party to or bound by any collective bargaining agreement or, with respect to any Foreign Subsidiary, any similar agreement. To the knowledge of any Loan Party, the consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party is bound to the extent that such would be reasonably expected to result in a Material Adverse Effect.
- (b) (i) The IBT Agreement is in full force and effect and (ii) other than as contemplated by the IBT Transactions, the IBT Agreement has not been amended, waived or otherwise modified in any respect materially adverse to the Borrower and its Subsidiaries (taken as a whole). For purposes of this Section 5.14(b), it is understood that the resolution in the ordinary course of business of an employee grievance seeking to enforce the IBT Agreement terms will not be deemed to constitute an amendment, waiver or other modification to the IBT Agreement.

#### Section 5.15. *Insurance*

. Each of the Borrower and its Subsidiaries maintains, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations; *provided*, that each of the Borrower and its Subsidiaries may self-insure to the same extent as other companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or each such Subsidiary, as applicable, operates.

#### Section 5.16. *Solvency*

. As of each Funding Date and each date of disbursement of proceeds from the UST Tranche B Controlled Account, immediately after giving effect to the consummation of the Transactions to occur on such Funding Date, including the making of the Loans under this Agreement, and immediately after giving effect to the application of the proceeds

of such Loans on the disbursement date, as applicable, (a) the fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis (on a going concern basis), exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the ordinary course of business; (c) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured; and (d) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital. For purposes of this [Section 5.16](#), the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability in the ordinary course of business.

*Section 5.17. No Other Borrowed Money Indebtedness*

. Immediately after giving effect to the consummation of the Transactions to occur on each Funding Date the Borrower and its Subsidiaries shall have outstanding no Indebtedness for borrowed money other than (a) Indebtedness outstanding under this Agreement, (b) the ABL Facility Indebtedness, (c) the Tranche B-2 Term Loan Facility Indebtedness, (d) the UST Tranche A Term Loan Facility Indebtedness, (e) Indebtedness set forth on Schedule 7.03(b) and (f) Indebtedness permitted pursuant to [Section 7.03](#).

*Section 5.18. Collateral Documents*

(a) *Valid Liens.* The Collateral Documents are, or on execution and delivery thereof by the parties thereto will be, effective to create in favor of the Collateral Agent for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, the Collateral described therein to the extent intended to be created thereby, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity and (i) when financing statements and other filings in appropriate form are filed in the offices specified in Section 2 of the Perfection Certificate (and payments of all fees) and (ii) upon the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent possession or control by the Collateral Agent is required by the Security Agreement), and (iii) upon the notating of the Lien of the Collateral Agent on all certificates of title in respect of any Collateral, the Liens created by the Collateral Documents (other than the Mortgages) shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors in such Collateral, in each case prior and superior in right to any other Person, other than Liens permitted by [Section 7.01](#) (other than Liens securing Permitted Junior Priority Additional Debt or any Permitted Refinancing thereof and Liens securing ABL Facility Indebtedness, UST Tranche A Term Loan Facility Indebtedness and Tranche B-2 Term Loan Facility Indebtedness or, in each case, a Permitted Refinancing thereof, that are intended to be junior to the Liens of the Collateral Documents).

(b) *PTO Filing; Copyright Office Filing.* When the Security Agreement or a short form thereof is properly filed (and payments of all fees) in the United States Patent and Trademark Office and the United States Copyright Office, to the extent such filings may perfect such interests, the Liens created by such Security Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors thereunder in Patents and Trademarks (each as defined in the Security Agreement) registered or applied for with the United States Patent and Trademark Office or Copyrights (as defined in such Security Agreement) registered or applied for with the United States Copyright Office, as the case may be, in each case prior and superior in right to any other Person, other than Liens permitted by Section 7.01 (other than Liens securing Permitted Junior Priority Additional Debt or any Permitted Refinancing thereof and Liens securing ABL Facility Indebtedness or Permitted Refinancing thereof, that are intended to be junior to the Liens of the Collateral Documents) (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to establish a Lien on registered Patents, Trademarks and Copyrights acquired by the grantors thereof after the Effective Date).

(c) *Mortgages.* Upon recording thereof in the appropriate recording office (and payments of all applicable fees), each Mortgage (or, if applicable, each Existing Mortgage as amended by a Mortgage Amendment) is effective to create, in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, legal, valid and enforceable (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity) perfected Liens on, and a security interest in, all of the Loan Parties' right, title and interest in and to the Mortgaged Property thereunder and the proceeds thereof, subject only to Liens permitted hereunder, and when such Mortgage (or, if applicable, Mortgage Amendment) is filed in the offices specified in the local counsel opinion delivered with respect thereto in accordance with the provisions of Sections 6.11 and 6.13, such Mortgage (or Existing Mortgage, as amended by a Mortgage Amendment) shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Party to such Mortgage (or Existing Mortgage, as amended by a Mortgage Amendment) in the Mortgaged Property described therein and the proceeds thereof, in each case prior and superior in right to any other Person, other than Liens permitted by Section 7.01.

(d) *Rolling Stock.* Upon the recording thereof on the applicable certificate of title (and filing of financing statements and payment of applicable fees, which shall be for the account of the Borrower), the notation of the Administrative Agent's lien on any rolling stock or other goods subject to a certificate of title is effective to create, in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, legal, valid and enforceable (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity) perfected Liens on, and a security interest in, all of the Loan Parties' right, title and interest in and to such Collateral and the proceeds thereof, subject only to Liens permitted hereunder, in each case prior and superior in right to any other Person, other than Liens permitted by Section 7.01.

Notwithstanding anything herein (including this Section 5.18 or Section 5.04) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to (A) [reserved], (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or

security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) on the Initial Funding Date and until required pursuant to [Section 6.13](#), the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Initial Funding Date pursuant to [Section 4.02\(d\)](#) or [Section 4.02\(g\)](#).

#### Section 5.19. *Compliance with Anti-Terrorism and Corruption Laws*

(a) To the extent applicable, the Borrower and the Restricted Subsidiaries are in compliance, in all material respects, with (i) the Trading with the Enemy Act and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, and (ii) the USA PATRIOT Act.

(b) None of the Borrower or any Restricted Subsidiary nor, to the knowledge of the Borrower, any director, officer, agent, employee or controlled Affiliate of the Borrower or any Restricted Subsidiary, (i) is a Blocked Person or (ii) is currently subject to any U.S. sanctions administered by OFAC that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and none of the Borrower or any Restricted Subsidiary will use the proceeds of the Loans for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

No part of the proceeds of the Loans will be used by the Borrower or any of the Restricted Subsidiaries, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

#### Section 5.20. *Real Property Permits*

Borrower has all Permits, all of which are in full force and effect as of the date hereof required by the applicable Governmental Authorities in connection with the ownership and operation of any Material Real Property, except to the extent that the failure to have any such Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### Section 5.21. *Treasury Equity*

The Treasury Equity to be issued pursuant to the Treasury Equity Issuance shall (i) have been approved for listing on the NASDAQ Stock Market LLC, subject to notice of issuance and (ii) other than restrictions on transfer pursuant to applicable securities laws and the terms of the Voting Trust, be freely transferable, duly authorized, validly issued, fully paid and non-assessable, be free of any Liens, and will not be issued in violation of any options, warrants, convertible or exchangeable securities or other rights, however denominated, to subscribe for, purchase or otherwise acquire any security of any class, with or without payment of additional consideration in cash or property. The Treasury Equity Issuance (x) has been duly authorized by all necessary corporate or other organizational action of Borrower and (y) does not (i) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any Lien under (other than as permitted by [Section 7.01](#)), or require any payment to be made under (a) any Indebtedness of such Person in excess of the Threshold Amount or (b) any material order, injunction, writ or decree of any Governmental Authority or any arbitral

award to which such Person or its property is subject; or (ii) violate any material Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (y)(1)(a), to the extent that such violation, conflict, breach, contravention or payment, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.22. *No Transaction Benefits*

(a) Neither the execution or delivery of the Loan Documents (or any other instrument or document furnished pursuant the Loan Documents) nor the consummation of the Transactions will, alone or together with any other event, cause or result in any Transaction Benefit.

(b) To the extent necessary, the Borrower and each Restricted Subsidiary have taken all actions required to ensure that the execution and delivery of the Loan Documents (and any other instrument or document furnished pursuant the Loan Documents) and the consummation of the Transactions shall not, alone or together with any other event, cause or result in any Transaction Benefit or provide a basis for any current or former employee, director or other service provider of the Borrower or any Restricted Subsidiary to allege entitlement to any Transaction Benefit, including, without limitation, by securing any appropriate written waivers or consents from any such current or former employees, directors or other service providers of the Borrower or any Restricted Subsidiary.

Section 5.23. *Statutory Conflicts*

The Borrower is not a covered entity, as such term is defined in Section 4019 of the CARES Act.

**ARTICLE 6**

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation (other than contingent indemnification or reimbursement obligations) hereunder which is accrued or payable shall remain unpaid or unsatisfied, then from and after the Effective Date, the Borrower shall and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.15) cause each of the Restricted Subsidiaries to:

Section 6.01. *Financial Statements, Reports, Etc*

In the case of the Borrower, deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) within 90 days after the end of each fiscal year of the Borrower (beginning with the fiscal year ending December 31, 2019), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of 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 accompanied by a report and opinion of KPMG LLP, any other independent registered public accounting firm of nationally recognized standing or any other independent registered public accounting firm approved by the Administrative Agent and the Required Lenders (such approval not to be unreasonably withheld, conditioned or delayed), which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards,

(ii) shall not be subject to qualifications or exceptions as to the scope of such audit, (iii) shall be without a “going concern” disclosure or like qualification or exception (other than with respect to, or disclosure or an exception or qualification solely resulting from, (x) the impending maturity of any Indebtedness, (y) any prospective or actual default under any financial covenant or (z) the impact of COVID 19 on the business of the Borrower and its Subsidiaries) and (iv) shall be accompanied with customary management discussion and analysis;

(b) within 45 days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended September 30, 2019), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (x) consolidated statements of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (y) consolidated statements of cash flows for such fiscal quarter and the portion of the 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 and certified by each Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and accompanied by customary management discussion and analysis; and

(c) within 90 days after the end of each fiscal year (commencing with the fiscal year ending December 31, 2019) of the Borrower, a reasonably detailed consolidated budget for the following fiscal year on a quarterly basis (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flows and projected income and a summary of the material underlying assumptions applicable thereto) (collectively, the “Projections”), which Projections shall in each case be accompanied by a certificate of each Responsible Officer of the Borrower stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood by the Agents and the Lenders that such projections as to future events (i) are not to be viewed as facts, (ii)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower and its Restricted Subsidiaries, (B) no assurance is given by the Borrower and its Restricted Subsidiaries that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 or Section 6.02(b) may be satisfied with respect to information of the Borrower and the Subsidiaries by furnishing within the time period specified in the applicable paragraph (A) the applicable financial statements of the Borrower or (B) the Borrower’s Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, with respect to clauses (A) and (B), to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are accompanied by a report and opinion of KPMG LLP, any other independent registered public accounting firm of nationally recognized standing or any other independent registered public accounting firm approved by the Required Lenders (such approval not to be

unreasonably withheld, conditioned or delayed), which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards, (ii) shall not be subject to qualifications or exceptions as to the scope of such audit and (iii) shall be without a "going concern" disclosure or like qualification or exception (other than with respect to, or disclosure or an exception or qualification solely resulting from, (A) the impending maturity of any Indebtedness, (B) any prospective or actual default under any financial covenant or (C) the impact of COVID 19 on the business of the Borrower and its Subsidiaries).

Documents required to be delivered pursuant to Section 6.01(a), (b), (c) and (d) or Section 6.02(b) or (c) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the earliest date on which (i) Borrower posts such documents, or provides a link thereto on Borrower's website on the Internet and provides notice thereof to the Administrative Agent; (ii) such documents are posted on Borrower's behalf on IntraLinks/IntraAgency or another website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent), or (iii) such financial statements and/or other documents are posted on the SEC's website on the internet at [www.sec.gov](http://www.sec.gov); *provided* that: (i) promptly following written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent; *provided, however*, that if such Compliance Certificate is first delivered by electronic means, the date of such delivery by electronic means shall constitute the date of delivery for purposes of compliance with Section 6.02(a).

Section 6.02. *Certificates; Other Information*

. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) Business Days after the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(b) (or the date on which such delivery is required), commencing with the first full fiscal quarter completed after the Effective Date, a duly completed Compliance Certificate signed by each Responsible Officer of the Borrower; it being understood that , if applicable for such period of delivery, such Compliance Certificate shall include (i) information about Net Proceeds received in the period for individual amounts greater than \$5,000,000 and set forth statements of the Borrower's intention regarding the use of any portion of such Net Proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions or any acquisition permitted hereunder of all or substantially all the assets of, or all the Equity Interests (other than directors qualifying shares) in a Person, division or line of business previously acquired) and (ii) calculations setting forth in reasonable detail the amount of any Cumulative Credit available at the beginning of the applicable period and at the end of such period and the amount and application of any Cumulative Credit during such period (it being understood

that the Borrower has the right to reallocate usage of the Cumulative Credit in accordance with Section 1.02(i) from time to time);

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(c) (i) promptly after the furnishing thereof, copies of any material notices of default received by any Loan Party or Restricted Subsidiary (other than in the ordinary course of business) or furnished to any holder of Indebtedness or debt securities of any Loan Party or of any of its Restricted Subsidiaries pursuant to the terms of the ABL Facility Documentation, the Tranche B-2 Term Loan Facility Documentation, the UST Tranche A Term Loan Facility Documentation, any Junior Financing Documentation, any Permitted Additional Debt or any Permitted Refinancing of any thereof, in each case in a principal amount in excess of the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to any clause of this Section 6.02 and (ii) promptly after the execution thereof, copies of any amendments, modifications or waivers to the ABL Facility Documentation and the Tranche B-2 Term Loan Facility Documentation;

(d) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), (i) in the case of annual Compliance Certificates only, a report setting forth the information required by sections of the Perfection Certificate describing the legal name and the jurisdiction of organization or formation of each Loan Party and the location of the chief executive office of each Loan Party or confirming that there has been no change in such information since the Effective Date or the date of the last such report, (ii) a description of each (x) event, condition or circumstance during the last fiscal quarter covered by such Compliance Certificate requiring a mandatory prepayment under Section 2.13(a) and (y) Disposition of owned Real Property on which sits a trucking terminal and adjacent/vacant land located nearby and (iii) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Loan Party or a non-Loan Party as of the date of delivery of such Compliance Certificate;

(e) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Restricted Subsidiaries, including the business performance and tax and collateral due diligence of the Borrower and its Restricted Subsidiaries, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request;

(f) promptly after the written request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act;

(g) promptly after the receipt thereof by the Borrower or any of the Restricted Subsidiaries, a copy of any final “management letter” received by any such Person from its certified public accountants and the management’s response thereto;

(h) promptly following any request thereof by the Administrative Agent or any Lender, copies of (i) any material documents described in Section 101(k) of ERISA that any Loan Party may request with respect to any Multiemployer Plan and (ii) any material notices described in Section 101(l) of ERISA that any Loan Party may request with respect to any Plan or Multiemployer Plan, *provided* that if any Loan Party has not requested such material documents or material notices from the administrator or sponsor of the applicable Plan or Multiemployer Plan, such Loan Party shall make a request for such material documents or material notices from the such administrator or sponsor at the earliest date on which such Loan Party determines that it is commercially reasonable to so request in order to avoid the occurrence of an event that could reasonably be expected to result in a material liability, and shall provide copies of such material documents and material notices promptly after receipt thereof;

(i) commencing as of the Effective Date and promptly after the written request by the Administrative Agent or any Lender, (i) such reasonably available information with respect to purchases of Rolling Stock exceeding \$5,000,000 after the Effective Date as the Administrative Agent or such Lender shall request, (ii) all invoices, receipts, agreements or other information detailing or otherwise relating to any Disposition by any Loan Party of Rolling Stock of such Loan Party, which Disposition or series of Dispositions, in each case, results in at least \$250,000 of aggregate Net Proceeds during any 12-month period,

(j) during the Specified Period, prior to 5:00 p.m. New York time on the third Business Day of every second week after the Effective Date (i.e., the first delivery date hereunder will be Wednesday July 15, 2020), deliver to the Lenders a liquidity report (each, a “**Liquidity Report**”) setting forth the aggregate amount of Liquidity of the Loan Parties as of the end of the immediately preceding week (ending on the Sunday immediately preceding the applicable third Business Day reporting deadline; i.e. with respect to the reporting deadline occurring on Wednesday July 15, 2020, the week ending Sunday July 12, 2020) and a comparison of the amount set forth on the prior delivered Liquidity Report;

(k) within fifteen (15) calendar days following the end of each fiscal quarter, a (x) report reconciling (each, a “**Reconciliation Report**”) the disbursements from the UST Tranche B Controlled Account during such fiscal quarter and the amount expended (in respect of the UST Tranche B Term Loans and otherwise) in connection with the acquisition of Rolling Stock during such fiscal quarter and (y) schedule setting forth a list of the Rolling Stock acquired during such fiscal quarter and the Vehicle Identification Numbers and acquisition cost (including source of funds) for each such Rolling Stock acquired;

(l) on or prior to the date that is thirty (30) calendar days prior to the first day of each fiscal quarter (or, in the case of the Initial Funding Date if the Initial Funding Date occurs during the fiscal quarter ending September 30, 2020, ten (10) Business Days before the Initial Funding Date), a capital expenditure plan setting forth in reasonable detail the amount of Rolling Stock (which for the avoidance of doubt, shall be limited to Rolling Stock constituting tractors and trailers) intended to be acquired by the Borrower and its Restricted Subsidiaries during such fiscal

quarter and the amount of disbursements from the UST Tranche B Controlled Account intended to be requested during such fiscal quarter (each such capital expenditure plan, if in form and substance acceptable to the Required Lenders, an “**Approved CapEx Plan**”);

(m) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), the Borrower shall promptly deliver to the Administrative Agent or such Lender a list of its Rolling Stock specifying whether such Rolling Stock is (A) Non-UST Tranche B Term Priority Collateral, (B) UST Tranche B Joint Collateral or (C) UST Tranche B Priority Collateral and shall provide such information as the Administrative Agent or any Lender may request to verify such designation of Rolling Stock;

(n) promptly after the furnishing thereof (and in no event later than three Business Days after the delivery thereof), a copy of each borrowing base certificate delivered under the ABL Credit Agreement; and

(o) promptly after the furnishing thereof (and in no event later than three Business Days after the delivery thereof), a copy of each Cash Flow Forecast and Variance Report (each as defined in the Tranche B-2 Term Loan Credit Agreement) delivered under the Tranche B-2 Term Loan Credit Agreement.

Notwithstanding anything to the contrary, neither 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 trade secrets or proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their 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.

#### Section 6.03. Notices

. Promptly after the Borrower or any Guarantor has obtained knowledge thereof, notify the Administrative Agent (which shall provide notice to the Lenders):

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) of the filing or commencement of, or any written threat or written notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority, against the Borrower or any of its Restricted Subsidiaries that has a reasonable likelihood of adverse determination and such determination could reasonably be expected to result in a Material Adverse Effect; and

(d) of the occurrence of any ERISA Event following the Effective Date that, alone or together with any other ERISA Events that have occurred following the Effective Date, could reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a written statement of each Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a), (b), (c), or (d) (as applicable) and (y) setting forth details of the occurrence referred to in

Section 6.03(a), (b), (c), or (d), as applicable, and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04. *Payment of Taxes*

. Promptly pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, to the extent any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP if such contest shall have the effect of suspending enforcement or collection of such Taxes or, where the failure to pay, discharge or otherwise satisfy the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.05. *Preservation of Existence, Etc*

. (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or Section 7.05 and (b) obtain, maintain, renew, extend and keep in full force and effect all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except, in the case of clause (a) (other than with respect to the Borrower) or (b), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.06. *Maintenance of Properties*

. Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in satisfactory working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted, and (b) make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with prudent industry practice and in the normal conduct of its business.

Section 6.07. *Maintenance of Insurance*

.  
*Generally.* Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business consistent in all material respects with the insurance maintained by Borrower and/or such Restricted Subsidiaries (as applicable) as of the Effective Date, which insurance shall insure against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, and which insurance shall be of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons in such similar or same locations.

(a) *Requirements of Insurance.* (A) Use commercially reasonable efforts to cause, not later than 30 days after the Effective Date (or such longer period as the Required Lenders may agree in writing in their reasonable discretion), all insurance required pursuant to Section 6.07(a) and (d) (x) to provide (and to continue to provide at all times thereafter) that it shall not be canceled, materially modified or not renewed (i) by reason of nonpayment of premium upon not less than 10 days' prior written notice thereof by the insurer to the Administrative Agent and the

Collateral Agent or (ii) for any other reason upon not less than 20 days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent and (y) subject to the terms, conditions and provisions of the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement, to name the Collateral Agent as additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable (and to continue to so name the Collateral Agent at all times thereafter), (B) use commercially reasonable efforts to deliver, not later than 30 days after the Effective Date (or such longer period as the Required Lenders may agree in writing in their reasonable discretion), a copy of the policy (and to the extent any such policy is cancelled or not renewed, a renewal or replacement policy) or other evidence thereof to the Administrative Agent and the Collateral Agent, or insurance certificate with respect thereto, and (C) in the case of all property insurance policies located in the United States, not later than 30 days after the Effective Date (or such longer period as the Required Lenders may agree in writing in their reasonable discretion) cause such policies to be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement, in form and substance reasonably satisfactory to the Required Lenders, which endorsement shall provide that, from and after such date, if the insurance carrier shall have received written notice from the Administrative Agent or the Collateral Agent of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower or the Loan Parties under such policies directly to the Collateral Agent during the continuance of such Event of Default.

(b) *Flood Insurance.* Following the Effective Date, the Borrower shall deliver to the Collateral Agent and the Required Lenders annual renewals of the flood insurance policy under the property policy or annual renewals of a force-placed flood insurance policy.

(c) *Environmental Insurance.* Maintain with financially sound and reputable insurance companies, a premises pollution liability portfolio insurance and storage tank third-party liability, corrective and clean-up insurance policy with respect to its properties and business for an initial three year policy period commencing on the date hereof and with limits not less than, and with terms and conditions comparable to, the limits, terms and conditions in such policies that are in effect as of the date hereof, and subject to annual renewals after such initial three year policy period, which insurance shall be reasonably satisfactory to the Required Lenders. The Borrower shall purchase such insurance required under this Section 6.07(d) within 30 days following the Effective Date and provide evidence thereof to the Administrative Agent.

(d) Notify the Administrative Agent (for distribution to the Lenders) and the Collateral Agent promptly whenever any separate insurance concurrent in form or contributing in the event of material loss with that required to be maintained under this Section 6.07 is taken out by the Borrower or another Loan Party; and promptly deliver to the Administrative Agent and the Collateral Agent a duplicate original copy of such policy or policies, or an insurance certificate with respect thereto once available.

#### Section 6.08. *Compliance with Laws*

. Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.09. *Books and Records*

. Maintain proper books of record and account, in which entries are made that are full, true and correct in all material respects and are in conformity with GAAP (except as noted therein) and which reflect all material financial transactions and matters involving the assets and business of the Borrower or a Restricted Subsidiary, as the case may be.

Section 6.10. *Inspection Rights*

. Permit representatives and independent contractors of the Required Lenders to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and subject to *bona fide* confidentiality obligations, limitations imposed by law and attorney-client privilege and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that, excluding any such visits and inspections during the continuation of an Event of Default, the Required Lenders shall not exercise such rights more often than one time during any calendar year; *provided further* that when an Event of Default exists, 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 upon reasonable advance notice. The Required Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants.

Section 6.11. *Additional Collateral; Additional Guarantors*

. Subject to the terms, conditions and provisions of each Intercreditor Agreement, at the Borrower's expense, the Borrower shall take all reasonable actions which are necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) Upon (x) the formation or acquisition of any new direct or indirect Subsidiary (in each case, other than an Excluded Subsidiary) by the Borrower or (y) any Subsidiary that is an Excluded Subsidiary ceasing to be an Excluded Subsidiary:

(i) within 60 days after such formation, acquisition, designation or other event, or such longer period as the Required Lenders may agree in writing in their reasonable discretion (not to be unreasonably withheld, delayed, conditioned or denied):

(A) causing each such Subsidiary to duly execute and deliver to the Administrative Agent or the Collateral Agent (as appropriate) joinders to this Agreement as Guarantors, Security Agreement Supplements, Intellectual Property Security Agreements, a counterpart of the Intercompany Note and other security agreements (including Mortgages) and documents (including, (I) with respect to any Foreign Subsidiary, local law security agreements and documents in each case consistent with market practice, and (II) with respect to such Mortgages, the documents described in the definition of Collateral and Guarantee Requirement, as reasonably requested by the Required Lenders and in form and substance reasonably satisfactory to the Required Lenders and the Borrower (consistent with the Mortgages (or Existing Mortgage, as amended), Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Effective Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(B) causing each such Subsidiary (and the parent of each such Subsidiary that is a Loan Party) to deliver to the Collateral Agent any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) taking and causing each such Restricted Subsidiary and each direct or indirect parent of such Restricted Subsidiary to take whatever action (including the recording of Mortgages, the filing of UCC financing statements and the delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the Required Lenders to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected Liens to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(ii) if reasonably requested by the Required Lenders, Administrative Agent or the Collateral Agent, within 45 days after such request (or such longer period as the Required Lenders may agree in writing in their reasonable discretion), delivering to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties as to such matters set forth in this Section 6.11(a) as the Administrative Agent and the Required Lenders may reasonably request; and

(iii) promptly after the reasonable request therefor by the Administrative Agent or Collateral Agent, delivering to the Collateral Agent with respect to each Material Real Property, any existing surveys, title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; *provided, however*, that there shall be no obligation to deliver to the Collateral Agent any existing environmental assessment report whose disclosure to the Collateral Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, and where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained.

(b) if reasonably requested by the Required Lenders, Administrative Agent or the Collateral Agent, within 60 days after such request (or such longer period as the Required Lenders may agree in writing in their reasonable discretion), delivering to the Collateral Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to the validity, perfection, existence and priority of security interests with respect to property of any Guarantor acquired after the Effective Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii) or (iii) or clause (c) below.

(c) not later than 120 days after (i) the acquisition by any Loan Party of Material Real Property or (ii) the release of any first lien security interest on any Real Property securing the obligations under the Contribution Deferral Agreement, in each case, that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement (or such longer period as the Required Lenders may agree in writing in their reasonable discretion), which Material Real Property would not be automatically subject to another Lien pursuant to pre-existing Collateral Documents, causing such property to be subject to a Lien in favor of the Collateral Agent for the

benefit of the Secured Parties and taking, or causing the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Required Lenders, Administrative Agent or the Collateral Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of, the Collateral and Guarantee Requirement and to otherwise comply with the requirements of the Collateral and Guarantee Requirement.

Section 6.12. *Compliance with Environmental Laws*

. Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all Environmental Permits necessary for its operations and properties; and, (c) in each case to the extent the Loan Parties or the Restricted Subsidiaries are required to do so by Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

Section 6.13. *Further Assurances and Post-Closing Conditions*

(a) Within the time periods after the Effective Date set forth in Schedule 6.13(a), deliver each Collateral Document set forth on Schedule 6.13(a), duly executed by each Loan Party party thereto, together with all documents and instruments required to perfect the security interest of the Collateral Agent in the Collateral free of any other pledges, security interests or mortgages, except Liens expressly permitted hereunder, to the extent required pursuant to the Collateral and Guarantee Requirement.

(b) Promptly upon reasonable request by the Required Lenders, Administrative Agent or the Collateral Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral (including, without limitation, any defect or error related to certificates of title for vehicles and other rolling stock) as to which the Borrower reasonably agrees is a defect or error, and (ii) subject to the terms of the Collateral Documents, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Required Lenders, the Administrative Agent or the Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Loan Documents and to cause the Collateral and Guarantee Requirement to be and remain satisfied. If the Required Lenders, Administrative Agent or the Collateral Agent reasonably determines that it is required by applicable Law to have appraisals prepared in respect of any Material Real Property of any Loan Party subject to a Mortgage (or Existing Mortgage, as amended by a Mortgage Amendment), the Borrower shall cooperate with the Required Lenders, Administrative Agent and/or Collateral Agent, as applicable, in obtaining such appraisals and shall pay all reasonable out-of-pocket costs and expenses relating thereto.

Section 6.14. *[Reserved]*

Section 6.15. *Maintenance of Ratings*

. In the case of the Borrower, use commercially reasonable efforts to maintain a public corporate rating from S&P and a public corporate family rating from Moody's, in each case in respect of the Borrower.

Section 6.16. *Use of Proceeds*

. The Borrower shall use the proceeds of the Term Loans borrowed on each Funding Date solely to fund the UST Tranche B Controlled Account on such Funding Date, the disbursements from which shall be used solely to finance the purchase of Rolling Stock constituting tractors and trailers substantially consistent with the most recent Approved Capex Plan.

Section 6.17. *Compliance with Regulations*

. The Borrower shall comply with the provisions of 31 U.S.C. 1352, as amended, and with the regulations at 31 CFR Part 21.

Section 6.18. *Equity Issuance*

. (a) Prior to any disbursement of amounts in the UST Tranche B Controlled Account, the Borrower shall (i) consummate the Treasury Equity Issuance, (ii) enter into a Voting Trust Agreement with the trustee thereunder and Treasury having substantially the terms set forth in Annex A attached hereto and (iii) enter into a Registration Rights Agreement with the Treasury with respect to the Treasury Equity having substantially the terms set forth in Annex B attached hereto.

(b) The Borrower shall cooperate with, and perform all acts necessary in connection with, any transfer of Treasury Equity made in accordance with the Voting Trust, including the issuance of instructions to the transfer agent for the shares of Common Stock.

Section 6.19. *Treasury Access*

. Provide Treasury, the Treasury Inspector General, and such other entities as authorized by Treasury timely and unrestricted access to all documents, papers, or other records, including electronic records, of the Borrower related to the Loans, to enable Treasury and the Treasury Inspector General to make audits, examinations, and otherwise evaluate the Borrower's compliance with the terms of this Agreement. This right also includes timely and reasonable access to the Lender's and its Affiliates' personnel for the purpose of interview and discussion related to such documents.

Section 6.20. *Reconciliation Top-Up*

. Following the delivery of each Reconciliation Report, if the disbursements from the UST Tranche B Controlled Account during the fiscal quarter in respect of such Reconciliation Report is greater than the amount of the UST Tranche B Term Loans utilized to purchase Rolling Stock during such fiscal quarter, the Borrower shall, within five (5) Business Days following the delivery of such Reconciliation Report, deposit cash in the UST Tranche B Controlled Account in an amount equal to such excess.

**ARTICLE 7**  
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation (other than contingent indemnification or reimbursement obligations) hereunder which is accrued or payable shall remain unpaid or unsatisfied, then from and after the Effective Date:

Section 7.01. *Liens*

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens created pursuant to any Loan Document;

(b) Liens existing or contemplated on the Effective Date and listed on Schedule 7.01(b); *provided* that, (i) the Lien does not extend to any additional property other than any replacements of such property or assets and additions and accessions thereto, after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property (it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition, or asset of the Borrower or any Restricted Subsidiary and the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment provided by any lender, other equipment financed by such lender), and (ii) such Lien does not secure any obligation (including unused commitments) other than those it secured on the Effective Date or, to the extent constituting Indebtedness, any Permitted Refinancing of the Indebtedness secured thereby on the Effective Date and any extensions, renewals, restructurings, refinancings and replacements thereof;

(c) Liens for unpaid utilities, taxes, assessments or governmental charges that are (i) not overdue for a period of more than thirty (30) days and are not otherwise delinquent, securing obligations in an amount not to exceed \$500,000, or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or (ii) otherwise not required to be paid pursuant to Section 6.04;

(d) Statutory, lease or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, or other customary Liens (other than in respect of Indebtedness) in favor of landlords, in each case arising in the ordinary course of business that secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, that either secure obligations in an amount not to exceed \$1,000,000 or are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) (i) Liens in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation (other than any Lien imposed pursuant to Section 430(k) of the Code or Section 303(k) of ERISA or a violation of Section 436 of the Code) and (ii) Liens in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any of its Restricted Subsidiaries; *provided* that this Section 7.01(e) shall not permit liens securing letters of credit;

(f) Liens to secure the performance of bids, trade contracts, governmental contracts and leases (in the case of each of the foregoing, other than for Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations), in each case incurred in the ordinary course of business; *provided* that this Section 7.01(f) shall not permit liens securing letters of credit;

(g) (i) easements, rights-of-way, restrictions (including zoning restrictions and other land use regulations), encroachments, protrusions, reservations and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower and the Restricted Subsidiaries, taken as a whole and (ii) ground leases in respect of Real Property on which facilities owned or leased by the Borrower or any of the Restricted Subsidiaries are located; *provided* in the case of this clause (ii) that such ground leases do not confer rights on the counter-party(ies) thereto superior to those of the Collateral Agent in the relevant property;

(h) Liens securing judgments not constituting an Event of Default under Section 8.01(h);

(i) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole, or (ii) secure any Indebtedness;

(j) Liens (i) in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or (ii) on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such person to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) arising in the ordinary course of business in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to the general terms and conditions of such banking institutions;

(l) Liens (i) on cash earnest money deposits or other cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Sections 7.02(e), (h), (l), (p), (r) or (v), in each case to be applied against the purchase price for such Investment, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

- (m) Liens (i) in favor of the Borrower or a Restricted Subsidiary on assets of a Restricted Subsidiary that is not a Loan Party securing Indebtedness permitted under Section 7.03 and (ii) in favor of the Borrower or any Guarantor;
- (n) any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor, sublessor, licensor or sublicensor under leases, subleases, licenses or sublicenses entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business; *provided*, that no such lease or sublease shall constitute a Capitalized Lease;
- (o) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 7.02(a);
- (p) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;
- (q) Liens (including any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor or sublessor under Capitalized Leases) securing Indebtedness constituting Capital Leases and purchase money security interests permitted under Section 7.03(e) or Section 7.03(ff); *provided* that (i) such Liens are created within 270 days of the acquisition, construction, repair, lease or improvement, as applicable, of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits, and (iii) such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to Capitalized Leases and the proceeds and products thereof and customary security deposits; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;
- (r) Liens on property (i) of any Foreign Subsidiary that is not a Loan Party and (ii) that does not constitute Collateral, which Liens secure Indebtedness of the applicable Foreign Subsidiary that is not a Loan Party permitted under Section 7.03;
- (s) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary, in each case after the Effective Date; *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (iii) the Indebtedness secured thereby is permitted under Section 7.03;

- (t) Liens arising from precautionary Uniform Commercial Code financing statements or similar filings;
- (u) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto in the ordinary course of business;
- (v) Liens on the Collateral (other than the UST Tranche B Only Collateral) securing Indebtedness permitted under Section 7.03(o) or other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness; provided that (A) in the case of Indebtedness permitted pursuant to Section 7.03(o)(x) and all other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness, the representative in respect thereof shall have entered into the ABL Intercreditor Agreement as the ABL Agent, on behalf of the holders of such Indebtedness, and such Indebtedness and other obligations shall at all times be subject to the ABL Intercreditor Agreement as “ABL Obligations”; (B) in the case of Indebtedness and all other obligations permitted pursuant to Section 7.03(o)(y) or other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness, the representative in respect thereof shall have entered into the ABL Intercreditor Agreement as the Tranche B-2 Term Agent, on behalf of the holders of such Indebtedness, and such Indebtedness and other obligations shall at all times be subject to the ABL Intercreditor Agreement as “Tranche B-2 Obligations”; and (C) in the case of Indebtedness or other obligations permitted pursuant to Section 7.03(o)(z) and all other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness, the representative in respect thereof shall have entered into the ABL Intercreditor Agreement as the UST Tranche A Term Agent, on behalf of the holders of such Indebtedness, and such Indebtedness and other obligations shall at all times be subject to the ABL Intercreditor Agreement as “UST Tranche A Obligations”;
- (w) Liens on the Collateral securing Credit Agreement Refinancing Indebtedness that is Permitted Junior Priority Additional Debt and any Permitted Refinancing of the foregoing; *provided*, that any such Liens are secured on a junior lien basis to the Liens securing the Obligations pursuant to, and subject at all times to, the Junior Lien Intercreditor Agreement;
- (x) Liens on the Equity Interests of any joint venture entity of the Borrower consisting of a transfer restriction, purchase option, call or similar right of a third party joint venture partner;
- (y) [reserved];
- (z) [reserved];
- (aa) Liens on (i) the Securitization Assets arising in connection with a Qualified Securitization Financing or (ii) the Receivables Assets arising in connection with a Receivables Facility;
- (bb) Liens (i) arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods or (ii) encumbering deposits made to secure obligations arising from contractual or warranty requirements;
- (cc) Utility and similar deposits in the ordinary course of business;

(dd) [reserved];

(ee) Liens related to Sale and Leaseback Transactions in an aggregate amount of \$25,000,000; *provided* that, during the Specified Period (and during the continuance of an Event of Default at any time after the end of the Specified Period), this clause (ee) shall be unavailable for use under this Agreement and the dollar amount specified in this clause (ee) shall be \$0;

(ff) other Liens with respect to property or assets securing obligations of the Borrower or any Restricted Subsidiary in an aggregate principal amount outstanding at any time not to exceed \$5,000,000; *provided* that such Liens do not secure Indebtedness for borrowed money and are not incurred in respect of any pension obligations of the Borrower or any of its Restricted Subsidiaries; and

(gg) Liens on Pension Real Property related to or arising on account of Indebtedness in respect of Specified Pension Fund Obligations permitted pursuant to Section 7.03(u); *provided* that the aggregate amount of Indebtedness in respect of Specified Pension Fund Obligations permitted to be secured by such Liens on Pension Real Property under this Section 7.01(gg) shall not at any time exceed (x) the aggregate amount of Specified Pension Fund Obligations that are secured by such Liens on Pension Real Property on the Effective Date less (y) payments of Specified Pension Fund Obligations after the Effective Date.

#### Section 7.02. *Investments*

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make or hold any Investments, except:

(a) Investments by the Borrower or any of the Restricted Subsidiaries in cash or Cash Equivalents;

(b) loans or advances to officers, directors and employees of any Loan Party or any of its Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, in each case, consistent with past practice (including pursuant to use of any credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services) and (ii) for any other corporate purposes not described in the foregoing clauses (i) and (ii); *provided* that the aggregate principal amount of loans and advances outstanding at any time under this Section 7.02(b)(i) and (ii) shall not exceed \$2,000,000;

(c) Investments (i) by the Borrower or any Restricted Subsidiary in any Loan Party (or any newly formed wholly owned Restricted Subsidiary that is not an Excluded Subsidiary and is to become a Loan Party in accordance with Section 6.11), (ii) by any Restricted Subsidiary that is not a Loan Party in any other Restricted Subsidiary that is not a Loan Party and (iii) by any Loan Party in a Restricted Subsidiary that is not a Loan Party; *provided*, that the aggregate amount of Investments at any time outstanding under this clause (ii) shall not exceed (x) during the Specified Period, \$5,000,000, and (y) after the Specified Period shall have ended, \$15,000,000, *provided* that, if after the end of the Specified Period an Event or Default shall occur and be continuing, such dollar amount in this clause (y) shall be reduced to \$5,000,000;

- (d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit or other credits to suppliers in the ordinary course of business;
- (e) Investments (i) existing or contemplated on the Effective Date and set forth on Schedule 7.02(e) (including unused commitments) and any modification, replacement, renewal or extension thereof and (ii) existing on the Effective Date by the Borrower or any other Restricted Subsidiary in any Restricted Subsidiary and any modification, replacement, renewal or extension thereof; *provided*, that in the case of clause (i) and clause (ii) the amount of the original Investment is not increased except by the terms of such original Investment as set forth on Schedule 7.02(e) or as otherwise permitted by this Section 7.02 (and in such case made in reliance on the other paragraph of this Section 7.02 so permitting such modification, replacement, renewal or extension thereof);
- (f) Investments in Swap Contracts permitted under Section 7.03;
- (g) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.05;
- (h) any acquisition by the Borrower or any Restricted Subsidiary of all or substantially all the assets of, or all the Equity Interests (other than directors' qualifying shares, shares issued to foreign nationals as required by applicable law or any options for Equity Interests that cannot, as a matter of law, be cancelled, redeemed or otherwise extinguished without the express agreement of the holder thereof at or prior to acquisition) in, a Person or division, business unit or line of business of a Person (or any subsequent investment made in a Person, division, business unit or line of business previously acquired in a Permitted Acquisition), in each case in a single transaction or series of related transactions, if (i) no Event of Default shall have occurred and be continuing or would result therefrom at the time of entering in the agreement to consummate such acquisition; (ii) all transactions related thereto shall be consummated in all material respects in accordance with applicable Laws; (iii) as of the most recently ended fiscal quarter for which financial statements of the Borrower and the target are available, (A) the Borrower and the Restricted Subsidiaries shall be in compliance, on a Pro Forma Basis, with the covenant set forth in Section 7.10 and (B) the Total Leverage Ratio, on a Pro Forma Basis, for the Test Period most recently ended shall not be greater than 3.00:1.00, in each case, after giving effect to such acquisition or investment and any related transactions; (iv) any acquired or newly formed Restricted Subsidiary shall not be liable for any Indebtedness except for Indebtedness otherwise permitted by Section 7.03; (v) to the extent required by the Collateral and Guarantee Requirement, (A) the property, assets and businesses acquired in such purchase or other acquisition shall constitute Collateral and (B) any such newly created or acquired Subsidiary (other than an Excluded Subsidiary) shall become a Guarantor, in each case, to the extent required by and in accordance with Section 6.11; (vi) the businesses acquired in such purchase or other acquisition shall be in compliance with Section 7.07; and (vii) the Borrower shall have delivered to the Administrative Agent a certificate of each Responsible Officer of the Borrower certifying that the conditions set forth in the preceding clauses (i) through (v) have been satisfied (any such acquisition, a "**Permitted Acquisition**"); *provided* that the aggregate amount of Investments made by Loan Parties pursuant to this Section 7.02(h) in assets that are not (or do not become) owned by a Loan Party or in Equity Interests in Persons that do not become Loan Parties upon consummation of such Permitted Acquisition shall not exceed

\$15,000,000 at any time outstanding; *provided, further*, that notwithstanding anything to the contrary, during the Specified Period, this clause (h) shall be unavailable under this Agreement and no Permitted Acquisitions may be made (and Permitted Acquisitions shall be disregarded in any reference in any other term or provision herein);

(i) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(j) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers;

(k) advances of payroll payments to employees in the ordinary course of business;

(l) Investments to the extent that payment for such Investments is made with Equity Interests (other than Disqualified Equity Interests) of the Borrower or the Net Proceeds received from the issuance thereof;

(m) Investments of a Restricted Subsidiary acquired after the Effective Date pursuant to a Permitted Acquisition or of a corporation merged or amalgamated or consolidated into the Borrower or merged, amalgamated or consolidated with a Restricted Subsidiary, in each case in accordance with this [Section 7.02](#) and [Section 7.04](#) after the Effective Date, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(n) Investments made by any Restricted Subsidiary that is not a Loan Party to the extent such Investments are financed with the proceeds received by such Restricted Subsidiary from an Investment in such Restricted Subsidiary made pursuant to [Section 7.02\(c\)\(iii\)](#) or [Section 7.02\(p\)](#);

(o) Guarantees by the Borrower or any Restricted Subsidiary of operating leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness, in each case, which leases or other obligations are entered into by the Borrower or any Guarantor in the ordinary course of business;

(p) other Investments (including after the Specified Period for Permitted Acquisitions) in an aggregate amount outstanding pursuant to this clause (p) at any time not to exceed (x) together with (I) the aggregate amount of Restricted Payments made under sub-clause (x) of [Section 7.06\(g\)](#) and (II) the aggregate amount of prepayments, redemptions, purchases, defeasances and other payments made pursuant to sub-clause (x) of [Section 7.13\(a\)\(vi\)](#), (A) during the Specified Period, \$20,000,000, and (B) after the Specified Period shall have ended, \$30,000,000 plus, (y) the portion, if any, of the Cumulative Credit on the date of such election that the Borrower elects to apply to this subclause (y); *provided*, that with respect to any Investment made pursuant to this [Section 7.02\(p\)](#), (A) no Event of Default shall have occurred and be continuing or would result from the making of any such Investment and (B) with respect to Investments made in reliance on this subclause (y) (i) other than Investments made in Restricted Subsidiaries organized under the laws of Canada or Mexico or, in each case, any political

subdivision thereof, on a Pro Forma Basis after giving effect thereto the Total Leverage Ratio is equal to or less than 2.00:1.00 or (ii) with respect to Investments in Restricted Subsidiaries organized under the laws of Canada or Mexico or, in each case, any political subdivision thereof, on a Pro Forma Basis after giving effect thereto the Total Leverage Ratio is equal to or less than 4.00:1.00;

(q) (i) make lease, utility and other similar deposits or any other advance or deposit permitted by this Agreement in the ordinary course of business or (ii) make prepayments and deposits to suppliers in the ordinary course of business;

(r) to the extent constituting Investments, capital expenditures otherwise permitted under this Agreement;

(s) Investments in deposit accounts or securities accounts opened in the ordinary course of business;

(t) repurchase, retirement or repayment of any Indebtedness to the extent not otherwise prohibited by this Agreement, including, without limitation, acquisitions of Tranche B-2 Term Loan Facility Indebtedness in accordance with the Tranche B-2 Term Loan Credit Agreement;

(u) (a) Investments (including by consideration in the form of cash, Cash Equivalents, contributing receivables and through subordinated notes) in any Receivables Facility or any Securitization Subsidiary or other Subsidiary that in turn then transfers Securitization Assets to a Securitization Subsidiary in order to effectuate a Qualified Securitization Financing, including the ownership of Equity Interests in such Securitization Subsidiary and (b) distributions or payments of Securitization Fees and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Purchase Obligation in connection with a Qualified Securitization Financing or a Receivables Facility;

(v) Investments consisting of or resulting from (i) Indebtedness permitted under Section 7.03, (ii) Liens permitted under Section 7.01, (iii) Restricted Payments permitted under Section 7.06, (iv) Dispositions permitted by Section 7.05 and (v) fundamental changes permitted by Section 7.04;

(w) Investments solely to the extent such Investments reflect an increase in the value of Investments otherwise permitted under this Section 7.02;

(x) loans and advances to Borrower in lieu of, and not in excess of the amount of (after giving effect to any other such loans or advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made in accordance with Section 7.06 (other than Section 7.06(i)); and

(y) Guarantee obligations of the Borrower or any Restricted Subsidiary in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of any Restricted Subsidiary of the Borrower to the extent required by law or in connection with any statutory filing or the delivery of audit opinions performed in jurisdictions other than within the United States.

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party under the Loan Documents;

(b) (i) Indebtedness outstanding on the Effective Date and listed on Schedule 7.03(b) and any Permitted Refinancing thereof and (ii) intercompany Indebtedness outstanding on the Effective Date and any Permitted Refinancing thereof; *provided*, that (x) any intercompany Indebtedness shall be evidenced by an Intercompany Note and (y) any intercompany Indebtedness of any Loan Party owed to any Person that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to the subordination provisions reasonably acceptable to the Required Lenders;

(c) Guarantees by the Borrower and any Restricted Subsidiary in respect of Indebtedness of the Borrower or any Restricted Subsidiary of the Borrower otherwise permitted hereunder; *provided* that (i) no Guarantee by any Restricted Subsidiary of any ABL Facility Indebtedness, any Tranche B-2 Term Loan Facility Indebtedness, any UST Tranche A Term Loan Facility Indebtedness, any Junior Financing, any Permitted Additional Debt or any Permitted Refinancing of any of the foregoing shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein (*provided further* that, clause (i) shall not apply in the case of a Guarantee by any Foreign Subsidiary that is not a Loan Party of any Indebtedness of another Foreign Subsidiary that is not a Loan Party), and (ii) if the Indebtedness being Guaranteed is Junior Financing that is, or is required by this Agreement to be, Subordinated Indebtedness, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms (taken as a whole) at least as favorable to the Lenders as those contained in the subordination of such Junior Financing;

(d) Indebtedness (other than Indebtedness permitted under Section 7.03(b)) of the Borrower or any Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or consisting of a Guaranty on behalf of any Loan Party or any other Restricted Subsidiary) to the extent constituting an Investment permitted by Section 7.02 (other than clause (v) thereof); *provided* that (x) all such Indebtedness shall be evidenced by an Intercompany Note and (y) all such Indebtedness of any Loan Party owed to any Person that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to the subordination provisions reasonably acceptable to the Required Lenders;

(e) Attributable Indebtedness and other Indebtedness of the Borrower or any Restricted Subsidiary (including Capitalized Leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred prior to or within 270 days after the acquisition, lease or improvement of the applicable asset in an aggregate amount (together with any Permitted Refinancings thereof) not to exceed \$25,000,000 at any time outstanding;

(f) Indebtedness in respect of Swap Contracts designed to hedge against the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities (including fuel) pricing risks incurred not for speculative purposes;

(g) Indebtedness of the Borrower or any Restricted Subsidiary assumed in connection with any Permitted Acquisition or other Investment permitted hereunder, *provided*, that (w) such Indebtedness is not incurred in contemplation of such Permitted Acquisition or Investment, and any Permitted Refinancing thereof, (x) such Indebtedness and all Indebtedness resulting from a Permitted Refinancing thereof is unsecured (except for Liens permitted by Section 7.01(s)), and (y) both immediately prior and after giving effect thereto, (1) no Event of Default shall exist or result therefrom, and (2) immediately after giving effect to the related Permitted Acquisition or Investment and the assumption of Indebtedness, the Total Leverage Ratio, on a Pro Forma Basis, for the Test Period most recently ended shall not be greater than 3.00:1.00;

(h) Indebtedness representing deferred compensation to employees of the Borrower or any of its Restricted Subsidiaries incurred in the ordinary course of business and other obligations and liabilities arising under employee benefit plans in the ordinary course of business;

(i) [reserved];

(j) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition expressly permitted hereunder, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earnouts and holdbacks) or other similar adjustments;

(k) Indebtedness in respect of treasury, depository, credit card, debit card and cash management services or automated clearinghouse transfer of funds, overdraft or any similar services incurred in the ordinary course of business or any similar cash management services relating or secured pursuant to the ABL Facility and any hedges related to the ABL Facility;

(l) Indebtedness consisting of the financing of insurance premiums or take-or-pay obligations contained in supply arrangements that do not constitute Guarantees, in each case, in the ordinary course of business;

(m) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business and not in connection with the borrowing of money, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness incurred in the ordinary course of business with respect to reimbursement-type obligations regarding workers compensation claims;

(n) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice and not in connection with the borrowing of money or Swap Contracts;

(o) (x) (i) ABL Facility Indebtedness and (ii) any Permitted Refinancing thereof, in each case, of the Loan Parties; *provided* that the aggregate principal amount outstanding at any time of all such Indebtedness under clauses (i) and (ii) of this Section 7.03(o)(x) and Section

7.03(z) shall not exceed \$500,000,000, (y) (i) Tranche B-2 Term Loan Facility Indebtedness and (ii) any Permitted Refinancing thereof, in each case, of the Loan Parties; *provided* that the aggregate principal amount (excluding interest paid-in-kind or otherwise capitalized to principal) outstanding at any time of all such Indebtedness under clauses (i) and (ii) of this Section 7.03(o) (y) shall not exceed \$615,000,000 and (z) (i) UST Tranche A Term Loan Facility Indebtedness and (ii) any Permitted Refinancing thereof, in each case, of the Loan Parties;

(p) [reserved];

(q) (i) Credit Agreement Refinancing Indebtedness (other than any Credit Agreement Refinancing Indebtedness incurred pursuant to a Refinancing Amendment) and (ii) any Permitted Refinancing thereof;

(r) [reserved];

(s) [reserved];

(t) all premiums (if any), interest (including post-petition interest and interest paid in kind), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (q) above and (u) through (ff) below;

(u) (i) Indebtedness in respect of the Specified Pension Fund Obligations and Guarantees thereof, to the extent existing on the Effective Date, in an aggregate principal amount at any time outstanding not to exceed the amount outstanding as of the Effective Date (and as adjusted from time to time pursuant to any audits), plus any interest paid in kind thereon and any accrued but unpaid interest thereon, and (ii) any Permitted Refinancing (disregarding clauses (b) and (c) of the definition of such term) thereof;

(v) [reserved];

(w) [reserved];

(x) Indebtedness in respect of taxes, assessments or governmental charges to the extent that payment thereof shall not at the time be required to be made hereunder;

(y) [reserved];

(z) Indebtedness of (i) any Securitization Subsidiary arising under any Securitization Facility or (ii) the Borrower or any Restricted Subsidiary arising under any Receivables Facility or Qualified Securitization Financing; *provided* that the aggregate principal amount of Indebtedness permitted under this Section 7.03(z), together with the aggregate principal amount of Indebtedness permitted under Section 7.03(q)(x), shall not exceed \$500,000,000 at any one time outstanding;

(aa) Indebtedness in respect of Sale and Leaseback Transactions in an amount not to exceed \$25,000,000 at any time outstanding; *provided* that, during the Specified Period, this clause (aa) shall be unavailable for use under this Agreement and the dollar amount specified in this clause (aa) shall be \$0;

- (bb) Indebtedness in respect of Investments not prohibited by Section 7.02 (other than clause (v) thereof);
- (cc) [reserved];
- (dd) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services, in each case, incurred in the ordinary course of business consistent with past practice;
- (ee) [reserved];
- (ff) other Indebtedness of the Borrower or any of its Restricted Subsidiaries, in an aggregate principal amount at any time outstanding not to exceed \$30,000,000; *provided* that the aggregate principal amount of Indebtedness of Restricted Subsidiaries that are not Guarantors permitted under this Section 7.03(ff) at any time outstanding shall not exceed \$5,000,000; and
- (gg) obligations, charges or liabilities incurred in the ordinary course of business (and not representing Indebtedness for borrowed money) outstanding as of the Effective Date and in an aggregate amount not to exceed \$185,000,000.

Section 7.04. *Fundamental Changes*

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of related 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, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that (w) no Event of Default exists or would result therefrom, (x) the Borrower shall be the continuing or surviving Person, (y) such transaction does not result in the Borrower ceasing to be organized under the laws of the United States, any State thereof or the District of Columbia and (z) such transaction does not have an adverse effect in any material respect on the perfection or priority of the Liens granted under the Collateral Documents or (ii) one or more other Restricted Subsidiaries; *provided*, in the case of this clause (ii), that when such transaction involves a Loan Party, a Loan Party shall be the continuing or surviving Person except to the extent otherwise constituting an Investment permitted by Section 7.02;

(b) (i) any Restricted Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Restricted Subsidiary that is not a Loan Party and (ii) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interest of the Borrower and the Restricted Subsidiaries and is not disadvantageous to the Lenders in any material respect (it being understood that (other than a transaction constituting a permitted Investment under Section 7.02 or involving an Excluded Subsidiary) in the case of any liquidation or dissolution of a Guarantor, such Guarantor shall transfer its assets to a Loan Party, and in the case of any change in legal form, a Restricted Subsidiary that is a Guarantor will remain a Guarantor and such transaction shall not have an adverse effect on the perfection or priority of the Liens granted under the Collateral Documents);

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Guarantor, then (i) the transferee must be a Guarantor or the Borrower or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in or Indebtedness of a Restricted Subsidiary which is not a Loan Party in accordance with Sections 7.02 and 7.03, respectively;

(d) so long as no Event of Default exists or would result therefrom, the Borrower may merge with any other Person; *provided* that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the “**Successor Borrower**”), (A) the Successor Borrower shall be an entity organized or existing under the Laws of the United States, any state thereof or the District of Columbia and such transaction shall not have an adverse effect in any material respect on the perfection or priority of the Liens granted under the Collateral Documents, (B) the Successor Borrower shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor Borrower’s obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that the collateral granted by it to secure its obligations thereunder shall apply to secure its and the Successor Borrower’s obligations under the Loan Documents, (E) if reasonably requested by the Collateral Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Collateral Agent) confirmed that the collateral granted by it to secure its obligations thereunder shall apply to secure its and the Successor Borrower’s obligations under the Loan Documents, and (F) the Borrower shall have delivered to the Administrative Agent an officer’s certificate and an opinion, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; *provided further*, that if the foregoing are satisfied (or waived), the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement; *provided further* that the Borrower agrees to provide any documentation and other information about the Successor Borrower as shall have been reasonably requested in writing by the Administrative Agent, the Collateral Agent or any Lender through the Administrative Agent that is required by regulatory authorities or under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA Patriot Act;

(e) any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person (other than the Borrower) in order to effect an Investment permitted pursuant to Section 7.02; *provided* that either (x) the continuing or surviving Person shall be a Restricted Subsidiary, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of Section 6.11 to the extent required pursuant to the Collateral and Guarantee Requirement or (y) the transaction shall otherwise constitute a permitted Investment;

(f) any Restricted Subsidiary may effect a merger, dissolution, liquidation or consolidation, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05; and

(g) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the extent that such Disposition (or series of related Dispositions) is not prohibited under Section 7.05.

Section 7.05. *Dispositions*

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make any Disposition, except:

(a) (i) Dispositions (including abandonment) of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business, (ii) Dispositions (including abandonment) in the ordinary course of business of surplus property or property no longer used or useful in the conduct of the business of the Borrower or any of the Restricted Subsidiaries, (iii) Dispositions of immaterial assets (considered in the aggregate) in the ordinary course of business and (iv) Dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business;

(b) Dispositions of property to the extent that (i) such property or an interest therein is exchanged for credit against the purchase price of similar replacement property, (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property, or (iii) such property is swapped in exchange for services or other assets of comparable or greater value or usefulness to the business of the Borrower and the Subsidiaries as a whole, as determined in good faith by the management of the Borrower;

(c) Dispositions of property to the Borrower or any Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party and if such property constitutes Collateral, it shall continue to constitute Collateral after such Disposition or (ii) if such transaction constitutes an Investment, such transaction is permitted under Section 7.02;

(d) Dispositions of cash and Cash Equivalents;

(e) leases, subleases, licenses, sublicenses (including the provision of software under an open source license) or any abandonment thereof, in each case (i) in the ordinary course of business and (ii) without interfering in any material respect with the business of the Borrower or any of its Restricted Subsidiaries;

(f) transfers of property subject to Casualty Events upon the receipt (where practical) of the Net Proceeds of such Casualty Event;

(g) Dispositions (including write-offs, discounts, and compromises in clause (b) above) or discounts without recourse of accounts receivable and related assets in connection with the compromise or collection thereof in the ordinary course of business;

(h) [reserved];

(i) [reserved];

(j) Dispositions of Investments in joint ventures or other non-wholly owned Subsidiaries to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(k) the unwinding of any Swap Contract or cash management agreement;

(l) Dispositions of property not otherwise permitted under this Section 7.05; *provided* that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default exists), no Event of Default shall exist or would result from such Disposition, (ii) any prepayment required to be made in connection with the receipt of Net Proceeds in respect of such Disposition pursuant to Section 2.13 shall be made in accordance therewith, (iii) the Borrower or any of the Restricted Subsidiaries shall receive not less than 75% of the consideration for such Disposition in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(a), (c), (d), (f), (i), (j), (k), (l), (o), (p), (v), (w), (z), (aa), (bb), (cc) and (ee), (iv) any portion of the consideration for such Disposition that is not in the form of cash or Cash Equivalents shall become Collateral, (v) this Section 7.05(l) shall not permit the Disposition of all or substantially all of the assets of the Borrower and its Subsidiaries (taken as a whole), and (vi) during the Specified Period, (A) no Dispositions shall be permitted under this Section 7.05(l) except for (1) Dispositions of Real Property specified in Schedule 7.05(l)(i) (such Real Property, “**Scheduled Property**”) to the extent (x) such Real Property is subject to a bona fide sale agreement with a third party purchaser entered into prior to March 23, 2020 and (y) the Disposition of such Real Property shall be made for gross consideration not less than the amount specified for such Scheduled Property identified to the Lenders as of the Effective Date (subject to customary purchase price adjustments and working capital adjustments), (2) Dispositions of property (other than Real Property), *provided* that the aggregate fair market value of property Disposed of pursuant to this clause (vi)(A)(2) shall not exceed \$10,000,000 in the aggregate during the Specified Period, and (3) Dispositions of Pension Real Property set forth on Schedule 7.05(l)(ii) and (B) the Net Proceeds of each Disposition permitted under the foregoing clause (vi)(A) shall be applied to the prepayment of the Term Loans in accordance with Section 2.13(a)(ii) without giving effect to any thresholds or reinvestment rights;

(m) (i) any Disposition of Securitization Assets or Receivables Assets, or participations therein, in connection with any Qualified Securitization Financing or Receivables Facility, in the case of this clause (i) to the extent permitted under Section 7.03(z), or (ii) the Disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with past practice;

(n) [reserved];

(o) dispositions from and after the Effective Date of non-core or obsolete assets acquired in connection with any Permitted Acquisition or other permitted Investments; *provided* that, during the Specified Period, no Dispositions shall be permitted under this clause (o);

- (p) the incurrence of Liens permitted hereunder;
- (q) sales or dispositions of Equity Interests of any Subsidiary (other than the Borrower) in order to qualify members of the governing body of such Subsidiary if required by applicable law;
- (r) [reserved];
- (s) Restricted Payments made pursuant to Section 7.06; and
- (t) Sale and Leaseback Transactions in an aggregate principal amount not to exceed \$25,000,000 during the term of this Agreement; *provided* that, during the Specified Period, this clause (t) shall be unavailable for use under this Agreement and the dollar-amount specified in the clause (t) shall be \$0.

*provided* that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(a)-(c)-(e)-(f)-(g)-(i)-(j)-(k)-(m)-(n)-(o)-(p)-(q)-(r) and (s) and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than a Loan Party, such Collateral shall be automatically sold free and clear of the Liens created by the Loan Documents, and, if requested by the Borrower, upon the certification delivered to the Administrative Agent by the Borrower that such Disposition is permitted by this Agreement, the Administrative Agent or the Collateral Agent, as applicable, shall be authorized to take, and shall take, any actions reasonably requested by the Borrower in order to effect the foregoing (at the Borrower's expense) and/or to expressly subordinate any Lien in favor of the Collateral Agent on such Collateral that is disposed of.

Notwithstanding anything herein to the contrary in this Agreement, (i) during the Specified Period, the Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make any Disposition of Real Property (other than (a) Dispositions of Scheduled Property pursuant to Section 7.05(l), (b) leases of Real Property entered into in the ordinary course of business (excluding Sale and Leaseback Transactions), (c) transfers of property subject to condemnation and Casualty Events) and (d) Dispositions of Pension Real Property set forth on Schedule 7.05(l)(ii) so long as the proceeds thereof are applied to repay CDA First Lien Obligations (or, if the CDA First Lien Obligations shall have been paid in full, to prepay the Term Loans in accordance with Section 2.13(a)(ii) without giving effect to any thresholds or reinvestment rights), (ii) notwithstanding anything to the contrary in this Agreement, during the Specified Rolling Stock Prepayment Period, all Net Proceeds from any Disposition of Rolling Stock in excess of the Specified Rolling Stock Reinvestment Threshold in any fiscal year shall be applied (x) with respect to any Rolling Stock constituting UST Tranche B Priority Collateral to prepay the Term Loans in accordance with this Agreement, (y) with respect to any Rolling Stock constituting UST Tranche B Joint Collateral 67% to prepay the Term Loans in accordance with this Agreement and 33% to prepay the Tranche B-2 Term Loan Facility in accordance with the Tranche B-2 Term Loan Credit Agreement and (z) with respect to any Rolling Stock constituting Non-UST Tranche B Term Priority Collateral to prepay the Tranche B-2 Term Loan Facility in accordance with the Tranche B-2 Term Loan Credit Agreement, in each case of clauses (x), (y) and (z) above, without giving

effect to any thresholds (other than such Specified Rolling Stock Reinvestment Threshold) or reinvestment rights, (iii) pending reinvestment in accordance with this proviso, (A) proceeds from the Disposition of Rolling Stock constituting (x) Non-UST Tranche B Term Priority Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited and maintained in a Non-UST Tranche B Priority Account (as defined in the ABL Intercreditor Agreement), (y) UST Tranche B Priority Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited and maintained in a UST Tranche B Priority Account (as defined in the ABL Intercreditor Agreement) and (z) UST Tranche B Joint Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited and maintained in a UST Tranche B Joint Account (as defined in the ABL Intercreditor Agreement), (iv) the Borrower shall not, nor shall it permit any Restricted Subsidiary to, Dispose of Rolling Stock that does not constitute UST Tranche B Priority Collateral or UST Tranche B Joint Collateral with an aggregate fair market value in any fiscal year in excess of \$5,000,000 without the prior consent of the Required Lenders and (v) any Dispositions of Rolling Stock shall be for no less than the fair market value of such property at the time of such Disposition.

Section 7.06. *Restricted Payments*

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower or any other Restricted Subsidiary (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in the Equity Interests (other than Disqualified Equity Interests unless such Disqualified Equity Interests would be permitted by Section 7.03) of such Person;

(c) (i) repurchases of Equity Interests in the Borrower deemed to occur upon the exercise of stock options or warrants or the settlement or vesting of other equity awards if such Equity Interests represent a portion of the exercise price of such options or warrants, (ii) cash payments in lieu of the issuance of fractional shares in connection with the exercise of stock options, warrants or other securities convertible into or exchangeable for Equity Interests of the Borrower or (iii) Restricted Payments made in respect of any other transaction involving fractional shares; *provided, however*, that any such cash payment shall not be for the purpose of evading the limitations of this Agreement;

(d) the Borrower may pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of the Borrower held by any present or former employee, officer, director or consultant of the Borrower or any Restricted Subsidiary or equity based awards held by such Persons, in each case, upon the death, disability, retirement or termination of employment of any such Person or pursuant to any employee or director equity plan, employee or

director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, officer or consultant of the Borrower or any Restricted Subsidiary; *provided*, that the aggregate amount of Restricted Payments made pursuant to this clause (d) shall not exceed (i) \$7,500,000 in any fiscal year plus (ii) the then applicable Cumulative Credit plus (iii) the proceeds of any key man insurance policies; *provided, further*, that to the extent that the aggregate amount of Restricted Payments made by the Borrower and the Restricted Subsidiaries pursuant to this clause (d) in any fiscal year is less than the amount set forth above, 100% of the amount of such difference may be carried forward and used to make such Restricted Payments pursuant to this clause (d) in the next two succeeding fiscal years (*provided*, that any such amount carried forward shall be deemed to be used to make such Restricted Payments in any fiscal year after the amount set forth above for such fiscal year shall be deemed to be used to make such Restricted Payments for such fiscal year);

(e) the Borrower may make Restricted Payments in an aggregate amount not to exceed (x) together with (I) the aggregate amount of Investments made under sub-clause (x) of Section 7.02(p) and (II) the aggregate amount of prepayments, redemptions, purchases, defeasances and other payments made pursuant to sub-clause (x) of Section 7.13(a)(vi), \$30,000,000, plus (y) the portion, if any, of the Cumulative Credit on such date that the Borrower elects to apply to this subclause (y); *provided* that (A) with respect to any Restricted Payment made pursuant to this Section 7.06(e), (1) no Event of Default has occurred and is continuing or would result therefrom and (2) on a Pro Forma Basis after giving effect thereto the Total Leverage Ratio is equal to or less than 2.00:1.00, and (B) no Restricted Payments shall be permitted under this clause (e) until the Specified Period shall have ended;

(f) distributions or payments of Securitization Fees, sales, contributions and other transfers of Securitization Assets or Receivables Assets and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Purchase Obligations, in each case in connection with a Qualified Securitization Financing or a Receivables Facility;

(g) [reserved];

(h) the Restricted Subsidiaries may make a Restricted Payment in connection with the acquisition of additional Equity Interests in any Restricted Subsidiary from minority shareholders (in accordance with Section 7.08, if applicable);

(i) Restricted Payments made (i) in respect of working capital adjustments or purchase price adjustments pursuant to any Permitted Acquisition or other permitted Investments (other than pursuant to Section 7.02(x)) and (ii) to satisfy indemnity and other similar obligations under the Permitted Acquisitions or other permitted Investments; *provided* that no Restricted Payments shall be permitted under this clause (i) during (x) the Specified Period and (y) during the continuance of an Event of Default at any time after the end of the Specified Period;

(j) [reserved]; and

(k) Restricted Payments in respect of transactions related to (i) fundamental changes permitted under Section 7.04 and (ii) Investments permitted under Section 7.02 (other than clause (v) thereof).

(a) The Borrower shall not, nor shall the Borrower permit any of the Restricted Subsidiaries to, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Effective Date or any business reasonably related, complementary, synergistic or ancillary thereto or reasonable extensions thereof.

(b) The Borrower shall not, nor shall the Borrower permit any of the Restricted Subsidiaries to, amend, restate, supplement or otherwise modify to, or waive of any of its rights under, its Organization Documents to the extent any of the foregoing could reasonably be expected to be material and adverse to the Lenders (in their capacities as such).

Section 7.08. *Transactions with Affiliates*

The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into any transaction of any kind with any of its Affiliates, whether or not in the ordinary course of business, other than (a) transactions between or among Loan Parties or any entity that becomes a Loan Party as a result of such transaction and transactions between or among Restricted Subsidiaries that are not Loan Parties, (b) on terms (taken as a whole) substantially not less favorable to the Borrower in any material respect or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (c) the Transactions and the payment of fees and expenses (including Transaction Expenses) as part of or in connection with the Transactions, (d) the issuance of Equity Interests or equity based awards to any officer, director, employee or consultant of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business, (e) Investments made pursuant to Section 7.02, Indebtedness incurred pursuant to Section 7.03 and Restricted Payments permitted under Section 7.06, (f) customary employment, consulting and severance arrangements between the Borrower and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and similar arrangements in the ordinary course of business, (h) the payment of customary fees and reasonable out of pocket costs to, and customary indemnities provided on behalf of, directors, officers, employees and consultants of the Borrower and the Restricted Subsidiaries in the ordinary course of business, (i) any customary transaction with a Receivables Facility or a Securitization Subsidiary effected as part of a Qualified Securitization Financing, (j) transactions pursuant to registration rights agreements and similar arrangements, (k) transactions in which the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent and the Required Lenders a letter from an independent financial advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) of this Section 7.08 and (l) transactions pursuant to agreements in existence on the Effective Date and set forth on Schedule 7.08 or any amendment thereto to the extent such an amendment (taken as a whole) is not adverse to the Lenders in any material respect.

Section 7.09. *Burdensome Agreements*

The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into or permit to exist any Contractual Obligation (other than (i) this Agreement or any other Loan Document, (ii) any ABL Facility Documentation, (iii) any Tranche B-2 Term Loan Facility Documentation, (iv) any UST Tranche A Term Loan Facility Documentation, (v) any documents governing Credit Agreement

Refinancing Indebtedness, or a Permitted Refinancing of (ii)-(v) or (vi) any Treasury Equity Documents or documents governing Treasury Equity) that limits the ability of (a) any Restricted Subsidiary that is not a Guarantor to make Restricted Payments to the Borrower or any Guarantor or to make or repay loans or advances to or otherwise transfer assets to or make Investments in the Borrower or any Restricted Subsidiary that is a Guarantor or (b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person to secure the Obligations; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which (i) (x) exist on the Effective Date and (to the extent not otherwise permitted by this [Section 7.09](#)) are listed on [Schedule 7.09](#) hereto and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation in any material respect (as determined in good faith by the Borrower), (ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such Contractual Obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary, (iii) represent Indebtedness of a Restricted Subsidiary which is not a Loan Party which is permitted by [Section 7.03](#), (iv) arise in connection with any Disposition permitted by [Section 7.04](#) or [7.05](#) and relate solely to the assets or Person subject to such Disposition, (v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures or other non-wholly owned Subsidiaries permitted under [Section 7.02](#) and applicable solely to such joint venture or other non-wholly owned Subsidiaries and are entered into in the ordinary course of business, (vi) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness (other than any Junior Financing) permitted under [Section 7.03\(e\)](#) or (g) but solely to the extent any negative pledge relates to the property financed by such Indebtedness, (vii) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto, (viii) comprise restrictions imposed by any agreement governing secured Indebtedness permitted pursuant to [Section 7.03](#) to the extent that such restrictions apply only to the property or assets securing such Indebtedness, (ix) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary entered into in the ordinary course of business, (x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (xi) are customary restrictions contained in the ABL Facility Documentation, any Qualified Securitization Financing, the Tranche B-2 Term Loan Facility Documentation and the UST Tranche A Term Loan Facility Documentation, (xii) arise in connection with cash or other deposits permitted under [Sections 7.01](#) and [7.02](#) and limited to such cash or deposit or (xiii) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Effective Date and permitted under [Section 7.03](#) if the restrictions contained in any such agreement taken as a whole (a) are not materially less favorable to the Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by the Borrower) or (b) either (I) the Borrower determines at the time of entry into such agreement or instrument that such encumbrances or restrictions will not adversely affect, in any material respect, the Borrower's ability to make principal or interest payments required hereunder or (II) such encumbrance or restriction applies only during the continuance of a default relating to such agreement or instrument.

Section 7.10. *Financial Covenant*

. The Borrower shall not permit Consolidated EBITDA for any Test Period, commencing with the Test Period ending as of the end of the fiscal quarter ending December 31, 2021, to be less than the amount set forth for such Test Period, below:

<u>Test Period Ending</u>	<u>Minimum EBITDA</u>
December 31, 2021	\$100,000,000
March 31, 2022	\$150,000,000
June 30, 2022 and the last day of each Fiscal Quarter thereafter	\$200,000,000

Section 7.11. *Minimum Liquidity*

. During the Liquidity Test Period, the Borrower shall not permit Liquidity to be less than \$125,000,000 on Tuesday and Friday of each week (or if any such day is not a Business Day, then the next succeeding Business Day) during the Liquidity Test Period.

Section 7.12. *Fiscal Year*

. The Borrower shall not make any change in its fiscal year or fiscal quarters (it being understood that the Borrower's fiscal year ends on December 31 of each year, and that each of the first three fiscal quarters of each fiscal year of the Borrower ends on the March 31, June 30 and September 30, respectively); *provided, however*, that the Borrower may, upon written notice to the Administrative Agent and the Required Lenders, change its fiscal year and fiscal quarters to any other fiscal year (and any other fiscal quarters) reasonably acceptable to the Administrative Agent and the Required Lenders, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such changes.

Section 7.13. *Prepayments, Etc. of Indebtedness*

(a) The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled interest shall be permitted unless such payments violate any subordination terms of any Junior Financing Documentation) (x) any Permitted Additional Debt (or any Permitted Refinancing thereof) or (y) any Junior Financing that constitutes Subordinated Indebtedness (or any Permitted Refinancing thereof), or make any payment in violation of any subordination terms of any Junior Financing Documentation, if any, except (i) any Permitted Refinancing permitted in respect thereof (including any Permitted Refinancing set forth in Section 7.03(u) hereof), (ii) the conversion of any Permitted Additional Debt (or any Permitted Refinancing thereof) or Junior Financing that constitutes Subordinated Indebtedness (or any Permitted Refinancing thereof) to Equity Interests (other than Disqualified Equity Interests) of the Borrower, (iii) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary to the Borrower or any Restricted Subsidiary to the extent not prohibited by applicable subordination provisions, (iv) prepayments, redemptions, purchases, defeasances and other payments or satisfaction from the proceeds of equity issuances by the Borrower, (v) AHYDO "catch up" payments, and (vi) prepayments, redemptions,

purchases, defeasances and other payments in respect of Permitted Additional Debt (or any Permitted Refinancing thereof) and Junior Financings that constitutes Subordinated Indebtedness (or any Permitted Refinancing thereof) prior to their scheduled maturity in an aggregate amount not to exceed (x) together with (I) the aggregate amount of Investments made under sub-clause (x) of Section 7.02(p) and (II) the aggregate amount of Restricted Payments made pursuant to sub-clause (x) of Section 7.06(e), \$15,000,000, plus (y) the portion, if any, of the Cumulative Credit on such date that the Borrower elects to apply to this subclause (y); provided that (A) no prepayment, redemption, purchase, defeasance or other payment shall be made pursuant to this clause (vi) if an Event of Default has occurred and is continuing or would result therefrom and (B) no prepayments, redemptions, purchases, defeasances and other payments in respect of Permitted Additional Debt shall be permitted under this clause (vi) until the Specified Period shall have ended. For greater certainty, nothing in this Section 7.13(a) or elsewhere in this Agreement shall limit or restrict the ability of the Borrower or any Restricted Subsidiary to prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof (x) any ABL Facility Indebtedness or other obligations also secured pursuant to the ABL Credit Agreement, (y) any Tranche B-2 Term Loan Facility Indebtedness or other obligations also secured pursuant to the Tranche B-2 Term Loan Credit Agreement or (z) any UST Tranche A Term Loan Facility Indebtedness or other obligations also secured pursuant to the UST Tranche A Term Loan Credit Agreement.

(b) The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, amend, modify, change, terminate or release in any manner materially adverse to the interests of the Lenders any term or condition of any Junior Financing Documentation or the documentation governing any Permitted Additional Debt (or any Permitted Refinancing thereof) if the effect thereof would be to cause such Junior Financing or Permitted Additional Debt to no longer constitute Junior Financing or Permitted Additional Debt, as the case may be, without the consent of the Required Lenders (which consent shall not be unreasonably withheld, conditioned or delayed); provided, that none of the ABL Facility Indebtedness, the Tranche B-2 Term Loan Facility Indebtedness or the UST Tranche A Term Loan Facility Indebtedness shall be subject to this clause (b) unless expressly designated as Permitted Junior Priority Additional Debt.

Section 7.14. *Prepayments, Etc. of Single-Employer Plans.* The Borrower shall not, except to the extent required by ERISA or other applicable Law, make any early lump sum payment to satisfy any liability under any Single-Employer Plan, in each case, directly from the cash or Cash Equivalents of the Borrower or the Restricted Subsidiaries (including, for the avoidance of doubt, the proceeds of any borrowing under the ABL Facility).

## ARTICLE 8 EVENTS OF DEFAULT AND REMEDIES

### Section 8.01. *Events of Default*

. Any of the following from and after the Effective Date shall constitute an event of default (an “**Event of Default**”):

(a) *Non-Payment.* Any Loan Party fails to pay (i) when and as required to be paid herein or in any other Loan Document, any amount of principal of any Loan, (ii) within five (5) Business Days after the same becomes due, any interest on any Loan, or (iii) within ten (10) days

after the same becomes due, any other amount payable hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants.* The Borrower fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a) (provided that the delivery of a notice of Default or Event of Default at any time will cure an Event of Default under Section 6.03(a) arising from the failure of the Borrower to timely deliver such notice of Default or Event of Default), 6.05(a) (solely with respect to the Borrower), 6.18 (and, in the case of Section 6.18(b), such failure continues for five (5) Business Days after receipt by the Borrower of written notice thereof from the Administrative Agent or the Required Lenders), 6.20, Article 7 or Article 12; or

(c) *Other Defaults.* Any Loan Party fails to perform or observe any other term, 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 thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent or the Required Lenders; or

(d) *Representations and Warranties.* Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any Compliance Certificate or other document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) *Cross-Default.* Any Loan Party or any Restricted Subsidiary (i) fails to make any payment after the applicable grace period with respect thereto, if any, (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of (x) any other Indebtedness (other than Indebtedness hereunder ) having an outstanding aggregate principal amount of not less than the Threshold Amount, (y) the Tranche B-2 Term Loan Facility Indebtedness or (z) the UST Tranche A Term Loan Facility Indebtedness or (ii) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts and not as a result of any other default thereunder by any Loan Party), after all grace periods having expired and all required notices having been given, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, after all grace periods having expired and all required notices having been given, such Indebtedness 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; provided that any such failure or the occurrence of any such other event referred to in subclause (ii) relating to Indebtedness under the ABL Credit Agreement or the Tranche B-2 Term Loan Credit Agreement, or, in each case, any Permitted Refinancing thereof shall not constitute an Event of Default under this Section 8.01(e) until the earlier of (x) thirty days after the expiration of all grace periods relating to such failure or occurrence thereunder and (y) any acceleration of the ABL Obligations (as defined in the ABL Intercreditor Agreement) outstanding under the ABL Credit Agreement or the Tranche B-2 Obligations (as defined in the ABL Intercreditor Agreement) outstanding under the Tranche B-2 Term Loan Credit Agreement, as applicable, whether automatic or otherwise; provided further that

this clause (e)(ii) shall not apply to (I) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (II) Indebtedness which is convertible into Equity Interest and converts to Equity Interests in accordance with its terms or (III) any breach or default that (X) is remedied by the Borrower or the applicable Restricted Subsidiary or (Y) waived (including in the form of amendment) by the requisite holders of the applicable item of Indebtedness, in either case, prior to the acceleration of all the Loans pursuant to this Section 8.01; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any Restricted Subsidiary institutes or consents to the institution of any voluntary or involuntary proceeding under any Debtor Relief Law, or makes a general assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or substantially all of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) consecutive calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or substantially all of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) consecutive calendar days, or an order for relief is entered in any such proceeding; or

(g) *Inability to Pay Debts; Attachment.* Any Loan Party or any Restricted Subsidiary becomes generally unable or admits in writing its general inability or fails generally to pay its debts as they become due, or any writ or warrant of attachment or execution or similar process is issued or levied against all or substantially all of the property of the Borrower and the Restricted Subsidiaries, taken as a whole, and is not released, vacated or fully bonded within sixty (60) consecutive days after its issue or levy; or

(h) *Judgments.* There is entered against any Loan Party or any Restricted Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance or indemnity as to which the insurer or third party indemnitor has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) *Invalidity of Loan Documents.* Any material provision of the Loan Documents, at any time after their execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the Administrative Agent or Collateral Agent or any Lender or the satisfaction in full of all the Obligations (other than other than contingent obligations), ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations), or purports in writing to revoke or rescind any Loan Document; or

(j) *Change of Control.* There occurs any Change of Control; or

(k) *Collateral Documents.* The Collateral Documents after delivery thereof pursuant to Sections 4.02, 6.11 or 6.13 shall for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction permitted under Section 7.04 or 7.05) cease to create, or shall be asserted by any Loan Party not to create, a valid and perfected Lien, with the priority required by the Collateral Documents on and security interest in Collateral purported to be covered thereby with an aggregate value equal to or greater than \$25,000,000, subject to Liens permitted under Section 7.01, (i) except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Administrative Agent or the Collateral Agent to maintain possession or control of certificates representing securities, other collateral requiring possession or control, or motor vehicle certificates of title (or notation thereon) pledged under the Collateral Documents, in each case actually delivered to it and (ii) except as to Collateral consisting of Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

(l) *ERISA.* (i) An ERISA Event that occurs after the Effective Date that, alone or together with any other ERISA Events that have occurred after the Effective Date, has resulted or could reasonably be expected to result in liability of a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates in an aggregate amount at any particular time that would reasonably be expected to have a Material Adverse Effect, or (ii) a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount, that, alone or together with any other such failures to pay, has resulted or would reasonably be expected to result in a Material Adverse Effect; or (iii) as of any date, a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates (x) shall have made contributions to any Multiemployer Plan during the immediately preceding twelve month period ending on such date that exceed in value in the aggregate among all such Persons the Pension Contribution Cap for such period or (y) is projected or reasonably expected (in each case by the Borrower in good faith) to make contributions to any Multiemployer Plan in the next twelve month period that exceed in the aggregate among all such Persons the Pension Contribution Cap for such period (*provided* that such Pension Contribution Cap may be exceeded solely to facilitate a compromise, settlement, rearrangement or other restructuring of liabilities under such Multiemployer Plan with the consent of the Required Lenders (such consent not to be unreasonably withheld, delayed or conditioned or denied)); *provided* that this clause (iii) shall not apply if on the applicable date of determination Consolidated EBITDA for the most recent Test Period ending prior to such date of determination as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a) on or prior to such date of determination exceeds \$400,000,000; or

(m) *Junior Financing Documentation.* (i) Any of the Obligations of the Loan Parties under the Loan Documents for any reason shall cease to be, or shall be asserted by any Loan Party not to be, "Senior Indebtedness" (or any comparable term) or "Senior Secured Financing" (or any comparable term) under, and as defined in, any Junior Financing Documentation in respect of any Junior Financing that is, or is required by this Agreement to be, Subordinated Indebtedness or (ii) the subordination provisions set forth in any Junior Financing Documentation in respect of any Junior Financing that is, or is required by this Agreement to be, Subordinated Indebtedness shall, in whole or in part, cease to be, or shall be asserted by any Loan Party not to be, effective or legally

valid, binding and enforceable against the holders of any such Junior Financing, if applicable (other than as a result of acts or omissions by the Administrative Agent or Collateral Agent or the satisfaction in full of all the Obligations (other than contingent obligations)); or

(n) *IBT Agreement.* The IBT Agreement shall be declared invalid or illegal, shall be terminated, or shall no longer be in full force and effect.

*Section 8.02. Remedies Upon Event of Default*

. If any Event of Default occurs and is continuing the Administrative Agent, at the request of the Required Lenders shall, take any or all of the following actions:

(i) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, premium and all other amounts owing or payable or accrued 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 (to the extent permitted by applicable law) by the Borrower and each other Loan Party; and

(iii) subject to the terms, conditions and provisions of any Intercreditor Agreement, exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

*provided* 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, premium and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender, and without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived (to the extent permitted by applicable law) by the Borrower and each other Loan Party.

*Section 8.03. Exclusion of Immaterial Subsidiaries*

. Solely for the purpose of determining whether a Default or an Event of Default has occurred under clause (f) or (g) of Section 8.01, any reference in any such clause to any Restricted Subsidiary or Loan Party shall be deemed not to include any Restricted Subsidiary affected by any event or circumstances referred to in any such clause that was, as of the last day of the most recent completed fiscal quarter of the Borrower, an Immaterial Subsidiary.

*Section 8.04. Application of Funds*

. Subject to the terms, conditions and provisions of each Intercreditor Agreement, 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 be applied by the Administrative Agent in the following order (to the fullest extent permitted by mandatory provisions of applicable Law):

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.05 and amounts payable under Article 3) payable to the Administrative Agent or the Collateral Agent in its capacity as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities, premium and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.05 and amounts payable under Article 3), ratably among them in proportion to the 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, ratably among the Secured Parties 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, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Fourth* held by them;

*Fifth*, to the payment of all other Obligations of the Borrower that are due and payable to the Administrative Agent, the Collateral Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

*Last*, the balance, if any, after all of the Obligations (other than contingent obligations) have been paid in full, to the Borrower or as otherwise required by Law.

#### **ARTICLE 9**

##### THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Each Lender hereby irrevocably appoints the Administrative Agent and the Collateral Agent (for purposes of this Article 9, the Administrative Agent and the Collateral Agent are referred to collectively as the "**Agents**") its agent and authorizes the Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental or related thereto. Without limiting the generality of the foregoing, the Agents are hereby expressly authorized to (i) execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents (including, for the avoidance of doubt, (x) the ABL Intercreditor Agreement, including any amendment or supplement expressly contemplated thereby and (y) upon the incurrence of any Permitted Junior Priority Additional Debt, a Junior Lien Intercreditor Agreement) and (ii) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the direction of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Lender.

The institution serving as the Administrative Agent and/or the Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender, if it is a Lender, as any other Lender and may exercise the same as though it were not an Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the

Borrower or any Subsidiary or other Affiliate thereof as if it were not an Agent hereunder. The Agents 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 Loan Party that is communicated or obtained by the Person serving as Administrative Agent or Collateral Agent, as applicable, or any of their Affiliates in any capacity.

Neither Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) neither Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, except that The Bank of New York Mellon shall always have a fiduciary duty to the Department of the Treasury while serving as its Agent, (b) neither Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that such Agent is instructed in writing to exercise by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.08), and (c) except as expressly set forth in the Loan Documents, neither Agent shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to the Borrower or any of the Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent and/or Collateral Agent or any of its Affiliates in any capacity. Neither Agent shall be required to expend or risk its own funds or otherwise incur liability in the performance of any of its duties hereunder or under any other Loan Document or in the exercise of any of its rights or powers. Notwithstanding anything in any Loan Document to the contrary, prior to taking any action under this Agreement or any other Loan Document, each Agent shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses in connection with taking such action. Neither Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.08) or in the absence of its own gross negligence or willful misconduct as determined by the final non-appealable judgment of a court of competent jurisdiction. Notwithstanding the foregoing, no action nor any omission to act, taken by either Agent at the direction of the Required Lenders (or such other number or percentage of Lenders as shall be expressly provided for herein or in the other Loan Documents) shall constitute gross negligence or willful misconduct. Neither Agent shall be deemed to have knowledge of any Default unless and until written notice thereof, conspicuously labeled as a "notice of default" and specifically describing such Default, is given to an Agent Responsible Officer by the Borrower or a Lender, and neither Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent.

Notwithstanding anything to the contrary in any Loan Document, the Agent shall not be responsible for the existence, genuineness or value of any of the Collateral; for filing any financing or continuation statements or recording any documents or instruments in any public

office or otherwise perfecting or maintaining the perfection of any security interest in the Collateral; for the validity, perfection, priority or enforceability of the Liens in any of the Collateral; for the validity or sufficiency of the Collateral or any agreement or assignment contained therein; for the validity of the title of any grantor to the Collateral; for insuring the Collateral; or for the payment of taxes, charges or assessments on the Collateral.

In no event shall either Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder or under any other Loan Document arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, epidemics, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services (it being understood that such Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances).

Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, opinion, consent, statement, instrument, document or other writing believed by it in good faith to be genuine and to have been signed or sent by the proper Person. Each Agent may also rely upon any statement made to it orally or by telephone and believed by it in good faith to have been made by the proper Person, and shall not incur any liability for relying thereon. Delivery of reports, information and documents to an Agent is for informational purposes only and an Agent's receipt of the foregoing will not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Borrower's compliance with any of its covenants hereunder. Each 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. The Agents shall not be liable for any errors of judgment made in good faith by an Agent Responsible Officer, unless it shall be proved that the Agent Responsible Officer was grossly negligent in ascertaining the pertinent facts. Any funds held by an Agent shall, unless otherwise agreed in writing with the Borrower, be held uninvested in a non-interest bearing account.

The calculation of any ratio, including the Total Leverage Ratio, shall not be a duty or obligation of either Agent.

Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents or attorneys appointed by it and will not be responsible for the misconduct or negligence of any agent appointed with due care. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related Parties (other than Disqualified Lenders). The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties (other than Disqualified Lenders) of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the arrangement of the Facilities as well as activities as Agent.

Either Agent may resign at any time by notifying the Lenders and the Borrower in writing, and either Agent may be removed at any time with or without cause by an instrument or concurrent

instruments in writing delivered to the Borrower and such Agent and signed by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right, with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g)), to appoint a successor. If no successor shall have been so appointed by the Required Lenders (with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g))) and shall have accepted such appointment within 30 days after (i) the retiring Agent gives notice of its resignation or (ii) the Required Lenders delivers removal instructions, then the retiring or removed Agent may, on behalf of the Lenders (with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g))), appoint a successor Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. If no successor Agent has been appointed pursuant to the immediately preceding sentence, such Agent's resignation or removal shall become effective and the Required Lenders shall thereafter perform all the duties of such Agent hereunder and/or under any other Loan Document until such time, if any, as the Required Lenders (with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g))) appoint a successor Administrative Agent and/or Collateral Agent, as the case may be. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of its predecessor Agent, and its predecessor Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article and Section 10.05 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties (other than Disqualified Lenders) in respect of any actions taken or omitted to be taken by any of them while acting as Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

Each Lender acknowledges and agrees that The Bank of New York Mellon or one or more of its Affiliates may (but is not obligated to) act as collateral agent or representative for the holders of ABL Facility Indebtedness, Tranche B-2 Term Loan Facility Indebtedness, UST Tranche A Term Loan Facility Indebtedness, Permitted Junior Priority Additional Debt, any Extended Term Loan or any Permitted Refinancing thereof under the collateral agreements with respect thereto and/or under the ABL Intercreditor Agreement or any Junior Lien Intercreditor Agreement. Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against The Bank of New York Mellon or any of its Affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

In case of the pendency of any case or proceeding under any insolvency or other similar 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 (but not obligated) 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 Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders, the Agents under Section 2.05, Section 3.01, and Section 10.05) 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, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agents 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 to the Agents under Section 2.05 and Section 10.05. 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 or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Lenders 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 amounts owed to the Agents 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 stock 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 stock thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination 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 stock 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 the Administrative Agent 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 each Lenders pro rata and the stock 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 the Administrative Agent or any acquisition vehicle to take any further action.

**ARTICLE 10**  
MISCELLANEOUS

Section 10.01. *Notices; Electronic Communications*

. 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 email or fax, as follows:

(a) if to the Borrower or any other Loan Party, to it at:

YRC Worldwide Inc.  
Attention of Chief Financial Officer and General Counsel  
10990 Roe Avenue  
Overland Park, Kansas 66211  
Fax No. 913-696-6116  
Tel. No. 913-696-6529 or 913-696-6132  
Email: [stephanie.fisher@yrcw.com](mailto:stephanie.fisher@yrcw.com) and [jim.fry@yrcw.com](mailto:jim.fry@yrcw.com)

With copy to:

Kirkland & Ellis LLP  
Attention of Michelle Kilkenney, P.C., Esq.  
300 North LaSalle  
Chicago, Illinois 60654  
Fax No. 312-862-2200  
Tel. No. 312-862-2487  
Email: [michelle.kilkenney@kirkland.com](mailto:michelle.kilkenney@kirkland.com)

(b) if to the Administrative Agent or the Collateral Agent, to:

The Bank of New York Mellon  
240 Greenwich Street 7th Floor  
New York, NY 10286  
Attention: Joanna Shapiro, Managing Director  
Tel. No: 212-815-4949  
[joanna.g.shapiro@bnymellon.com](mailto:joanna.g.shapiro@bnymellon.com) with a copy to  
[UST.Cares.Program@bnymellon.com](mailto:UST.Cares.Program@bnymellon.com)

With a copy to (which shall not constitute notice):

Hogan Lovells US LLP  
390 Madison Avenue  
New York, New York 10017  
Fax No.: 212-918 3100  
Tel. No.: 212-909 0616  
Attention: Robert A. Ripin  
Email: Robert.ripin@hoganlovells.com

With a copy to (which shall not constitute notice):

United States Department of the Treasury  
1500 Pennsylvania Ave., NW,  
Washington, D.C. 20220  
Attention: Eric Froman  
Assistant General Counsel (Banking & Finance)  
e-mail: [Eric.Froman@treasury.gov](mailto:Eric.Froman@treasury.gov)

With a copy to (which shall not constitute notice):

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017  
Attention: James A. Florack  
e-mail: james.florack@davispolk.com

(c) if to a Lender, to it at its address (email address or fax number) set forth on Schedule 2.01 or in the Assignment and Acceptance or Refinancing Amendment pursuant to which such Lender shall have become a party hereto.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or on the date three Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 10.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 10.01. As agreed to among the Borrower, the Administrative Agent, the Collateral Agent and the applicable Lenders from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable Person provided from time to time by such Person.

The Borrower hereby agrees, unless directed otherwise by the Required Lenders, the Administrative Agent, the Collateral Agent or unless the electronic mail address referred to below has not been provided by the Administrative Agent or the Collateral Agent to the Borrower, that it will, or will cause its Restricted Subsidiaries to, provide to the Administrative Agent, the

Collateral Agent and/or the Required Lenders all information, documents and other materials that it is obligated to furnish to the Administrative Agent, the Collateral Agent and/or the Required Lenders pursuant to the Loan Documents or to the Lenders under Article 6, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) is or relates to a Request for Credit Extension or a notice pursuant to Section 2.10, (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, or (iii) provides notice of any Default or Event of Default under this Agreement or any other Loan Document, (all such non-excluded communications being referred to herein collectively as “**Communications**”), by transmitting the Communications in an electronic/soft medium that is properly identified in a format reasonably acceptable to the Administrative Agent, the Collateral Agent and/or the Required Lenders to an electronic mail address as directed by the Administrative Agent, the Collateral Agent and/or the Required Lenders. In addition, the Borrower agrees, and agrees to cause its Restricted Subsidiaries, to continue to provide the Communications to the Administrative Agent, the Collateral Agent, the Required Lenders or the Lenders, as the case may be, in the manner specified in the Loan Documents but only to the extent requested by the Administrative Agent.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, the “**Borrower Materials**”) by posting the Borrower Materials on Intralinks or another similar electronic system (the “**Platform**”) and (b) certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower, its Restricted Subsidiaries or any of their respective securities) (each, a “**Public Lender**”). The Borrower hereby agrees (w) to use commercially reasonable effort to make all Borrower Materials that are to be made available to Public Lenders clearly and conspicuously “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or any of its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.16); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated as “Public Investor;” and (z) the Administrative Agent 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 marked as “Public Investor.” Notwithstanding the foregoing, the following Borrower Materials shall be marked “PUBLIC”, unless the Borrower notifies the Administrative Agent promptly that any such document contains material non-public information: (1) the Loan Documents, (2) financial statements and related documentation, in each case, provided pursuant to Section 6.01(a) or 6.01(b) and (3) notification of changes in the terms of the Facilities.

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 Communications 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, its Restricted Subsidiaries or any of their respective securities for purposes of United States Federal or state securities laws.

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY, ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL NON-APPEALABLE RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BAD FAITH, IN EACH CASE, AS DETERMINED BY THE FINAL NON-APPEALABLE JUDGMENT OF A COURT OF COMPETENT JURISDICTION AND SHALL HAVE NO LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON FOR DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE).

The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such e-mail address.

Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

#### Section 10.02. *Survival of Agreement*

All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans, regardless of any investigation made by the Lenders or on their behalf or that any

Agent or Lender may have had notice of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Commitments have not been terminated. The provisions of Sections 3.01, 3.03, 3.04 and 10.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent or any Lender.

Section 10.03. *Binding Effect*

. This Agreement shall become effective when it shall have been executed and delivered by the Borrower, each other Loan Party party hereto on the Effective Date, the Collateral Agent and the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto.

Section 10.04. *Successors and Assigns*

(a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower, the Administrative Agent, the Collateral Agent or the Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns.

(b) Each Lender may assign to one or more Eligible Assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it), with the prior written consent of the Administrative Agent (not to be unreasonably withheld, conditioned or delayed); *provided, however*, that (i) if the approval of the Borrower is required for any such assignment pursuant to the definition of "Eligible Assignee", then the Borrower must also give its prior written consent to such assignment (which consent shall not be unreasonably withheld, conditioned or delayed), and the Borrower shall be deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the Administrative Agent within three (3) Business Days after the Borrower having received written notice thereof, (ii) the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall be in an integral multiple of, and not less than, \$1,000,000 (or, if less, the entire remaining amount of such Lender's Commitment or Loans of the relevant Class) unless the Administrative Agent otherwise agrees; *provided* that simultaneous assignments by two or more Related Funds shall be combined for purposes of determining whether the minimum assignment requirement is met, (iii) the parties to each assignment shall (A) execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent or (B) if previously agreed with the Administrative Agent, manually execute and deliver to the Administrative Agent an Assignment and Acceptance, and, in each case, shall pay to the Administrative Agent a processing and recordation fee of \$3,500; *provided* that (x) simultaneous assignments by two or more Related Funds shall require the payment of a single processing and

recording fee of \$3,500 and (y) such processing and recording fee may be waived or reduced in the sole discretion of the Administrative Agent and (iv) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire (in which the assignee shall designate one or more credit contacts to whom all Lender-level information (which may contain material non-public information about the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable Laws, including Federal and state securities laws), all documentation and other information reasonably determined by the Administrative Agent or the Collateral Agent to be required by applicable regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, and all applicable tax forms (including such documentation required under Section 3.01(d)). Upon acceptance and recording pursuant to paragraph (e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.03, 3.04 and 10.05). Upon request and the surrender by the assigning Lender of its Term Note (if any), the Borrower (at its expense) shall execute and deliver a Term Note to the assignee Lender.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and the outstanding balances of its Term Loans without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance; (ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is an Eligible Assignee legally authorized to enter into such Assignment and Acceptance; (iv) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with copies of the most recent financial statements referred to in Section 5.05 or delivered pursuant to Section 6.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon the Administrative Agent, the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vi) such assignee appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the

other Loan Documents as are delegated to the Administrative Agent and the Collateral Agent, respectively, by the terms hereof or thereof, together with such powers as are reasonably incidental or related thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of and the 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, the Collateral 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, the Collateral Agent and, as to entries pertaining to it, any Lender, at any reasonable time and from time to time upon reasonable prior written notice. Upon reasonable request by a Lender, the Administrative Agent shall make available to such Lender a schedule of Disqualified Lenders, to the extent the Borrower has provided such a schedule to the Administrative Agent. This Section 10.04(d) shall be construed so that all Loans are at all times maintained in “registered form” within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

(e) Upon its receipt of, and consent to, a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) above, if applicable, and the written consent of the Administrative Agent and, if required, the Borrower, to such assignment, and “know your customer” information requested by the Administrative Agent and the Collateral Agent, and any applicable tax forms (including such documentation required under Section 3.01(d)), the Administrative Agent shall promptly (i) accept such Assignment and Acceptance and (ii) record the information contained therein in the Register. No assignment shall be effective unless it has been recorded in the Register as provided in this paragraph (e).

(f) Each Lender may without the consent of the Borrower or the Administrative Agent sell participations to one or more banks or other Persons (other than Disqualified Lenders) in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided, however*, that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participating banks or other Persons shall be entitled to the benefit of the cost protection provisions contained in Sections 3.01, 3.03 and 3.04 (subject to the requirements and limitations therein, including the requirements under Section 3.01(d) (it being understood that the documentation required under Section 3.01(d) shall be delivered to the participating Lender)) to the same extent as if they were Lenders (but with respect to any particular participant, to no greater extent than the Lender that sold the participation to such participant and only if such participant has complied with the requirements of such provisions as if it were a Lender) and (iv) the Borrower, the Administrative Agent, the Collateral

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, and such Lender shall retain the sole right to enforce the obligations of the Borrower relating to the Loans and to approve any amendment, modification or waiver of (or consent under) any provision of this Agreement or any other Loan Document (*provided* that the agreement or instrument pursuant to which such Lender has sold a participation may provide that such Lender shall not agree to the following amendments without the consent of such participating bank or Person hereunder: amendments, modifications or waivers decreasing any fees payable to such participating bank or Person hereunder or the amount of principal or the rate at which interest is payable on the Loans in which such participating bank has an interest; extending any scheduled principal payment date or scheduled date fixed for the payment of interest on the Loans in which such participating bank or Person has an interest; increasing or extending the Commitments in which such participating bank or Person has an interest; releasing all or substantially all of the Guarantors (other than in connection with the sale of any such Guarantor in a transaction permitted by Section 7.05) releasing all or substantially all of the Collateral or the Term Priority Collateral or reductions in the voting thresholds; or modifying the pro rata requirements of Section 2.13(b), Section 2.13(c) or Section 2.14, in each case, which directly and adversely affects such participants; *provided, further*, that, notwithstanding the foregoing, only the consent of the Required Lenders shall be required in respect of any amendment, modification or waiver of (i) the payment of default interest, (ii) the occurrence of a default or an Event of Default, (iii) the mandatory prepayment requirements of Section 2.13 or (iv) the payment or receipt of the fee or premium pursuant to Section 2.12(d)). To the extent permitted by law, each participating bank or other Person also shall be entitled to the benefits of Section 10.06 as though it were a Lender, *provided* such participating bank or other Person agrees to be subject to Section 2.15 as though it were a Lender. Each Lender that sells a participation or exercises its option under section 10.04(i) with respect to an SPV 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 SPV (other than any SPV that is treated as a disregarded entity of the Granting Lender for U.S. federal income tax purposes) and the principal amounts (and interest thereon) of each participant's interest in the Loans or other Obligations under this Agreement (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 SPV or any information relating to a Participant's or a SPV'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 in connection with a Tax audit or other proceeding to establish that such commitment, loan, letter of credit or other obligation is in registered form under United States Treasury Regulations Section 5f.103-1(c) and proposed United States Treasury Regulations Section 1.163-5(b) (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and the Borrower, the Lenders and each Agent 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 notice to the contrary.

(g) Any Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 10.04, disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; *provided* that (except during the arrangement by the Required Lenders when customary confidentiality arrangements shall apply), prior to any such disclosure of Information, each such assignee or participant or proposed assignee or participant

shall execute an agreement whereby such assignee or participant shall agree to preserve the confidentiality of such confidential information on terms no less restrictive in any material respect than those applicable to the Lenders pursuant to [Section 10.16](#) for the benefit of (and enforceable by) the Borrower.

(h) Any Lender may at any time assign all or any portion of its rights under this Agreement to secure extensions of credit to such Lender or in support of obligations owed by such Lender; *provided* that no such assignment shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(i) Notwithstanding anything to the contrary contained herein, any Lender (a “**Granting Lender**”) may grant to a special purpose funding vehicle (an “**SPV**”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPV to make any Loan, (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof, and (iii) the Granting Lender shall for all purposes remain the Lender hereunder. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, it will not institute against, or join any other Person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this [Section 10.04](#), any SPV may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPV to support the funding or maintenance of Loans, and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV.

(j) The Borrower (except as expressly permitted by clause (ii) of [Section 7.04\(d\)](#)) shall not assign or delegate any of its rights or duties hereunder without the prior written consent of the Administrative Agent and each Lender, and any attempted assignment without such consent shall be null and void.

Section 10.05. *Expenses; Indemnity*

(a) The Borrower agrees (i) promptly following (and in any event within thirty (30) days of) written demand (including documentation reasonably supporting such request) therefor, to pay or reimburse the Administrative Agent, the Collateral Agent and the Lenders for all

reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby (including Attorney Costs which shall be limited to Attorney Costs of one counsel to the Agents, and one counsel to the Lenders (and one local counsel in each applicable jurisdiction for each group and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel of each type to similarly situated parties)) and (ii) from and after the Effective Date, promptly following (and in any event within thirty (30) days of) written demand (including documentation reasonably supporting such request) therefor, to pay or reimburse the Administrative Agent and the Collateral Agent and each Lender promptly following written demand for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of any rights or remedies under this Agreement or the other Loan Documents (including all such out-of-pocket costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective Attorney Costs which shall be limited to Attorney Costs of one counsel to the Agents and one counsel to the Lenders (and one local counsel in each applicable jurisdiction for each group and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel of each type to similarly situated parties)). To the extent otherwise reimbursable by the foregoing sentence of this section, the foregoing costs and expenses shall include all reasonable search, filing, recording, title insurance, survey, environmental, property condition report and zoning report charges and fees related thereto, and other reasonable and documented out of pocket expenses incurred by any Agent. The foregoing costs and expenses shall also include all mortgage recording, recording and filing fees charged by governmental authorities to record and/or file Collateral Documents.

(b) Whether or not the transactions contemplated hereby are consummated, the Loan Parties shall, jointly and severally, indemnify and hold harmless the Administrative Agent, the Collateral Agent and their respective Affiliates, successors and permitted assigns (or the directors, officers, employees, agents, advisors and members of each of the foregoing) (each an “**Agent Indemnitee**” and collectively, the “**Agent Indemnitees**”) and each Lender and their respective Affiliates, successors and permitted assigns (or the directors, officers, employees, agents, advisors and members of each of the foregoing) (each a “**Lender Indemnitee**” and collectively, the “**Lender Indemnitees**”); together with, the Agent Indemnitees, collectively the “**Indemnitees**”) from and against any and all actual losses, damages, claims, liabilities and reasonable documented out-of-pocket costs and expenses (including Attorney Costs which shall be limited to Attorney Costs of one outside counsel for the Agent Indemnitees and Attorney Costs of one outside counsel for the Lender Indemnitees (and, if necessary, one local counsel in each applicable jurisdiction and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel in each jurisdiction for each type of similarly situated affected Indemnitees)) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any Agent Indemnitee or Lender Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the Transactions or the other transactions contemplated thereby, (ii) any Commitment or 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 from any property, vehicle or facility currently or formerly owned, leased or operated by the Loan Parties or any Subsidiary, or any other Environmental Liability related in any way to any Loan Parties or any Subsidiary, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Agent Indemnitee or Lender Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of its Affiliates or equityholders in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of any such Agent Indemnitee or Lender Indemnitee; *provided* that, notwithstanding the foregoing, such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, damages, claims, liabilities and expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee, as determined by the final non-appealable judgment of a court of competent jurisdiction or (y) any dispute solely among the Indemnitees other than (1) any claim against an Indemnitee in its capacity or in fulfilling its role as Administrative Agent, Collateral Agent or similar role and (2) any claim arising out of any act or omission of the Borrower or any of its Affiliates, as determined by the final non-appealable judgment of a court of competent jurisdiction. No Indemnitee or any other party hereto shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement except to the extent that such damages resulted from the (A) gross negligence, bad faith or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee, as determined by the final non-appealable judgment of a court of competent jurisdiction or (B) the material breach by such Indemnitee of its or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee's obligations under the Loan Documents, as determined by the final non-appealable judgment of a court of competent jurisdiction. In the case of a claim, investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such claim, investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, any Loan Party's directors, stockholders or creditors or other Affiliates or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. For the avoidance of doubt, this paragraph shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Each Lender (other than Treasury) shall indemnify and hold harmless the Agent Indemnitees (to the extent not indefeasibly and timely indemnified by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), based on and to the extent of such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), from and against any and all losses, claims, damages, liabilities and related expenses (including reasonable and documented or invoiced out-of-pocket fees and expenses of a primary counsel for the Agent Indemnitees, taken as a whole (and, if necessary, one local counsel in each applicable jurisdiction) and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel in each jurisdiction for the conflicted Agent Indemnitees, and excluding any allocated costs of in-house legal counsel and any other third parties and consultants) of any kind or nature whatsoever which may at any time be imposed on, incurred

by or asserted against any Agent Indemnitee in any way relating to or arising out of or in connection with this Agreement or any other Loan Document or any action taken or omitted to be taken by any Agent Indemnitee (solely to the extent, in each case, that the Borrower is required to so indemnify and hold harmless the Administrative Agent Indemnitees pursuant to (and subject to the limitations of) this Section 10.05). Without limiting the foregoing, each Lender (other than Treasury) shall promptly following written demand therefor, pay or reimburse the Administrative Agent based on and to the extent of such Lender's pro rata share of all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of any rights or remedies under this Agreement or the other Loan Documents including all such out-of-pocket costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective fees, charges and disbursements of a primary counsel and local counsel for the Agent Indemnitees, to the extent that the Agent Indemnitees are not timely reimbursed for such expenses by or on behalf of the Borrower. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the outstanding Loans and unused Commitments at such time (or, if such indemnity payment is sought after the date on which the Loans have been paid in full and the Commitments are terminated, in accordance with such Lender's pro rata share immediately prior to the date on which the Loans are paid in full and the Commitments are terminated). Each Lender (other than Treasury) hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any source against any amount due to the Administrative Agent under this paragraph (c).

(d) To the extent permitted by applicable Law, (i) no Loan Party shall assert, and each hereby waives, any claim against any Indemnitee and (ii) no Indemnitee shall assert, and each hereby waives, any claim against any Loan Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions or any Loan or the use of the proceeds thereof (whether before or after the Effective Date); *provided* that the foregoing shall in no event limit the Borrower's indemnification obligations under clause (b) above.

(e) The provisions of this Section 10.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, any investigation made by or on behalf of the Administrative Agent, the Collateral Agent or any Lender or the resignation or removal of any Agent. All amounts due under this Section 10.05 shall be payable within 30 days after written demand therefor (including documentation reasonably supporting such request).

#### Section 10.06. *Right of Setoff*

. In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Agents, in respect of any unpaid fees, costs, expenses, indemnities and other amounts payable hereunder) is authorized at any time and from time to time (with the prior consent of the Administrative Agent), without prior notice to any Loan Party, any such notice being waived by each Loan Party (on its own behalf and on behalf of each of its

Subsidiaries), 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) (other than payroll accounts, trust accounts, escrow accounts, employee benefits accounts or petty cash accounts) at any time held by, and other indebtedness at any time owing by, such Lender and its Affiliates or the Administrative Agent or Collateral Agent to or for the credit or the account of the respective Loan Parties against any and all matured Obligations owing to such Lender and its Affiliates or the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided*, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent, the Collateral Agent and each Lender under this Section 10.06 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent, the Collateral Agent and such Lender may have at Law.

Section 10.07. *Applicable Law*

. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE FEDERAL LAW OF THE UNITED STATES. INsofar AS THERE MAY BE NO APPLICABLE FEDERAL LAW, THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

Section 10.08. *Waivers; Amendment*

(a) No failure or delay of the Administrative Agent, the Collateral Agent or any Lender in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Except as provided in Section 2.18, with respect to any Refinancing Amendment, in Section 2.19 with respect to an Extension Offer or as otherwise provided herein or in a Loan Document, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders

and (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto with the consent of the Required Lenders (*provided*, that amendments to the ABL Intercreditor Agreement or any Junior Lien Intercreditor Agreement shall require the agreement of the Loan Parties (or any of them) only to the extent required pursuant to the terms thereof); *provided, however*, that no such agreement shall (i) decrease the principal amount of, or extend the maturity of or any scheduled principal payment date or date for the payment of any fee or any interest on any Loan, or waive or excuse any such payment or any part thereof (other than with respect to any default interest), or decrease the amount of any fee or the rate of interest on any Loan (other than with respect to any default interest), without the prior written consent of each Lender directly and adversely affected thereby (it being understood that (x) the waiver 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, (y) any change to the definition of "Consolidated EBITDA" or in the component definitions thereof shall not constitute a reduction or forgiveness in any rate of interest pursuant to this clause (i), (ii) increase or extend the Commitment of any Lender without the prior written consent of such Lender (it being understood that a waiver of any condition precedent or of any Default or Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender), (iii) amend or modify the pro rata requirements of [Section 2.13\(b\)](#), [Section 2.13\(c\)](#) or [Section 2.14](#), the provisions of [Section 10.04\(j\)](#) or the provisions of this Section or release all or substantially all of the Guarantors (other than in connection with the sale of such Guarantors in a transaction permitted by [Sections 7.04](#) or [7.05](#)) or all or substantially all of the Collateral (other than as permitted hereby), without the prior written consent of each Lender directly and adversely affected thereby (or, in the case of [Section 10.04\(j\)](#), each Lender), (iv) change the provisions of any Loan Document in a manner that by its terms materially and adversely affects the rights of Lenders holding Loans of one Class differently from the rights of Lenders holding Loans of any other Class without the prior written consent of the Required Class Lenders with respect to each materially and adversely affected Class, (v) modify the protections afforded to an SPV pursuant to the provisions of [Section 10.04\(i\)](#) without the written consent of such SPV (vi) reduce the percentage contained in the definition of the term "Required Lenders" without the prior written consent of each Lender (it being understood that, with the consent of the Required Lenders (if such consent is otherwise required), additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loan Commitments on the Effective Date) or (vii) modify the definition of "Required Class Lenders" without the consent of the Required Class Lenders with respect to each Class of Loans or Commitments; *provided further* that (w) no Lender consent is required to effect a Refinancing Amendment or an Extension (except as expressly provided in [2.18](#) or [2.19](#), as applicable) or to effect any amendment expressly contemplated by [Section 7.12](#), (x) [reserved], (y) modifications to [Section 2.14](#), [2.15](#) or any other provision requiring pro rata payments or sharing of payments in connection with (I) [reserved], (II) [reserved] or (III) any Extension, shall only require approval (to the extent any such approval is otherwise required) of the Lenders participating and (z) no Lender consent other than the consent of the Required Lenders is required to effect any amendment or supplement to the ABL Intercreditor Agreement or any Junior Lien Intercreditor Agreement (I) that the Administrative Agent is otherwise authorized to enter into with only the consent of the Required Lenders by [Section 10.23](#), (II) that is for the purpose of adding the holders of Permitted Junior Priority Additional Debt, (or a Junior Representative with respect thereto) as parties thereto, as expressly

contemplated by the Junior Lien Intercreditor Agreement (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided*, that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (III) that is expressly contemplated by Section 5.2(c) or the second paragraph of Section 7.4 of the ABL Intercreditor Agreement (or the comparable provisions, if any, of any Junior Lien Intercreditor Agreement); *provided further* that no such agreement shall amend, modify or otherwise adversely affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Required Lenders, Administrative Agent or the Collateral Agent, as applicable.

Notwithstanding any other language to the contrary contained herein, with respect to any amendment, waiver or modification to which the Administrative Agent's consent is not required, the parties agree to deliver to the Administrative Agent and the Collateral Agent a copy of each such amendment, waiver or modification; provided that, (i) no party shall be liable for its failure to comply with this sentence and (ii) each of the Administrative Agent and the Collateral Agent shall not be bound by any such amendment unless and until it has received a copy thereof.

(c) Notwithstanding the foregoing, this Agreement and any other Loan Document may be amended solely with the consent of the Administrative Agent, the Required Lenders and the Borrower without the need to obtain the consent of any other Lender if such amendment is delivered in order to (x) correct or cure (x) ambiguities, errors, omissions, defects, (y) to effect administrative changes of a technical or immaterial nature or (z) incorrect cross references or similar inaccuracies in this Agreement or the applicable Loan Document. This Agreement, guarantees, collateral documents, security documents, intercreditor agreements, and related documents executed in connection with this Agreement may be in a form reasonably determined by the Administrative Agent or Collateral Agent, as applicable, and may be amended, modified, terminated or waived, and consent to any departure therefrom may be given, without the consent of any Lender if such amendment, modification, waiver or consent is given in order to (x) comply with local law or advice of counsel or (y) cause such guarantee, collateral document, security document or related document to be consistent with this Agreement and the other Loan Documents. The Borrower, the Required Lenders and the Administrative Agent may, without the consent of any other Lender, effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Borrower, the Required Lenders and the Administrative Agent to effect the provisions of Section 2.05, Section 2.17, Section 2.18 and Section 2.19. Notwithstanding anything to the contrary contained herein, such amendment shall become effective without any further consent of any other party to such Loan Document.

#### Section 10.09. *Interest Rate Limitation*

. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable Law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or participation in accordance with applicable Law, the rate of interest payable in respect of such Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have

been payable in respect of such Loan or participation but were not payable as a result of the operation of this Section 10.09 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 10.10. *Entire Agreement*

. This Agreement and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder and, to the extent expressly contemplated hereby, the Related Parties of each of the Required Lenders, Administrative Agent, the Collateral Agent and the Lenders) any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

Section 10.11. *WAIVER OF JURY TRIAL*

. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

Section 10.12. *Severability*

. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 10.13. *Counterparts; Electronic Signatures*

. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 10.03. Delivery of an executed signature page to this Agreement by facsimile or other electronic imaging transmission shall be as effective as delivery of a manually signed counterpart of this Agreement. For all purposes of this Agreement and any document to be signed or delivered in connection with or pursuant to this Agreement, the words "execution," "signed," "signature," "delivery," and words of like import shall be deemed to

include electronic signatures, deliveries or the keeping of records in electronic form, as the case may be, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery or the use of a paper-based recordkeeping system, as the case may be.

Section 10.14. *Headings*

. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 10.15. *Jurisdiction; Consent to Service of Process*

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(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the District of Columbia or the United States Court of Federal Claims, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any such Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 10.16. *Confidentiality*

. Each of the Administrative Agent, the Collateral Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' officers, directors, employees and agents, including accountants, financing sources, legal counsel and other advisors involved in the Transaction on a "need to know" basis (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 requested by any regulatory authority or quasi-regulatory authority (such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations (including in connection with any reporting obligations under the CARES Act or Congressional inquiries, as determined in the sole discretion of the Secretary of the Treasury) or by any subpoena or similar legal process, or if otherwise consistent with the purposes of the CARES Act, as determined in the sole discretion of the Secretary of the Treasury (and in each such case, such Person shall promptly notify the Borrower of such disclosure), (d) in connection with the exercise of any remedies hereunder or under the other Loan Documents or any suit, action or proceeding relating to the enforcement of its rights

hereunder or thereunder, (e) subject to an agreement containing provisions substantially the same as those of this [Section 10.16](#), to (i) any actual or prospective assignee of or participant in any of its rights or obligations under this Agreement and the other Loan Documents or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any Subsidiary or any of their respective obligations, (f) with the prior written consent of the Borrower, (g) on a confidential basis to (x) any rating agency in connection with rating the Borrower or its Subsidiaries or the Facility or (y) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facility, or (h) to the extent such Information becomes publicly available other than as a result of a breach of this [Section 10.16](#) or other confidentiality obligation owed to the Borrower or any of its Subsidiaries. For the purposes of this Article, “**Information**” shall mean all information received from the Borrower and related to the Borrower, its business, other than any such information that was available to the Administrative Agent, the Collateral Agent or any Lender on a nonconfidential basis prior to its disclosure by the Borrower not in violation of any confidentiality or obligation owed to the Borrower and the Subsidiaries. In addition, each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents. Any Person required to maintain the confidentiality of Information as provided in this [Section 10.16](#) 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 its own confidential information.

#### Section 10.17. *Lender Action*

. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker’s lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, unless expressly provided for herein or in any other Loan Document, without the prior written consent of the Administrative Agent (which shall be given at the direction of the Required Lenders).

#### Section 10.18. *USA PATRIOT Act Notice*

. Each Lender and the Agents (for themselves and not on behalf of any Lender) hereby notifies the Borrower and, in the case of the Agents, the Lenders, that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower, and, in the case of the Agents, the Lenders, which information includes the name and address of the Borrower and, in the case of the Agents, the Lenders and other information that will allow such Lender or the Agents, as applicable, to identify the Borrower and, in the case of the Agents, the Lenders, in accordance with the USA PATRIOT Act.

#### Section 10.19. *Collateral And Guaranty Matters*

. The Lenders irrevocably agree:

(a) that any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document shall be automatically released (i) upon termination of all Commitments hereunder and payment in full of all Obligations (other than contingent obligations not yet accrued or payable), (ii) at the time the property subject to such Lien is disposed

as part of or in connection with any disposition permitted hereunder or under any other Loan Document to any Person other than a Person required to grant a Lien to the Administrative Agent or the Collateral Agent under the Loan Documents (or, if such transferee is a Person required to grant a Lien to the Administrative Agent or the Collateral Agent on such asset, at the option of the applicable Loan Party, such Lien on such asset may still be released in connection with the transfer so long as (x) the transferee grants a new Lien to the Administrative Agent or Collateral Agent on such asset substantially concurrently with the transfer of such asset, (y) the transfer is between parties organized under the laws of different jurisdictions and at least one of such parties is a Foreign Subsidiary and (z) the priority of the new Lien is the same as that of the original Lien), (iii) subject to [Section 10.08](#), if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to [Section 11.10](#), (v) any such property constitutes Excluded Property or (vi) in accordance with any Intercreditor Agreement;

(b) to release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by [Sections 7.01\(b\)](#), [7.01\(g\)](#), [7.01\(q\)](#) or [7.01\(s\)](#) (in the case of [Section 7.01\(s\)](#), to the extent required by the terms of the obligations secured by such Liens); and

(c) that any Guarantor shall be automatically released from its obligations under the Guaranty as provided in [Section 11.10](#).

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's or the Collateral 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 10.19](#). In each case as specified in this [Section 10.19](#), the Administrative Agent or the Collateral Agent will (and each Lender irrevocably authorizes the Administrative Agent and the Collateral Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as the Borrower may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this [Section 10.19](#).

#### Section 10.20. *Limitation on Liability*

. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS: (A) NO INDEMNITEE SHALL BE LIABLE TO ANY PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THEIR RESPECTIVE ACTIVITIES RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, THE TRANSACTIONS CONTEMPLATED THEREBY, THE TERM LOANS, OR OTHERWISE IN CONNECTION WITH THE FOREGOING; (B) WITHOUT LIMITING THE FOREGOING, NO INDEMNITEE SHALL BE SUBJECT TO ANY EQUITABLE REMEDY OR RELIEF, INCLUDING SPECIFIC PERFORMANCE OR INJUNCTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY; (C) NO INDEMNITEE SHALL HAVE

ANY LIABILITY TO THE LOAN PARTIES, FOR DAMAGES OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY UNTIL THE EFFECTIVE DATE HAS OCCURRED; AND (D) IN NO EVENT SHALL ANY INDEMNITEE'S LIABILITY TO THE LOAN PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY EXCEED ACTUAL DIRECT DAMAGES INCURRED BY THE LOAN PARTIES OF UP TO \$10,000,000 IN THE AGGREGATE; *PROVIDED* THAT THE FOREGOING SHALL IN NO EVENT LIMIT THE LENDERS' INDEMNIFICATION OBLIGATIONS TO THE AGENT INDEMNITEES UNDER SECTION 10.05 OF THIS AGREEMENT; *PROVIDED FURTHER* THAT SUCH LIMITATION OF LIABILITY IN CLAUSE (D) SHALL NOT APPLY TO LIABILITY RESULTING FROM FRAUD BY THE INDEMNITEES.

Section 10.21. *Payments Set Aside*

To the extent that any payment by or on behalf of the Borrower or any other Loan Party is made to any Agent or any Lender, or any 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 such 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, to the fullest extent possible under provisions of applicable Law, 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 of any amount so recovered from or repaid by any 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 applicable Federal Funds Effective Rate from time to time in effect.

Section 10.22. *No Advisory or Fiduciary Responsibility*

(a) In connection with all aspects of each transaction contemplated hereby, each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower and its Subsidiaries, on the one hand, and the Agents and the Lenders, on the other hand, and the Borrower and its Subsidiaries are capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof), (ii) the Agents, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Borrower and its Affiliates, and none of the Agents or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship, and (iii) the Agents and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

(b) Each Loan Party acknowledges and agrees that each Lender and any of its affiliates may lend money to, invest in, and generally engage in any kind of business with, the Borrower, any of its Affiliates or any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lender or Affiliate thereof were not a Lender (or an agent or any other person with any similar role under the Facilities) and without any duty to account therefor to any other Lender, the Borrower or any Affiliate of the foregoing. Each Lender and any of its Affiliates may accept fees and other consideration from the Borrower or any of its Affiliates for services in connection with this Agreement, the Facilities, the commitment letter or otherwise without having to account for the same to any other Lender, the Borrower or any Affiliate of the foregoing.

Section 10.23. *Intercreditor Agreements*

(a) The Administrative Agent and the Collateral Agent are authorized and directed to become a party to the ABL Intercreditor Agreement (and enter into the ABL Intercreditor Agreement in respect of any Permitted Refinancing of ABL Facility Indebtedness), and each of the parties hereto acknowledges that it has received a copy of the ABL Intercreditor Agreement and that the ABL Intercreditor Agreement is binding upon it. Each Lender (a) hereby consents to the subordination of the Liens on the ABL Priority Collateral securing the Obligations on the terms set forth in the ABL Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the ABL Intercreditor Agreement and (c) hereby authorizes and instructs the Administrative Agent and the Collateral Agent to enter into the ABL Intercreditor Agreement and any amendments or supplements expressly contemplated thereby, and to subject the Liens on the ABL Priority Collateral securing the Obligations to the provisions of the ABL Intercreditor Agreement. The foregoing provisions are intended as an inducement to the ABL Secured Parties to extend credit to the borrowers under the ABL Credit Agreement and such ABL Secured Parties are intended third-party beneficiaries of such provisions and the provisions of the ABL Intercreditor Agreement.

(b) The Administrative Agent and the Collateral Agent are authorized and directed to enter into the Junior Lien Intercreditor Agreement, and each of the parties hereto acknowledges that such agreement shall be binding upon it. Each Lender (a) hereby consents to the intercreditor agreements in respect of the Collateral securing the Obligations on the terms set forth in the Junior Lien Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Junior Lien Intercreditor Agreement and (c) hereby authorizes and instructs the Administrative Agent and the Collateral Agent to enter into the Junior Lien Intercreditor Agreement and, without the further consent, direction or other action of any Lender, to enter into any amendments or supplements thereto, in each case solely if the form of the agreement as so amended or supplemented would constitute the Junior Lien Intercreditor Agreement, as applicable, if being entered into as an original agreement. The foregoing provisions are intended as an inducement to the parties providing any Permitted Junior Priority Additional Debt to extend credit to the borrowers thereof and such parties are intended third-party beneficiaries of such provisions and the provisions of the Junior Lien Intercreditor Agreement.

(c) The extent of any conflict between the Loan Documents, on the one hand, and the ABL Intercreditor Agreement or other intercreditor agreement contemplated by this Section 10.23, on the other hand, such intercreditor agreement shall control.

(a) If at least two (2) Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing, the Required Lenders reasonably determine that for any reason, adequate and reasonable means do not exist for determining the Adjusted LIBO Rate for any requested Interest Period with respect to a proposed Eurodollar Loan, or that the Adjusted LIBO Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, or that deposits are not being offered to banks in the relevant interbank market for the applicable amount and the Interest Period of such Eurodollar Loan, the Required Lenders shall notify the Administrative Agent in writing, and thereafter the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Adjusted LIBO Rate component of the Alternate Base Rate, the utilization of the Adjusted LIBO Rate component in determining the Alternate Base Rate shall be suspended, in each case until the Administrative Agent (upon the written instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of or continuation of Eurodollar Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans (determined without reference to the Adjusted LIBO Rate component thereof) in the amount specified therein; provided, that such ABR Loans will be deemed "Eurodollar Loans" for purposes of Article 2 hereof.

(b) If the Required Lenders and the Borrower shall reasonably agree that either (i) the circumstances set forth in clause (a) of this Section 10.24 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a) of this Section 10.24 have not arisen but the supervisor for the administrator of the LIBO Rate (or any component thereof) or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate (or any component thereof) shall no longer be published for use in determining interest rates for loans (in the case of either such clause (i) or (ii), an "**Alternative Interest Rate Election Event**"), then the LIBO Rate, for any day, shall mean the rate per annum equal to the Federal Funds Rate in effect on such day plus one half of one percent (0.50%) (subject at all times to the requirement that such rate per annum shall not be less than one percent (1.00%) per annum).

Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at

or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to 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.

In connection with the implementation of a Benchmark Replacement, the Required Lenders 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 or any other Loan Document.

The Required Lenders will promptly notify the Administrative Agent of, and the Administrative Agent will, following receipt of such notice, promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Required Lenders or, if applicable, any Lender (or group of Lenders) pursuant to this [Section 10.24\(e\)](#) including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this [Section 10.24\(e\)](#). Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent will promptly inform the Required Lenders if any change to be made is not administratively feasible. If the Required Lenders are so notified, such change will not be implemented and the Required Lenders shall substitute such change with a change that is administratively feasible.

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

the Required Lenders may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Borrowing of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

Section 10.25. *Investment Purpose*

. Treasury acknowledges that the Treasury Equity has not been registered under the Securities Act of 1933, as amended (the “Securities Act”) or under any state securities laws. Treasury (a) is acquiring the Treasury Equity pursuant to an exemption from registration under the Securities Act solely for investment without a view to sell and with no present intention to distribute them to any person in violation of the Securities Act or any applicable U.S. state securities laws; (b) will not sell or otherwise dispose of any of the Treasury Equity, except in compliance with the registration requirements or exemption provisions of the Securities Act and any applicable U.S. state securities laws; and (c) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of the Treasury Equity and of making an informed investment decision.

**ARTICLE 11**  
GUARANTEE

Section 11.01. *The Guarantee*

. Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not as a surety to each Secured Party and their respective permitted successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of (i) Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws, whether or not such items are allowed or allowable as a claim in any applicable proceeding) on the Loans made by the Lenders to, and the Term Notes (if any) issued hereunder and held by each Lender of, the Borrower, and all other Obligations from time to time owing to the Secured Parties by any Loan Party under any Loan Document strictly in accordance with the terms thereof (such obligations being herein collectively called the “**Guaranteed Obligations**”). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 11.02. *Obligations Unconditional*

. The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by

applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower or any other Guarantor under this Agreement, any Term Notes issued under this Agreement, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

- (a) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any of the acts mentioned in any of the provisions of this Agreement or the Term Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;
- (c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;
- (d) any Lien or security interest granted to, or in favor of, any Secured Party or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or
- (e) the release of any other Guarantor pursuant to Section 11.10.

Section 11.03. *Certain Waivers*

. *Etc.* The Guarantors hereby expressly waive (to the extent permitted by applicable Law) diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Term Notes issued hereunder, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person

at any time of any right or remedy against the Borrower or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and permitted assigns thereof, and shall inure to the benefit of the Secured Parties, and their respective successors and permitted assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding. Each Guarantor waives (to the extent permitted by Law) any rights and defenses that are or may become available to it by reason of §§ 2787 to 2855, inclusive, and §§ 2899 and 3433 of the California Civil Code. As provided in [Section 10.07](#), the provisions of this [Article 11](#) shall be governed by, and construed in accordance with, the laws of the State of New York. The foregoing waivers and the provisions hereinafter set forth in this [Article 11](#) which pertain to California law are included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this [Article 11](#), to any other provision of this Agreement or to the Obligations.

Section 11.04. *Reinstatement*

. The obligations of the Guarantors under this [Article 11](#) shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 11.05. *Subrogation; Subordination*

. Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations (other than contingent obligations) and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in [Section 11.01](#), whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party to any Person that is not a Loan Party permitted pursuant to [Section 7.03\(b\)](#) or [7.03\(d\)](#), shall be subordinated to such Loan Party's Obligations in a manner reasonably acceptable to the Required Lenders.

Section 11.06. *Remedies*

. The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Term Notes issued hereunder, if any, may be declared to be forthwith due and payable as provided in [Section 8.02](#) (and shall be deemed to have become automatically due and payable in the circumstances provided in [Section 8.02](#)) for purposes of [Section 11.01](#), notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of [Section 11.01](#).

Section 11.07. *Instrument for the Payment of Money*

. Each Guarantor hereby acknowledges that the guarantee in this [Article 11](#) constitutes an instrument for the payment of money, and consents and agrees that any Secured Party or Agent, at its sole option, in the event of

a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 11.08. *Continuing Guarantee*

. The guarantee in this Article 11 is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

Section 11.09. *General Limitation on Guarantee Obligations*

. In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other Person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.11) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 11.10. *Release of Guarantors*

. If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests or property of any Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party or (ii) any Guarantor becomes an Excluded Subsidiary (any such Guarantor, and any Guarantor referred to in clause (i), a “**Transferred Guarantor**”), such Transferred Guarantor shall, upon (x) the consummation of such sale or transfer or other transaction or (y) becoming an Excluded Subsidiary pursuant to clause (e) of the definition thereof, be automatically released from its obligations under this Agreement (including under Section 10.05 hereof) and its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Collateral Agent pursuant to the Collateral Documents shall be automatically released, and, the Collateral Agent shall, at the cost and direction of the Borrower, take such actions as are reasonably necessary to effect each release described in this Section 11.10 in accordance with the relevant provisions of the Collateral Documents; *provided*, that no Guarantor shall be released as provided in this paragraph if such Guarantor continues to be a guarantor in respect of any Indebtedness incurred pursuant to Section 7.03(o), any Permitted Additional Debt, any Junior Financing, any Tranche B-2 Term Loan Facility Indebtedness, UST Tranche A Term Loan Facility Indebtedness or any Permitted Refinancing of any of the foregoing. Notwithstanding anything herein to the contrary, if any Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall only be permitted to be released from its Guarantee so long as the fair market value of any and all Investments then held by the Loan Parties in such Person are permitted as an Investment under Section 7.02(c)(iii) and Section 7.02(p) at the time such Person becomes an Excluded Subsidiary pursuant to clause (a) of the definition of “Excluded Subsidiary”.

When all Commitments hereunder have terminated, and all Loans or other Obligations hereunder which are accrued and payable have been paid or satisfied, this Agreement and the Guarantees made herein shall automatically terminate with respect to all Obligations, except with

respect to Obligations that expressly survive such repayment pursuant to the terms of this Agreement.

Section 11.11. *Right of Contribution*

. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.05. The provisions of this Section 11.11 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent, the Collateral Agent and the Secured Parties, and each Guarantor shall remain liable to the Administrative Agent, the Collateral Agent and the Secured Parties for the full amount guaranteed by such Guarantor hereunder.

Section 11.12. *Additional Guarantor Waivers and Agreements*

(a) Each Guarantor understands and acknowledges that if the Collateral Agent or any other Secured Party forecloses judicially or nonjudicially against any real property security for the Obligations, that foreclosure could impair or destroy any ability that such Guarantor may have to seek reimbursement, contribution, or indemnification from the Borrower or others based on any right such Guarantor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by such Guarantor under the Guaranty. Each Guarantor further understands and acknowledges that in the absence of this paragraph, such potential impairment or destruction of such Guarantor's rights, if any, may entitle such Guarantor to assert a defense to this Guaranty based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968). By executing this Guaranty, each Guarantor freely, irrevocably, and unconditionally: (i) waives (to the extent permitted by Law) and relinquishes that defense and agrees that such Guarantor will be fully liable under this Guaranty even though the Collateral Agent or any other Secured Party may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations; (ii) agrees that such Guarantor will not assert that defense in any action or proceeding which the Administrative Agent, the Collateral Agent or any other Secured Party may commence to enforce this Guaranty; (iii) acknowledges and agrees that the rights and defenses waived by such Guarantor in this Guaranty include any right or defense that such Guarantor may have or be entitled to assert based upon or arising out of any one or more of §§ 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or § 2848 of the California Civil Code; and (iv) acknowledges and agrees that the Secured Parties are relying on this waiver in creating the Obligations, and that this waiver is a material part of the consideration which the Secured Parties are receiving for creating the Obligations.

(b) Each Guarantor waives (to the extent permitted by Law) all rights and defenses that such Guarantor may have because any of the Obligations is secured by real property. This means, among other things: (i) the Administrative Agent, the Collateral Agent and the other Secured Parties may collect from such Guarantor without first foreclosing on any real or personal property Collateral pledged by the other Loan Parties; and (ii) if the Collateral Agent or any other Secured Party forecloses on any real property Collateral pledged by the other Loan Parties: (A) the amount of the Obligations may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Administrative

Agent, the Collateral Agent and the other Secured Parties may collect from such Guarantor even if the Secured Parties, by foreclosing on the real property Collateral, have destroyed any right such Guarantor may have to collect from the Borrower. This is an unconditional and irrevocable waiver of any rights and defenses such Guarantor may have because any of the Obligations is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon § 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(c) Each Guarantor waives (to the extent permitted by Law) any right or defense it may have at law or equity, including California Code of Civil Procedure § 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

#### Section 11.13. *Parallel Debt*

. In this Section 11.13, (x) "Corresponding Liabilities" means the Obligations of a Loan Party, but excluding its Parallel Liability and (y) "Parallel Liability" means a Loan Party's undertaking pursuant to this Section 11.13. Each Loan Party irrevocably and unconditionally undertakes to pay to the Collateral Agent an amount equal to the aggregate amount of its Corresponding Liabilities (as these may exist from time to time). For purposes of this Section 11.13: (a) a Loan Party's Parallel Liability is due and payable at the same time as, for the same amount of and in the same currency as its Corresponding Liabilities; (b) a Loan Party's Parallel Liability is decreased to the extent that its Corresponding Liabilities have been irrevocably paid or discharged and its Corresponding Liabilities are decreased to the extent that its Parallel Liability has been irrevocably paid or discharged; (c) a Loan Party's Parallel Liability is independent and separate from, and without prejudice to, its Corresponding Liabilities, and constitutes a single obligation of that Loan Party to the Collateral Agent (even though that Loan Party may owe more than one Corresponding Liability to the Secured Parties under the Loan Documents) and an independent and separate claim of the Collateral Agent to receive payment of that Parallel Liability (in its capacity as the independent and separate creditor of that Parallel Liability and not as a co-creditor in respect of the Corresponding Liabilities); and (d) for purposes of this Section 11.13, the Collateral Agent acts in its own name and not as agent, representative or trustee of the Secured Parties and accordingly holds neither its claim resulting from a Parallel Liability nor any Lien securing a Parallel Liability on trust.

### ARTICLE 12 CARES ACT REQUIREMENTS

#### Section 12.01. *CARES Act Compliance*

. The Borrower hereby represents, warrants and covenants that the Borrower and each of its Affiliates are in compliance, and will at all times comply, with all applicable requirements under Title IV of the CARES Act, including any applicable requirements pertaining to the Borrower's eligibility to receive the Loan. The Borrower will provide any information requested by the Lenders or Agents to assess the compliance by the Borrower and its Affiliates with the applicable requirements under Title IV of the CARES Act or the Borrower's eligibility to receive the Loan under the CARES Act.

#### Section 12.02. *Dividends and Buybacks*

(a) Until the date that is 12 months after the date on which the Loan is no longer outstanding, neither the Borrower nor any of its Affiliates (other than an Affiliate that is a natural person) shall, in any transaction, purchase an equity security of the Borrower or of any direct or

indirect parent company of the Borrower or of any Subsidiary of the Borrower, in each case, that is listed on a national securities exchange, except to the extent required under a contractual obligation in effect as of the date of enactment of the CARES Act.

(b) Until the date that is 12 months after the date on which the Loan is no longer outstanding, the Borrower shall not pay dividends, or make any other capital distributions, with respect to the common stock of the Borrower.

Section 12.03. *Maintenance of Employment Levels*

. Until the date that is 12 months after the Initial Funding Date, the Borrower shall maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case shall not reduce its employment levels by more than ten (10) percent from the levels on March 24, 2020.

Section 12.04. *United States Business*

. The Borrower hereby represents that it is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States.

Section 12.05. *Limitations on Certain Compensation*

(a) Beginning on the Effective Date and ending on the date that is one year after the date on which the Loan is no longer outstanding, the Borrower and its Affiliates shall not pay any of the Borrower's Corporate Officers or Employees whose Total Compensation exceeded \$425,000 in calendar year 2019 or the Subsequent Reference Period (other than an Employee whose compensation is determined through an existing collective bargaining agreement entered into before March 1, 2020):

(i) Total Compensation which exceeds, during any 12 consecutive months of the period beginning on the Effective Date, and ending on the date that is one year after the date on which the Loan is no longer outstanding, the Total Compensation the Corporate Officer or Employee received in calendar year 2019 or the Subsequent Reference Period; or

(ii) Severance Pay or Other Benefits in connection with a termination of employment with the Borrower which exceed twice the maximum Total Compensation received by such Corporate Officer or Employee in calendar year 2019 or the Subsequent Reference Period.

(b) Beginning on the Effective Date, and ending on the date that is one year after the date on which the Loan is no longer outstanding, the Borrower and its Affiliates shall not pay any of the Borrower's Corporate Officers or Employees whose Total Compensation exceeded \$3,000,000 in calendar year 2019 or the Subsequent Reference Period Total Compensation in excess of the sum of:

(i) \$3,000,000; and

(ii) 50 percent of the excess over \$3,000,000 of the Total Compensation received by such Corporate Officer or Employee in calendar year 2019 or the Subsequent Reference Period.

(c) For purposes of determining applicable amounts under this Section 12.05 with respect to any Corporate Officer or Employee who was employed by the Borrower or any of its Affiliates for less than all of calendar year 2019, the amount of Total Compensation in calendar year 2019 shall mean such Corporate Officer's or Employee's Total Compensation on an annualized basis.

Section 12.06. *Additional Defined Terms*

. As used in this Article 12, the following terms have the meanings specified below:

**"Benefits"** means, without duplication of any amounts counted as Salary or Wages, pension expenses (including company retirement or 401(k) plan contributions and direct annuity payments) in respect of Employees, all expenses for accident, sickness, hospital, and death benefits to Employees, and the cost of insurance (or self-insured costs) to provide such benefits; any Severance Pay or Other Benefits payable to Employees pursuant to a bona fide voluntary early retirement program or voluntary furlough; and any other similar expenses paid by the Borrower for the benefit of Employees, including other fringe benefit expenses (such as those relating to travel, meals, lodging, trade memberships, dues and registrations, tools or uniforms, moving and relocation costs, education, medical and recreational programs, and company contributions for group accident, health or life insurance) but excluding any Federal, state, or local payroll taxes paid by the Borrower.

**"Corporate Officer"** means, with respect to the Borrower, its president; any vice president in charge of a principal business unit, division, or function (such as sales, administration or finance); any other officer who performs a policy-making function; or any other person who performs similar policy making functions for the Borrower. Executive officers of subsidiaries or parents of the Borrower may be deemed Corporate Officers of the Borrower if they perform such policy-making functions for the Borrower.

**"Employee"** has the meaning given to the term in section 2 of the National Labor Relations Act (29 U.S.C. 152 and includes any individual employed by an employer subject to the Railway Labor Act (45 U.S.C. 151 et seq.), and for the avoidance of doubt includes all individuals who are employed by the Borrower who are not Corporate Officers.

**"Salary"** means, without duplication of any amounts counted as Benefits, a predetermined regular payment, typically paid on a weekly or less frequent basis but which may be expressed as an hourly, weekly, annual or other rate, as well as cost-of-living differentials, vacation time, paid time off, sick leave, and overtime pay, paid by the Borrower to its Employees, but excluding any Federal, state, or local payroll taxes paid by the Borrower.

**"Severance Pay or Other Benefits"** means any severance payment or other similar benefits, including cash payments, health care benefits, perquisites, the enhancement or acceleration of the payment or vesting of any payment or benefit or any other in-kind benefit payable (whether in lump sum or over time, including after March 24, 2022) by the Borrower to a Corporate Officer or Employee in connection with any termination of such Corporate Officer's or Employee's employment (including, without limitation, resignation, severance, retirement, or constructive termination), which shall be determined and calculated in respect of any Employee or Corporate Officer of the Borrower in the manner prescribed in 17 CFR 229.402(j) (without

regard to its limitation to the five most highly compensated executives and using the actual date of termination of employment rather than the last business day of the Borrower's last completed fiscal year as the trigger event).

**"Subsequent Reference Period"** means (i) for a Corporate Officer or Employee whose employment with the Borrower or an Affiliate started during 2019 or later, the 12-month period starting from the end of the month in which the officer or employee commenced employment, if such officer's or employee's total compensation exceeds \$425,000 (or \$3,000,000) during such period and (ii) for a Corporate Officer or Employee whose Total Compensation first exceeds \$425,000 during a 12-month period ending after 2019, the 12-month period starting from the end of the month in which the Corporate Officer's or Employee's Total Compensation first exceeded \$425,000 (or \$3,000,000).

**"Total Compensation"** means Salary, bonuses, awards of stock and other financial benefits provided by the Borrower to a Corporate Officer or Employee of the Borrower.

**"Wage"** means, without duplication of any amounts counted as Benefits, a payment, typically paid on an hourly, daily, or piecework basis, including cost-of-living differentials, vacation, paid time off, sick leave, and overtime pay, paid by the Borrower to its Employees, but excluding any Federal, state, or local payroll taxes paid by the Borrower.

YRC WORLDWIDE INC.

By: /s/ Darren D. Hawkins  
Name: Darren D. Hawkins  
Title: Chief Executive Officer

By: /s/ Jamie G. Pierson  
Name: Jamie G. Pierson  
Title: Chief Financial Officer

EXPRESS LANE SERVICE, INC.

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

NEW PENN MOTOR EXPRESS LLC  
(F/K/A NEW PENN MOTOR EXPRESS INC.)

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

ROADWAY EXPRESS INTERNATIONAL, INC.

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

ROADWAY LLC

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

ROADWAY NEXT DAY CORPORATION

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

HENRY LOGISTICS, INC.

By: /s/ Jason W. Bergman  
Name: Jason W. Bergman  
Title: President

USF BESTWAY INC.

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF DUGAN INC.

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF GLEN MOORE INC.

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF HOLLAND LLC  
(F/K/A USF HOLLAND INC.)

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF REDSTAR LLC

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF REDDAWAY INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC ASSOCIATION SOLUTIONS, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

YRC INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC INTERNATIONAL INVESTMENTS, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC LOGISTICS SERVICES, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC MORTGAGES, LLC

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC ENTERPRISE SERVICES, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC REGIONAL TRANSPORTATION, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

REIMER HOLDING B.V.

By: /s M.F.A. van Schijndel  
Name: M.F.A. van Schijndel  
Title: Director A

By: /s Terry Gerrond  
Name: Terry Gerrond  
Title: Director B

1105481 ONTARIO INC.

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President and Treasurer

YRC LOGISTICS INC.

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President and Treasurer

USF HOLLAND INTERNATIONAL SALES  
CORPORATION

By: /s Thomas J. O'Connor

Name: Thomas J. O'Connor

Title: President

YRC FREIGHT CANADA COMPANY

By: /s Mark Boehmer

Name: Mark Boehmer

Title: Vice President and Treasurer

[Signature Page to Credit Agreement]

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THE BANK OF NEW YORK  
MELLON, as Administrative Agent and Collateral Agent

By: /s/ Bret S. Derman  
Name: Bret S. Derman Title: Vice President

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UNITED STATES DEPARTMENT OF THE TREASURY, as Lender

By: /s/ Brent J. McIntosh

Name: Brent J. McIntosh

Title: Under Secretary for International Affairs

United States Department of the Treasury

## AMENDMENT NO. 6

Dated as of July 7, 2020

to

## LOAN AND SECURITY AGREEMENT

Dated as of February 13, 2014

THIS AMENDMENT NO. 6 (this "Amendment") is dated as of the date first written above, by and among YRC WORLDWIDE INC., a Delaware Corporation ("Parent"), YRC INC., a Delaware Corporation ("YRC"), USF REDDAWAY INC., an Oregon Corporation ("Reddaway"), USF HOLLAND LLC, a Delaware limited liability company ("Holland"), and NEW PENN MOTOR EXPRESS LLC, a Delaware limited liability company ("New Penn"), and together with Parent, YRC, Holland and Reddaway, "Borrowers" and each a "Borrower", each Guarantor party hereto, the Lenders party hereto and CITIZENS BUSINESS CAPITAL, a division of Citizens Asset Finance, Inc. (a subsidiary of Citizens Bank, N.A.) as agent for the Lenders and Issuing Banks (in such capacity, "Agent"), under that certain Loan and Security Agreement dated as of February 13, 2014 by and among Borrowers, Guarantors party thereto from time to time, the Lenders and Agent (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Loan Agreement, as amended hereby.

WHEREAS, the Parent and the Guarantors have requested that the Lenders amend the Loan Agreement on the terms more fully set forth herein; and

WHEREAS, the Lenders party hereto constituting all of the existing Lenders party to the Loan Agreement as of the date hereof (the "Existing Lenders") and the Agent have agreed to make the amendments described herein pursuant to this Amendment on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrowers, Guarantors, the Existing Lenders and the Agent have agreed to enter into this Amendment.

1. Amendments to Loan Agreement.

(a) Effective as of the date of satisfaction or waiver of the conditions precedent set forth in Section 2 below (the "Amendment No. 6 Effective Date"), the Loan Agreement is hereby amended to delete the bold, stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and to add the bold, double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Loan Agreement attached as Exhibit A hereto; and

(b) Effective as of the earlier of (i) the date, following the Amendment No. 6 Effective Date, that (A) the Agent shall have received confirmation from each Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction and (B) in the case of each Material Real Property located in a special flood zone hazard area, the Agent shall have discharged the applicable Mortgages on all such Material Real Properties, and (ii) August 7, 2020 (such earlier date, the "Amendment No. 6 Trigger Date"), the Loan Agreement shall be amended as follows:

(i) Section 1.1 of the Loan Agreement is hereby amended by deleting the definition of "Maturity Date" and replacing and restating it in their entirety as follows:

Maturity Date – (i) January 9, 2024, (ii) with respect to any Commitments as to which the final maturity date has been extended pursuant to Section 2.4, the final maturity date as specified in the Extension Offer accepted by the applicable Lender or Lenders holding such Commitments, and (iii) with respect to any Incremental Facility, the final maturity date as specified in the Incremental Amendment governing the Commitments.

2. **Conditions of Effectiveness.** The effectiveness of this Amendment on the Amendment No. 6 Effective Date is subject to the satisfaction (or waiver by each of the Existing Lenders) of the following conditions precedent:

(a) **the Agent shall have received counterparts of this Amendment duly executed by each Loan Party, each Existing Lender and Agent;**  
the Agent shall have received an executed copy of that certain Term Debt Intercreditor Agreement dated as of the Amendment No. 6 Effective Date, between Agent, the Term Agent, the UST Tranche A Agent, the UST Tranche B Agent and the Loan Parties, in form and substance reasonably satisfactory to Agent;

(c) **the Agent shall have received an executed copy of that certain Amendment No. 2 to the Term Loan Agreement dated as of the date hereof between the Loan Parties party thereto, the lenders party thereto and the Term Agent, in form and substance reasonably satisfactory to Agent;**

(d) the Agent shall have received executed copies of (i) the UST Tranche A Credit Agreement dated as of the Amendment No. 6 Effective Date, between the Parent, the other Subsidiaries of the Parent party thereto, the lenders party thereto and the UST Tranche A Agent and (ii) the UST Tranche B Credit Agreement dated as of the Amendment No. 6 Effective Date, between the Parent, the other Subsidiaries of the Parent party thereto, the lenders party thereto and the UST Tranche B Agent, and all of the documents, instruments and agreements executed and/or delivered in connection therewith, each in form and substance reasonably satisfactory to Agent;

(e) **receipt by Agent of a certificate executed by the Secretary (or other equivalent officer, partner or manager) of each Loan Party dated as of the Amendment No. 6 Effective Date certifying: (i) as true and correct a copy of resolutions in form and substance reasonably satisfactory to Agent, of the board of directors (or other equivalent governing body, member or partner) of each Loan Party approving and authorizing the execution, delivery and performance by such Loan Party of this Amendment and all documents, instruments and agreements executed and/or delivered in connection herewith (if any) and of the transactions contemplated herein and therein, (ii) as true and correct and in full force and effect, without any amendment except as shown, a copy of the Organization Documents of each Loan Party, or that there have been no amendments, supplements, or other modifications to such Loan Party's Organizational Documents since the Amendment No. 5 Effective Date and that the copies of such Loan Party's Organizational Documents delivered to Agent on such date as a part of the "secretary's certificate" delivered by such Loan Party are true, correct and complete copies of such Organizational Documents as currently in full force and effect, (iii) as true and correct a copy of a good standing certificate/certificate of status for each Loan Party certified by the applicable Governmental Authority of such Loan Party's jurisdiction of incorporation, organization or formation dated a recent date prior to the date hereof (except for those delivered pursuant to Section 3(b) below), and (iv) the names and signatures of the officers of such Loan Party authorized to execute and deliver this Amendment and all documents, instruments and agreements executed and/or delivered in connection herewith (if any) on behalf of such Loan Party pursuant to the resolutions referenced in clause (i) above (and such certificate shall be countersigned by another officer of such Loan Party certifying the name, office and signature of the Secretary (or other equivalent officer, partner or manager) of such Loan Party giving such certificate); and**

(f) no Default or Event of Default has occurred and is continuing, or would result from the execution of the Amendment or consummation of the transactions contemplated hereunder; and

3. **Conditions Subsequent.** The Loan Parties shall satisfy the conditions described below within the time periods provided therewith (unless extended by the Agent in its sole discretion).

(a) Within forty-five (45) days following the Amendment No. 6 Effective Date, the Agent shall have received legal opinions covering the Loan Parties organized in Canada and the Netherlands from the Borrowers' local legal counsel regarding certain customary matters relating to the execution, delivery, and performance of this Amendment by the Loan Parties organized under the laws of such foreign jurisdictions and the validity, binding nature, and enforceability (as regards the Loan Parties) of this Amendment and the Loan Agreement as amended hereby, in form and substance reasonably satisfactory to Agent;

(b) Within ten (10) days following the Amendment No. 6 Effective Date, Borrower shall deliver to Agent true and correct copies of each good standing certificate/certificate of status of the Loan Parties not previously delivered on or prior to the Amendment No. 6 Effective Date, certified by the applicable Governmental Authority of such Loan Party's jurisdiction of incorporation, organization or formation dated a recent date prior to or after the date hereof;

(c) Within ninety (90) days following the Amendment No. 6 Effective Date, with respect to the Mortgages in which the Maturity Date is stated therein, the Agent shall have received (i) counterparts executed by the applicable Loan Parties of an amendment to each such Mortgage to update the Maturity Date, in form and substance reasonably satisfactory to Agent, and (ii) evidence that the Borrowers have caused such amendments to be filed or recorded in the filing or recording offices in which such Mortgages are filed or recorded. Borrowers shall pay all filing and recording taxes and fees that are payable in connection with such amendments to the Mortgages; and

(d) Within fifteen (15) days following the Amendment No. 6 Effective Date, the Agent shall have received legal opinions covering the Loan Parties from the Borrowers' legal counsel, in customary form and substance.

4. **Representations and Warranties of the Borrower.** Each of the Borrowers and each of the Guarantors party hereto hereby represents and warrants as follows as of the Amendment No. 6 Effective Date:

This Amendment has been duly authorized, executed and delivered by the Borrowers and each Guarantor and this Amendment and the Loan Agreement, as modified hereby, constitute legal, valid and binding obligations of the Borrowers and the Guarantors and are enforceable against the Borrowers and the Guarantors in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

As of the date hereof, the representations and warranties of the Borrowers and the Guarantors set forth in the Loan Agreement, as modified hereby, and the Loan Documents are true and correct in all material respects on and as of the date hereof, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; *provided*, that any such representation and warranty that is qualified by "materiality", "material adverse effect" or similar language shall be true and correct in all respects (after giving effect to such qualification therein) on and as of the date hereof with the same effect as though made on and as of such date or such earlier date, as applicable.

5. **Consent to Term Debt Intercreditor Agreement.** Subject to satisfaction or waiver of the conditions precedent set forth in Section 2 above, each Existing Lender agrees and acknowledges that it has received a copy of the Term Debt Intercreditor Agreement being amended and restated on the Amendment No. 6 Effective Date and each Existing

Lender further agrees that the Administrative Agent is authorized to enter into the Term Debt Intercreditor Agreement, as amended.

**6. Reference to and Effect on the Loan Agreement.**

(a) Upon the effectiveness hereof, each reference to the Loan Agreement in the Loan Agreement or any other Loan Document shall mean and be a reference to the Loan Agreement as modified hereby. This Amendment shall constitute a Loan Document.

- Except as specifically set forth above, the Loan Agreement and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed.

Other than as set forth above, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Agent or the Lenders, nor constitute a waiver of any provision of the Loan Agreement, the Loan Documents or any other documents, instruments and agreements executed and/or delivered in connection therewith.

**7. Acknowledgements. By executing this Amendment, each of the Loan Parties (a) consents to this Amendment and the performance by Borrowers and each of the other Loan Parties of their obligations hereunder; (b) acknowledges that notwithstanding the execution and delivery of this Amendment, the obligations of each of the Loan Parties under each of the Security Documents and each of the other Loan Documents to which such Loan Party is a party, are not impaired or affected and each Security Document and each such other Loan Document continues in full force and effect, (c) affirms and ratifies, to the extent it is a party thereto, each Security Document and each other Loan Document with respect to all of the Obligations as expanded or amended hereby, and (d) hereby represents and warrants that, as of the date hereof, the Loan Parties do not, to their Knowledge, have, nor claim, any offsets or defenses to their respective Obligations, and have no other claims or causes of action against, any of the Lenders or Agent in connection with the Loan Documents (as amended hereby).**

**8. No Novation or Mutual Departure. The Parent expressly acknowledges and agrees that there has not been, and this Amendment does not constitute or establish, a novation with respect to the Loan Agreement or any other Loan Document, or a mutual departure from the strict terms, provisions, and conditions thereof, other than with respect to the amendments contained in Section 2 hereof.**

**9. Governing Law. This Amendment shall be construed in accordance with and governed by the law of the State of New York, WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF, BUT INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.**

**10. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.**

11. **Counterparts.** This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Signatures delivered by facsimile or PDF shall have the same force and effect as manual signatures delivered in person. The words "execution," "signed," "signature," and words of like import in this Amendment shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

YRC WORLDWIDE INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

EXPRESS LANE SERVICE, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

NEW PENN MOTOR EXPRESS LLC  
(F/K/A NEW PENN MOTOR EXPRESS INC.)

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

ROADWAY EXPRESS INTERNATIONAL, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

ROADWAY LLC

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

ROADWAY NEXT DAY CORPORATION

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

HENRY LOGISTICS, INC.

By: /s/ Jason W. Bergman  
Name: Jason W. Bergman  
Title: President

USF BESTWAY INC.

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF DUGAN INC.

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF GLEN MOORE INC.

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF HOLLAND LLC  
(F/K/A USF HOLLAND INC.)

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF REDSTAR LLC

By: /s/ Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF REDDAWAY INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC ASSOCIATION SOLUTIONS, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

YRC INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC INTERNATIONAL INVESTMENTS, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC LOGISTICS SERVICES, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC MORTGAGES, LLC

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC ENTERPRISE SERVICES, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

YRC REGIONAL TRANSPORTATION, INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President

REIMER HOLDING B.V.

By: /s/ M.F. A van Schijndel

Name: M.F. A van Schijndel

Title: Managing Director A

By: /s/ Terry Gerrond

Name: Terry Gerrond

Title: Managing Director B

[Signature Page to Amendment No. 6 to Loan and Security Agreement]

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1105481 ONTARIO INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

YRC LOGISTICS INC.

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

USF HOLLAND INTERNATIONAL SALES  
CORPORATION

By: /s Thomas J. O'Connor  
Name: Thomas J. O'Connor  
Title: President

YRC FREIGHT CANADA COMPANY

By: /s Mark Boehmer  
Name: Mark Boehmer  
Title: Vice President and Treasurer

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By: /s/ David J. Slattery  
Name: David J. Slattery  
Title: Vice President

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By: /s/ Charles  
Fairchild  
Name: Charles Fairchild  
Title: Senior Vice President

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By: /s/ Sherry  
Winick  
Name: Sherry Winick  
Title: Vice President

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---

By: /s/ Jeff  
Chu  
Name: Jeff Chu  
Title: Director

By: /s/ Michael  
Chen  
Name: Michael Chen  
Title: Director

[Signature Page to Amendment No. 6 to Loan and Security Agreement]

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By: /s/ Christopher J.  
Esposito  
Name: Christopher J. Esposito  
Title: Managing Director

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By: /s/ Matthew  
McLucky.

Matthew McLucky  
Title: Vice President

Name:

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By: /s/ John  
Finore  
Name: John Finore  
Title: Vice President

By: /s/ Maria  
Levy  
Name: Maria Levy  
Title: Head of Risk

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By: /s/ Beverly  
Reichik  
Name: Beverly Reichik  
Title: Sr. Vice President

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**SIGNATURE BANK**, as a Lender

By: /s/ Robert  
Wallace

Name: Robert Wallace

Title: Senior Vice President

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By: /s/ Michael  
Strobel  
Name: Michael Strobel  
Title: Vice President

By: /s/ Suzan  
Onal  
Name: Suzan Onal  
Title: Vice President

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By: /s/ Julian  
Vigder  
Name: Julian Vigder  
Title: Vice President

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**EXHIBIT A**

Amendments to the Loan Agreement

[See attached.]

LOAN AND SECURITY AGREEMENT

YRC WORLDWIDE INC.,  
as Administrative Borrower,  
BORROWERS NAMED HEREIN, GUARANTORS NAMED HEREIN,  
CERTAIN FINANCIAL INSTITUTIONS,  
as Lenders and  
RBS CITIZENS BUSINESS CAPITAL,  
a division of RBS Asset Finance, Inc., a subsidiary of RBS  
Citizens, N.A., as Agent

CITIZENS BANK, N.A.,  
MERRILL LYNCH, PIERCE, FENNER & SMITH and PNC ~~Bank~~BANK  
As Joint Lead Arrangers and Joint Bookrunners

~~Bank of America~~BANK OF AMERICA, N.A. and PNC ~~Bank~~BANK as Co-Syndication Agents

ING CAPITAL LLC, CIT FINANCE LLC, and KEYBANK ~~National~~  
~~association~~NATIONAL ASSOCIATION as Co-Documentation Agents

Dated as of February 13, 2014

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## LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (as amended through Amendment No. 6, and as the same may be further amended, amended and restated, restated, supplemented or otherwise modified, this "Agreement") is dated as of February 13, 2014, by and among YRC WORLDWIDE INC., a Delaware Corporation ("Parent"), as administrative borrower (in such capacity, "Administrative Borrower"), Parent, YRC INC., a Delaware Corporation ("YRC"), USF REDDWAY INC., an Oregon Corporation ("Reddaway"), USF HOLLAND INC., a Michigan Corporation ("Holland"), and NEW PENN MOTOR EXPRESS, INC., a Pennsylvania Corporation ("New Penn", and together with Parent, YRC, Holland and Reddaway, "Borrowers" and each a "Borrower"), those Subsidiaries of Parent identified on Schedule 1.1(a) attached hereto (as updated from time to time) (collectively, "Guarantors" and each, a "Guarantor"); the financial institutions from time to time party to this Agreement as lenders (collectively, "Lenders" and each a "Lender"), the financial institutions from time to time party to this Agreement as issuing banks (collectively, "Issuing Banks" and each an "Issuing Bank"), and RBS CITIZENS BUSINESS CAPITAL, a division of RBS Asset Finance, Inc., a subsidiary of RBS Citizens, N.A., as agent for Lenders and Issuing Banks (in such capacity, "Agent").

### RECITALS:

Borrowers have requested that Agent, Lenders and Issuing Banks make available a credit facility, to be used by Parent and Restricted Subsidiaries to finance their business enterprises. Agent, Lenders and Issuing Banks are willing to provide such credit facility on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for valuable consideration hereby acknowledged, the parties agree as follows:

### SECTION 1.

#### 1.1

#### DEFINITIONS; RULES OF CONSTRUCTION

**Definitions.** As used herein, the following terms have the meanings set forth

below:

ABL Priority Collateral – as defined in the Term Debt Intercreditor Agreement. Accelerated Reporting Trigger Event – shall occur when Availability is less than or equal to ten percent (10%) of the Collateral Line Cap.

Accelerated Reporting Trigger Period – shall commence upon the occurrence of an Accelerated Reporting Trigger Event, and shall continue until the date that the Accelerated Reporting Trigger Event shall have ceased to exist for a period of at least thirty (30) consecutive calendar days.

Account(s) - "accounts" as defined in Section 9-102 of the UCC, and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that

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has been sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered, or (c) arising out of the use of a credit or charge card.

Account Debtor - any Person who is or who may become obligated to any Loan Party under, with respect to or on account of an Account.

Administrative Borrower - as defined in the preamble to this Agreement.

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

Affiliate - 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; provided, that, with respect to the Borrowers and their Subsidiaries, in no case shall any Governmental Authority constitute an "Affiliate". Control shall mean 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.

Agent - as defined in the preamble to this Agreement.

Agent Indemnitees - Agent and its respective officers, directors, employees, Affiliates, agents and attorneys.

Agent Payment Account - an account designated by Agent to Administrative Borrower on the Closing Date and such other account as Agent may from time to time designate to Administrative Borrower as the "Agent Payment Account" for purposes of this Agreement and the other Loan Documents.

Agent Professionals - attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Agent, as applicable.

Agreed 1Q2014 Amount - as defined in the definition of Consolidated Fixed Charges. Amendment Fee Letter - that certain Amendment Fee Letter, dated as of May 24, 2016, by and among the Loan Parties and Agent, as amended and in effect from time to time.

Amendment No. 3 - means the Amendment No. 3 and Limited Consent, dated as of January 30, 2018, by and among the Loan Parties party thereto, Agent and the Lenders party thereto.

Amendment No. 5 - that certain Amendment No. 5, dated as of September 11, 2019, by and among the Loan Parties party thereto, Agent and the Lenders party thereto.

Amendment No. 5 Effective Date - September 11, 2019.

Amendment No. 6 - that certain Amendment No. 6 to Loan and Security Agreement, dated as of the Amendment No. 6 Effective Date, by and among the Borrowers, the Guarantors referred to on the signature pages thereto, the Agent and the Lenders party thereto.

Amendment No. 6 Effective Date - the date on which the conditions set forth in Section 2 of the Amendment No. 6 were satisfied, which date was July 7, 2020.

Amendment No. 6 Transactions - collectively, (a) the negotiation, execution and delivery by the Loan Parties of Amendment No. 6 and the Loan Documents delivered in connection therewith, (b) the negotiation, execution and delivery of the UST Tranche A Facility Documentation, the UST Tranche B Facility Documentation and incurrence of UST Tranche A Facility Indebtedness and UST Tranche B Facility Indebtedness, (c) the negotiation, execution and delivery by the Borrowers and the Subsidiaries party thereto of amendments to the Term Debt Documents in connection with the matters described in clauses (a) and (b) and effecting certain other amendments in connection therewith, (d) the Treasury Equity Issuance and the negotiation, execution and delivery of the Treasury Equity Documents and (e) the payment of fees, costs and expenses in connection with the foregoing.

Applicable Debt - as defined in the definition of Weighted Average Life to Maturity.

Applicable Law - with respect to any Person, all laws, rules, regulations and governmental guidelines applicable to such Person, conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, requirements, and agreements with, any Governmental Authority.

Applicable Margin - with respect to any Type of Loan on any day, the following margin for such type of Loan: (a) at any time prior to the Amendment No. 6 Effective Date, (i) Base Rate Loans, 0.75%, and (ii) LIBOR, 1.75%. and (b) from and after the Amendment No. 6 Effective Date, (i) Base Rate Loans, 1.25%, and (ii) LIBOR, 2.25%.

Approved Fund - any Person (other than a natural person) that is primarily engaged in making, holding or investing in extensions of credit in its ordinary course of business and is administered or managed by a Lender, an entity that administers or manages a Lender, or an Affiliate of either.

Assignment and Acceptance - an assignment agreement between a Lender and Eligible Assignee, substantially in the form of Exhibit A.

Attributable Debt - 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.

Audited Financial Statements - shall mean the audited consolidated balance sheets of Parent and its consolidated Subsidiaries for the Fiscal Years ending December 31, 2010, December 31, 2011 and December 31, 2012 and the related consolidated statements of

operations, changes in shareholders' equity and cash flows of Parent and its consolidated Subsidiaries.

Auto-Extension Letter of Credit – is defined in Section 2.2.1(f).

Availability - as of any date of determination calculated on a Pro Forma Basis, the amount equal to: (a) the Collateral Line Cap, minus (b) the then outstanding Facility Exposure; provided, that solely for the purposes of determining whether an Accelerated Reporting Trigger Event has occurred, Availability may be increased by the amount of cash maintained by Loan Parties in one or more Dominion Accounts (excluding the Borrowing Base Cash Account) in an aggregate amount not to exceed \$25,000,000 at any time; provided, that during the period from the Closing Date to the date that is forty-five (45) days after the Closing Date (or such longer period as Agent may agree in its reasonable discretion), Dominion Accounts shall be deemed to include any deposit account of Loan Parties as to which a Deposit Account Control Agreement is required to be delivered (or other method of control effected) under this Agreement whether or not such requirement has been satisfied.

Availability Reserve - on any day, the sum (without duplication of any other reserve or eligibility criteria) of (a) the aggregate amount of liabilities secured by Liens (other than Permitted Liens) upon Collateral that are senior to Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (b) amounts to reflect events, conditions, contingencies or risks which, as determined by Agent in its Permitted Discretion, adversely affect, or would have a reasonable likelihood of adversely affecting, the ability of Agent to realize upon the Collateral of the type that is included in the Borrowing Base; (c) amounts to reflect Agent's good faith belief that any collateral report or financial information furnished by or on behalf of any Borrower or Loan Party to Agent is or may have been incomplete, inaccurate or misleading in any material respect (to the extent thereof); or (d) amounts in respect of any state of facts which Agent determines in its Permitted Discretion constitutes an Event of Default. The amount of any Availability Reserve established by Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by Agent in its Permitted Discretion.

Agent shall have the right to establish and modify components of the Availability Reserve against the Borrowing Base assets from time to time in its Permitted Discretion in accordance with the terms above, provided, that so long as no Specified Event of Default has occurred and is continuing, Agent has provided Administrative Borrower with at least two (2) Business Days' prior written notice of such establishment or modification and Administrative Borrower shall have the opportunity during such two (2) Business Day period to discuss such establishment or modification with Agent; provided, that (x) no Letters of Credit shall be issued or Loans funded during such two (2) Business Day period if, after giving effect to such establishment or modification, the requested issuance or funding would result in an Overadvance, and (y) no such notice shall be required for changes resulting by virtue of mathematical calculations or if a Material Adverse Effect would occur if such reserves were not established.

Average Availability - for any period, the daily average of Availability for such period as calculated by Agent.

Average Revolver Usage - for any period, the average daily aggregate Facility Exposure for such period divided by the Commitments on the last day of such period.

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

Bail-In Legislation - means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

Bank Product - any of the following products, services or facilities extended to any Loan Party or Subsidiary by a Bank Product Provider: (a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card, purchase card, corporate credit card and merchant card services; and (d) other banking products or services as may be requested by any Loan Party or Subsidiary, other than Letters of Credit; provided, however, that for any of the foregoing to be included as an "Obligation" for purposes of a distribution under Section 5.7.1, the applicable Bank Product Provider must have previously provided written notice to Agent and Administrative Borrower of (i) the existence of such Bank Product, (ii) the maximum dollar amount of obligations arising thereunder ("Bank Product Amount") and (iii) the methodology to be used by such parties in determining the Bank Product Debt owing from time to time. The Bank Product Amount may be changed from time to time upon written notice to Agent and Administrative Borrower by the applicable Bank Product Provider. No Bank Product Amount may be established or increased (other than increases in connection with marking to market products under Hedging Agreements) at any time that a Default or Event of Default exists, or if a reserve in such amount would cause an Overadvance.

Bank Product Amount - as defined in the definition of Bank Product.

Bank Product Debt - Debt and other obligations of a Loan Party relating to Bank Products.

Bank Product Provider - RBS, any other Lender or any of their respective Affiliates (other than a Disqualified Lender) that provides Bank Products to any Loan Party or Subsidiary.

Bankruptcy Code - the United States Bankruptcy Code, being Title 11 of the United States Code, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented.

Base Rate - for any day, a variable rate of interest per annum equal to the highest of (a) the "prime rate" as determined by Agent announced from time to time by RBS at its offices in

Boston, Massachusetts (or any successor to the foregoing) as its “prime rate”, subject to each increase or decrease in such prime rate, effective as of the day any such change occurs (with the understanding that any such rate may merely be a reference rate and may not necessarily represent the lowest or best rate actually charged to any customer by such bank), (b) the Federal Funds Effective Rate (as defined below) from time to time plus one-half of one percent (0.50%), and (c) the LIBOR Rate for a one (1) month Interest Period on such day plus one percent (1%). The term “Federal Funds Effective Rate” shall mean, for any period, a fluctuating interest rate per annum equal, for each day during such period, to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not published for any day that is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal Funds brokers of recognized standing selected by it; provided, that, at no time shall the “Federal Funds Effective Rate” be less than zero percent (0.00%).

Base Rate Loan - a Loan that bears interest based on the Base Rate.

Benchmark Replacement - the sum of: (a) the alternate benchmark rate (which may include Term SOFR or another rate based on SOFR) that has been selected by the Agent and the Borrowers giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the LIBOR Rate for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero percent (0.00%), the Benchmark Replacement will be deemed to be zero percent (0.00%) for the purposes of this Agreement.

Benchmark Replacement Adjustment - with respect to any replacement of the LIBOR Rate with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and the Borrowers giving due consideration to: (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the LIBOR Rate with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the LIBOR Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

Benchmark Replacement Conforming Changes - with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such

market practice is not administratively feasible or if the Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement).

Benchmark Replacement Date - the earlier to occur of the following events with respect to the LIBOR Rate:

- (1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the LIBOR Rate permanently or indefinitely ceases to provide the LIBOR Rate; or
- (2) in the case of clause (3) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

Benchmark Transition Event - the occurrence of one or more of the following events with respect to the LIBOR Rate:

- (1) a public statement or publication of information by or on behalf of the administrator of the LIBOR Rate announcing that such administrator has ceased or will cease to provide the LIBOR Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR Rate;
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBOR Rate, a resolution authority with jurisdiction over the administrator for the LIBOR Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBOR Rate, which states that the administrator of the LIBOR Rate has ceased or will cease to provide the LIBOR Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR Rate; or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR Rate or a Governmental Authority having jurisdiction over the Agent in effect announcing that the LIBOR Rate is no longer representative.

Benchmark Transition Start Date - (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90<sup>th</sup> day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Agent or the Required Lenders, as applicable, by notice to the Borrowers, the Agent (in the case of such notice by the Required Lenders) and the Lenders.

Benchmark Unavailability Period - if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the LIBOR Rate and solely to the

extent that the LIBOR Rate has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the LIBOR Rate for all purposes hereunder in accordance with Section 3.1.4(c) and (y) ending at the time that a Benchmark Replacement has replaced the LIBOR Rate for all purposes hereunder pursuant to Section 3.1.4(c).

Beneficial Ownership Certification - means, with respect to each Borrower, a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation, which certification shall be substantially in the form provided by Agent or such other form satisfactory to the Agent.

Beneficial Ownership Regulation - means 31 C.F.R. § 1010.230.

Blocked Person - any Person that is publicly identified on the most current list of “Specially Designated Nationals and Blocked Persons” published by OFAC.

Board - the Board of the Federal Reserve System of the United States of America. Borrower or Borrowers - as defined in the preamble to this Agreement and any other

Person that at any time after the date hereof becomes a Borrower.

Borrowing - a group of Loans of one Type that are made on the same day or are converted into Loans of one Type on the same day.

Borrowing Base - on any date of determination and without duplication, an amount equal to the sum of:

(a) eighty five percent (85%) of the sum of (x) Eligible Accounts minus (y) the Dilution Reserve, plus

(b) one hundred percent (100%) of the amount of Eligible Borrowing Base Cash,

minus

(c) the Deferred Revenue Reserve, minus

(d) the Availability Reserve.

Borrowing Base Cash Account - account maintained by Administrative Borrower, on

behalf of Borrowers, with Agent as designated in a letter agreement between Administrative Borrower and Agent on the Closing Date and any other account maintained with Agent and designated as the “Borrowing Base Cash Account” by Administrative Borrower and Agent from time to time.

Borrowing Base Cash Release - as defined in Section 8.3.3.

Borrowing Base Certificate - a certificate substantially in the form attached hereto as Exhibit B, as such form may be modified by Agent and Administrative Borrower from time to time in a manner consistent with the terms of this Agreement, by which Administrative

Borrower, on behalf of Borrowers, certifies calculation of the Borrowing Base as of the date delivered.

Business Day - any day (a) which is neither a Saturday or Sunday nor a day on which commercial banks are authorized or required to be closed in New York City; (b) when such term is used to describe a day on which a borrowing, payment, prepayment, or repayment is to be made in respect of any LIBOR Loan, any day which is: (i) neither a Saturday or Sunday nor a day on which commercial banks are authorized or required to be closed in New York City; and (ii) a London Banking Day; and (c) when such term is used to describe a day on which an interest rate determination is to be made in respect of any LIBOR Loan, any day which is a London Banking Day.

Capital Expenditures - for any period of determination with respect to Parent and Restricted Subsidiaries, the aggregate of (a) all amounts that would be reflected as additions to property, plant or equipment on a consolidated statement of cash flows of Parent and Restricted Subsidiaries in accordance with GAAP and (b) the value of all assets under Capitalized Leases incurred by Parent and Restricted Subsidiaries during such period; provided, that, Capital Expenditures shall not include (i) the purchase price paid in connection with a Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby, (ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for such existing equipment being traded in at such time, (iii) expenditures made in leasehold improvements, to the extent reimbursed by the landlord, (iv) expenditures to the extent that they are actually paid for by a third party (excluding Parent or any Restricted Subsidiary) and for which none of Parent nor any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or monetary obligation to such third party or any other Person (whether before, during or after such period), (v) property, plant and equipment taken in settlement of accounts, and (vi) expenditures made with the net proceeds of any Debt (other than Loans advanced hereunder) or equity issuance.

Capitalized Lease - any lease that is required to be capitalized for financial reporting purposes and reflected as a liability on a balance sheet of such Person in accordance with GAAP.

CARES Act - means the [Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 \(2020\)](#), as amended.

Cash Collateral - cash, and any interest or other income earned thereon, that is delivered to Agent to Cash Collateralize any Obligations.

Cash Collateral Account - a demand deposit, money market or other account established by Agent at such financial institution as Agent may select in its Permitted Discretion, which account shall be subject to Agent's Liens for the benefit of Secured Parties.

Cash Collateralize - the delivery of cash to Agent, as security for the payment of the Obligations, with respect to any LC Obligations, in an amount equal to one hundred two percent

(102%) of such LC Obligations (excluding amounts owing pursuant to clause (c) of the definition thereof). Cash Collateralization has a correlative meaning.

Cash Dominion Trigger Event - shall occur when either (i) a Specified Event of Default has occurred; or (ii) Borrowers shall fail to maintain at any time Availability in an amount at least equal to ten percent (10%) of the Collateral Line Cap.

Cash Dominion Trigger Period - shall commence upon the occurrence of a Cash Dominion Trigger Event, and shall continue until the date that (i) no Specified Event of Default exists; and (ii) Borrowers have maintained Availability of not less than ten percent (10%) of the Collateral Line Cap for a period of thirty (30) consecutive calendar days.

Cash Equivalents –

- (a) Dollars and, to the extent consistent with past practice, Canadian Dollars;
- (b) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of issuance thereof;
- (c) investments in commercial paper maturing within 270 days from the date of issuance thereof and having, at such date of acquisition, rated at least A-1 or P-1 by S&P or Moody's;
- (d) investments in demand deposits, certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, Agent, ~~Term Agent~~ or any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000 and that issues (or the parent of which issues) commercial paper rated at least "Prime 1" (or the then equivalent grade) by Moody's or "A 1" (or the then equivalent grade) by S&P;
- (e) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (b) above and entered into with a financial institution satisfying the criteria of clause (d) above;
- (f) investments in "money market funds" within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (e) above; and
- (g) other short-term investments of any Foreign Subsidiary entered into in accordance with normal investment policies and practices of such Foreign Subsidiary consistent with past practices for cash management and constituting investments in governmental obligations and investment funds analogous to and having a credit risk not greater than investments of the type described in clauses (a) through (f) above.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than set forth in clause (a) above; provided, that such amounts are converted into currencies listed in clause (a) within ten Business Days following the receipt of such amounts.

Cash Management Services - any services provided from time to time by RBS or any other Lender or any of its Affiliates to any Loan Party or Subsidiary in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automatic clearinghouse, controlled disbursement, depository, electronic funds transfer, information reporting, lockbox, stop payment, overdraft and/or wire transfer services.

Cash Pension Contribution - as to any period of determination, the actual cash pension funding payments made by Parent and Restricted Subsidiaries with respect to pension funding obligations during such period.

Casualty Event - any event that gives rise to the receipt by Parent or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Property (including any improvements thereon) to replace or repair such equipment, fixed assets or Real Property or as compensation for such condemnation event.

CFC - a "controlled foreign corporation" within the meaning of Section 957 of the Code. Change in Law - 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 or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, however, for the purposes of this Agreement: (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 or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

Change of Control - shall mean:

(a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof), in each case, other than the United States federal government or any other Governmental Authority on behalf thereof (or, in each case, any agent, trustee or other Person on behalf thereof, including, for the avoidance of doubt, any voting trust and the trustee thereof created to hold the Equity Interests for the benefit of the United States Federal government or any other Governmental Authority), of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Parent;

(b) occupation of a majority of the seats (other than vacant seats) on the board of directors of Parent by Persons who were neither (i) nominated ~~nor~~or approved by the board of directors of Parent nor (ii) appointed by directors so nominated ~~nor~~or approved; or

(c) a “change of control” (or similar event) shall occur under (i) the Term Debt Documents or any Permitted Refinancing thereof or (ii) any other Debt for borrowed money with an aggregate principal amount (in the case of this clause (ii)) in excess of the Threshold Amount.

provided, that, notwithstanding anything in this definition to the contrary, in no event shall the Amendment No. 6 Transactions constitute a Change of Control.

Claims - all liabilities, obligations, actual losses, damages, penalties, judgments, proceedings, costs and expenses of any kind (including remedial response costs, reasonable and documented out-of-pocket attorneys’ fees (limited in the case of attorney’s fees to one primary counsel for Agent and Lenders taken as a whole and one additional counsel in each relevant jurisdiction and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel of each type to similarly situated parties) and Extraordinary Expenses) at any time incurred by or asserted against any Indemnitee in any way relating to (a) any Loan Documents or transactions contemplated thereby, (b) any action taken or omitted to be taken by any Indemnitee in connection with any Loan Documents, (c) the existence or perfection of any Liens under the Loan Documents, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or under Applicable Law in connection with the Loan Documents, or (e) failure by any Loan Party to perform or observe any terms of any Loan Document, in each case including all reasonable and documented out-of-pocket 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 (limited in the case of attorney’s fees to one primary counsel for Agent and Lenders taken as a whole and one additional counsel in each relevant jurisdiction and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel of each type to similarly situated parties).

Closing Date - as defined in Section 6.1.

Code - the U.S. Internal Revenue Code of 1986, as amended.

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; provided, that it shall exclude all Excluded Property and all defined terms used therein shall exclude Excluded Property.

Collateral and Guarantee Requirement - shall mean, at any time, the requirement that:

(a) on the Closing Date, Agent shall have received each Security Document to the extent required to be delivered on the Closing Date pursuant to Section 6.1, subject to the limitations and exceptions of this Agreement, duly executed by each Loan Party party thereto;

(b) in each case subject to the limitations and exceptions set forth in this Agreement and the Security Documents, any action required to be taken by Agent to effectuate the same and the lien subordination set forth in the Term Debt Intercreditor Agreement, the Obligations shall have been secured by:

(i) a perfected first priority security interest (subject to Liens permitted by Section 10.2.1) in all personal property of Loan Parties consisting of all accounts receivable, Cash and Cash Equivalents, deposit accounts and supporting obligations and books and records related to the foregoing and, in each case, proceeds thereof;

(ii) a perfected second priority pledge (subject to Liens permitted by Section 10.2.1) of all Equity Interests directly held by the ~~Borrower~~Borrowers or any Guarantor;

(iii) except as otherwise agreed to by the Agent with respect to any Real Property located in any in a special flood hazard area, with respect to each Material Real Property, (1) a second priority mortgage, deed of trust or deed to secure debt (as applicable) (subject to Liens permitted by Section 10.2.1) on such Material Real Property pursuant to Mortgages that satisfy the requirements of clause (c)(i) below and (2) a perfected second priority security interest (subject to Liens permitted by Section 10.2.1) in all personal property relating to such Material Real Property and all fixtures thereon, provided, that, to the extent the opinion delivered to Agent confirms that the filing of the applicable Mortgage itself perfects Agent's second priority security interest in such fixtures, no separate fixture filing shall be required;

(iv) except as otherwise agreed to by the Agent with respect to any Real Property located in any in a special flood hazard area, within one hundred twenty (120) days following the repayment in full of the CDA First Lien Obligations (as defined in the Term ~~Deb~~Debt Agreement) (or, if the proviso to this clause (iv) applies, the date the Requisite CDA Consent (as defined below) is obtained, as applicable), a second priority Pension Property Mortgage (as defined in the Term Debt Agreement) pursuant to Mortgages that satisfy the requirements of clause (c)(i) below (subject to Liens permitted by Section 10.2.1) and a perfected second priority security interest (subject to Liens permitted by Section 10.2.1) in all personal property relating to such Pension Real Property and all fixtures thereon; *provided* that to the extent such Pension Property Mortgage is prohibited under the terms of the Contribution Deferral Agreement (as in effect as of the Amendment No. 5 Effective Date), the Loan Parties shall use commercially reasonable efforts to obtain the necessary consents under the Contribution Deferral Agreement to permit such Pension Property Mortgage (the "Requisite CDA Consent") and if after using such commercially reasonable efforts, such consent is not obtained, the Loan Parties shall not be required to deliver such Pension Property Mortgage until all obligations under the Contribution Deferral Agreement to the extent permitted under Section 10.2.3(u) shall have been paid in full; ~~and~~

(v) subject to clause (vi) below, a perfected second priority security interest (subject to Liens permitted by Section 10.2.1) in substantially all other personal property of Loan Parties, including investment property, contracts, Patents, Copyrights, Trademarks and other general intangibles (subject to the Term Debt Intercreditor Agreement), commercial tort claims, letter of credit rights, intercompany notes and proceeds of the foregoing; and

(vi) [a perfected third priority security interest \(subject to Liens permitted by Section 10.2.1\) in the UST Tranche B Priority Collateral \(as defined in the Term Debt Intercreditor Agreement\) and, in each case, proceeds thereof;](#)

(c) subject to the limitations and exceptions set forth in this Agreement and the Security Documents [and except as otherwise agreed to by the Agent with respect to any Real Property located in any in a special flood hazard area](#), to the extent a security interest in and mortgage lien on any Material Real Property is required under Section 6.1, 10.1.11 or 10.1.13 (together with any Material Real Property that is subject to a Mortgage on the Closing Date, each, a "Mortgaged Property"), Agent shall have received (i) counterparts of a Mortgage with respect to such Mortgaged Property duly executed and delivered by the record owner of such property in form suitable for filing or recording in all filing or recording offices that Agent may reasonably deem necessary or desirable in order to create a valid and subsisting perfected Lien on the property and/or rights described therein in favor of Agent for the benefit of Lenders, and evidence that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to Agent (it being understood that if a mortgage tax will be owed on the entire amount of the indebtedness evidenced hereby, then the amount secured by the Mortgage shall be limited to 120% (or, in the case of Real Property located in the state of New York, 100%) of the fair market value of the property at the time the Mortgage is entered into if such limitation results in such mortgage tax being calculated based upon such fair market value),

(ii) fully paid policies of title insurance (or marked-up title insurance commitments having the effect of policies of title insurance) on the Mortgaged Property (the "Mortgage Policies") issued by Chicago Title or another nationally recognized title insurance company reasonably acceptable to Agent in form and in an amount reasonably acceptable to Agent (not to exceed 100% of the fair market value of the Real Property (or interest therein, as applicable) covered thereby), insuring the Mortgages to be valid, subsisting Liens on the property described therein, free and clear of all Liens other than Liens permitted pursuant to Section 10.2.1, each of which shall (A) to the extent reasonably necessary, include such reinsurance arrangements (with provisions for direct access, if reasonably necessary) as shall be reasonably acceptable to Agent, (B) contain a "tie-in" or "cluster" endorsement, if available under Applicable Law (i.e., policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), (C) have been supplemented by such endorsements (or where such endorsements are not available, opinions of special counsel, architects or other professionals reasonably acceptable to Agent) as shall be reasonably requested by Agent (including endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity, revolving credit (if available after the applicable Loan Party uses commercially reasonable efforts), doing business, non-imputation, public road access, variable rate, environmental lien, subdivision, mortgage recording tax, separate tax lot and so-called comprehensive coverage over covenants and restrictions), (iii) either (1) an American Land Title Association/American Congress of Surveying and Mapping (ALTA/ACSM) form of survey for which all charges have been paid, dated a date, containing a certification and otherwise being in form and substance reasonably satisfactory to Agent or (2) such documentation as is sufficient to omit the standard survey exception to coverage under the Mortgage Policy with respect to such Mortgaged Property and affirmative endorsements reasonably requested by Agent, including "same as" survey and comprehensive endorsements, (iv) customary legal opinions, addressed to Agent and Lenders, and (v) in order to comply with the Flood Laws, the following documents: (A) a completed standard "life of loan" flood hazard determination form (a "Flood Determination Form"); (B) if

any of the material improvement(s) to the improved Material Real Property is located in a special flood hazard area, a notification thereof to the applicable Loan Party ("Flood Notice") and, if applicable, notification to the applicable Loan Party that flood insurance coverage under the National Flood Insurance Program ("NFIP") is not available because the community in which the property is located does not participate in the NFIP; (C) documentation evidencing the applicable Loan Party's receipt of the Flood Notice (e.g., a countersigned Flood Notice or return receipt of certified U.S. Mail or overnight delivery); and (D) if the Flood Notice is required to be given and flood insurance is available in the community in which such Material Real Property is located, a copy of one of the following: the flood insurance policy, the applicable Loan Party's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued or such other evidence of flood insurance reasonably satisfactory to Agent and documentation reasonably satisfactory to Agent supporting the amount of flood insurance required for such Material Real Property (any of the foregoing being "Evidence of Flood Insurance"); and

(d) after the Closing Date, each Restricted Subsidiary of Parent that is not an Excluded Subsidiary shall become a Guarantor pursuant to a joinder agreement in accordance with Section 10.1.11 or 10.1.13, as applicable, and signatory to this Agreement; *provided* that, notwithstanding the foregoing provisions, any Subsidiary of Parent that would otherwise constitute an Excluded Subsidiary that Guarantees any Term Debt, any Term Refinancing Debt, [any UST Tranche A Facility Indebtedness](#), [any UST Tranche A Refinancing Debt](#), [any UST Tranche B Facility Indebtedness](#), [any UST Tranche B Refinancing Debt](#), any Permitted Junior Debt or any Permitted Refinancing of any of the foregoing, or that is a borrower under the Term Debt Documents ~~(or, the UST Tranche A Facility Documentation or the UST Tranche B Facility Documentation (or, in each case~~, any Permitted Refinancing thereof) shall be a Guarantor hereunder for so long as it Guarantees such Debt (or is a borrower with respect thereto) ~~); and~~.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary:

(A) the foregoing definition shall not require, unless otherwise stated in this clause (A), the creation or perfection of pledges of, security interests in, Mortgages on, the obtaining of title insurance with respect to or the taking of any other actions with respect to: (i) any fee owned Real Property that is not Material Real Property (other than Pension Property Mortgages solely to the extent required to be delivered pursuant to clause (b)(iv) of this definition) and any Leasehold Property (it being understood there shall be no requirement to obtain any landlord waivers, estoppels or collateral access letters), (ii) motor vehicles (other than tractors, trucks, trailers and other Rolling Stock) consisting of an employee or light vehicle and other assets subject to certificates of title with an individual fair market value of less than \$40,000, *provided* that the aggregate fair market value of all assets excluded from the Collateral and Guarantee Requirement pursuant to this sub-clause (ii), together with the aggregate book value of all assets excluded from the Collateral and Guarantee Requirement pursuant to sub-clause (xiv) of this clause (A), shall not exceed \$5,000,000 in the aggregate at any time outstanding, (iii) letter of credit rights (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a UCC financing statement) of an amount less than \$5,000,000 and commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than \$5,000,000, (iv) any governmental licenses or state or local franchises, charters and

authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby (except to the extent such prohibition or restriction is rendered ineffective under the UCC or other Applicable Law), (v) Collateral in which pledges or security interests are prohibited or restricted by Applicable Law or require the consent of any governmental authority or third party, which consent has not been obtained, (vi) Margin Stock, (vii) Equity Interests in a bona fide joint venture formed after the Amendment No. 5 Effective Date with any Person that is not an Affiliate of any Loan Party (but only to the extent that the organizational documents of such Subsidiaries or agreements with other equity holders prohibit or restrict the pledge thereof without the consent of the other equity holders under restrictions that are enforceable under the UCC or other Applicable Law and such consent has not been obtained), (viii) Equity Interests of (or held as assets by) Immaterial Subsidiaries, or captive insurance Subsidiaries, (ix) any lease, license or agreement or any property to the extent a grant of a security interest therein would violate or invalidate such lease, license or agreement or similar arrangement or create a right of termination in favor of any other party thereto after giving effect to the applicable anti-assignment provisions of the UCC or other Applicable Law, other than proceeds and receivables thereof, the assignment of which is deemed effective under the UCC or other Applicable Law, notwithstanding such prohibition, (x) any assets or rights subject to a purchase money security interest, Capitalized Lease or similar arrangement, ~~(xi) reserved~~ other than in each case, the UST Tranche B Priority Collateral, (xi) UST Only Collateral, (xii) any assets to the extent a security interest in such assets could result in adverse Tax consequences as reasonably determined by Parent, in consultation with Agent, (xiii) any intent-to-use Trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use Trademark application under applicable Federal law, (xiv) any equipment or other collateral with a net book value in an aggregate amount not to exceed \$5,000,000 for all such equipment or other collateral (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a UCC financing statement); *provided* that the aggregate fair market value of all assets excluded from the Collateral and Guarantee Requirement pursuant to this sub-clause (xiv), together with the aggregate net book value of all assets excluded from the Collateral and Guarantee Requirement pursuant to sub-clause (ii) of this clause (A), shall not exceed \$5,000,000 in the aggregate at any time outstanding, and (xv) other assets not specifically included in the Collateral in circumstances where the cost of obtaining a security interest in such assets exceeds the practical benefit to the Lenders afforded thereby as reasonably determined by the Administrative Agent in consultation with the Parent;

(B) (i) perfection by possession or control shall not be required with respect to (x) any intercompany notes in an aggregate principal amount not to exceed \$5,000,000 and (y) any other notes or other evidence of Debt in an aggregate principal amount not to exceed \$5,000,000; (ii) except in the case of (A) Canadian Subsidiaries, (B) Dutch Subsidiaries and (C) other Foreign Subsidiaries that are not Excluded Foreign Subsidiaries, no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the United States (including the Equity Interests of any Foreign Subsidiary) or to perfect such security interests (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction); and (iii) except to the extent that perfection and priority may be achieved (w) by the filing of a financing statement under the Uniform Commercial Code with respect to a

Loan Party, (x) with respect to Real Property and the recordation of Mortgages in respect thereof, as contemplated by clauses (b)(iii) and (c) above, (y) with respect to Equity Interests or Debt, by the delivery of certificates or instruments representing or evidencing such Equity Interests or Debt along with appropriate undated instruments of transfer executed in blank, or (z) by notation of liens on certificate of title, the Loan Documents shall not contain any requirements as to perfection or priority with respect to any assets or property described in clause (A) above and this clause (B);

(C) Agent in its reasonable discretion may grant extensions of time for the creation or perfection of security interests in, and Mortgages on, or obtaining of title insurance or taking of other actions with respect to, particular assets ~~(including extensions beyond the Amendment No. 5 Effective Date)~~ or any other compliance with the requirements of this definition (or any similar requirements set forth herein or in any other Loan Documents) where it reasonably determines, in consultation with Parent, that such creation or perfection of security interests or Mortgages, or such obtaining of title insurance or taking of other actions, or any other compliance with the requirements of this definition cannot be accomplished without undue delay, burden or expense by the time or times at which such act would otherwise be required by this Agreement or any Security Documents; *provided*, that Agent shall have received on or prior to the Amendment No. 5 Effective Date, (i) UCC financing statements in appropriate form for filing under the UCC in the jurisdiction of incorporation or organization of each Loan Party, (ii) evidence that the Term Agent shall be in possession of any certificates or instruments representing or evidencing Equity Interests of Loan Parties and each directly wholly owned Subsidiary of Loan Parties, in each case accompanied by undated instruments of transfer and stock powers endorsed in blank and (iii) Mortgages and Mortgage Policies for each Material Real Property; ~~and~~

(D) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to the exceptions and limitations set forth in this Agreement and the Security Documents; and

(E) notwithstanding the foregoing clauses (A) through (D) to the contrary, no Loan Party shall grant a Lien on any of its assets ~~to secure the Term Debt (other than (i) any Material Real Property in which the Agent has elected to not obtain a Mortgage in its discretion (any such Material Real Property, "Disclaimed Real Property Assets") and (ii) in the case of UST Tianche A Facility indebtedness and UST Tianche B Facility indebtedness, the UST Only Collateral) to secure the Term Debt, UST Tianche A Facility indebtedness or the UST Tianche B Facility indebtedness~~ unless it has granted (or, concurrently therewith, will grant) a Lien on such assets to secure the Obligations, which Lien securing the Obligations shall be perfected with the requisite relative priority in accordance with the Term Debt Intercreditor Agreement.

Collateral Line Cap - at any date of determination, the lesser of (x) the Commitments and (y) the Borrowing Base.

Common Stock - means the common stock, par value \$0.01 per share, of Borrower. Commitment - for any Lender, its obligation to make Loans and to participate in LC Obligations (excluding amounts owing pursuant to clause (c) of the definition of LC Obligations) up to the maximum principal amount shown on Schedule 1.1(b), or as specified hereafter in the

most recent Assignment and Acceptance to which it is a party. "Commitments" means the aggregate amount of such commitments of all Lenders. The Commitments on the Closing Date are equal to \$450,000,000.

Commercial Software License - any non-exclusive license of commercially available (on non-discriminatory pricing terms) computer software to a Loan Party from a commercial software provider (e.g., "shrink-wrap", "browse-wrap" or "click-wrap" software licenses) or a license of freely available computer software from a licensor of free or open source software.

Commitment Termination Date - the earliest to occur of (a) the Latest Maturity Date; (b) the date on which Borrowers terminate the Commitments pursuant to Section 2.1.4; or (c) the date on which the Commitments are terminated pursuant to Section 11.2.

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

Compliance Certificate - a certificate substantially in the form attached hereto as Exhibit C, as such form may be modified by Agent and Administrative Borrower from time to time in a manner consistent with the terms of this Agreement, by which Administrative Borrower, on behalf of Loan Parties, calculates the Fixed Charge Coverage Ratio for the period covered by the most recent financial statements delivered pursuant to Section 10.1.1 whether or not such Compliance Certificate is delivered during a Financial Reporting Trigger Period.

Concentration Account - account maintained by Administrative Borrower, on behalf of Borrowers, with Agent as designated in a letter agreement between Administrative Borrower and Agent on the Closing Date and any other account designated as the "Concentration Account" by Administrative Borrower and Agent from time to time.

Consolidated EBITDA - for any period of determination calculated on a Pro Forma Basis, the Consolidated Net Income for such period, plus:

(a) without duplication and to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income (other than clauses (viii) or (xi)), the sum of the following amounts for such period with respect to Parent and Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, any expenses or losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations or other derivative obligations, letter of credit fees, costs of surety bonds in connection with financing activities and any bank fees and financing fees (including commitment, underwriting, funding, "rollover" and similar fees and commissions, discounts, yields and other fees, charges and amounts incurred in connection with the issuance or incurrence of Debt and all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Hedging Agreements entered into for the purpose of hedging interest or commodity rate risk) and annual agency, unused line, facility or similar fees paid under definitive documentation related to Debt (whether amortized or immediately expensed),

(ii) provision for taxes based on income, profits or capital gains of Parent and Restricted Subsidiaries, including, without limitation, federal, state, local, franchise and similar taxes and foreign withholding taxes paid or accrued during such period,

(iv)  
losses,  
(iii)

(v)  
depreciation and amortization,  
extraordinary, unusual or non-recurring charges, expenses or

non-cash  
reserves, expenses, charges and losses

impairment charges or asset write-offs, write-offs of deferred financing fees, losses from investments recorded using the equity method, purchase accounting adjustments and stock-based awards compensation expense), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to accounts receivable in the normal course or inventory; provided, that if any of the non-cash charges referred to in this clause (v) represents an accrual or reserve for potential cash items in any future period, (1) Parent may determine not to add back such non-cash charge in the current period and (2) to the extent Parent does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to the extent paid,

(vi) restructuring costs and charges, integration costs, retention, recruiting, relocation and signing bonuses and expenses, and severance costs (including, for the avoidance of doubt, any bonuses payable in connection with the IBT Transactions in 2014 and 2015),

(vii) Transaction Expenses, and any fees, costs and expenses in connection with any amendment, negotiation, modification, restatement, waiver, forbearance or other transaction in connection with the Amendment No. 6 Transactions; provided that the aggregate amount added to "Consolidated EBITDA" pursuant to this clause (a)(vii) with respect to the Amendment No. 6 Transactions shall not exceed \$20,000,000,

(viii) pro forma results for acquisitions (including the commencement of activities constituting such business) and material dispositions (including the termination or discontinuance of activities constituting such business) of business entities or properties or assets, constituting a division or line of business of any business entity, division or line of business that is the subject of any such acquisition or disposition, and operational changes and operational initiatives (including, to the extent applicable, from the Transactions but excluding the IBT Transactions), including any synergies, operating expense reductions, other operating improvements and cost savings as certified by Parent as having been determined in good faith to be reasonably anticipated to be realizable within twelve (12) months following any such acquisition or disposition, operational change and operational initiatives (with the total add-back pursuant to this clause (viii) or Section 1.5(c) to be limited in the aggregate to 20% of Consolidated EBITDA (prior to giving effect to any such adjustments pursuant to this clause

(viii) and Section 1.5 but otherwise on a pro forma consolidated basis) in any Test Period; provided, that such limitation on add-backs shall not apply if supported by a quality of earnings

report prepared by a nationally recognized accounting firm or other third-party advisor reasonably acceptable to Agent or if such adjustments satisfy the requirements of Regulation S-X),

(ix) other transaction specific accruals, costs, charges, fees and expenses (including rationalization, legal, tax, structuring and other costs and expenses) related to the Transactions, acquisitions, investments, restricted payments, dispositions or issuances, amendments, waivers or modifications of debt or equity (whether or not consummated) reasonably expected to be permitted under this Agreement or the consummation of which would result in the repayment in full of the Obligations (other than unasserted contingent indemnity and reimbursement obligations and obligations of any Loan Party arising under any Hedging Agreement),

(x) proceeds of business interruption insurance (other than business interruption insurance relating to COVID 19 (or any related virus) or any related events) received or reasonably expected to be received within 365 days; provided, that any such expected amounts that are not actually received in such 365 day period shall be deducted from Consolidated EBITDA in fiscal quarter immediately following such 365 day period,

(xi) charges, losses or expenses to the extent indemnified or insured or reimbursed or reasonably expected to be indemnified, insured or reimbursed by a third party within 365 days after such charge, loss or expense; provided, that any such expected amounts that are not actually received in such 365 day period shall be deducted from Consolidated EBITDA in fiscal quarter immediately following such 365 day period,

(xii) the amount of any minority interest expense attributable to minority interests of third parties in the positive income of any non-wholly owned Restricted Subsidiary,

(xiii) any net loss from disposed, abandoned or discontinued operations,

(xiv) net realized losses from Swap Obligations or embedded derivatives that require similar accounting treatment and the application of Accounting Standard Codification Topic 815 and related pronouncements,

(xv) the cumulative effect of a change in accounting principles,

(xvi) realized non-cash foreign exchange losses resulting from the impact of foreign currency changes on the valuation of assets or liabilities on the balance sheet of Parent and Restricted Subsidiaries, less

(b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period) and all other non-cash items of income for such period, (ii) any gains and income from investments recorded using the equity method, and (iii) any gains arising out of transactions of the types described in clauses (a)(xii), (xiii), (xiv), (xv) and (xvi) above; provided, that, for the avoidance of doubt, any gain representing the reversal of any non-cash charge

referred to in clause (a)(v)(B) above for a prior period shall be added (together with, without duplication, any amounts received in respect thereof to the extent not increasing Consolidated Net Income) to Consolidated EBITDA in any subsequent period to such extent so reversed (or received).

Notwithstanding the foregoing, Consolidated Net Income and Consolidated EBITDA shall be calculated to exclude any amounts otherwise increasing or included in Consolidated Net Income and/or Consolidated EBITDA relating to (x) business interruption insurance relating to COVID 19 (or any related virus) or any related events or (y) any assistance programs provided by Governmental Authorities (or the equivalent).

Consolidated Fixed Charges - for any period of determination calculated on a Pro Forma Basis, (a) cash interest expense payable during such period (including amounts payable under Capitalized Leases), (b) regularly scheduled principal payments payable in cash during such period (including amounts payable under Capitalized Leases), and (c) letter of credit fees payable in cash during such period. Notwithstanding the foregoing, (i) Consolidated Fixed Charges for the Test Period ending March 31, 2014 (or, if necessary under Section 10.2.10, December 31, 2013) shall be calculated by multiplying (x) \$30,225,000 (the "Agreed 1Q2014 Amount") by (y) four, (ii) Consolidated Fixed Charges for the Test Period ending June 30, 2014 shall be calculated by multiplying (x) the sum of the Agreed 1Q2014 Amount plus the actual amount of Consolidated Fixed Charges for the Fiscal Quarter ending June 30, 2014 by (y) two, (iii) Consolidated Fixed Charges for the Test Period ending September 30, 2014 shall be calculated by multiplying (x) the sum of the Agreed 1Q2014 Amount plus the actual amount of Consolidated Fixed Charges for the two Fiscal Quarters ending September 30, 2014 by (y) the product of four divided by three, and (iv) Consolidated Fixed Charges for the Test Period ending December 31, 2014 shall equal the sum of the Agreed 1Q2014 Amount plus the actual amount of Consolidated Fixed Charges for the three (3) Fiscal Quarters ending December 31, 2014.

Consolidated Fixed Charge Coverage Ratio - for any period of determination calculated on a Pro Forma Basis, the ratio of: (a) (i) Consolidated EBITDA calculated on a Pro Forma Basis for such period, minus (ii) Capital Expenditures made during such period, minus (iii) the aggregate amount of net cash taxes paid in cash during such period, minus (iv) the amount, if any, by which the Cash Pension Contribution for such period exceeds the Pension Expense for such period, and plus (v) the amount, if any, by which the Pension Expense for such period exceeds the Cash Pension Contribution for such period, divided by (b) the Consolidated Fixed Charges for such period.

Consolidated Net Income - for any period of determination, the net income (or loss) of Parent and Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP on a consolidated basis (without duplication) for such period (without deduction for minority interests); provided, that (a) in determining Consolidated Net Income, the net income of any other Person which is not a Restricted Subsidiary, is an Unrestricted Subsidiary or is accounted for by Parent by the equity method of accounting shall be included only to the extent of the payment of cash dividends or cash distributions by such other Person to Parent, Restricted Subsidiaries or another Restricted Subsidiary during such period, (b) the net income of any Subsidiary of Parent shall be excluded to the extent that the declaration or payment of cash dividends or similar cash distributions by that Subsidiary of that net income is

not at the date of determination permitted by operation of its charter or any agreement, instrument or law applicable to such Subsidiary (other than (x) restrictions that have been waived or otherwise released, (y) restrictions pursuant to the Loan Documents ~~and of~~, the Term Debt Documents, [the UST Tranche A Facility Documentation or the UST Tranche B Facility Documentation](#) and (z) restrictions arising pursuant to an agreement or instrument if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by Parent in good faith)) and (c) the income or loss of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with a Loan Party or any Subsidiary or the date that such Person's assets are acquired by Parent or any Subsidiary shall be excluded.

Consolidated Total Assets - total assets of Parent and Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the consolidated balance sheet of Parent and Restricted Subsidiaries for the most recently completed Fiscal Quarter for which financial statements have been delivered pursuant to Section 10.1.1(a) or (b).

Consolidated Total Debt - as of any date of determination calculated on a Pro Forma Basis, the aggregate principal amount of Debt of Parent and Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Debt as provided in Section 1.4), consisting of Debt for borrowed money, Attributable Debt or purchase money Debt, debt obligations evidenced by bonds, debentures, promissory notes, loan agreements or similar instruments, and all Guarantees of any of the foregoing; provided, that (i) Consolidated Total Debt shall not include Debt in respect of letters of credit, bankers' acceptances and other similar contingent obligations, except to the extent of unreimbursed amounts thereunder, (ii) Consolidated Total Debt shall not include obligations under Hedging Agreements permitted hereunder, and (iii) Consolidated Total Debt shall not include any Debt which Parent or any Restricted Subsidiary has either defeased or discharged and satisfied.

Contractual Obligation - 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.

Contribution Deferral Agreement - that certain Second Amended and Restated Contribution Deferral Agreement, dated as of January 31, 2014, among YRC, Holland, New Penn, Reddaway, certain other of the Subsidiaries of Parent, the Trustees for the Central States, Southeast and Southwest Areas Pension Fund, the Pension Fund Entities and each other pension fund from time to time party thereto and Wilmington Trust Company, all as the same may be amended, amended and restated, restated, supplemented or otherwise modified in accordance with the terms hereof.

Control - as defined in the definition of Affiliate.

Copyright License - any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now or hereafter owned by any Loan Party material to the operation of the business of any Loan Party or that such Loan Party otherwise has the right to

license material to the operation of the business of any Loan Party, or granting any right to any Loan Party under any Copyright now or hereafter owned by any third party, and all rights of such Loan Party under any such agreement.

Copyrights - all of the following now owned or hereafter acquired by or assigned to any Loan Party: (a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise, whether registered or unregistered and whether published or unpublished, (b) all registrations and applications for registration of any such Copyright in the United States or any other country, including registrations, recordings, supplemental registrations and pending applications for registration in the USCO, including those listed on Schedule 1.1(c), (c) all rights and privileges arising under Applicable Law with respect to such Loan Party's use of such Copyrights, (d) all derivatives, reissues, renewals, continuations and extensions thereof and amendments thereto, (e) all income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect to the foregoing, including damages and payments for past, present or future infringements thereof, (f) all rights corresponding thereto throughout the world and (g) all rights to sue for past, present or future infringements thereof.

Corresponding Liability – has the meaning set forth in Section 14.15.

Debt - as to any Person at any time, without duplication and without reference to what constitutes indebtedness or a liability in accordance with GAAP, all of the following: (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person; (c) net obligations of such Person under any Hedging Agreement; (d) all obligations of such Person to pay the deferred purchase price of property or services; (e) indebtedness (excluding prepaid interest thereon) described in clauses (a) through (d) and (f) through (h) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; (f) all Attributable Debt; (g) all obligations of such Person to purchase, redeem, retire or otherwise acquire for value any Disqualified Equity Interests (but solely to the extent required to occur on or prior to the Latest Maturity Date (other than as a result of a change of control, asset sale or similar event)); and (h) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Debt of any Person (i) shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, except to the extent such Person's liability for such Debt is otherwise expressly contractually limited and only to the extent such Debt would be included in the calculation of Consolidated Total Debt and (ii) shall exclude (A) trade accounts payable in the ordinary course of business, (B) any earn-out obligation until such earn-out obligation has become due and payable, (C) any current and

undeferred pension contributions or health and welfare contributions due from such Person and/or its applicable Subsidiaries to any Pension Fund Entity, (D) liabilities accrued in the ordinary course, (E) deferred revenues, liabilities associated with customer prepayments and deposits and any such obligations incurred under ERISA, and other accrued obligations (including transfer pricing), in each case incurred in the ordinary course of business, (F) operating leases, (G) customary obligations under employment agreements and deferred compensation, and (H) deferred tax liabilities. The amount of any net obligation under any Hedging Agreement on any date shall be deemed to be the Hedge Termination Value thereof as of such date. The amount of Debt of any Person for purposes of clause (e) that is limited in recourse to the property encumbered thereby shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Debt and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

Debtor Relief Laws - the Bankruptcy Code as now or hereafter in effect or any successor thereto, as well as all other liquidation, conservatorship, bankruptcy, assignment for benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States federal or state law or of any applicable foreign law from time to time in effect affecting the rights of creditors generally.

Debt Repayment Conditions - at the time of determination with respect to any proposed repayment of Debt (to the extent that such repayment is subject to the Debt Repayment Conditions in accordance with the terms of this Agreement), and subject to Section 2.3.4, that (a) no Event of Default then exists or would arise as a result of repaying such Debt, and (b) Availability on the date of such proposed repayment (after giving effect thereto) is not less than \$67,500,000. Prior to consummating any proposed transaction which is subject to the Debt Repayment Conditions, Administrative Borrower shall deliver to Agent evidence acceptable to Agent of the satisfaction of the conditions set forth above on a basis (including, without limitation, giving due consideration to results for prior periods) reasonably satisfactory to Agent.

December 2013 Exchange Agreements - each of the exchange agreements dated as of December 22, 2013, as amended, restated, modified, waived, supplemented or consented to, by and among Administrative Borrower and certain of the holders of the Series B Senior Secured Notes due 2015 that are party thereto.

December 2013 Registration Rights Agreement - the Registration Rights Agreement dated as of December 22, 2013, as amended, restated modified, waived, supplemented or consented to, by and among Administrative Borrower and each of the purchasers signatory thereto.

December 2013 Stock Purchase Agreements - each of the stock purchase agreements dated as of December 22, 2013, as amended, restated, modified, waived, supplemented or consented to, by and among Administrative Borrower and each of the purchasers party thereto.

Default - an event or condition that, with the lapse of time or giving of notice, without any waiver or cure hereunder, would constitute an Event of Default.

Defaulting Lender - any Lender that (a) has failed to fund any amounts required to be funded by it under this Agreement within one (1) Business Day of the date that it is required to do so under the Agreement, (b) notified Administrative Borrower, Agent, or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under the Agreement, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under the Agreement, (d) failed, within one (1) Business Day after written request by Agent, to confirm that it will comply with the terms of the Agreement relating to its obligations to fund any amounts required to be funded by it under the Agreement, (e) otherwise failed to pay over to Agent or any other Lender any other amount required to be paid by it under the Agreement within one (1) Business Day of the date that it is required to do so under the Agreement, (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent or (ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment, or (g) a Lender that has, or has a direct or indirect parent company that has, 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 such 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 or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination made in good faith by Agent that a Lender is a Defaulting Lender under clauses (a) through (f) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to Administrative Borrower, each Issuing Bank and each Lender.

Default Rate - for any Obligation described in Section 3.1.1(b) (including, to the extent permitted by law, accrued but unpaid interest), two percent (2%) plus the interest rate otherwise applicable thereto.

Deferred Revenue Reserve – at any date of determination, 85% of “deferred revenue liability” as reflected on the balance sheet of Parent and Restricted Subsidiaries as of the last day of the most recently completed Fiscal Month.

Deposit Account Control Agreements - the written agreements, in form and substance reasonably satisfactory to Agent and Administrative Borrower, by and among Agent, for the benefit of Secured Parties, each Loan Party with a deposit account at any bank and the bank at which such deposit account is at any time maintained, which provides that such bank will comply with instructions originated by Agent directing disposition of the funds in such deposit account without further consent by such Loan Party and has such other terms and conditions as Agent may reasonably require.

Dilution – as of any date of determination on a consolidated basis for all Loan Parties, a percentage, based upon the experience of the immediately prior 365 consecutive days, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits or other dilutive items with respect to Loan Parties' Accounts during such period, by (b) Loan Parties' billings with respect to Accounts during such period.

Dilution Reserve - as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by one (1) percentage point for each percentage point by which Dilution is in excess of five percent (5%).

Disclaimed Real Property Assets – has the meaning specified in the definition of Collateral and Guaranty Requirement.

Disposition or Dispose - the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

Disqualified Equity Interests - any Equity Interest that, 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 Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (c) provides for scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Debt or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the then Latest Maturity Date; provided, that if such Equity Interests are issued pursuant to, or in accordance with, a plan for the benefit of employees of Parent or Restricted Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by Parent or Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability.

Disqualified Lender – (i) those banks, financial institutions and other entities identified in writing by Administrative Borrower to Agent prior to the date hereof, (ii) any competitors of Parent or its Subsidiaries, and (iii) any of their known Affiliates; provided, that a "competitor" or an affiliate of a competitor or an entity referenced in clause (i) above shall not include any bona fide debt fund or investment vehicle (other than a person which is excluded pursuant to clause (i) above) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business.

Dollar(s) - lawful money of the United States.

Domain Names - all internet domain names and associated URL addresses in or to which any Loan Party now or hereafter has any right, title or interest.

Domestic Subsidiary - any Subsidiary that is organized under the laws of the United States, any state thereof or the District of Columbia; provided, that notwithstanding the foregoing, "Domestic Subsidiary" shall not include any Subsidiary substantially all of the assets of which are Equity Interests or Debt in (or owed by) one or more Subsidiaries that are not Domestic Subsidiaries.

Dominion Account - any special account, lockbox, blocked account or other deposit account established by Loan Parties at RBS, JPMorgan Chase Bank, National Association, Bank of Nova Scotia, The Toronto-Dominion Bank, or another bank reasonably acceptable to Agent which is subject to a Deposit Account Control Agreement in favor of Agent.

Early Opt-in Election - the occurrence of:

(1)(a) a determination by the Agent or (b) a notification by the Required Lenders to the Agent (with a copy to the Borrowers) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 3.1.4(c), are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the LIBOR Rate, and

(2)(a) the election by the Agent or (b) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Agent of written notice of such election to the Borrowers and the Lenders or by the Required Lenders of written notice of such election to the Agent.

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.

Eligible Account - an Account owing to a Loan Party that arises in the Ordinary Course of Business (or, subject to Section 10.2.2, acquired by a Loan Party in connection with any Permitted Acquisition or other acquisition permitted hereunder and, in any such instance, has been reviewed as part of a field exam conducted by the Agent pursuant to Section 10.1.10) from the sale or lease of goods or rendition of services and is payable in Dollars or Canadian Dollars; provided, that in no event shall an Account be an Eligible Account if:

- (a) such Account is unpaid for more than one hundred twenty (120) days after the original invoice date; provided, that, on any date of determination, the aggregate amount of Accounts which remain unpaid for more than ninety (90) days after the original invoice date thereof and are included in the calculation of Eligible Accounts may not exceed 35% of all Eligible Accounts on such date;
- (b) fifty percent (50%) or more of the aggregate Accounts owing by the Account Debtor to such Loan Party are not Eligible Accounts under the foregoing clause (a);
- (c) such Account, when aggregated with other Accounts owing by the applicable Account Debtor, exceeds fifteen percent (15%) of the aggregate Eligible Accounts of Loan Parties (or such higher percentage as Agent may establish for any specific Account Debtor from time to time);
- (d) such Account is owing by an account debtor appearing on the most recently published OFAC Specially Designated Nationals and Blocked Persons List;
- (e) such Account is owing by a creditor or supplier; or is otherwise subject to a potential offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance including, without limitation, off bill discounts, overcharge claims, cargo claims, due to interlines, A/R credits payable (but ineligibility shall be limited solely to the amount thereof);
- (f) an Insolvency Proceeding has been commenced by or against the Account Debtor, or the Account Debtor has failed, has suspended or ceased doing business, is liquidating, dissolving or winding up its affairs, or to Loan Parties' knowledge, is not Solvent; provided, that, in the case of an Insolvency Proceeding, so long as (x) an order exists permitting such Account Debtor to pay the applicable Loan Party as a "critical vendor", and (y) such Account Debtor has obtained adequate postpetition financing to pay the Accounts of such Loan Party arising postpetition, the Accounts of such Loan Party that arise postpetition shall not be deemed ineligible under the provisions of this clause
- (f) to the extent that the order permitting such financing allows the payment of such postpetition Accounts.
- (g) the Account Debtor does not maintain its principal place of business inside the United States or Canada; except, that at Agent's option, such Account owing by an Account Debtor that does not maintain its principal place of business inside the United States or Canada may be deemed an Eligible Account if either: (x) the applicable Account Debtor has delivered to such Loan Party an irrevocable letter of credit issued or confirmed by a bank reasonably satisfactory to Agent and payable only in the United States and in Dollars, sufficient to cover such Account, in form and substance reasonably satisfactory to Agent and if required by Agent, the original of such letter of credit has been delivered to Agent or Agent's agent, and such Loan Party has complied with the terms of Section 7.4.2 with respect to the assignment of any Letter-of-Credit-Rights to Agent or naming Agent as transferee beneficiary thereunder, as Agent may specify; (y) such Account is subject to credit insurance payable to Agent issued by an insurer and on

terms and in an amount reasonably acceptable to Agent, or (z) such Account is otherwise reasonably acceptable in all respects to Agent (subject to such lending formula with respect thereto as Agent may determine in its Permitted Discretion);

(h) such Account is owing by a Governmental Authority, unless the applicable Account Debtor is the United States, any state or territory thereof or any department, agency or instrumentality thereof and the Account has been assigned to Agent in compliance with the Assignment of Claims Act or other Applicable Law; provided, that, notwithstanding the foregoing provisions of this clause (h), Accounts owing by a Governmental Authority that have not been assigned to Agent in compliance with the Assignment of Claims Act or other Applicable Law may be included in the Borrowing Base at any time so long as such Accounts otherwise constitute Eligible Accounts and the aggregate amount of such Accounts included in the calculation of Eligible Accounts (before giving effect to the applicable advance rate) does not exceed 2.5% of the aggregate amount of all Eligible Accounts at such time; and provided, further, that, notwithstanding the foregoing provisions of this clause (h), during a Cash Dominion Trigger Period no Account owing by a Governmental Authority shall be deemed an Eligible Account unless the Account Debtor is the United States, any state or territory thereof or any department, agency or instrumentality thereof and the Account has been assigned to Agent in compliance with the Assignment of Claims Act or other Applicable Law;

(i) such Account is not subject to a duly perfected, first priority Lien in favor of Agent, or is subject to any other Lien (including, without limitation, any Lien to secure the performance of a surety, performance bond or similar instrument);

(j) such Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment unless such Chattel Paper or Instrument has been delivered to Agent;

(k) payment has been extended as to such Account, the applicable Account Debtor has made a partial payment, or such Account arises from a sale on a cash-on-delivery or cash-in-advance basis;

(l) such Account arises from a sale to an Affiliate, or from a sale on a bill-and-hold, guaranteed sale, sale or return, sale on approval, consignment, or other repurchase or return basis; provided, that, this clause (l) shall not apply to Accounts generated by Loan Parties in the Ordinary Course of Business from any Account Debtor that constitutes an Affiliate solely because such Account Debtor shares a common material equityholder with Parent;

(m) such Account represents a progress billing or retainage or has not been invoiced;

(n) such Account includes a billing for interest, fees or late charges, but ineligibility shall be limited to the extent thereof;

(o)

such Account is subject to a legally binding commitment to be sold to a third party or was generated by a Loan Party or any division or operating unit thereof that is subject to a legally binding commitment to be sold to a third party;

(p)

payment of such Account is being administered by an outside collection agency; or

(q)

Loan Parties' records with respect to such Account do not identify the Account Debtor with respect thereto.

Any Accounts that are not Eligible Accounts shall nevertheless be part of the Collateral except to the extent that they constitute Excluded Property.

Eligible Assignee - a Person that is (a) a Lender (other than a Defaulting Lender), an Affiliate of a Lender or Approved Fund; (b) prior to the occurrence of an Event of Default under Section 11.1(a) or (j), any other Person approved by Agent and Administrative Borrower (which approval by Administrative Borrower shall (i) not be unreasonably withheld or delayed, and (ii) be deemed granted if the Administrative Borrower has not objected thereto in writing to the Agent within ten days of receiving a request for approval), that is organized under the laws of the United States or any state or district thereof, has total assets in excess of \$5 billion, extends asset-based lending facilities in its ordinary course of business and whose becoming an assignee would not constitute a non-exempt prohibited transaction under Section 4975 of ERISA or any other Applicable Law; and (c) during the continuance of any Event of Default under Section 11.1(a) or (j), any Person acceptable to Agent in its Permitted Discretion; provided, that notwithstanding the foregoing, no Disqualified Lender or Defaulting Lender shall qualify as an Eligible Assignee, and in any event no Loan Party shall qualify as an Eligible Assignee.

Eligible Borrowing Base Cash - the lesser of (a) cash from time to time deposited in the Borrowing Base Cash Account, which, for purposes of any Borrowing Base Certificate, shall be calculated as of the close of business on the date that is two (2) Business Days prior to the delivery (or required delivery) of same to the Administrative Agent pursuant to Section 8.1 of this Agreement, and (b) cash from time to time deposited in the Borrowing Base Cash Account plus any other Dominion Accounts plus any other cash or Cash Equivalents of the Borrowers in accordance with GAAP, which, for purposes of any Borrowing Base Certificate, shall be calculated as of the close of business on the last Business Day of the previous calendar month or the preceding Friday, as applicable, depending on whether the Borrowers are required to deliver monthly or weekly Borrowing Base Certificates pursuant to Section 8.1 of this Agreement.

Enforcement Action - any action to enforce any Obligations or Loan Documents or to realize upon any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, or otherwise).

Environmental Laws - all federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), and agreements in each case, relating to protection of the environment, natural resources, human health and safety (with respect to exposure to hazardous or toxic substances or wastes) or the presence, Release of, or exposure to, hazardous or toxic substances or wastes, or

the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or the arrangement for such activities with respect to, hazardous or toxic substances or wastes.

**Environmental Liability** - all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses and costs (including administrative oversight costs, capital and operating costs, injunctive relief, costs associated with financial assurance, permitting or closure requirements, natural resource damages and investigation or remediation costs), whether contingent or otherwise, arising out of or relating to (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release 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** - any permit, approval, identification number, license or other authorization required under any Environmental Law.

**Equipment** - means (x) any "equipment" as such term is defined in Article 9 of the UCC and shall also include, but shall not be limited to, all machinery, equipment, furnishings, appliances, furniture, fixtures, tools, vehicles, Tractor Trailers and Rolling Stock now or hereafter owned by any Loan Party in each case, regardless of whether characterized as equipment under the UCC and (y) and any and all additions, substitutions and replacements of any of the foregoing and all accessions thereto, wherever located, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefore, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

**Equity Interests** - with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities) but excluding in each case any debt security that is convertible into, or exchange for, Equity Interest.

**ERISA** - the Employee Retirement Income Security Act of 1974.

**ERISA Affiliate** - any corporation that is part of the same controlled group of corporations as Parent and/or its Subsidiaries within the meaning of Section 414(b) of the Code, and any trade or business (whether or not incorporated) under common control with Parent and/or its Subsidiaries within the meaning of Section 414(c) of the Code.

**ERISA Event** - (a) a Reportable Event; (b) the failure to satisfy the minimum funding standard with respect to a Plan within the meaning of Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA, whether or not waived (unless such failure is corrected by the final due date for the plan year for which such failure occurred), (c) a determination that a Plan is, or is expected to be, in "at risk" status (as defined in Section 303(i)(4) of ERISA or Section

430(i)(4) of the Code); (d) the receipt by Parent, any Restricted Subsidiary or any of their respective ERISA Affiliates of notice pursuant to Section 305(b)(3)(D) of ERISA that a Multiemployer Plan is or will be in “endangered status” or “critical status” (as defined in Section 305(b) of ERISA), or is, or is expected to be, “insolvent” (within the meaning of Section 4245 of ERISA) or in “reorganization” (within the meaning of Section 4241 of ERISA); (e) the filing pursuant to Section 431 of the Code or Section 304 of ERISA of an application for the extension of any amortization period; (f) the failure to timely make a contribution required to be made with respect to any Plan or Multiemployer Plan; (g) the filing of a notice to terminate any Plan if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA; (h) the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Plan or the termination of any Plan under Section 4041(c) of ERISA; (i) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (j) the incurrence by Parent, any Restricted Subsidiary or any of their respective ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (k) the receipt by Parent, any Restricted Subsidiary or any of their respective ERISA Affiliates from the PBGC or a plan administrator of any notice of an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (l) the receipt by Parent, any Restricted Subsidiary or any of their respective ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from Parent, any Restricted Subsidiary or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability; (m) the occurrence of any event or condition that would reasonably be expected to result in the termination of a Plan or the appointment of a trustee to administer a Plan; or (o) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to any Plan which could result in liability to Parent or any Restricted Subsidiary or with respect to which Parent or any Restricted Subsidiary is a “disqualified person” (as defined in Section 4975 of the Code) or a “party in interest” (as defined in Section 3(14) of ERISA).

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

Event of Default - as defined in Section 11.1.

Evidence of Flood Insurance - as defined in the definition of Collateral and Guarantee Requirement.

Excluded Deposit Accounts - collectively, (a) deposit accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Loan Parties’ salaried employees, (b) petty cash accounts to the extent the balances therein do not exceed (x) \$1,000,000 in the aggregate for more than five (5) Business Days, and/or (y) \$5,000,000 in the aggregate for more than one (1) Business Day, (c) zero-balance accounts, (d) deposit accounts specifically and exclusively used to maintain cash collateral required pursuant to the Term Debt Agreement, ~~or (e) escrow accounts~~ the UST Tranche A Credit Agreement or the UST Tranche B Credit Agreement, (e) escrow account, (f) the UST Tranche A Only Collateral and (g) the UST Tranche B Priority Account; provided, that any

deposits or other amounts in excess of the amounts permitted under clause (b) and maintained in petty cash accounts above shall be remitted promptly to a Dominion Account.

Excluded Foreign Subsidiary – shall mean any Foreign Subsidiary (other than any Canadian Subsidiary or Dutch Subsidiary) of the Parent that does not individually have total assets or revenues (for the period of four fiscal quarters most recently ended) that exceed 3.0% of the Parent's total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* that the aggregate amount of assets or revenues (for the period of four fiscal quarters most recently ended) of such Subsidiaries shall not at any time exceed 7.0% of the Parent's total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* further that if, as of the date the financial statements for any fiscal quarter of the Parent are delivered or required to be delivered hereunder, the consolidated assets or revenues of all Excluded Foreign Subsidiaries shall have, as of the last day of such fiscal quarter, exceeded the limits set forth above, then within sixty (60) days (or such later date as agreed by the Agent in its reasonable discretion) after the date such financial statements are so delivered (or so required to be delivered), the Parent shall cause one or more Foreign Subsidiaries to comply with Section 10.1.11 such that, as a result thereof, the consolidated assets and revenues of all Excluded Foreign Subsidiaries do not exceed such limits. For the avoidance of doubt, no Canadian Subsidiary or Dutch Subsidiary shall constitute an Excluded Foreign Subsidiary.

Excluded Property - assets described in clause (A) of the "notwithstanding" clause in the definition of Collateral and Guarantee Requirement.

Excluded Real Property - shall mean (a) any Real Property set forth on Schedule 1.01(a) of the Term Debt Agreement as in effect on the Amendment No. 5 Effective Date and (b) any Pension Real Property.

Excluded Subsidiary - ~~shall mean~~ (a) any bona fide joint venture formed after the Amendment No. 5 Effective Date with any Person that is not an Affiliate of any Loan Party, (b) any Immaterial Subsidiary, (c) any Subsidiary that is prohibited by Applicable Law whether or not existing on the Amendment No. 5 Effective Date or Contractual Obligations existing on the Amendment No. 5 Effective Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from Guaranteeing the Obligations or if Guaranteeing the Obligations would require governmental (including regulatory) consent, approval, license or authorization (unless such contractual obligation is waived or otherwise removed or such consent, approval, license or authorization has been obtained), (d) any other Subsidiary with respect to which, in the reasonable judgment of Agent, in consultation with Administrative Borrower, the burden or cost or other consequences (other than adverse tax consequences) of providing a Guarantee of the Obligations shall be excessive in view of the benefits to be obtained by Secured Parties therefrom, (e) any other Subsidiary with respect to which, in the reasonable judgment of Administrative Borrower, the tax consequences of providing a Guarantee could be adverse in consultation with Agent, (f) any Excluded Foreign Subsidiary of the Parent, and (g) any captive insurance company or non-profit Subsidiary; provided that no Person shall be an Excluded Subsidiary to the extent it guarantees or pledges any of its assets to secure, directly or indirectly, any other Indebtedness of any Loan Party in excess of the Threshold Amount; provided, further, that in the event that any Excluded

Subsidiary guarantees or otherwise becomes an obligor under any Indebtedness, the aggregate principal amount of which exceeds the Threshold Amount, then such Excluded Subsidiary shall, notwithstanding the foregoing, no longer constitute an Excluded Subsidiary, and shall become a Loan Party hereunder. If any Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall only be permitted to be released from its Guarantee so long as the fair market value of any and all Investments then held by the Loan Parties in such Person are permitted as an Investment under Section 10.2.2(c)(iii) and Section 10.2.2(p) at the time such Person becomes an Excluded Subsidiary pursuant to clause (a) of the definition of “Excluded Subsidiary”.

Excluded Swap Obligation - with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or would otherwise become illegal or unlawful 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 Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guaranty of such Loan Party or the grant of such security interest would otherwise become 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 illegal or unlawful.

Excluded Tax - with respect to any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder, (a) income or franchise (or similar) Taxes imposed on (or measured by) its gross or net income by the United States, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits Taxes imposed by the United States or any similar Tax imposed by any other jurisdiction in which any Borrower or Guarantor, as applicable, is located, (c) any U.S. Tax that is imposed on amounts payable to a Lender at the time it becomes a party to this Agreement, acquires additional interests in the credit facility contemplated hereunder, or designates a new lending office (except to the extent a Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from Borrowers with respect to such Tax pursuant to Section 5.10, (d) Taxes attributable to a failure to comply with Section 5.11, (e) Taxes imposed by a jurisdiction as a result of any connection between such party and such jurisdiction other than any connection arising solely from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, or enforcing any, Loan Document, (f) any Taxes, charges or similar levies arising from an Assignment and Acceptance, grant of a participation described in Section 13.2 hereof or a transfer or assignment to or designation of a new applicable lending office for receiving payment under any loan document, (g) any withholding Taxes imposed pursuant to FATCA, and (h) interest, penalties and additions to Tax on the foregoing amounts.

Existing 6% Senior Notes - those certain 6% Convertible Senior Notes due 2014 under that certain Indenture, dated as of February 23, 2010 (as amended, restated, modified or

supplemented from time to time prior to the date hereof), among Parent, as issuer, the guarantors party thereto and US Bank, National Association, as trustee.

Existing ABL Facility - the credit facility governed by that certain Credit Agreement, dated as of July 22, 2011 (as amended, restated, modified or supplemented from time to time prior to the date hereof), among Receivables SPV, as borrower, Parent, as servicer, the lenders party thereto from time to time and JPMorgan Chase Bank, N.A., as agent.

Existing Term Facility - the term loan facility governed by that certain Amended and Restated Credit Agreement, dated as of July 22, 2011 (as amended, restated, modified or supplemented from time to time prior to the date hereof), among Parent, the lenders party thereto from time to time and JPMorgan Chase Bank, National Association, as agent.

Existing Letters of Credit – those Letters of Credit identified on Schedule 1.1(e) hereto.

Existing Series A Notes - those certain 10% Series A Convertible Senior Secured Notes due 2015 under that certain Indenture, dated as of July 22, 2011 (as amended, restated, modified or supplemented from time to time prior to the date hereof), among Parent, as issuer, the subsidiaries party thereto as guarantors and U.S. Bank National Association, as trustee.

Existing Series B Notes - those certain 10% Series B Convertible Senior Secured Notes due 2015 under that certain Indenture, dated as of July 22, 2011 (as amended, restated, modified or supplemented from time to time prior to the date hereof), among Parent, as issuer, the subsidiaries party thereto as guarantors and U.S. Bank National Association, as trustee.

Extended Commitment – as defined in Section 2.4.1. Extension – as defined in Section 2.4.1.

Extension Amendment – as defined in Section 2.4.3. Extension Offer – as defined in Section 2.4.1.

Extraordinary Expenses - all reasonable and documented out-of-pocket costs, expenses or advances that Agent (or, to the extent expressly provided herein, a Lender) may incur during an Event of Default, or during the pendency of an Insolvency Proceeding of a Loan Party (limited (i) in the case of legal fees, to one primary outside counsel for Agent and Lenders taken as a whole, one additional counsel in each relevant foreign jurisdiction and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel of each type to similarly situated parties and (ii) in the case of third party advisors, to one such advisor approved by Agent with the prior consultation of Administrative Borrower), 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 Loan Party, any representative of creditors of a Loan Party 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 or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or

remedies of Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral in accordance with the terms herein; (e) any Enforcement Action; (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents, Loans or Letters of Credit; or (g) Protective Advances.

Facility Exposure - the aggregate outstanding Loans plus LC Obligations (excluding amounts owing pursuant to clause (c) of the definition of LC Obligations).

EATCA - Sections 1471 through 1474 of the Code, as in effect on the date hereof (or any amended or successor version that is substantively comparable), and any applicable Treasury regulation promulgated thereunder or published administrative guidance implementing such Sections or any intergovernmental agreement between the United States and any other jurisdiction in connection therewith whether in existence on the Closing Date or promulgated or published thereafter.

Federal Funds Effective Rate – as defined in the definition of Base Rate.

Fee Letter –the fee letter agreement, dated as of the Closing Date, between Agent and Parent, on behalf of itself and the other Loan Parties.

Financial Covenant Trigger Event- shall occur when Borrowers fail to maintain Availability in an amount at least equal to ten percent (10%) of the Collateral Line Cap.

Financial Covenant Trigger Period – shall commence on the occurrence of a Financial Covenant Trigger Event, and shall continue until the date that the Financial Covenant Trigger Event shall have ceased to exist for a period of at least thirty (30) consecutive calendar days.

Fiscal Month – a calendar month.

Fiscal Quarter – a consecutive three-month period ending March 31, June 30, September 30 or December 31, as adjusted from time to time to the extent not prohibited hereunder.

Fiscal Year - a consecutive twelve-month period ending December 31, as adjusted from time to time to the extent not prohibited hereunder.

Flood Laws - the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board).

Flood Notice – as defined in the definition of Collateral and Guarantee Requirement. FLSA - the Fair Labor Standards Act of 1938.

Foreign Lender - any Lender that is organized under the laws of a jurisdiction other than the laws of the United States, or any state or district thereof.

Foreign Subsidiary - a Subsidiary other than a Domestic Subsidiary.

Full Payment of the Obligations - the occurrence of the following: (a) the Commitments have terminated, (b) all Obligations have been paid in full (other than contingent indemnification obligations and Bank Product Debt as to which arrangements with respect thereto reasonably satisfactory the applicable Bank Product Provider shall have been made), and (c) all Letters of Credit have terminated, expired or Cash Collateralized (other than Letters of Credit as to which other arrangements with respect thereto satisfactory to the applicable Issuing Bank shall have been made). For the avoidance of doubt, "Full Payment of the Obligations" shall not include payment of Bank Product Debt.

GAAP - generally accepted accounting principles in the United States in effect from time to time; provided, however, that if Administrative Borrower notifies Agent that Administrative Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if Agent notifies Administrative Borrower that Required Lenders request an amendment to any provision hereof for such purposes), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

General Intangibles - has the meaning provided in Article 9 of the UCC and shall in any event include all choses in action and causes of action and all other intangible personal property of every kind and nature (other than Accounts) now owned or hereafter acquired by any Loan Party, as the case may be, including corporate or other business records, indemnification claims, contract rights (including rights under leases, whether entered into as lessor or lessee, Hedging Agreements and other agreements), goodwill, registrations, franchises, tax refund claims and any letter of credit, guarantee, claim, security interest or other security held by or granted to any Loan Party.

Governmental Authority - any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, 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) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision, the Treasury, or any successor or similar authority to any of the foregoing).

Grant of Security Interest - a Grant of Security Interest in certain Intellectual Property Collateral substantially in the form of Exhibit E, F or G attached hereto.

Guarantee - as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other monetary obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such

Debt, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt of the payment or performance of such Debt, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt of any other Person, whether or not such Debt is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien); provided, that the term Guarantee shall not include (i) endorsements for collection or deposit, in either case in the ordinary course of business, (ii) customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Debt), or (iii) product warranties. 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.

Guarantor or Guarantors - as defined in the preamble to this Agreement and any other Person that at any time after the date hereof becomes a Guarantor (together with their respective successors and assigns).

Guaranty - the guaranty set forth in Section 14 of this Agreement and any other guaranty of the Obligations of Borrowers now or hereafter executed by a Guarantor in favor of Agent, for the benefit of Secured Parties.

Hazardous Materials - (a) any petroleum products, distillates or byproducts and all other hydrocarbons, coal ash, radon gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, chlorofluorocarbons and all other ozone-depleting substances and (b) any chemical, material, substance or waste that is prohibited, limited or regulated by or pursuant to any Environmental Law.

Hedge Termination Value - in respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements, (a) for any date on or after the date such Hedging Agreements 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 Hedging Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedging Agreements (which may include a Lender or any Affiliate of a Lender).

Hedging Agreement - an agreement relating to any swap, cap, floor, collar, option, forward, cross right or obligation, or combination thereof or similar transaction, with respect to interest rate, foreign exchange, currency, commodity, credit or equity risk.

Holland - as defined in the preamble to this Agreement.

IBT - the International Brotherhood of Teamsters.

IBT Agreement - that certain National Master Freight Agreement, effective April 1, 2008, among the IBT, YRC, Holland and New Penn, as amended, restated, modified, supplemented, extended, renewed or replaced from time to time.

IBT Extension Agreement - that certain Extension of the Agreement for the Restructuring of the YRC Worldwide Inc. Operating Companies, by and among YRC, Holland, New Penn, Reddaway and the Teamsters National Freight Industry Negotiating Committee of the IBT.

IBT Transactions - the modification and extension through March 31, 2019 of the IBT Agreement and the approval and ratification of the IBT Extension Agreement by the members of the IBT in all material respects in accordance with all Applicable Law and other requirements relating thereto.

Immaterial Subsidiary - any Subsidiary of Parent constituting a Restricted Subsidiary that does not individually have total assets or annual revenues in that exceed 1% of Parent's and Restricted Subsidiaries' total assets or annual revenues as of the end of each Fiscal Quarter; provided, that the aggregate amount of assets or annual revenues of such all Immaterial Subsidiaries shall not, at any time, exceed 2.5% of Parent's and Restricted Subsidiaries' total assets or annual revenues as of the end of each Fiscal Quarter; and provided, further, that if, as of the date the financial statements for any Fiscal Quarter of Parent and Restricted Subsidiaries are delivered or required to be delivered hereunder, the consolidated assets or revenues of all Restricted Subsidiaries so designated by Parent as Immaterial Subsidiaries shall have, as of the last day of such Fiscal Year, exceeded the limits set forth above, then within ten (10) Business Days (or such later date as agreed by Agent in its reasonable discretion) after the date such financial statements are so delivered (or so required to be delivered), Parent shall redesignate one or more Immaterial Subsidiaries, in each case in a written notice to Agent, such that, as a result thereof, the consolidated assets and revenues of all Restricted Subsidiaries that are still designated as Immaterial Subsidiaries do not exceed such limits. Upon any such Restricted Subsidiary ceasing to be an Immaterial Subsidiary pursuant to the preceding sentence, such Restricted Subsidiary, to the extent not otherwise qualifying as an Excluded Subsidiary, shall comply with Section 10.1.11, to the extent applicable. The Immaterial Subsidiaries as of the Closing Date are identified on Schedule 9.1.11.

Increase Effective Date – as defined in Section 2.3.3. Incremental Amendment – as defined in Section 2.3.3. Increase Notice – as defined in Section 2.3.1.

Incremental Facility – as defined in Section 2.3.1. Incremental Lenders – as defined in Section 2.3.3.

Indemnitees - Agent Indemnitees, Lender Indemnitees, and Issuing Bank Indemnitees.

Insolvency Proceeding - 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, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or substantially all of its Property; or (c) a general assignment or trust mortgage for the benefit of creditors.

Intellectual Property - all intellectual and similar property of every kind and nature now owned or hereafter acquired by any Loan Party, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, trade secrets, confidential or proprietary technical and business information, know how, show how or other data or information, software (including all data and source code and related documentation), databases, all other proprietary information, including but not limited to Domain Names, social media identifications and tags including Twitter usernames and Facebook usernames, and all embodiments or fixations thereof and related documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing.

Intellectual Property Collateral - Collateral consisting of Intellectual Property. Intercompany Claims - as defined in Section 14.9.

Intercompany Note - one or more promissory notes evidencing Debt owed among Parent and Restricted Subsidiaries subordinated to the Obligations on terms reasonably acceptable to Agent.

Intercreditor Provisions - as defined in Section 11.1(o). Interest Period - relative to any LIBOR

Loan:

(a) initially, the period beginning on (and including) the date on which such LIBOR Loan is made or continued as, or converted into, a LIBOR Loan pursuant to this Agreement and ending on (but excluding) the day which numerically corresponds to such date one, two, three or six months thereafter (or, if such month has no numerically corresponding day, on the last Business Day of such month), in each case as Administrative Borrower may select in its notice pursuant to this Agreement; and

(b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such LIBOR Loan and ending one, two, three or six months thereafter, as selected by Administrative Borrower by irrevocable notice to Agent not less than two (2) Business Days prior to the last day of the then current Interest Period with respect thereto; provided, however, that:

(i) Administrative Borrower shall not be permitted to select Interest Periods to be in effect at any one time which have expiration dates occurring on more than eight different dates;

(ii) Interest Periods commencing on the same date for LIBOR Loans comprising part of the same advance under this Agreement shall be of the same duration;

(iii) if such Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next following Business Day unless such day falls in the next calendar month, in which case such Interest Period shall end on the first preceding Business Day; and

(iv) no Interest Period may end later than the Commitment Termination Date.

Investment - any acquisition of all or substantially all assets of another Person; any acquisition of record or beneficial ownership of any Equity Interests of another Person; or any advance or capital contribution to or other investment in another Person.

Issuing Bank - RBS (or one or more designated Affiliates of RBS), PNC Bank, Bank of America, N.A. and any other Lender or Affiliate of a Lender designated as an Issuing Bank by Administrative Borrower from time to time with the approval of Agent (such approval not to be unreasonably withheld, conditioned or delayed). As of the Closing Date, the Issuing Banks are RBS, PNC Bank and Bank of America, N.A.

Issuing Bank Indemnities - Issuing Banks and their respective officers, directors, employees, Controlled Affiliates, agents and attorneys.

Junior Financing - any Subordinated Debt and any other Debt that is required to be subordinated in right of payment to the Obligations ([for greater certainty, not including the Term Debt, the UST Tranche A Facility Indebtedness or the UST Tranche B Facility Indebtedness](#)).

Junior Financing Documentation - any documentation governing any Junior Financing. Knowledge - as to any Person, the actual knowledge of any Responsible Officer of such Person.

Latest Maturity Date - at any date of determination, the latest maturity or expiration date applicable to any Commitment hereunder at such time.

LC Application - an application by Administrative Borrower, on behalf of any Borrower, to any Issuing Bank for the issuance of a Letter of Credit, in customary form and substance which shall be reasonably satisfactory to Agent and such Issuing Bank.

LC Conditions - the following conditions necessary for issuance of a Letter of Credit: (a) each of the conditions set forth in Section 6.2; (b) after giving effect to such issuance, total LC Obligations under clauses (a) and (b) of the definition thereof do not exceed the Letter of Credit Subline, no Overadvance exists or would be caused thereby, and, if no Loans are outstanding, the LC Obligations under clauses (a) and (b) of the definition thereto do not exceed the Collateral Line Cap; (c) the expiration date of such Letter of Credit is (i) no more than three hundred sixty-five (365) days from issuance (or in the case of any renewal or extension thereof, three hundred sixty-five (365) days from such renewal or extension), in the case of standby Letters of Credit, (ii) no more than one hundred twenty (120) days from issuance, in the case of documentary Letters of Credit, and (iii) no later than the Latest Maturity Date unless the requested Letter of Credit is Cash Collateralized on the date of issuance in a manner acceptable to the applicable Issuing Bank; (d) the Letter of Credit and payments thereunder are denominated

in Dollars; (e) the form of the proposed Letter of Credit is reasonably satisfactory to Agent and Issuing Bank in their Permitted Discretion; and (f) with respect to any Issuing Bank, the stated amount of all outstanding Letters of Credit issued by such Issuing Bank in the aggregate shall not exceed such Issuing Bank's, LC Issuance Sublimit following the issuance of such Letter of Credit without the consent of such Issuing Bank in its sole discretion.

LC Documents - all documents, instruments and agreements (including LC Requests and LC Applications) delivered by Administrative Borrower, Loan Parties or any other Person to any Issuing Bank or Agent in connection with issuance, amendment or renewal of, or payment under, any Letter of Credit.

LC Issuance Sublimit - for any Issuing Bank, its obligation to issue Letters of Credit up to the maximum aggregate stated amount shown on Schedule 1.1(b), or as specified hereafter in the most recent Assignment and Acceptance to which it is a party. The LC Issuance Sublimit of any Issuing Bank may be increased from time to time with the consent of such Issuing Bank and the approval of Agent.

LC Obligations - the sum (without duplication) of (a) all amounts owing by Borrowers for any drawings under Letters of Credit; (b) the aggregate undrawn amount of all outstanding Letters of Credit; and (c) all fees and other amounts owing by Borrowers with respect to Letters of Credit.

LC Request - a request for issuance of a Letter of Credit, to be provided by Administrative Borrower, on behalf of a Borrower, to Issuing Bank, in customary form which shall be in form and substance reasonably satisfactory to Agent and Issuing Bank.

Leasehold Property - any leasehold interest of any Loan Party as lessee under any lease of Real Property.

Lender Indemnitees - Lenders and their officers, directors, employees, Controlled Affiliates, agents and attorneys.

Lenders - as defined in the preamble to this Agreement, including Agent and any other Person who hereafter becomes a "Lender" pursuant to an Assignment and Acceptance or otherwise.

Letter of Credit - any standby or documentary letter of credit, including all Existing Letters of Credit, issued by any Issuing Bank for the account of any Loan Party.

Letter of Credit Subline ~~-\$450,000,000-~~ at any time of determination, the lesser of (x) \$450,000,000 and (y) the aggregate Commitments at such time.

LIBOR Lending Rate - relative to any LIBOR Loan to be made, continued or maintained as, or converted into, a LIBOR Loan for any Interest Period, a rate per annum determined pursuant to the following formula:

$$\text{LIBOR Lending Rate} = \frac{\text{LIBOR Rate}}{(1.00 - \text{LIBOR Reserve Percentage})}$$

LIBOR Loan - any Loan that bears interest based on the LIBOR Lending Rate. LIBOR Loan Prepayment Fee - as defined in Section 5.5.1.

LIBOR Rate - with respect to any LIBOR Loan for the Interest Period applicable thereto, the rate appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by Agent from time to time for purposes of providing quotations of interest rates applicable to eurodollar deposits in dollars in the London interbank market) at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, that if more than one rate is specified on such Page for such comparable period, the applicable rate shall be the arithmetic mean of all such rates; provided, further, that, at no time shall the "LIBOR Rate" be less than zero percent (0.00%). In the event that such rate is not available at such time for any reason, then the term "LIBOR Rate" shall mean, with respect to any LIBOR Loan for the Interest Period applicable thereto, the rate of interest per annum at which dollar deposits in the approximate amount of the LIBOR Loan being made, continued or converted and for a term comparable to such Interest Period are offered by the principal London office of Agent in immediately available funds to major banks in the London interbank market at approximately 11:00 a.m. London time two (2) Business Days prior to the commencement of such Interest Period.

LIBOR Reserve Percentage - relative to any day of any Interest Period for LIBOR Loans, the maximum aggregate (without duplication) of the rates (expressed as a decimal fraction) of reserve requirements (including all basic, emergency, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto as issued from time to time and then applicable to assets or liabilities consisting of "Eurocurrency Liabilities", as currently defined in Regulation D of the Board, having a term approximately equal or comparable to such Interest Period.

License - any Patent License, Trademark License, Copyright License, Commercial Software License or other license or sublicense agreement granting rights under Intellectual Property to which any Loan Party is a party, including those listed on Schedule 1.1(f).

Lien - any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease or financing lease having substantially the same economic effect as any of the foregoing).

Liquidity - as of any date of determination calculated on a Pro Forma Basis, the amount equal to: (a) Availability on such date, plus (b) all cash maintained by Loan Parties in one or more Dominion Accounts on such date (excluding the Borrowing Base Cash Account); provided, that during the period from the Closing Date to the date that is forty-five (45) days after the Closing Date (or such longer period as Agent may agree in its reasonable discretion), Dominion

Accounts shall be deemed to include any deposit account of Loan Parties as to which a Deposit Account Control Agreement is required to be delivered (or other method of control effected) under this Agreement whether or not such requirement has been satisfied.

Loan - a loan made pursuant to Section 2.1, and any Overadvance Loan or Protective Advance; collectively, Loans.

Loan Account - the loan account established by each Lender on its books pursuant to Section 5.9.

Loan Documents - this Agreement, Other Agreements and Security Documents. For the avoidance of doubt, Hedging Agreements and any agreements in respect of Bank Product Debt do not constitute Loan Documents.

Loan Party or Loan Parties - each Borrower and/or Guarantor as applicable.

London Banking Day - a day on which dealings in US dollars deposits are transacted in the London interbank market.

Margin Stock - as defined in Regulation U of the Board.

Master Account - account maintained by Administrative Borrower, on behalf of Borrowers, with Agent as designated in a letter agreement between Administrative Borrower and Agent on the Closing Date and any other account designated as the "Master Account" by Administrative Borrower and Agent from time to time.

Master Assignment and Assumption - that certain Master Assignment and Assumption Agreement, dated as of the Second Amendment Effective Date, by and among the Lenders and Agent.

Material Adverse Effect - a (a) material adverse effect on the business, operations, assets, liabilities (actual or contingent), operating results or financial condition of Parent and Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of Loan Parties (taken as a whole) to fully and timely perform their payment obligations under the Loan Documents to which any Loan Party is a party; or (c) material adverse effect on the rights and remedies available to Lenders or Agent under any Loan Document (other than due to the action or inaction of Agent or any Lender); provided, that, with respect to the foregoing clause (a), the impacts of COVID 19 on the business, operations, assets, liabilities (actual or contingent), operating results or financial condition of Parent and Restricted Subsidiaries, taken as a whole, will be disregarded.

Material Real Property - each Real Property that is (i) owned in fee by a Loan Party, (ii) located in the United States and (iii) not an Excluded Real Property; provided, that Material Real Property shall include any Real Property subject to a mortgage under the Term Debt Documents, the UST Tranche A Facility Documentation or the UST Tranche B Facility Documentation.

Maturity Date - (i) the later of (a) five (5) years from the Second Amendment Effective Date (so long as at least 90% of the Term Debt which remains outstanding as of February 13,

2019 has been on or prior to such date refinanced, replaced or extended with a maturity date of no earlier than five (5) years following the Second Amendment Effective Date) and (b) February 13, ~~2019~~2019, (ii) with respect to any Commitments as to which the final maturity date has been extended pursuant to Section 2.4, the final maturity date as specified in the Extension Offer accepted by the applicable Lender or Lenders holding such Commitments, and (iii) with respect to any Incremental Facility, the final maturity date as specified in the Incremental Amendment governing the Commitments.

Maximum Incremental Facility Amount - as defined in Section 2.3.1. Minimum Extension Condition - as defined in Section 2.4.2.

MIRE Event - means if there are any Mortgaged Properties at such time, any increase, extension of the maturity or renewal of any of the Commitments or Loans (including pursuant to an Incremental Amendment or any incremental credit facility hereunder, but excluding (i) any continuation or conversion of borrowings, (ii) the making of any revolving loans, and (iii) the issuance, renewal or extension of Letters of Credit).

Moody's - Moody's Investors Service, Inc., and its successors.

Mortgage - each mortgage, deed of trust or deed to secure debt pursuant to which a Loan Party grants to Agent, for the benefit of Secured Parties, Liens upon the Real Property owned by such Loan Party, as security for the Obligations.

Mortgage Policies - as defined in the definition of Collateral and Guarantee Requirement. Mortgaged Property - as defined in the definition of Collateral and Guarantee Requirement.

Multiemployer Plan - any employee benefit plan or arrangement described in Section 4001(a)(3) of ERISA that is contributed to by any Loan Party or Subsidiary or ERISA Affiliate.

Net Proceeds - 100% of the cash proceeds actually received by Parent or any wholly-owned Restricted Subsidiary (~~provided that, for the avoidance of doubt, HJ International Transportation Co., Ltd. is not a wholly-owned Restricted Subsidiary~~) (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation and similar awards, but in each case only as and when received) from any Casualty Event, net of (i) attorneys' fees, accountants' fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, required debt payments and required payments of other obligations that are secured by the applicable asset or property (including without limitation principal amount, premium or penalty, if any, interest, fees and expenses and other amounts) (other than pursuant to the Loan Documents, the Term Debt Documents (other than in respect of Term Priority Collateral) ~~or~~, any Term Refinancing Debt (other than in respect of Term Priority Collateral), the UST Tranche A Facility Documentation (other than in respect of the UST Tranche A Only Collateral), any UST Tranche A Refinancing Debt (other than in respect of the UST Tranche A Only Collateral), the UST Tranche B Facility Documentation (other than in

respect of UST Tranche B Priority Collateral or the UST Tranche B Only Collateral) or any UST Tranche B Refinancing Debt (other than in respect of UST Tranche B Priority Collateral or the UST Tranche B Only Collateral), other expenses and brokerage, consultant and other fees actually incurred in connection therewith, (ii) in the case of any Casualty Event by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (ii)) attributable to minority interests and not available for distribution to or for the account of Parent or a wholly owned Restricted Subsidiary as a result thereof, (iii) taxes paid or reasonably estimated to be payable as a result thereof (provided, that if the amount of any such estimated taxes exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition or Casualty Event, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid), and (iv) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) or (iii) above) (x) related to any of the applicable assets and (y) retained by Parent or any of the Restricted Subsidiaries including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Casualty Event occurring on the date of such reduction); provided, that if no Event of Default exists such proceeds may be applied by Parent or any Restricted Subsidiary to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of Parent or Restricted Subsidiaries or to make Permitted Acquisitions or any acquisition permitted hereunder of all or substantially all the assets of, or all the Equity Interests (other than directors' qualifying shares) in, a Person or division or line of business of a Person (or any subsequent investment made in a Person, division or line of business previously acquired), in each case within 270 days of such receipt, such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 270 days of such receipt, so used or contractually committed with a third party that is not to be so used (it being understood that if any portion of such proceeds are not so used within such 270 day period but within such 270 day period are contractually committed with a third party that is not to be used, then upon the termination of such contract or if such Net Proceeds are not so used within the later of such 270 day period and 180 days from the entry into such contractual commitment, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso; it being understood that such proceeds shall constitute Net Proceeds notwithstanding any investment notice if there is a Specified Event of Default at the time of a proposed reinvestment unless such proposed reinvestment is made pursuant to a binding commitment with a third party that is not entered into at a time when no Specified Event of Default was continuing); provided, further, that no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless the aggregate net proceeds exceeds \$7,500,000 in any Fiscal Year (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (a)), and

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to Parent or any Restricted Subsidiary shall be disregarded.

New Penn - as defined in the preamble to this Agreement.

NFIP - as defined in the definition of Collateral and Guarantee Requirement.

Note - any promissory note to be executed by Borrowers in favor of a Lender, which shall be in the amount of such Lender's Commitment and shall evidence the Loans made by such Lender.

Notice of Borrowing - a Notice of Borrowing to be provided by Administrative Borrower to request the funding of a Borrowing of Loans, in substantially the form attached as Exhibit D hereto.

Notice of Conversion/Continuation - a Notice of Conversion/Continuation to be provided by Administrative Borrower to request a conversion or continuation of any Loans as LIBOR Loans, in substantially the form attached as Exhibit I hereto.

Obligations - all (a) principal of and premium, if any, on the Loans, (b) LC Obligations, (c) interest, expenses, fees and other sums payable by Loan Parties under Loan Documents, (d) obligations of Loan Parties under any indemnity for Claims, (e) Extraordinary Expenses, (f) Bank Product Debt, and (g) other Debts, obligations and liabilities of any kind owing by Loan Parties 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. Subject to Section 14.13, in no event shall the Obligations include any Excluded Swap Obligations.

OFAC - the Office of Foreign Assets Control of the U.S. Department of the Treasury. Ordinary Course of Business - any business practice currently or previously engaged in by Parent and Restricted Subsidiaries, and any similar, ancillary, complementary or other business practice reasonably related thereto or that is a reasonable extension, development or expansion thereof.

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

Original Maturity Date - as defined in the definition of Maturity Date.

Other Agreement - each Note; LC Document; Fee Letter; Amendment Fee Letter; Master Assignment and Assumption; Borrowing Base Certificate; Compliance Certificate; Perfection Certificate; Term Debt Intercreditor Agreement; Post-Closing Side Letter; custodial administration agreement; subordination agreement; or other document, instrument or agreement

(other than this Agreement or a Security Document) now or hereafter executed or delivered by a Loan Party to Agent or a Lender pursuant to this Agreement or any other Loan Document.

Overadvance - as defined in Section 2.1.5.

Overadvance Loan - a Base Rate Loan made when an Overadvance exists or is caused by the funding thereof.

Parallel Liability - has the meaning set forth in Section 14.15. Parent - as defined in the preamble to this Agreement.

Participant - as defined in Section 13.2.1. Participant Register - as defined in Section 13.2.4.

Patent License - any written agreement, now or hereafter in effect, granting to any third party any right to develop, commercialize, import, make, have made, offer for sale, use or sell any invention on which a Patent, now or hereafter owned by any Loan Party or that any Loan Party otherwise has the right to license, is in existence, or granting to any Loan Party any such right with respect to any invention on which a Patent, now or hereafter owned by any third party, is in existence, and all rights of any Loan Party under any such agreement.

Patents - means all of the following now owned or hereafter acquired by any Loan Party:

(a) all letters patent of the United States or the equivalent thereof in any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or the equivalent thereof in any other country, including registrations, recordings and pending applications in the United States Patent and Trademark Office or any similar offices in any other country, including those listed on Schedule 1.1(g), (b) all rights and privileges arising under Applicable Law with respect to such Loan Party's use of any Patents, (c) all inventions and improvements described and claimed therein, (d) all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and amendments thereto, (e) all income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect to any of the foregoing including damages and payments for past, present or future infringements thereof, (f) all rights corresponding thereto throughout the world and (g) rights to sue for past, present or future infringements thereof.

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 Conditions - at the time of determination with respect to any proposed transaction, and subject to Section 2.3.4, that (a) no Event of Default then exists or would arise as a result of consummating such transaction, and (b) (i) Liquidity on the date of such proposed transaction (after giving effect thereto) is not less than \$100,000,000 (with not less than \$67,500,000 of such Liquidity being attributable to Availability), or (ii) (x) Availability on the date of such proposed transaction (after giving effect thereto) is not less than \$67,500,000, and (y) the Consolidated Fixed Charge Coverage Ratio for the most recently completed Test Period

for which financial statements have been provided pursuant to Section 10.1.1 calculated on a Pro Forma Basis (giving effect to such proposed transaction) is equal to or greater than 1.10 to 1.00. Prior to consummating any proposed transaction which is subject to the Payment Conditions, Administrative Borrower shall deliver to Agent evidence acceptable to Agent of the satisfaction of the conditions set forth above on a basis (including, without limitation, giving due consideration to results for prior periods) reasonably satisfactory to Agent.

Payment Item - each check, draft or other item of payment payable to a Loan Party, including those constituting proceeds of any Collateral.

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

Pension Expense - the actual pension expense for the applicable period of Parent and its Subsidiaries pursuant to the profit and loss statement charge (or benefit) with respect to such pension funding obligations for such period.

Pension Fund Entities - those entities identified on Schedule 1.1(h) hereto.

Pension Real Property - shall mean any Real Property for so long as such Real Property secures the obligations of the Parent under the Contribution Deferral Agreement on a first lien basis on the Amendment No. 5 Effective Date, as set forth on Schedule 1.01(a) of the Term Debt Agreement as in effect on the Amendment No. 5 Effective Date.

Perfection Certificate - means a certificate substantially in the form of Exhibit H, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by any Responsible Officer of Administrative Borrower.

Permitted Acquisition - as defined in Section 10.2.2.

Permitted Additional Debt - shall mean Debt incurred by any Loan Party; provided, that (i) such Debt may only be secured by assets consisting of Collateral and may not be secured by any assets other than the Collateral, (ii) such Debt is not at any time guaranteed by any Subsidiaries that are not Loan Parties, (iii) the other terms and conditions of such Debt (excluding pricing, fees, rate floors and optional prepayment or redemption terms), if different from those contained herein ~~or~~, in the Term Debt Documents, [in the UST Tranche A Facility Documentation](#) or [in the UST Tranche B Facility Documentation](#), are customary market terms for Debt of such type (provided, that a certificate of a Responsible Officer of Parent delivered to Agent at least five (5) Business Days prior to the incurrence of such Debt (or such shorter period as Agent may agree in its sole discretion), together with a reasonably detailed description of the material terms and conditions of such Debt or drafts of the documentation relating thereto, stating that Parent has determined in good faith that such terms and conditions satisfy the requirement of this clause (iii) shall be conclusive evidence that such terms and conditions satisfy such requirement unless Agent notifies Parent within such five (5) Business Day period (or such shorter period as Agent may agree in its sole discretion) that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees)), (iv) the security agreements (taken as a whole) relating to such Debt, if applicable, are substantially the same as

or more favorable to the Loan Parties than the security documents governing the Term Debt or, as applicable, the UST Tranche A Facility Indebtedness and the UST Tranche B Facility Indebtedness, with such differences as are reasonably satisfactory to Agent, (v) no Event of Default shall exist immediately prior to or after giving effect to such incurrence, (vi) a representative acting on behalf of the holders of such Debt shall have become party to or otherwise subject to the provisions of the Term Debt Intercreditor Agreement or another intercreditor agreement in form and substance reasonably satisfactory to Agent and Administrative Borrower that contains terms substantially similar to the Term Debt Intercreditor Agreement or other intercreditor agreement on market terms as determined by the Agent in good faith, and (vii) if applicable, the priority position of the holders of such Debt with respect to the Collateral under the Term Debt Intercreditor Agreement shall be equivalent or junior to the position of the holders of the Term Debt and all obligations under such Debt shall constitute ~~Term~~ Tranche B-2 Obligations under (and as defined in) the Term Debt Intercreditor Agreement, or the holders of the UST Tranche A Facility Indebtedness and all obligations under such Debt shall constitute UST Tranche A Obligations under (and as defined in) the Term Debt Intercreditor Agreement or the holders of the UST Tranche B Facility Indebtedness and all obligations under such Debt shall constitute UST Tranche B Obligations under (and as defined in) the Term Debt Intercreditor Agreement, in each case as applicable. Notwithstanding the foregoing, Permitted Additional Debt shall include all Permitted Additional Debt (as defined in the Term Debt Agreement as in effect on the date hereof).

Permitted Discretion - Agent's judgment exercised in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

Permitted Junior Debt - unsecured Debt incurred by any Loan Party in the form of one or more series of unsecured notes or loans; provided, that (i) if constituting Subordinated Debt, (A) such Debt (including any Guarantee thereof) is subordinated to the Obligations on terms customary for high yield subordinated debt securities or otherwise reasonably satisfactory to Agent and (B) the Obligations at all times constitute "Designated Senior Debt" (or comparable term) under the documents governing such Debt, (ii) such Debt does not mature or have scheduled amortization or payments of principal and is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligation (except customary asset sale, change of control or similar provisions or AHYDO "catch-up" payments), in each case prior to the date that is ninety-one (91) days after the then Latest Maturity Date, (iii) such Debt is not at any time guaranteed by any Person that is not a Loan Party and (iv) the other terms and conditions of such Debt (excluding pricing, fees, rate floors and optional prepayment or optional redemption terms), if different than the terms hereof, are customary market terms for Debt of such type (provided, that a certificate of a Responsible Officer of Parent delivered to Agent at least five (5) Business Days prior to the incurrence of such Debt (or such shorter period as Agent may agree in its sole discretion), together with a reasonably detailed description of the material terms and conditions of such Debt or drafts of the documentation relating thereto, stating that Parent has determined in good faith that such terms and conditions satisfy the requirement of this clause (iv) shall be conclusive evidence that such terms and conditions satisfy such requirement unless Agent notifies Parent within such five (5) Business Day period (or such shorter period as Agent may agree in its sole discretion) that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees)).

Permitted Lien - as defined in Section 10.2.1.

Permitted Refinancing - with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Debt of such Person; provided, that (a) the original aggregate principal amount of such Debt (or accreted value, if applicable) does not exceed the aggregate principal amount (or accreted value, if applicable) of the Debt so modified, refinanced, refunded, renewed, replaced or extended except (i) by an amount equal to accrued but unpaid interest, premiums and fees payable by the terms of such Debt and reasonable fees, expenses, original issue discount and upfront fees incurred in connection with such modification, refinancing, refunding, renewal, replacement or extension and (ii) by an amount equal to any existing available commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Debt permitted pursuant to Section 10.2.3(e), the Debt resulting from such modification, refinancing, refunding, renewal, replacement 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 greater than the Weighted Average Life to Maturity of, the Debt being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Debt permitted pursuant to Sections 10.2.3(e), at the time thereof, no Event of Default shall have occurred and be continuing and (d) if such Debt being modified, refinanced, refunded, renewed, replaced or extended is Debt permitted pursuant to Section 10.2.3(b) or 10.2.3(r), or is otherwise a Junior Financing, (i) to the extent such Debt being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment or in lien priority to the Obligations, the Debt resulting from such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment or in lien priority, as applicable, to the Obligations on terms (taken as a whole) (x) at least as favorable to Lenders as those contained in the documentation governing the Debt being modified, refinanced, refunded, renewed, replaced or extended (provided, that a certificate of a Responsible Officer of Parent delivered to Agent at least five (5) Business Days prior to the incurrence of such Debt (or such shorter period as Agent may agree in its sole discretion), together with a reasonably detailed description of the material terms and conditions of such Debt or drafts of the documentation relating thereto, stating that Parent 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 Parent within such five Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees)) or (y) otherwise reasonably acceptable to Agent, (ii) the obligors (including any guarantors) in respect of the Debt resulting from such modification, refinancing, refunding, renewal, replacement or extension shall not include any Person other than the obligors (including any guarantors) of the Debt being modified, refinanced, refunded, renewed, replaced or extended unless otherwise permitted hereby, and (iii) in the case of any Permitted Refinancing in respect of the Term Debt ~~or any Term, UST Tranche A Facility Indebtedness or UST Tranche B Facility Indebtedness, any Term Refinancing Debt, any UST Tranche A Refinancing Debt, or any UST Tranche B Refinancing Debt~~, such Permitted Refinancing is secured, if at all, only by all or any portion of the collateral securing the Term Debt, ~~the UST Tranche A Facility Indebtedness or the UST Tranche B Facility Indebtedness, as applicable~~ (but not by any other assets) pursuant to one or more security agreements subject, in the case of assets constituting (or required to constitute) Collateral, to the Term Debt Intercreditor Agreement or any replacement intercreditor agreement reasonably satisfactory to Agent, that contains terms substantially similar to the Term Debt Intercreditor Agreement or

other intercreditor agreement on market terms as determined by the Agent in good faith. When used with respect to any specified Debt, Permitted Refinancing shall mean the Debt incurred to effectuate a Permitted Refinancing of such specified Debt. ~~Notwithstanding anything in this Agreement or this definition to the contrary, the modification, refinancing, refunding, renewal, replacement, extension and amendments contemplated by and consummated pursuant to the Term Debt Refinancing Amendment and the Restated Term Debt Agreement shall, in each case, constitute a Permitted Refinancing of the Term Debt.~~

Person - any individual, corporation, limited liability company, partnership, joint venture, joint stock company, land trust, business trust, unincorporated organization, Governmental Authority or other entity.

Plan - an employee pension benefit plan (other than a Multiemployer Plan) that is either (a) maintained by a Loan Party or Subsidiary for employees or (b) maintained pursuant to a collective bargaining agreement, or other arrangement under which more than one employer makes contributions and to which a Loan Party or Subsidiary is making or accruing an obligation to make contributions or has within the preceding five years made or accrued such contributions.

Pledged Collateral - as defined in Section 7.1.1. Pledged Debt - as defined in Section 7.1.1.

Pledged Equity - as defined in Section 7.1.1.

Pledged Securities - means any Promissory Notes, stock certificates or other Securities, certificates or Instruments now or hereafter included in the Pledged Collateral, including all Pledged Equity, Pledged Debt and all other certificates, instruments or other documents representing or evidencing any Pledged Collateral.

Post-Closing Side Letter - the post-closing side letter as of the date hereof among certain Loan Parties and Agent.

Projections - as defined in Section 10.1.1(c).

Pro Rata - with respect to any Lender, a percentage (expressed as a decimal, rounded to the third (3rd) decimal place) determined (a) while Commitments are outstanding, by dividing the amount of such Lender's Commitment by the aggregate amount of all Commitments; and (b) at any other time, by dividing the amount of such Lender's outstanding Loans and LC Obligations (under clauses (a) and (b) of the definition thereof) by the aggregate amount of all outstanding Loans and LC Obligations (under clauses (a) and (b) of the definition thereof).

Pro Forma Basis - with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.5.

Property - any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

Protective Advances - as defined in Section 2.1.6.

Qualified ECP Loan Party - in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

RBS - RBS Citizens Business Capital, a division of RBS Asset Finance, Inc., a New York corporation, a subsidiary of RBS Citizens, N.A.

Real Property - collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

Recapitalization Transactions - (a) retiring by (x) exchanging for equity interests of Parent, (y) repaying through the net cash proceeds of one or more equity offerings by Parent or (z) setting aside a sufficient amount of cash to redeem at maturity, at least 90% of the aggregate outstanding principal amount of Parent's Existing Series A Notes and Existing Series B Notes, (b) amending and restating that certain Amended and Restated Contribution and Deferral Agreement, dated as of July 22, 2011, among YRC, Holland, New Penn and Reddaway, collectively as primary obligors, the Trustees for the Central States, Southeast and Southwest Areas Pension Fund, the Wilmington Trust Company, as agent, and the other funds party thereto, to, among other changes, release all collateral currently securing such indebtedness (other than first lien real estate collateral constituting Excluded Property) and extend the maturity to December 31, 2019 and (c) refinancing, redeeming, defeasing or otherwise paying in full in cash (or depositing such amount with the trustee thereof) all of Parent's Existing 6% Senior Notes.

Receivables Assets - (a) any Accounts owed to Parent or a Restricted Subsidiary subject to a Receivables Facility and the proceeds thereof and (b) all Accounts, all contracts and contract rights, guarantees or other obligations in respect of such Accounts, all records with respect to such Accounts and any other assets customarily transferred together with Accounts in connection with a non-recourse accounts receivable factoring arrangement, except for Standard Receivables Undertakings, assigned or otherwise transferred or pledged by Parent in connection with a Receivables Facility.

Receivables Facility - an arrangement between Parent or a Restricted Subsidiary and another Person pursuant to which (a) Parent or such Restricted Subsidiary, as applicable, sells (directly or indirectly) in the Ordinary Course of Business to such Person Accounts owing from by customers, together with Receivables Assets related thereto, (b) the obligations of Parent or such Restricted Subsidiary, as applicable, thereunder are non-recourse (except for Receivables Purchase Obligations) to Parent and such Restricted Subsidiary and (c) the financing terms,

covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by Parent) and may include Standard Receivables Undertakings.

**Receivables Purchase Obligation** - any obligation of Parent or a Restricted Subsidiary in respect of Receivables Assets in a Receivables Facility to purchase Receivables Assets arising as a result of a breach of a representation, warranty or covenant otherwise, including as a result of receive or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to such party.

**Receivables SPV** - YRCW Receivables LLC, a Delaware limited liability company. **Reddaway** - as defined in the preamble to this Agreement.

**Refinancing Transactions** - the repayment of all amounts due or outstanding under or in respect of, and the termination of, the Existing Term Facility and the Existing ABL Facility, the release of all cash and other amounts restricted under or by the Existing Term Facility and the Existing ABL Facility and the termination and release of any and all commitments, security interests and guaranties in connection therewith on the Closing Date.

**Register** - as defined in Section 13.3.3. **Reimbursement Date** - as defined in Section 2.3.2.

**Relevant Governmental Body** - means [the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.](#)

**Release** - any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment.

**Report** - as defined in Section 12.2.3.

**Reportable Event** - any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived with respect to a Plan.

**Required Lenders** - subject to Section 4.2, (a) Lenders holding in excess of fifty-one percent (51%) of the Commitments; or (b) if the Commitments have terminated, Lenders holding Facility Exposure in excess fifty-one percent (51%) of the aggregate Facility Exposure. For the avoidance of doubt, no Defaulting Lender shall be included in the calculation of Required Lenders.

**Resignation Effective Date** - as defined in Section 12.8.1.

**Resolution Authority** - means [an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.](#)

**Responsible Officer** - the chief executive officer, president, vice president, chief financial officer, treasurer, assistant treasurer, director of treasury or other similar officer of a Loan Party and, as to any document delivered on the Closing Date, any secretary or assistant secretary of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed by the recipient of such document 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 by the recipient of such document to have acted on behalf of such Loan Party.

**Restated Term Debt Agreement** – ~~as defined in Amendment No. 5~~ that certain Amended and Restated Credit Agreement, dated as of September 11, 2019, by and among the Loan Parties, Cortland Products Corp. (n/k/a Alter Domus Products Corp.) and the lenders party thereto, as amended by that certain Amendment No. 1 to the Amended and Restated Credit Agreement, dated as of April 7, 2020, as further amended by that certain Amendment No. 2 to the Amended and Restated Credit Agreement, dated as of July 7, 2020, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with this Agreement and the Term Debt Intercreditor Agreement.

**Restricted Payment** - any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of Parent or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest of Parent or any Restricted Subsidiary, or on account of any return of capital to Parent's or a Restricted Subsidiary's stockholders, partners or members (or the equivalent Persons thereof).

**Restricted Subsidiary** - any Subsidiary of Parent other than an Unrestricted Subsidiary.  
The Restricted Subsidiaries as of the Closing Date are identified on Schedule 9.1.11.

**Rolling Stock** - any railroad car, locomotive, stacktrain or other rolling stock, or accessories used on such railroad cars, locomotives or other rolling stock (including superstructures and racks); provided, that Rolling Stock shall exclude Tractor Trailers.

**Sale and Leaseback Transaction** - shall mean any arrangement, directly or indirectly, whereby a seller or transferor shall sell or otherwise transfer any real or personal property and then or thereafter lease, or repurchase under an extended purchase contract, conditional sales or other title retention agreement, the same property.

**S&P** - Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

**SEC** - the Securities and Exchange Commission or any Governmental Authority that is the successor thereto.

**Second Amendment Effective Date** – June 28, 2016.

**Secured Parties** - Agent, Issuing Bank, Lenders and Bank Product Providers.

Security Documents – the Vehicle Collateral Agreement, the Vehicle Custodial Administration Agreement, any Guaranty, Mortgages, Deposit Account Control Agreements and all Loan Documents, Grants of Security Interest, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Security – means a “security” as such term is defined in Article 8 of the UCC and, in any event, shall include any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

Security Interest – as defined in Section ~~7.1.2~~7.1.2.

SOFR - with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's Website.

Solvent - as to Parent and Restricted Subsidiaries on a consolidated basis on any date of determination, (a) the fair value of the assets of Parent and Restricted Subsidiaries, on a consolidated basis (on a going concern basis), exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value (on a going concern basis) of the property of Parent and Restricted Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the ordinary course of business; (c) Parent and Restricted Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured; and (d) Parent and Restricted Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

Specified Event of Default - any Event of Default under Section 11.1(a), 11.1(b) (solely to the extent arising from a material breach of any certification, representation or warranty made or deemed made by Administrative Borrower in any Borrowing Base Certificate), 11.1(c) (solely to the extent arising with respect to a breach of Section 8.1, 8.3, 10.1.10 or 10.2.10 (during a Financial Covenant Trigger Period)), 11.1(f) (solely to the extent arising from a payment default or acceleration under any such document, instrument or agreement), 11.1(i) or 11.1(j).

Specified Pension Fund Obligations - the payment obligations due from Parent and/or its applicable Subsidiaries to the Pension Fund Entities under the terms and conditions of the Contribution Deferral Agreement.

Specified Transaction - any Investment that results in a Person becoming a Restricted Subsidiary or an Unrestricted Subsidiary, any Permitted Acquisition, any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of Parent, any Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person or

any Disposition of a business unit, line of business or division of Parent or a Restricted Subsidiary, in each case consummated after the Closing Date and whether by merger, consolidation, amalgamation or otherwise, and any incurrence or repayment of Debt or Restricted Payment, in each case, that by the terms of this Agreement requires a financial ratio or test to be calculated on a "Pro Forma Basis".

Standard Receivables Undertakings - representations, warranties, covenants, guarantees and indemnities entered into by Parent or any Restricted Subsidiary, which Parent has determined in good faith to be customary in a Receivables Facility, it being understood that any Receivables Repurchase Obligation shall be deemed to be a non-credit related recourse accounts receivable factoring arrangement.

Subordinated Debt - Debt incurred by a Loan Party that is expressly subordinate and junior in right of payment to Full Payment of the Obligations ([for greater certainty, not including the Term Debt, the UST Tranche A Facility Indebtedness or the UST Tranche B Facility, Indebtedness](#)).

Subsidiary - any entity at least fifty percent (50%) of whose voting securities or Equity Interests is owned by a Loan Party or any combination of Loan Parties (including indirect ownership by a Loan Party through other entities in which any Loan Party directly or indirectly owns fifty percent (50%) of the voting securities or Equity Interests).

Successor Parent - as defined in Section 10.2.4(d).

Supermajority Lenders - subject to Section 4.2 (a) Lenders holding in excess of sixty-six and two thirds percent (66 2/3%) of the aggregate Commitments; and (b) the Commitments have terminated, at least two Lenders holding Facility Exposure in excess of sixty-six and two thirds percent (66 2/3%) of the aggregate Facility Exposure. For the avoidance of doubt, no Defaulting Lender shall be included in the calculation of Supermajority Lenders.

Swap Obligation - 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.

Tax or Taxes - any taxes, levies, imposts, duties, fees, assessments, deductions, withholdings or other charges in the nature of taxes imposed by any Governmental Authority, including income, receipts, excise, property, sales, use, transfer, license, payroll, withholding, social security, franchise, intangibles, stamp or recording taxes, and all interest, penalties and similar liabilities relating thereto.

Term Agent - [Alter Domus Products Corp. \(f/k/a Cortland Products Corp.\)](#), as Administrative Agent and Collateral Agent under the Term Debt Agreement, any affiliate thereof, or successor or replacement thereto (subject to the Term Debt Intercreditor Agreement).

Term Debt Agreement - that certain Credit Agreement by and among Parent, the ~~guarantors~~ other Loan Parties party thereto, Term Agent, and the lenders from time to time party thereto, dated as of February ~~13~~, 2014, as amended, ~~restated~~; restated, amended and ~~restated~~; restated, supplemented or otherwise modified from time to time in accordance with the Term

Debt Intercreditor Agreement; provided, that, on and after Amendment No. 5, for purposes of this Agreement other than Section 6.1 hereof, the Restated Term Debt Agreement shall constitute the Term Debt Agreement.

Term Debt - Debt and all other obligations outstanding under or secured by the Term Debt Documents (including, for the avoidance of doubt, Term Refinancing Debt and Incremental Term Loans (as defined in the Term Debt Agreement)) and, in each case, all Permitted Refinancings thereof.

Term Debt Documents - the Term Debt Agreement and the "Loan Documents" as defined therein.

Term Debt Intercreditor Agreement - that certain ~~intercreditor agreement, Amended and Restated Intercreditor Agreement~~ dated as of ~~even date hereof, between Agent and the Amendment No. 6 Effective Date, among the Agent, the~~ Term Agent ~~as acknowledged by, the UST Tranche A Agent, the UST Tranche B Agent and the Loan Parties, as and as the same may be further~~ amended, restated, ~~amended and restated, supplemented or otherwise modified in accordance with the terms thereof~~ modified, supplemented, extended, renewed, restructured, waived or replaced from time to time.

Term Debt Refinancing Amendment - as defined in Amendment No. 5.

Term Priority Collateral - ~~as defined~~ shall have the meaning assigned to the term "Non-UST Tranche B Term Priority Collateral" in the Term Debt Intercreditor Agreement.

Term Refinancing Amendment - an amendment to the Term Debt Agreement executed by each of (a) Parent, (b) Term Agent, (c) each additional lender under the Term Debt Agreement that will make an Other Term Loan (as defined in the Term Debt Agreement) pursuant to such Term Refinancing Amendment and (d) each existing lender under the Term Debt Agreement that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness (as defined in the Term Debt Agreement) being incurred pursuant thereto, in accordance with Section 2.18 of the Term Debt Agreement. Notwithstanding anything in this Agreement or this definition to the contrary, the Term Debt Refinancing Amendment constitutes a Term Refinancing Amendment.

Term Refinancing Debt - Permitted Additional Debt or Indebtedness incurred pursuant to a Term Refinancing Amendment, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Debt) in exchange for, or to extend, renew, replace, restructure or refinance, in whole or part, existing Term Debt (including any successive Credit Agreement Refinancing Indebtedness (as defined in the Term Debt Agreement as in effect on the date hereof).

Term SOFR - means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

Test Period - for any date of determination, the most recent period as of such date of four consecutive Fiscal Quarters for which financial statements have been delivered (or were required to have been delivered) pursuant to Section 10.1.1(a) or 10.1.1(b), as applicable.

Threshold Amount - \$30,000,000.

Total Leverage Ratio - as of any date of determination calculated on a Pro Forma Basis, the ratio of (a) Consolidated Total Debt as of such date to (b) Consolidated EBITDA for the Test Period ending on such date of determination.

Tractor Trailers - shall mean any vehicle, truck, tractor, trailer, tank trailer or other trailer or similar vehicle or other trailer.

Trademark License - any written agreement, now or hereafter in effect, granting to any third party any right to use any Trademark now or hereafter owned by any Loan Party material to the operation of the business of any Loan Party or that any Loan Party otherwise has the right to license material to the operation of the business of any Loan Party, or granting to any Loan Party any right to use any Trademark now or hereafter owned by any third party, and all rights of any Loan Party under any such agreement.

Trademarks - all of the following now owned or hereafter acquired by any Loan Party:

(a) all Trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, the goodwill of the business symbolized thereby or associated therewith, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof, and all extensions or renewals thereof, including those listed on Schedule 1.1(i), (b) all rights and privileges arising under Applicable Law with respect to such Loan Party's use of any Trademarks, (c) all reissues, continuations, extensions and renewals thereof and amendments thereto, (d) all income, fees, royalties, damages and payments now and hereafter due and/or payable with respect to any of the foregoing, including damages, claims and payments for past, present or future infringements thereof, (e) all rights corresponding thereto throughout the world and (f) rights to sue for past, present and future infringements or dilutions thereof or other injuries thereto.

Transaction Expenses - any costs, fees or expenses incurred or paid by Parent and its Subsidiaries in connection with the Transactions (including costs and bonuses associated with the IBT Transactions and, for the avoidance of doubt, any costs, fees or expenses under the Contribution Deferral Agreement in connection with the closing of the second amendment and restatement thereof), this Agreement and the other Loan Documents.

Transactions - collectively, (a) the consummation of the IBT Transactions, (b) the consummation of the Recapitalization Transactions, (c) the execution and delivery by Loan Parties of the Loan Documents to which they are a party and the making of the Loans hereunder on the Closing Date, (d) the execution and delivery by Parent and its Subsidiaries party thereto of the Term Debt Documents and the funding under the Term Debt on the Closing Date, (e) the execution and delivery by Parent and its Subsidiaries party thereto of the Contribution Deferral Agreement on January 31, 2014, (f) the performance by Parent of its obligations under the December 2013 Stock Purchase Agreements, December 2013 Exchange Agreements and the

Transferee - any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

Treasury - means the United States Department of the Treasury.

Treasury Equity - means the 15,943,753 shares of Common Stock of Parent issued and delivered pursuant to the UST Tranche A Facility Documentation, directly or indirectly, to the United States federal government or any Governmental Authority on behalf thereof (including, in each case, any agent, trust or Person on behalf thereof, including, for the avoidance of doubt, any voting trust and the trustee thereof created to hold the Treasury Equity for the benefit of the United States federal government or any other Governmental Authority).

Treasury Equity Documents - means Share Issuance Agreement, dated as of June 30, 2020, between the Parent and the Treasury, (ii) the Voting Trust Agreement, by and among Parent, Treasury and the trustee thereunder to be entered into on or before the Treasury Equity Issuance and having the terms set forth in the UST Tranche A Facility Documentation and (iii) the Registration Rights Agreement, by and between Parent and Treasury to be entered into on or before the Treasury Equity Issuance and having the terms set forth in the UST Tranche A Facility Documentation.

Treasury Equity Issuance - the issuance of Treasury Equity in connection with the Amendment No. 6 Transactions, and which Treasury Equity shall be equal to 42% of the Parent's Common Stock outstanding immediately prior to such issuance, including any shares of Common Stock issuable upon conversion, exchange or exercise of any outstanding security convertible, exchangeable or exercisable into shares of Common Stock (including any warrants, rights or options to purchase or other arrangements or rights to acquire shares of Common Stock) ("fully diluted Common Stock outstanding") and 29.58% of fully diluted Common Stock outstanding on a pro forma basis reflecting the Treasury Equity Issuance.

Type - any type of a Loan (i.e., Base Rate Loan or LIBOR Loan) that has the same interest option and, in the case of LIBOR Loans, the same Interest Period.

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 Financial Institution - means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time), promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time), promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

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

Unadjusted Benchmark Replacement - means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

Unaudited Financial Statement - the unaudited consolidated balance sheets and related statements of operations and cash flows of Parent and its consolidated Subsidiaries as at the end of and for the Fiscal Quarters ended September 30, 2013.

Unused Line Fee Percentage - for any day, a percentage per annum equal to (a) initially, 0.250% per annum; and (b) following March 31, 2014, the following percentages per annum of the Commitments based upon the Average Revolver Usage for the immediately preceding calendar month:

Average Revolver Usage		Unused Line Fee Percentage Less
than 50%	0.375%	
Greater than or equal to 50%		0.250%

~~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.~~

Unrestricted Subsidiary - any Subsidiary of Parent designated by the Board of Directors of Parent as an Unrestricted Subsidiary pursuant to Section 10.1.14. The Unrestricted Subsidiaries as of the Closing Date are identified on Schedule 9.1.11.

U.S. Lender - as defined in Section 5.11.1(b). USCO - means the U.S. Copyright Office.

USPTO - means the U.S. Patent and Trademark Office.

UST Only Collateral - collectively, the UST Tranche A Only Collateral and the UST Tranche B Only Collateral.

UST Priority Accounts - means, collectively, the UST Tranche A Only Collateral and the UST Tranche B Priority Account.

UST Tranche A Agent - as the context may require, The Bank of New York Mellon, in its capacity as administrative agent and as collateral agent under the UST Tranche A Facility Documentation, such agents collectively or any permitted successor or assignee administrative agent or collateral agent under the UST Tranche A Facility Documentation.

UST Tranche A Credit Agreement - that certain UST Tranche A Term Loan Credit Agreement dated as of the Amendment No. 6 Effective Date, among the Parent, the other Subsidiaries of the Parent party thereto, the lenders party thereto and the UST Tranche A Agent, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, refunded, replaced or refinanced from time to time in one or more agreements (in

each case with the same or new lenders, institutional investors or agents and resulting in a financing that constitutes (or that would constitute if incurred as a new financing) a Permitted Refinancing of the UST Tranche A Facility Indebtedness), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Debt thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof), in each case as and to the extent permitted by this Agreement and the Term Debt Intercreditor Agreement.

UST Tranche A Facility - the credit facility made available to the Parent pursuant to the UST Tranche A Credit Agreement.

UST Tranche A Facility Documentation - the UST Tranche A Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith and including all "Loan Documents" (as defined in the UST Tranche A Credit Agreement) or similar term.

UST Tranche A Facility Indebtedness – Debt and all other obligations of the Parent or any Restricted Subsidiary outstanding under or secured by the UST Tranche A Facility Documentation (including, for the avoidance of doubt, UST Tranche A Refinancing Debt), and in each case, all Permitted Refinancings thereof.

UST Tranche A Only Collateral - shall have the meaning assigned to such term in the Term Debt Intercreditor Agreement.

UST Tranche A Refinancing Amendment - an amendment to the UST Tranche A Facility Agreement executed by each of (a) Parent, (b) UST Tranche A Agent, (c) each additional lender under the UST Tranche A Facility Agreement that will make an Other Term Loan (as defined in the UST Tranche A Credit Agreement) pursuant to such UST Tranche A Refinancing Amendment and (d) each existing lender under the UST Tranche A Credit Agreement that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness (as defined in the UST Tranche A Credit Agreement) being incurred pursuant thereto, in accordance with Section 2.18 of the UST Tranche A Credit Agreement.

UST Tranche A Refinancing Debt - Permitted Additional Debt or Debt incurred pursuant to a UST Tranche A Refinancing Amendment, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Debt) in exchange for, or to extend, renew, replace, restructure or refinance, in whole or part, existing UST Tranche A Facility Indebtedness (including any successive Credit Agreement Refinancing Indebtedness (as defined in the UST Tranche A Facility Agreement as in effect on the date hereof)).

UST Tranche A Secured Parties - shall have the meaning assigned to such term in the Term Debt Intercreditor Agreement.

UST Tranche B Agent - shall mean, as the context may require, The Bank of New York Mellon, in its capacity as administrative agent and as collateral agent under the UST Tranche B Facility Documentation, such agents collectively or any permitted successor or assignee administrative agent or collateral agent under the UST Tranche B Facility Documentation.

UST Tranche B Credit Agreement - shall mean that certain UST Tranche B Term Loan Credit Agreement dated as of the Amendment No. 6 Effective Date, among the Parent, the other Subsidiaries of the Parent party thereto, the lenders party thereto and the UST Tranche B Agent, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents and resulting in a financing that constitutes (or that would constitute if incurred as a new financing) a Permitted Refinancing of the UST Tranche B Facility Indebtedness), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Debt thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof), in each case as and to the extent permitted by this Agreement and the Term Debt Intercreditor Agreement.

UST Tranche B Facility - shall mean the credit facility made available to the Parent pursuant to the UST Tranche B Credit Agreement.

UST Tranche B Facility Documentation - shall mean the UST Tranche B Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith and including all "Loan Documents" (as defined in the UST Tranche B Credit Agreement) or similar term.

UST Tranche B Facility Indebtedness - Debt and all other obligations of the Parent or any Restricted Subsidiary outstanding under or secured by the UST Tranche B Facility Documentation (including, for the avoidance of doubt, UST Tranche B Refinancing Debt), and in each case, all Permitted Refinancings thereof.

UST Tranche B Only Collateral - shall have the meaning assigned to such term in the Term Debt Intercreditor Agreement.

UST Tranche B Priority Account - shall have the meaning assigned to such term in the Term Debt Intercreditor Agreement.

UST Tranche B Secured Parties - shall have the meaning assigned to such term in the Term Debt Intercreditor Agreement.

UST Tranche B Refinancing Amendment - an amendment to the UST Tranche B Facility Agreement executed by each of (a) Parent, (b) UST Tranche B Agent, (c) each additional lender under the UST Tranche B Facility Agreement that will make an Other Term Loan (as defined in the UST Tranche B Credit Agreement) pursuant to such UST Tranche B Refinancing Amendment and (d) each existing lender under the UST Tranche B Credit Agreement that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness (as defined in the UST Tranche B Credit Agreement) being incurred pursuant thereto, in accordance with Section 2.18 of the UST Tranche B Credit Agreement.

UST Tranche B Refinancing Debt - Permitted Additional Debt or Debt incurred pursuant to a UST Tranche B Refinancing Amendment, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Debt) in exchange for, or to extend, renew, replace, restructure or refinance, in whole or part, existing UST Tranche B

Facility Indebtedness (including any successive Credit Agreement Refinancing Indebtedness (as defined in the UST Tranche B Facility Agreement as in effect on the date hereof)).

U.S. Tax Compliance Certificate – as defined in Section 5.11.1(a).

Vehicle Collateral Agreement – the ~~security and collateral agency agreement~~ Amended and Restated Security and Collateral Agency Agreement, dated as of the ~~date hereof~~ Amendment No. 6 Effective Date, as amended, restated, amended and restated, supplemented, replaced, or otherwise modified from time to time, among Cortland Products Corp. (as successor to Credit Suisse AG, Cayman Islands Branch), as collateral agent, Term Agent, as term loan representative, Agent, as ABL representative, UST Tranche A Agent, as UST tranche A representative, UST Tranche B Agent, as UST tranche B representative and Loan Parties.

Vehicle Custodial Administration Agreement - the ~~custodial administration agreement~~ Amended and Restated Custodial Administration Agreement, dated as of the date hereof, as amended, restated, amended and restated, supplemented, replaced, or otherwise modified from time to time, among Parent, the Subsidiaries of Parent from time to time party thereto, Vintek, Inc., as custodial administrator (or any successor or replacement thereto, including in connection with a replacement of such agreement), Term Agent, UST Tranche A Agent, UST Tranche B Agent, Agent and Cortland Products Corp. (as successor to Credit Suisse AG, Cayman Islands Branch), as collateral agent under the Vehicle Collateral Agreement.

Weighted Average Life to Maturity - when applied to any Debt 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 scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled 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 Debt; provided, that for purposes of determining the Weighted Average Life to Maturity of any Debt that is being modified, refinanced, refunded, renewed, replaced, restructured or extended (the "Applicable Debt"), the effects of any amortization of or prepayments made on such Applicable Debt prior to the date of the applicable modification, refinancing, restructuring, refunding, renewal, replacement or extension shall be disregarded.

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) 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.

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

Write-Down and Conversion Powers - means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect

[to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.](#)

YRC - as defined in the preamble to this Agreement.

**1.2 Terms Defined in UCC.** Capitalized terms used in this Agreement and not otherwise defined herein but defined in the UCC shall have the meanings specified therefor in the UCC.

**1.3 Accounting Terms.** Notwithstanding any other provision contained herein or in any other Loan Document, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, (a) without giving effect to any election under Statement of Financial Accounting Standards 159 or Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of Parent or any Restricted Subsidiaries at "fair value", as defined therein; (b) without giving effect to any treatment of Debt in respect of convertible debt instruments under Accounting Standards Codification 470-20 and/or Statement of Financial Accounting Standards 150 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Debt in a reduced or bifurcated manner as described therein, and such Debt shall at all times be valued at the full stated principal amount thereof; and (c) treating Unrestricted Subsidiaries as if they were not consolidated with Parent or any Restricted Subsidiary and otherwise eliminating all accounts of Unrestricted Subsidiaries. Furthermore, unless Administrative Borrower elects otherwise, notwithstanding any other provision contained herein or in any other Loan Document, for all purposes under this Agreement and the other Loan Documents, including negative covenants, financials covenants and component definitions, operating leases and Capitalized Leases will be deemed to be treated in a manner consistent with their current treatment under GAAP as in effect on the Closing Date, notwithstanding any modifications or interpretive changes thereto that may occur thereafter. For the avoidance of doubt, the principal amount of any non-interest bearing Debt or other discount security constituting Debt at any date shall be the principal amount thereof that would be shown on a balance sheet of Parent dated such date prepared in accordance with GAAP, except as expressly set forth in clauses (a) and (b) of this Section 1.3.

**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 or statutes include all related rules, regulations, interpretations, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions, refinancings, replacements, restructuring or renewals (solely to the extent applicable, to the extent permitted by the Loan Documents and subject, in any event, to the definition of Permitted Refinancings as applicable); (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 includes successors and permitted assigns; or (f) time of day means time of day in New York, New York. All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such a Person in his or her capacity solely as an officer or representative of such Loan Party, on such Loan Party's behalf and not in such Person's individual capacity. Any financial ratios required to be maintained by Parent pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under 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). All calculations of fundings of Loans, issuances of Letters of Credit and payments of Obligations shall be in Dollars and, unless the context otherwise requires, 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 reasonably satisfactory to Agent in its Permitted Discretion (and not necessarily calculated in accordance with GAAP). When the performance of any covenant, duty or obligation under any Loan Document is stated to be required on a day which is not a Business Day, the date of such performance shall extend to the immediately succeeding Business Day. 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. Whenever the phrase "to the best knowledge" of any Loan Party or words of similar import are used in any Loan Documents, it means "Knowledge," as defined herein. For purposes of determining compliance with any one of Sections 10.2.1, 10.2.2, 10.2.3, 10.2.5, 10.2.6, 10.2.8, 10.2.9 and 10.2.13, in the event that any Lien, Investment, Debt, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Debt meets the criteria of more than one of the categories of transactions permitted pursuant to any clause of such Section, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by Administrative Borrower (and Administrative Borrower shall be entitled to redesignate use of any such clauses from time to time) in its sole discretion at such time. For purposes of determining the Total Leverage Ratio or Consolidated Fixed Charge Ratio, amounts denominated in a currency other than Dollars will be converted to Dollars at the currency exchange rates used in preparing Parent's financial statements corresponding to the test period with respect to the applicable date of determination and will, in the case of Debt, reflect the currency translation effects, determined in accordance with GAAP, of Hedging Agreements permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Debt. All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such a Person in his or her capacity solely as an officer or representative of such Loan Party, on such Loan Party's behalf and not in

such Person's individual capacity. 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.

#### 1.5 Pro Forma Calculations.

1.5.1 Notwithstanding anything to the contrary herein, the Total Leverage Ratio, Consolidated Fixed Charge Ratio, Availability and Liquidity shall be calculated in the manner prescribed by this Section 1.5.

1.5.2 For purposes of calculating the Total Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio, the pro forma calculations shall be made in good faith by a responsible financial or accounting officer of Parent and may include, for the avoidance of doubt, any synergies, operating expense reductions, other operating improvements and cost savings as certified by Parent as having been determined in good faith to be reasonably anticipated to be realizable within twelve (12) months following any such acquisition or disposition, operational change and operational initiatives. Notwithstanding the foregoing, (A) all pro forma adjustments under this Section 1.5.2 shall not, taken together with those added pursuant to clause (a)(viii) of the definition of "Consolidated EBITDA", increase pro forma Consolidated EBITDA by more than 20% for any test period (calculated prior to giving effect to any addback pursuant to this Section 1.5.2 or clause (a)(viii) of the definition of "Consolidated EBITDA"); provided, that such limitation on pro forma adjustments shall not apply if supported by a quality of earnings report prepared by a nationally recognized accounting firm or other third-party advisor reasonably acceptable to Agent or if such adjustments satisfy the requirements of Regulation S-X and (B) no pro forma adjustments under this Section 1.5.2 shall be made in respect of the Transactions (including in respect of the IBT Transaction).

1.5.3 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 financial or accounting officer of the Parent and may include, for the avoidance of doubt, any synergies, operating expense reductions, other operating improvements and cost savings as certified by the Parent as having been determined in good faith to be reasonably anticipated to be realizable within eighteen (18) months following any such acquisition or disposition, operational change and operational initiatives. Notwithstanding the foregoing, (A) all pro forma adjustments under this Section

1.5.3 shall not, taken together with those added pursuant to clause (a)(viii) of the definition of "Consolidated EBITDA" and Section 1.5.2, increase pro forma Consolidated EBITDA by more than 20% for any test period (calculated prior to giving effect to any addback pursuant to this Section 1.5.3 or clause (a)(viii) of the definition of "Consolidated EBITDA" and Section 1.5.2); provided, that such limitation on pro forma adjustments shall not apply if supported by a quality of earnings report prepared by a nationally recognized accounting firm or other third-party advisor reasonably acceptable to Agent or if such adjustments satisfy the requirements of Regulation S-X and (B) no pro forma adjustments under this Section 1.5.3 shall be made in respect of the Transactions (including in respect of the IBT Transaction).

1.5.4 In the event that Parent or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Debt included in the calculations of the Total Leverage Ratio, Consolidated

Fixed Charge Coverage Ratio, Availability and Liquidity (other than Debt incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Total Leverage Ratio, Consolidated Fixed Charge Coverage Ratio, Availability, and Liquidity shall be calculated giving pro forma effect to such incurrence or repayment of Debt, to the extent required, as if the same had occurred on the last day of the applicable Test Period (or, with respect to the calculation of Availability and Liquidity, the applicable date of determination) of the Total Leverage Ratio, Availability and Liquidity. Interest on a Capitalized Lease shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of Parent to be the rate of interest implicit in such Capitalized Lease in accordance with GAAP. Interest on Debt that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as Parent or such Restricted Subsidiary may designate.

1.5.5 For purposes of calculating the Consolidated Fixed Charge Coverage Ratio in any Test Period in which a Specified Transaction occurs, Capital Expenditures in clause (ii) of the definition of Consolidated Fixed Charge Coverage Ratio shall (a) include any Capital Expenditures of the target of a Permitted Acquisition consummated in such Test Period (whether or not such Permitted Acquisition was consummated at the time such Capital Expenditures were made) and (b) exclude any Capital Expenditures made by any Person or that are attributable to any division or line of business, in each case, that is disposed of in such Test Period.

1.5.6 In determining the Consolidated Fixed Charges for any period in which a Specified Transaction occurs, (a) pro forma effect will be given to the incurrence, repayment or retirement of any Debt of Parent and/or any of its Restricted Subsidiaries since the first day of such period as if such Debt was incurred, repaid or retired on the first day of such period and if such Debt bears, at the option of Parent and/or any Restricted Subsidiaries, a fixed or floating rate of interest, interest thereon will be computed by applying, at the option of Parent, either the fixed or floating rate, and (b) Consolidated Fixed Charges will include fees attributable to any letters of credit issued for the account of the target of a Permitted Acquisition consummated in such Test Period to the extent that such letters of credit (or replacements thereof) remain outstanding after the consummation of such Permitted Acquisition.

1.5.7 Whenever any provision of this Agreement requires Parent to have a Total Leverage Ratio or a Consolidated Fixed Charge Coverage Ratio (in each case) on a Pro Forma Basis in connection with any action to be taken by Parent or any Restricted Subsidiary hereunder, Parent shall deliver to Agent a certificate of a Responsible Officer setting forth in reasonable detail the calculations demonstrating such compliance or such Total Leverage Ratio or Consolidated Fixed Charge Coverage Ratio, as applicable.

1.6 Divisions. Any reference herein or in any other Loan Document to (i) a transfer, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company, as if it were a transfer, assignment, sale or transfer, or similar term, as applicable, to a

SECTION 2.

2.1

2.1.1

**CREDIT FACILITIES**

**Commitment.**

**Loans.** Each Lender agrees, severally on a Pro Rata basis up to its

Commitment, on the terms set forth herein, to make Loans to Borrowers from time to time through the Commitment Termination Date. The Loans may be repaid and reborrowed (without premium or penalty other than any LIBOR Loan Prepayment Fee) as provided herein. In no event shall Lenders have any obligation to honor a request for a Loan if the Facility Exposure (including after giving effect to the requested Loan) would exceed an amount equal to the Collateral Line Cap.

2.1.2 **Notes.** The Loans made by each Lender and interest accruing thereon shall be evidenced by the records of Agent and such Lender. Promptly following the request of any Lender, Borrowers shall deliver a Note to such Lender.

2.1.3 **Use of Proceeds.** The proceeds of Loans shall be used by Borrowers solely (in each case to the extent permitted hereunder) (a) on the Closing Date, (i) to pay Transaction Expenses; and (ii) to consummate the Refinancing Transactions; and (b) after the Closing Date (i) to pay Obligations in accordance with this Agreement; and (ii) for working capital and other lawful purposes of Borrowers (including Permitted Acquisitions, investments, capital expenditures and restricted payments), and to pay all other payments expressly permitted under this Agreement. None of the proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any margin security or for the purposes of reducing or retiring any Debt which was originally incurred to purchase or carry any margin security or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation U of the Board of the Federal Reserve System, as amended.

2.1.4

(a)

Voluntary Reduction or Termination of Commitments.

The Commitments shall terminate on the Commitment Termination Date.

Upon at least three (3) Business Days prior written notice to Agent at any time, Administrative Borrower, on behalf of Borrowers, may, at its option, terminate the Commitments and this credit facility. Any notice of termination given by Administrative Borrower, on behalf of Borrowers, shall be irrevocable; provided, that a notice of termination of the Commitments delivered by Administrative Borrower may state that such notice is conditioned upon the effectiveness of other events, in which case such notice may be revoked by Administrative Borrower (by notice to Agent on or prior to the specified effective date) if such condition is not satisfied. On the termination date, Borrowers shall make Full Payment of the Obligations.

(b) Borrowers may permanently reduce the Commitments, on a Pro Rata basis for each Lender, from time to time upon written notice to Agent, which notice shall specify the

amount of the reduction, shall be irrevocable once given, shall be given at least three (3) Business Days prior to the end of a calendar month and shall be effective as of the first (1st) day of the next calendar month. Each reduction shall be in a minimum amount of \$2,500,000, or an increment of \$1,000,000 in excess thereof, provided, that in no event shall the Commitments be reduced to an amount less than \$350,000,000.

2.1.5 Overadvances. If the Facility Exposure exceeds, at any time, the Collateral Line Cap ("Overadvance"), the excess amount (which shall nevertheless constitute Obligations secured by the Collateral and entitled to all benefits of the Loan Documents) shall be payable by Borrowers on demand by Agent (or within two (2) Business Days with respect to the repayment of outstanding Loans in the event of an Overadvance caused by an establishment or modification of any component of the Availability Reserve then in effect to the extent that such establishment or modification is not subject to a two (2) Business Day notice period under the definition of Availability Reserve). Unless its authority has been revoked in writing by Required Lenders, Agent may require Lenders to honor requests for Overadvance Loans and to forbear from requiring Borrowers to cure an Overadvance, (i) when no other Event of Default is known to Agent, as long as (A) the Overadvance does not continue for more than thirty (30) consecutive days (and no Overadvance may exist for at least five (5) consecutive days thereafter before further Overadvance Loans are required), and (B) the Overadvance is not known by Agent to exceed, when combined with Protective Advances under Section 2.1.6, ten percent (10%) of the Borrowing Base; and (ii) regardless of whether an Event of Default exists, if Agent discovers an Overadvance not previously known by it to exist, as long as from the date of such discovery the Overadvance (A) is not increased by more than \$10,000,000, and (B) does not continue for more than thirty (30) consecutive days. In no event shall an Overadvance Loan be made that would cause the outstanding Facility Exposure to exceed the aggregate Commitments. 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 Loan Party be deemed a beneficiary of this Section nor authorized to enforce any of its terms. Overadvances may be made even if the conditions precedent set forth in Section 6.2 have not been satisfied (or waived).

2.1.6 Protective Advances. Agent shall be authorized, in its Permitted Discretion (with written notice to Administrative Borrower, provided, that Agent's failure to provide such notice shall not in any way impair Agent's right to make such a Protective Advance or the enforceability of such Protective Advance as part of the Obligations), at any time that an Event of Default exists or any conditions in Section 6 are not satisfied (or waived) to make Base Rate Loans ("Protective Advances") (a) up to an aggregate amount (together with Overadvances under Section 2.1.5) equal to the greater of (i) \$45,000,000 and (ii) ten percent (10%) of the Commitments at such time, if Agent deems such Loans necessary or desirable to preserve or protect any Collateral, or to enhance the collectibility or repayment of Obligations; or (b) to pay any other amounts chargeable to Loan Parties under any Loan Documents, including costs, fees and expenses not paid by Borrowers when required hereunder. All Protective Advances shall be Obligations, secured by the Collateral, and shall be treated for all purposes as Extraordinary Expenses. Each Lender shall participate in each Protective Advance on a Pro Rata basis. Required Lenders may at any time revoke Agent's authorization to make further Protective Advances by written notice to Agent with a copy to Administrative Borrower. Absent such revocation, Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. In no event shall any Protective Advance be made that would cause the outstanding

Facility Exposure to exceed the aggregate Commitments. Protective Advances may be made even if the conditions precedent set forth in Section 6.2 have not been satisfied or waived.

## 2.2 Letter of Credit Facility.

### 2.2.1 Issuance of Letters of Credit, Subject to the LC Conditions, each Issuing

Bank agrees to issue Letters of Credit from time to time until one (1) Business Day prior to the Latest Maturity Date, on the terms set forth herein, including the following:

(a) Each Borrower acknowledges that each Issuing Bank's willingness to issue any Letter of Credit is conditioned upon such Issuing Bank's and Agent's receipt of a LC Application with respect to the requested Letter of Credit, as well as such other instruments and agreements as Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. No Issuing Bank shall have any obligation to issue any Letter of Credit unless

(i) such Issuing Bank and Agent receives a LC Request and LC Application at least two (2) Business Days prior to the requested date of issuance; and (ii) each LC Condition is satisfied or waived. No Issuing Bank shall issue a Letter of Credit if any LC Condition has not been satisfied. All Existing Letters of Credit shall be deemed to be Letters of Credit issued hereunder on the Closing Date

(b) Letters of Credit may be requested by Administrative Borrower, for the benefit of a Loan Party, only (i) to support obligations of such Loan Party; or (ii) for other lawful purposes. The renewal or extension of any Letter of Credit shall be treated as the issuance of a new Letter of Credit; except, that delivery of a new LC Application shall be required at the discretion of the applicable Issuing Bank.

(c) Borrowers assume all risks of the acts, omissions or misuses of any Letter of Credit by the beneficiary. In connection with the issuance of any Letter of Credit, other than the gross negligence, willful misconduct or bad faith of Agent, any Issuing Bank or any Lender as determined in a final, non-appealable judgment by a court of competent jurisdiction, none of Agent, any Issuing Bank or any 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 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 a Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of any Issuing Bank, Agent or any Lender, including any act or omission of a Governmental Authority. The rights and remedies of any Issuing Bank under the Loan Documents shall be cumulative.

(d) In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents, the applicable Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, notice or other communication in whatever form believed by such Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. Each 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. Each Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents, and shall not be liable for the negligence (other than gross negligence) or misconduct (other than willful misconduct) of any such agents or attorneys-in-fact selected with reasonable care.

(e) Notwithstanding anything contained herein to the contrary, no Issuing Bank shall be under any obligation to issue any Letter of Credit if any Lender is at such time a Defaulting Lender hereunder, unless (w) Defaulting Lender has been replaced pursuant to Section 3.8.2 or otherwise, (x) the LC Obligations of such Defaulting Lender have been Cash Collateralized, (y) the Commitments of the other Lenders have been increased by an amount sufficient to satisfy Agent that all future LC Obligations will be covered by all Lenders that are not Defaulting Lenders, or (z) all of the LC Obligations of such Defaulting Lenders are able to be reallocated to other Lenders in a manner consistent with the last sentence of Section 4.2.

(f) If Administrative Borrower requests in any LC Request, the applicable Issuing Bank shall agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided, that any such Auto-Extension Letter of Credit must permit such Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof and Administrative Borrower not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by such Issuing Bank, Administrative Borrower shall not be required to make a specific request to Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, Lenders shall be deemed to have authorized (but may not require) such Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the Latest Maturity date, unless otherwise agreed upon by Agent and Issuing Bank; provided, however, that such Issuing Bank shall not permit any such extension if (A) such Issuing Bank has reasonably determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of the LC Conditions), or (B) it has received written notice on or before the day that is seven (7) Business Days before the Non-Extension Notice Date from Agent, any Lender or Administrative Borrower that one or more of the applicable conditions specified in Sections 6.2 are not then satisfied, and in each such case directing such Issuing Bank not to permit such extension.

2.2.2

(a)

Reimbursement; Participations.

If any Issuing Bank honors any request for payment under a Letter of

Credit, Borrowers shall pay to such Issuing Bank, on the same day ("Reimbursement Date"), the

amount paid by such Issuing Bank under such Letter of Credit, together with interest at the interest rate for Base Rate Loans from the Reimbursement Date until date of payment by Borrowers. The obligation of Borrowers to reimburse an Issuing Bank for any payment made under a Letter of Credit issued by it shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any Letter of Credit or the existence of any claim, setoff, defense or other right that Borrowers may have at any time against the beneficiary. Whether or not Administrative Borrower submits a Notice of Borrowing, Borrowers shall be deemed to have requested a Borrowing of Base Rate Loans in an amount necessary to pay all amounts due to the applicable Issuing Bank on any Reimbursement Date and each Lender agrees to 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 (or waived).

(b) Upon issuance of a Letter of Credit, each Lender shall be deemed to have irrevocably and unconditionally purchased from the applicable Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all LC Obligations (excluding amounts owing pursuant to clause (c) of the definition of LC Obligations) relating to the Letter of Credit. If any Issuing Bank makes any payment under a Letter of Credit and Borrowers do not reimburse such payment on the Reimbursement Date, Agent shall promptly notify Lenders and each Lender shall promptly (within one (1) Business Day) and unconditionally pay to Agent, for the benefit of such Issuing Bank, Lender's Pro Rata share of such payment. Upon request by a Lender, each Issuing Bank shall furnish copies of any Letters of Credit and LC Documents in its possession at such time.

(c) The obligation of each Lender to make payments to Agent for the account of each Issuing Bank in connection with such Issuing Bank's payment under a 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 Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Loan Party may have with respect to any Obligations. No Issuing Bank assumes any responsibility for any failure or delay in performance or any breach by any Borrower or other Person of any obligations under any LC Documents. No Issuing Bank makes to Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Loan Party. No Issuing Bank shall be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, 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 Loan Party.

(d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of (i) its own (or its affiliates', directors', officers', employees' or agents') gross negligence, bad faith or willful misconduct, or (ii) its own (or its affiliates', directors', officers',

employees' or agents') material breach of its obligations hereunder. No Issuing Bank shall have any liability to any Lender if such Issuing Bank refrains from any action under any Letter of Credit or LC Documents until it receives written instructions from Required Lenders.

(e) In the event of any conflict between the terms hereof and the terms of any LC Document, the terms hereof shall control and any grant of security interest in any LC Documents shall be void.

2.2.3 Cash Collateral. If any LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default exists, (b) that Availability is less than zero, or (c) on or after the Latest Maturity Date (to the extent not otherwise Cash Collateralized at the time of issuance in accordance with the terms hereof), then Borrowers shall, at the applicable Issuing Bank's or Agent's request, pay to the applicable Issuing Bank the amount of all outstanding LC Obligations under clauses (a) and (c) of the definition thereof and Cash Collateralize the undrawn amount of all outstanding Letters of Credit within two (2) Business Days after written request therefor. If Borrowers fail to Cash Collateralize outstanding Letters of Credit as required herein, Lenders may (and shall upon direction of Agent) advance, as Loans, the amount of the Cash Collateral required (whether or not the Commitments have terminated, an Overadvance exists, or the conditions in Section 6 are satisfied or waived).

### 2.3 Increase in Commitments.

2.3.1 General. Administrative Borrower may at any time or from time to time after the Closing Date, by notice to Agent (any such notice, an "Increase Notice") (whereupon Agent shall promptly make a copy of such Increase Notice available to Lenders), request one or more increases to the Commitments (any such increase, an "Incremental Facility") in an aggregate amount not to exceed \$100,000,000 (the "Maximum Incremental Facility Amount"). Each Incremental Facility shall be in an aggregate amount that is not less than \$5,000,000 and shall be in an increment of \$1,000,000 (provided, that such amount may be less than \$5,000,000 and in lower increments if such amount represents all remaining availability under the Maximum Incremental Facility Amount).

2.3.2 Terms of Incremental Facilities. The following terms shall apply to any Incremental Facility established pursuant to an Incremental Amendment: (i) such Incremental Facility shall rank pari passu in right of payment and of security with all other Commitments; (ii) the maturity date of such Incremental Facility shall not be earlier than the Original Maturity Date; (iii) such Incremental Facility shall not be secured by any Lien on any asset of Loan Parties that does not also secure the then outstanding Commitments; (iv) the covenants, events of default and guarantees of such Incremental Facility shall be consistent with the terms of then outstanding Commitments, (v) pricing in connection with the Incremental Facility shall be consistent with the terms of the then outstanding Commitments, and (vi) fees to be paid in connection with such Incremental Facility shall be mutually agreed upon by Administrative Borrower, Agent and the financial institutions participating in such Incremental Facility. To the extent commitments from additional financial institutions are required in connection with any Incremental Facility, Agent shall control all aspects of the selection and syndication process (in consultation with

Administrative Borrower) and be compensated for the arranging of the Incremental Facility in an amount to be mutually agreed with Administrative Borrower.

2.3.3 Increase Notices. Each Increase Notice shall set forth (i) the requested amount and proposed terms of the relevant Incremental Facility and (ii) the date on which the relevant Incremental Facility is requested to become effective (the "Increase Effective Date"). Commitments under any Incremental Facility may be provided by any existing Lender (but no existing Lender shall have any obligation to participate in make any Incremental Facility except to the extent that it has agreed to do so pursuant to an Incremental Amendment) or by any other additional Lender (Lenders or additional Lenders participating in such Incremental Facility, collectively, "Incremental Lenders"). Commitments in respect of Incremental Facilities shall become Commitments under this Agreement pursuant to an amendment (an "Incremental Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by Administrative Borrower, each Incremental Lender and Agent. Each Incremental Amendment shall be on the terms and pursuant to documentation to be determined by Administrative Borrower and the relevant Incremental Lenders; provided, that to the extent such terms and documentation (taken as a whole) are not consistent with this Agreement in any material respect (except to the extent permitted by the foregoing clauses), they shall be reasonably satisfactory to Agent; provided, in any event that such terms shall be consistent with Section 2.3.2 above. The effectiveness of any Incremental Facility shall be subject to the satisfaction (or waiver) on the date thereof of each of the conditions set forth in Section 6.2 (and for purposes thereof the closing of the Incremental Facility shall be deemed to be a request for a credit extension) and, to the extent reasonably requested by Agent, receipt by Agent of customary legal opinions, board resolutions, officers' certificates and a solvency certificate or representation, in each case consistent with those delivered on the Closing Date under Section 6.1 (other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to Agent), and customary reaffirmation agreements.

2.3.4 Incremental Amendment. Notwithstanding anything to the contrary in Section 15.1 or otherwise in this Agreement, any Incremental Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of Agent and Administrative Borrower, to effect the terms thereof, to the extent such terms are permitted under this Section 2.3. Any such Incremental Amendment may include ratable increases in the thresholds set forth in the definition of Payment Conditions and Debt Repayment Conditions. Notwithstanding the foregoing, Agent shall have the right (but not the obligation) to seek the advice or concurrence of Required Lenders with respect to any matter contemplated by this Section 2.3 and, if Agent seeks such advice or concurrence, it shall be permitted to enter into such amendments with Administrative Borrower in accordance with any instructions actually received by such Required Lenders and shall also be entitled to refrain from entering into such amendments with Administrative Borrower unless and until it shall have received such advice or concurrence; provided, however, that whether or not there has been a request by Agent for any such advice or concurrence, all such amendments entered into with Administrative Borrower by Agent hereunder shall be binding and conclusive on Lenders. Without limiting the foregoing, in connection with any Incremental Amendment and as required by Applicable Law to protect Agent's perfected security interest thereon, the respective Loan Parties shall (at their expense) amend (and Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the

then Latest Maturity Date so that such maturity date is extended to the Latest Maturity Date after giving effect to such Incremental Amendment (or such later date as may be advised by local counsel to Agent).

2.3.5 Incremental Facility. Except as otherwise specifically set forth herein or in the Incremental Amendment, all of the other terms and conditions applicable to any Incremental Facility shall be identical to the terms and conditions applicable to the Commitments immediately prior to the Incremental Facility.

#### 2.4 Extensions of Commitments.

2.4.1 ~~Notwithstanding anything to the contrary in Section 15.1 or any other~~ provision of this Agreement, pursuant to one or more offers (each, an "Extension Offer") made from time to time by Administrative Borrower to all Lenders on a Pro Rata basis and on the same terms to each such Lender, Administrative Borrower may from time to time with the consent of any Lender that shall have accepted such offer extend the maturity date of the Commitments and modify the interest rate or fees payable in respect of the Commitments of such Lender pursuant to the terms of the relevant Extension Offer (including, without limitation, by increasing the interest rate or fees payable in respect of such Commitments) (each, an "Extension", and each group of Commitments as so extended, as well as the group of original Commitments not so extended, being a "tranche"; any Extended Commitments shall constitute a separate tranche of Commitments from the tranche of Commitments from which they were converted and a separate class of Commitments), so long as the following terms are satisfied (or waived): (i) except as to interest rates, fees and final maturity date, the Commitments of any Lender extended pursuant to any Extension ("Extended Commitments") shall have the terms and conditions that are substantially identical to all other Commitments; provided, that (1) the borrowing and repayment (except for (A) payments of interest and fees at different rates on Extended Commitments (and related outstandings), (B) repayments required upon the maturity date of the non-extended Commitments and (C) repayments made in connection with a permanent repayment and termination of commitments) of Loans with respect to Extended Commitments after the effective date of the applicable Extension shall be made on a pro rata basis or less in the event the Borrowers elect to reduce the Commitments of non-extending Lenders with all other Commitments, (2) all Letters of Credit shall be participated on a pro rata basis or less in the event the Borrowers elect to reduce the Commitments of non-extending Lenders by all Lenders with Commitments in accordance with their percentage of the Commitments, (3) the permanent repayment of Loans with respect to, and termination of, Extended Commitments after the effective date of the applicable Extension shall be made on a pro rata basis with all other Commitments, except that Administrative Borrower shall be permitted to permanently repay and terminate commitments of any such class on a non-pro rata basis at maturity as compared to any other class with a later maturity date than such class, and (4) assignments and participations of Extended Commitments and Extended Loans shall be governed by the same assignment and participation provisions applicable to Commitments and Loans, (iii) the final maturity date of any Extended Commitment shall be no earlier than the then Latest Maturity Date, (iv) if the aggregate amount of Commitments in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Commitments offered to be extended by Administrative Borrower pursuant to such Extension Offer, then the Commitments of such Lenders shall be extended ratably up to such maximum amount based on the respective

amounts with respect to which such Lenders have accepted such Extension Offer, (v) all documentation in respect of such Extension shall be consistent with the foregoing, and (vi) any applicable Minimum Extension Condition shall be satisfied unless waived by Administrative Borrower.

242 With respect to all Extensions consummated pursuant to this Section 2.4, (i) no Extension Offer is required to be in any minimum amount or any minimum increment, provided, that Administrative Borrower may at its election specify as a condition (a "Minimum Extension Condition") to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in Administrative Borrower's sole discretion and may be waived by Administrative Borrower) of Commitments of any or all applicable classes to participate in such Extension. Agent and Lenders hereby consent to the Extensions and the other transactions contemplated by this Section 2.4 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Commitments on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any other provision of this Agreement or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.4.

243 Each of the parties hereto hereby (A) agrees that this Agreement and the other Loan Documents may be amended to give effect to each Extension (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 Commitments incurred pursuant thereto, and (ii) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of Agent and Administrative Borrower, to effect the provisions of this Section 2.4, and Required Lenders hereby expressly and irrevocably, for the benefit of all parties hereto, authorize Agent to enter into any such Extension Amendment and (B) consent to the transactions contemplated by this Section 2.4 (including, for the avoidance of doubt, payment of interest, fees or premiums in respect of any Extended Commitments on such terms as may be set forth in the relevant Extension Amendment). Without limiting the foregoing, in connection with any Extension, if necessary, the respective Loan Parties shall (at their expense) amend (and Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the then Latest Maturity Date so that such maturity date is extended to the Latest Maturity Date after giving effect to such Extension (or such later date as may be advised by local counsel to Agent).

244 Notice In connection with any Extension, Administrative Borrower shall provide Agent at least five (5) Business Days' (or such shorter period as may be agreed by Agent) prior written notice thereof, and shall agree to such procedures, if any, as may be established by, or acceptable to, Agent, in each case acting reasonably to accomplish the purposes of this Section 2.4.

## 3.1

## 3.1.1

**INTEREST, FEES AND CHARGES****Interest.**Rates and Payment of Interest.

(a) The Obligations shall bear interest (i) if a Base Rate Loan, at the Base Rate in effect from time to time, plus the Applicable Margin; (ii) if a LIBOR Loan, at the LIBOR Lending Rate for the applicable Interest Period, plus the Applicable Margin; and (iii) if any other Obligation (including, to the extent permitted by law, interest not paid when due), at the Base Rate in effect from time to time, plus the Applicable Margin for Base Rate Loans. Interest shall accrue from the date the Loan is advanced or the Obligation is incurred or payable, until paid by Borrowers. If a Loan is repaid on the same day made, one (1) day's interest shall accrue.

(b) During an Insolvency Proceeding with respect to any Loan Party (other than an Immaterial Subsidiary), or during any other Event of Default if Required Lenders so elect, Obligations consisting of principal and accrued but unpaid interest on the Loans shall bear interest at the Default Rate; provided, that the Default Rate shall not accrue on the Obligations of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Each Loan Party acknowledges that the cost and expense to Agent and each Lender due to an Event of Default are difficult to ascertain and that the Default Rate is a fair and reasonable estimate to compensate Agent and Lenders for such added cost and expense.

(c) Interest accrued on the Loans shall be due and payable in arrears, (i) for any Base Rate Loan, on the first (1st) day of each calendar quarter and, for any LIBOR Loan, the last day of its Interest Period provided, that in the case of Interest Periods of more than three (3) months, accrued interest on LIBOR Loans shall also be paid on the 90<sup>th</sup> day of the Interest Period; (ii) on any date of prepayment, with respect to the principal amount of LIBOR Loans being prepaid; and (iii) on the Maturity Date applicable thereto. 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 promptly after written demand. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable promptly after written demand.

3.1.2 Continuation and Conversion Elections. By delivering a Notice of Conversion/Continuation to Agent on or before 2:00 p.m. on a Business Day, Administrative Borrower may from time to time irrevocably elect, on not less than three (3) nor more than five (5) Business Days' notice, that, subject to Section 4.3 below, (a) any Base Rate Loan be converted to a LIBOR Loan or (b) any LIBOR Loan be converted on the last day of an Interest Period into a LIBOR Loan with a different Interest Period, or continued on the last day of an Interest Period as a LIBOR Loan with a similar Interest Period; provided, however, that, upon election of Required Lenders by written notice to Administrative Borrower, no portion of the outstanding principal amount of any Loans may be converted to, or continued as, LIBOR Loans when any Event of Default has occurred and is continuing. In the absence of delivery of a Notice of Conversion/Continuation with respect to any LIBOR Loan at least three (3) Business Days before the last day of the then current Interest Period with respect thereto, such LIBOR Loan shall, on such last day, automatically convert to a Base Rate Loan.

3.1.3 Repayments, Continuations and Conversions of LIBOR Loans. LIBOR Loans shall mature and become payable in full on the last day of the Interest Period relating to such LIBOR Loan. Upon maturity, a LIBOR Loan may be continued for an additional Interest Period or may be converted to a Base Rate Loan, as set forth in Section 3.1.2.

3.1.4

(a)

Substitute Rate.

If Agent shall have determined in good faith after the Closing Date that:

(i) Dollar deposits in the relevant amount and for the relevant Interest Period are not available to Agent in the London interbank market or that the rates at which such Dollar deposits are being offered will not adequately and fairly reflect the cost to the majority of Lenders of making or maintaining LIBOR Loans during such Interest Period; or

(ii) by reason of circumstances affecting Agent in the London interbank market, adequate means do not exist for ascertaining the LIBOR Rate applicable hereunder to LIBOR Loans of any duration,

then, upon written notice from Agent to Administrative Borrower, the obligations of Lenders hereunder to make or continue any Loans as, or to convert any Loans into, LIBOR Loans of such duration shall forthwith be suspended until Agent shall notify Administrative Borrower that the circumstances causing such suspension no longer exist.

(b) If any Lender shall have determined in good faith that the LIBOR Rate no longer adequately reflects such Lender's cost of funding loans, then, upon notice from such Lender to Administrative Borrower and Agent, the obligations of such Lender under this Section to make or continue any Loans as, or to convert any Loans into, LIBOR Loans of such duration shall forthwith be suspended until such Lender shall notify Administrative Borrower and Agent that the circumstances causing such suspension no longer exist.

(c) Successor LIBOR Rate.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Agent and the Borrowers may amend this Agreement to replace the LIBOR Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Agent has posted such proposed amendment to all Lenders and the Borrowers so long as the Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders accept such amendment. No replacement of the LIBOR Rate with a Benchmark Replacement pursuant to this Section 3.1.4(c) will occur prior to the applicable Benchmark Transition Start Date.

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

(iii) Notices: Standards for Decisions and Determinations. The Agent will promptly notify the Borrowers and the Lenders of (A) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes and (D) the commencement or conclusion of any Benchmark Unavailability Period, provided that the failure to give such notice under this clause (D) shall not affect the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Agent or Lenders pursuant to this Section 3.1.4(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 or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.1.4(c).

(iv) Benchmark Unavailability Period. Upon the commencement of a Benchmark Unavailability Period, the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Loans to be made, converted or continued during such Benchmark Unavailability Period and, failing that, the Borrowers will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period, (A) the obligation of the Lenders to make or maintain LIBOR Loans shall be suspended, (B) any request for a Borrowing of, conversion to or continuation of LIBOR Loans shall be ineffective and will be deemed to have been a request for a Borrowing of or conversion to Base Rate Loans, and (C) the component of the Base Rate based upon the LIBOR Rate will not be used in any determination of the Base Rate.

### 3.2 Fees.

3.2.1 Unused Line Fee. Borrowers shall pay to Agent, for the Pro Rata benefit of Lenders (other than any Defaulting Lender), a fee equal to the applicable Unused Line Fee Percentage multiplied by the amount by which the Commitments exceed the average daily principal balance of Loans and the stated amount of Letters of Credit during any calendar quarter. Such fee shall be payable in arrears, on the first (1st) day of each calendar quarter and on the Maturity Date applicable thereto. For the avoidance of doubt, no fees shall accrue under this Section 3.2.1 in favor of any Defaulting Lender for so long as it remains a Defaulting Lender.

3.2.2 LC Facility Fees. Borrowers shall pay (a) to Agent, for the Pro Rata benefit of Lenders (other than any Defaulting Lender), a fee equal to the Applicable Margin in effect for LIBOR Loans multiplied by the average daily stated amount of Letters of Credit, which fee shall be payable quarterly in arrears, on the first (1st) day of each calendar quarter; (b) to Agent, for the account of Issuing Bank, a fronting fee equal to one-eighth of one percent (.125%) of the stated amount of each Letter of Credit, which fee shall be payable upon issuance of the Letter of Credit and quarterly in arrears, on the first (1st) day of each calendar quarter thereafter, and shall be payable on any increase in stated amount made between any such dates; and (c) to Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of Letters of Credit, which charges shall be paid as and when incurred. During an Insolvency Proceeding with respect to any Loan Party (other than an Immaterial Subsidiary), or during any other Event of Default if Required Lenders so elect, the fee payable under clause (a) shall be increased by two percent (2%) per annum. For the avoidance of doubt, no fees shall accrue under this Section 3.2.2 in favor of any Defaulting Lender for so long as it remains a Defaulting Lender.

3.2.3 Other Fees. Borrowers shall pay to Agent the other fees and amounts set forth in the Fee Letter in the amounts and at the times specified therein. To the extent payment in full of the applicable fee as set forth in the Fee Letter is received by Agent from Borrowers on or about the date hereof, Agent shall pay to each Lender its share of such fees in accordance with the terms of the arrangements of Agent with such Lender.

**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 three hundred sixty (360) days (or 365/366 days, in the case of Base Rate Loans). 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 or refund, nor subject to proration except as specifically provided herein. 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 5.10 (which shall include the method for calculating such amount), submitted to Administrative Borrower by Agent or the affected Lender, as applicable, shall be final, conclusive and binding for all purposes, absent manifest error. Failure to or delay on the part of Agent or any Lender to demand compensation pursuant to any of Sections 3.4, 3.6, 3.7, 3.9 or 5.10 shall not constitute a waiver of Agent's or such Lender's right to demand such compensation; provided, that Borrowers shall not be required to compensate Agent or any Lender pursuant to any such Section for any increased costs, reductions or other amounts incurred more than 180 days prior to the date that such Agent or such Lender, as applicable, notifies Administrative Borrower of circumstances and/or events giving rise to such increased costs, reductions or other amounts and of Agent's or such Lender's intention to claim compensation therefor; provided, further, that, if the circumstance and/or event giving rise to such increased costs, reductions or other amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

**3.4 Reimbursement Obligations.** Borrowers shall reimburse Agent for all Extraordinary Expenses. Borrowers shall also reimburse Agent for all reasonable and

documented out-of-pocket legal, accounting, appraisal, consulting, and other fees, costs and expenses incurred by it 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 10.1.10, each inspection, audit or appraisal with respect to any Loan Party or Collateral, whether prepared by Agent's personnel or a third party. All amounts reimbursable by Borrowers under this Section shall constitute Obligations secured by the Collateral and shall be payable (x) in the case of Extraordinary Expenses, promptly upon written demand, and (y) with respect to all other amounts due pursuant to this Section 3.4, within thirty (30) days of written demand thereof, in each case including customary documentation supporting such request.

**3.5 Illegality.** If a Lender shall reasonably determine (which determination shall, upon notice thereof to Administrative Borrower and Agent be conclusive and binding on Borrowers) that any Change in Law makes it unlawful, or any central bank or other Governmental Authority asserts that it is unlawful, for such Lender to make, continue or maintain any LIBOR Loan as, or to convert any Loan into, a LIBOR Loan of a certain duration, the obligations of such Lender to make, continue, maintain or convert into any such LIBOR Loans shall, upon such determination, forthwith be suspended until such Lender shall notify Borrower and Agent that the circumstances causing such suspension no longer exist, and all LIBOR Loans of such type shall automatically convert into Base Rate Loans at the end of the then current Interest Periods with respect thereto or sooner, if required by such law or assertion.

**3.6 Increased Costs.** If on or after the date hereof any Change in Law:

(a) shall subject any Lender to any Tax with respect to its LIBOR Loans or its obligation to make LIBOR Loans, or shall change the basis of taxation of payments to such Lender of the principal of or interest on its LIBOR Loans or any other amounts due under this Agreement in respect of its LIBOR Loans or its obligation to make LIBOR Loans (except for Excluded Taxes); or

(b) shall impose, modify or deem applicable any reserve, special deposit or similar requirement (including, without limitation, any such requirement imposed by the Board) against assets of, deposits with or for the account of, or credit extended by, such Lender or shall impose on such Lender or on the London interbank market any other condition affecting its LIBOR Loans or its obligation to make LIBOR Loans;

and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining any available LIBOR Loan, or to reduce the amount of any sum received or receivable by such Lender under this Agreement with respect thereto, by an amount deemed by such Lender to be material, then, within fifteen (15) days after written demand (including customary documentation supporting such request) by such Lender, Borrowers shall pay to such Lender such additional amount or amounts as will compensate such Lender for such increased cost or reduction; provided, that Borrowers shall not be required to compensate any Lender pursuant to this Section 3.6 for any Taxes which are otherwise the subject of Section 5.10 or for any Excluded Tax.

**3.7 Increased Capital Costs.** If any Change in Law affects the amount of capital or liquidity required or expected to be maintained by any Lender, or Person Controlling such Lender, and such Lender determines (in its Permitted Discretion) that the rate of return on its or such Controlling Person's capital as a consequence of its Commitments or the Loans made by such Lender is reduced to a level below that which such Lender or such Controlling Person could have achieved but for the occurrence of any such circumstance, then, in any such case upon notice from time to time by such Lender to Borrower and Agent, Borrowers shall promptly pay, after presentment of the certificate described in Section 3.3, directly to such Lender additional amounts sufficient to compensate such Lender or such Controlling Person for such reduction in rate of return. A statement of such Lender as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on Borrowers. In determining such amount, such Lender may use any method of averaging and attribution that it (in its Permitted Discretion) shall deem applicable.

**3.8 Mitigation; Replacement of Lenders.**

**3.8.1** Mitigation. Each Lender agrees that, upon becoming aware that it is subject to Section 3.5, 3.6, 3.7 or 5.10, it will take reasonable measures to reduce Borrowers' obligations under such Sections, including funding or maintaining its Commitments or Loans through another office, as long as use of such measures would not adversely affect Lender's Commitments, Loans, business or interests, and would not be inconsistent with any internal policy or applicable legal or regulatory restriction.

**3.8.2**  
(a)

Replacement of Lenders.

If any Lender requests compensation under Section 3.6 or Section 3.7, or if

any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.10 or 5.11, or if any Lender ceases to make LIBOR Loans as a result of any of the conditions in Section 3.5, then Administrative Borrower may, at its sole expense and effort, upon notice to such Lender and Agent, require such Lender (and such Lender shall be obligated) to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 13.3), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided, that (i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in drawn Letters of Credit and, other than in the case of a Defaulting Lender, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Administrative Borrower (in the case of all other amounts), and (ii) in the case of any such assignment resulting from a claim for compensation under Section 3.6 or 3.7 or payments required to be made pursuant to Section 5.10 or 5.11, such assignment will result in a reduction in such compensation or payments.

(b) Any Lender being replaced pursuant to clause (a) above shall (i) execute and deliver an Assignment and Acceptance with respect to such Lender's Commitment and outstanding Loans and participations in drawn Letters of Credit, as applicable (provided, that the failure of any such Lender to execute an Assignment and Acceptance shall not render such

assignment invalid and such assignment shall be recorded in the Register) and (ii) deliver Notes, if any, evidencing such Loans to Administrative Borrower or Agent. Pursuant to such Assignment and Acceptance, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Commitments and outstanding Loans and participations in drawn Letters of Credit, as applicable, (B) all obligations of Loan Parties owing to the assigning Lender relating to the Loan Documents and participations so assigned shall be paid in full by the assignee Lender or Administrative Borrower (as applicable) to such assigning Lender concurrently with such Assignment and Acceptance, any amounts owing to the assigning Lender (other than a Defaulting Lender) under Section 13.1 as a consequence of such assignment and (C) upon such payment and, if so requested by the assignee Lender, the assignor Lender shall deliver to the assignee Lender the appropriate Note or Notes executed by Borrowers, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender.

**3.9 Indemnities.** In addition to (but without duplication of) the LIBOR Loan

Prepayment Fee payable under Section 5.5.1, Borrowers agree to reimburse each Lender (without duplication) for any increase in the cost to such Lender, or reduction in the amount of any sum receivable by such Lender, in respect, or as a result of:

(a) any conversion or repayment or prepayment of the principal amount of any LIBOR Loans on a date prior to the scheduled last day of the Interest Period applicable thereto;

(b) of Borrowing thereof;

(c)

any Loans not being made as LIBOR Loans in accordance with the Notice

any Loans not being continued as, or converted into, LIBOR Loans in

accordance with the Notice of Conversion/ Continuation notice thereof; or

(d) any costs associated with marking to market any obligations under any Hedging Agreement with a Bank Product Provider that (in the reasonable determination of Agent) are required to be terminated as a result of any conversion, repayment or prepayment of the principal amount of any LIBOR Loan on a date other than the scheduled last day of the Interest Period applicable thereto.

Such Lender shall promptly notify Administrative Borrower and Agent in writing of the occurrence of any such event, such notice to state, in reasonable detail, the reasons therefor and the additional amount required to fully compensate such Lender for such increased cost or reduced amount. Such additional amounts shall be payable by Borrowers to such Lender within fifteen (15) days of its receipt of such notice, and such notice shall, in the absence of manifest error, be conclusive and binding on Borrowers. Borrowers understand, agree and acknowledge the following: (i) no Lender has any obligation to purchase, sell and/or match funds in connection with the use of LIBOR Rate as a basis for calculating the rate of interest on a LIBOR Loan, (ii) the LIBOR Rate may be used merely as a reference in determining such rate, and (iii) each Borrower has accepted the LIBOR Rate as a reasonable and fair basis for calculating such rate, the LIBOR Loan Prepayment Fee, and other funding losses incurred by Lenders. Borrowers

further agree to pay the LIBOR Loan Prepayment Fee and other funding losses (except for lost profits), if any, whether or not the applicable Lender elects to purchase, sell and/or match funds. Notwithstanding anything to the contrary in this Section 3.9, Borrowers shall not be required to compensate any Lender pursuant to this Section 3.9 for any Taxes which are otherwise the subject of Section 5.10 or for any Excluded Tax.

**3.10 Maximum Interest.** In no event shall interest, charges or other amounts that are contracted for, charged or received by Agent and Lenders pursuant to any Loan Documents and that are deemed interest under Applicable Law ("interest") exceed the highest rate permissible under Applicable Law ("maximum rate"). If, in any calendar month, any interest rate, absent the foregoing limitation, would have exceeded the maximum rate, then the interest rate for that month shall be the maximum rate and, if in a future month, that interest rate would otherwise be less than the maximum rate, then the rate shall remain at the maximum rate until the amount of interest actually paid equals the amount of interest which would have accrued if it had not been limited by the maximum rate. If, upon Full Payment of the Obligations, the total amount of interest actually paid under the Loan Documents is less than the total amount of interest that would, but for this Section, have accrued under the Loan Documents, then Borrowers shall, to the extent permitted by Applicable Law, pay to Agent, for the account of Lenders, (a) the lesser of (i) the amount of interest that would have been charged if the maximum rate had been in effect at all times, or (ii) the amount of interest that would have accrued had the interest rate otherwise set forth in the Loan Documents been in effect, minus (b) the amount of interest actually paid under the Loan Documents. If a court of competent jurisdiction determines that Agent or any Lender has received interest in excess of the maximum amount allowed under Applicable Law, such excess shall be deemed received on account of, and shall automatically be applied to reduce, Obligations other than interest (regardless of any erroneous application thereof by Agent or any Lender), and upon Full Payment of the Obligations, any balance shall be refunded to Borrowers. In determining whether any excess interest has been charged or received by Agent or any Lender, all interest at any time charged or received from Borrowers in connection with the Loan Documents shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the Obligations.

## SECTION 4.

### 4.1

#### 4.1.1

### LOAN ADMINISTRATION

#### Manner of Borrowing and Funding Loans.

##### Notice of Borrowing.

(a) Whenever Borrowers desire funding of a Borrowing of Loans, Administrative Borrower shall give Agent a Notice of Borrowing. Such notice must be received by Agent no later than 2:00 p.m. (i) on the Business Day of the requested funding date, in the case of Base Rate Loans, and (ii) at least two (2) Business Days prior to the requested funding date, in the case of LIBOR Loans. Notices received after 2:00 p.m. shall be deemed received on the next Business Day. Each Notice of Borrowing shall be irrevocable and shall specify (A) the principal amount of the Borrowing, (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as Base Rate Loans or LIBOR Loans, and (D) in the case of LIBOR Loans, the duration of the applicable Interest Period (which shall be deemed to be one (1) month if not specified).

(b) Unless payment is otherwise timely made by Borrowers, the becoming due of any Obligations (whether principal, interest, fees or other charges, including Extraordinary Expenses, LC Obligations, Cash Collateral and Bank Product Debt) shall be deemed to be a request for Base Rate Loans on the due date, in the amount of such Obligations. The proceeds of such Loans shall be disbursed as direct payment of the relevant Obligation.

(c) At such time as Borrowers have established and maintain controlled disbursement accounts with Agent or Agent's Affiliate, the parties agree that the presentation for payment of any check or other item of payment drawn on, or other transfer made from, such account at a time when there are insufficient funds to cover it shall be deemed to be a request for Base Rate Loans on the date of such presentation, in the amount of the check and items presented for payment. At such time, the proceeds of such Loans may be disbursed directly to the controlled disbursement accounts or other appropriate account.

4.12 Fundings by Lenders Each Lender shall timely honor its Commitment by funding its Pro Rata share of each Borrowing of Loans that is properly requested hereunder. Agent shall endeavor to notify Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 2:00 p.m. on the proposed funding date for Base Rate Loans or by 3:00 p.m. at least two (2) Business Days before the proposed funding date for LIBOR Loans. Each Lender shall fund to Agent such Lender's Pro Rata share of the Borrowing to the account specified by Agent in immediately available funds not later than 3:00 p.m. on the requested funding date, unless Agent's notice is received after the times provided in the immediately preceding sentence, in which event Lender shall fund its Pro Rata share by 11:00 a.m. on the Business Day immediately following the requested funding date. Subject to its receipt of such amounts from Lenders, Agent shall disburse the proceeds of the Loans as directed by Administrative Borrower. Unless Agent shall have received (in sufficient time to act) written notice from a Lender that it does not intend to fund its Pro Rata share of a Borrowing, Agent may assume that such Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to Borrowers. If a Lender's share of any Borrowing is not in fact received by Agent, then Borrowers 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 such Borrowing.

4.13 Notices Each Loan Party authorizes Agent and Lenders to extend, convert or continue Loans, effect selections of interest rates, and transfer funds to or on behalf of Borrowers based on telephonic or e-mailed instructions. Administrative Borrower, for the account of Borrowers, 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 in any material respect from the action taken by Agent or Lenders, the records of Agent and Lenders shall govern absent manifest error. Neither Agent nor any Lender shall have any liability for any loss suffered by a Loan Party as a result of Agent or any Lender acting upon its understanding of telephonic or e-mailed instructions from a person believed in good faith by Agent or any Lender to be a person authorized to give such instructions on a Loan Party's behalf.

4.2 Defaulting Lender Agent shall not be obligated to transfer to a Defaulting Lender any payments received by Agent for the Defaulting Lender's benefit, nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder (including any principal,

interest or fees and whether in respect of Loans, participation interests or otherwise). For purposes of voting or consenting to matters with respect to this Agreement and the other Loan Documents and determining Pro Rata, such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero (0). At any time that there is a Defaulting Lender, payments received for application to the Obligations payable to Lenders (other than the Defaulting Lender) in accordance with the terms of this Agreement shall be distributed to such non-defaulting Lenders on a Pro Rata basis calculated after giving effect to the reduction of the Defaulting Lender's Loan to zero (0) as provided herein or at Agent's option, Agent may instead receive and retain such amounts that would be otherwise attributable to the Pro Rata share of the Defaulting Lender. To the extent that Agent elects to receive and retain such amounts, Agent may hold them and, in its reasonable discretion, relend such amounts to Borrowers. To the extent that Agent exercises its option to relend such amounts, such amounts shall be treated as Loans for the account of Agent in addition to the Loans that are made by Lenders, other than Defaulting Lenders, on a Pro Rata basis as calculated after giving effect to the reduction of the Defaulting Lender's Commitment to zero (0) as provided herein but shall be repaid in the same order of priority as Protective Advances for purposes of Section 5.7.1 hereof, except as Agent may otherwise elect. Agent shall determine whether any Loans requested shall be made from relending such amounts or from Loans from Lenders other than the Defaulting Lenders and any allocation of requested Loans between them. The rights of a Defaulting Lender shall be limited as provided herein until such time as the Defaulting Lender (a) has made all payments to Agent of the amounts that it had failed to pay causing it to become a Defaulting Lender, (b) has made any other payments as it would have been required to make as a Lender during the period that it was a Defaulting Lender other than in respect of the principal amount of Loans, which payments as to the principal amount of Loans shall be settled and funded based on the outstanding principal balance of the Loans on the date that Defaulting Lender makes all of the payments required to be made under Section 4.2(a) above or shall be settled and funded by such Lender at such other time thereafter as Agent may specify, and (c) is otherwise in compliance with the terms of this Agreement. Upon the making of such payment or payments by Defaulting Lender with respect to the event that is the basis for it having become a Defaulting Lender, such Lender shall (i) cease to be a Defaulting Lender, (ii) only be entitled to receive the payment of interest (and no other amounts) accrued during the period that such Lender was a Defaulting Lender to the extent previously received and retained by Agent from or for the account of Borrowers relating to the funds constituting Loans funded by such Lender prior to the date that such Lender became a Defaulting Lender (and not previously paid to such Lender), (iii) have its Commitment reinstated for all purposes and (iv) fund Loans and settle in respect of the Loans and other Obligations in accordance with the terms hereof. The existence of a Defaulting Lender and the operation of this Section shall not be construed to increase or otherwise affect the Commitment of any Lender, or relieve or excuse (except as otherwise expressly provided herein with respect to such Defaulting Lender) the performance by any Borrower or Guarantor of its duties and obligations hereunder. During any period in which there is a Defaulting Lender with a Commitment, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit the Pro Rata share of each non-Defaulting Lender with a Commitment shall be computed without giving effect to the Commitment of that Defaulting Lender, and such obligation to so acquire, refinance or fund participations in such Letters of Credit shall automatically be reallocated among the non-Defaulting Lenders with Commitments or Commitments, as applicable, upon such

Defaulting Lender becoming a Defaulting Lender; provided, that the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in such Letters of Credit shall not exceed the positive difference, if any, of (1) the Commitment of that non-Defaulting Lender minus (2) the aggregate outstanding amount of the Loans of that Lender. ~~Not~~ Subject to Section 15.21 hereof, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender with a Commitment arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

**43**            **Number and Amount of LIBOR Loans; Determination of Rate.** For ease of administration, all LIBOR Loans having the same length and beginning date of their Interest Periods shall be aggregated together, and such Loans shall be allocated among Lenders on a Pro Rata basis. No more than eight aggregated LIBOR Loans may be outstanding at any time, and each aggregate LIBOR Loan when made, continued or converted shall be in a minimum amount of \$1,000,000, or an increment of \$250,000 in excess thereof.

Upon determining the LIBOR Lending Rate for any Interest Period requested by Borrowers, Agent shall promptly notify Administrative Borrower thereof by telephone or electronically and, if requested by Administrative Borrower, shall confirm any telephonic notice in writing.

**44**            **Administrative Borrower.**

(a)            Each Borrower hereby irrevocably appoints and constitutes Administrative Borrower as its agent to request and receive Loans and Letters of Credit pursuant to this Agreement and the Loan Documents from Agent or any Lender in the name or on behalf of such Borrower, Agent and Lenders may disburse the Loans to such bank account of Administrative Borrower or a Borrower or otherwise make such Loans to a Borrower and provide such Letters of Credit to a Borrower as Administrative Borrower may designate or direct, without notice to any other Borrower or Loan Party. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b)            Administrative Borrower hereby accepts the appointment by Borrowers to act as Agent of Borrowers pursuant to this Section 4.4. Administrative Borrower shall ensure that the disbursement of any Loans to each Borrower requested by or paid to or for the account of Borrowers, or the issuance of any Letters of Credit for a Borrower hereunder, shall be paid to or for the account of such Borrower.

(c)            Each Borrower and Guarantor hereby irrevocably appoints and constitutes Administrative Borrower as its agent to receive statements on account and all other notices from Agent and Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the Loan Documents.

(d)            Any notice, election, representation, warranty, agreement or undertaking by or on behalf of any other Loan Party by Administrative Borrower shall be deemed for all purposes to have been made by such Loan Party, as the case may be, and shall be binding upon

and enforceable against such Loan Party to the same extent as if made directly by such Loan Party.

(e) No purported termination of the appointment of Administrative Borrower as agent as aforesaid shall be effective, except after ten (10) days' prior written notice to Agent (or such shorter period as approved by Agent).

**45 One Obligation.** The Loans, LC Obligations and other Obligations shall constitute one general obligation of Borrowers and shall be secured by Agent's Lien upon all Collateral; provided, however, that Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Borrower to the extent of any Obligations jointly or severally owed by such Borrower.

**46 Effect of Termination.** On the effective date of any termination of the Commitments, all Obligations (other than Bank Product Debt) shall be immediately due and payable, and any Lender may terminate its and its Affiliates' Bank Products (including, with the consent of Agent, any Cash Management Services). All undertakings of Loan Parties contained in the Loan Documents shall survive any termination of the Commitments, and Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents, in each case, until Full Payment of the Obligations. The provisions of Sections 2.3, 3.4, 3.6, 3.7, 3.9, 5.6, 5.10, 12, 15.2, 15.11 and this Section, and the obligation of each Loan Party and Lender with respect to each indemnity given by it in any Loan Document, shall survive Full Payment of the Obligations and any release relating to this credit facility (except as expressly provided for in any such release) provided, that the survival of Section 15.11 following Full Payment of the Obligations shall be limited to the period of two (2) years following such Full Payment of the Obligations. In addition to (and not in any way limiting) Section 15.20 hereunder, upon Full Payment of the Obligations (other than contingent indemnity Obligations which have not been asserted) and termination of all Commitments, Agent will, at Borrowers' sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

## SECTION 5.

### 5.1

#### PAYMENTS

##### General Payment Provisions.

All payments of Obligations shall be made in

Dollars, without offset, counterclaim or defense of any kind, and subject to Section 5.10, free of (and without deduction for) any Taxes, and in immediately available funds, not later than 2:00

p.m. on the due date. Any payment after such time, at the election of Agent, shall be deemed made on the next Business Day. Administrative Borrower, on behalf of Borrowers, may, at the time of payment, specify to Agent the Obligations to which such payment is to be applied; provided, that if not specified, such amounts shall be applied to repay outstanding Loans without a corresponding Commitment reduction. If any payment under the Loan Documents shall be stated to be due on a day other than a Business Day, the due date shall be extended to the next Business Day and such extension of time shall be included in any computation of interest and fees. Any payment of a LIBOR Loan prior to the end of its Interest Period shall be accompanied by the LIBOR Loan Prepayment Fee and all amounts due under Section 3.9. Subject to Section

5.7.1, any payment or prepayment of Loans shall be applied to each Lender's Loans on a Pro Rata basis. Subject to the immediately preceding sentence, any prepayment of Loans shall be applied first to Base Rate Loans and then to LIBOR Loans.

**5.2 Repayment of Loans.** Loans shall be due and payable in full on the Commitment Termination Date. Loans may be prepaid from time to time, without penalty or premium, other than the LIBOR Loan Prepayment Fee, if applicable. If an Overadvance exists, Borrowers shall immediately (or within two (2) Business Days with respect to the repayment of outstanding Loans in the event of an Overadvance caused by an establishment or modification of any component of the Availability Reserve then in effect to the extent that such establishment or modification is not subject to a two (2) Business Day notice period under the definition of Availability Reserve) repay the outstanding Loans and Cash Collateralize LC Obligations, in each case in an amount sufficient to reduce the Facility Exposure to the Collateral Line Cap; provided, that once any such Overadvance no longer exists any funds on deposit as Cash Collateral for LC Obligations shall be returned.

**5.3 Reserved.**

**5.4 Mandatory Prepayments.** Subject to Section 5.7, during any Cash Dominion Trigger Period, Borrowers shall (a) prepay the Loans, and (b) pay other amounts outstanding under this Agreement and the other Loan Documents with the proceeds and collections received by Loan Parties to the extent so required under the provisions of Section 8.3 (it being understood and agreed that for purposes of this sentence, LC Obligations shall be deemed to not be outstanding). Prepayments made pursuant to this Section 5.4, first, shall be applied ratably to the outstanding Loans (without any reduction in the Commitments), second, shall be applied ratably to all other amounts outstanding under this Agreement and the other Loan Documents, third, shall, if required by Agent during an Event of Default, be used to Cash Collateralize the LC Obligations, and fourth, so long as no Event of Default is continuing, shall be remitted to Borrowers.

**5.5 Payment of LIBOR Loans and Other Obligations.**

5.5.1 LIBOR Loans. LIBOR Loans may be prepaid upon the terms and conditions set forth herein. Administrative Borrower shall give Agent, no later than 2:00 p.m. at least two (2) Business Days' notice of any proposed prepayment of any LIBOR Loans, specifying the proposed date of payment of such LIBOR Loans, and the principal amount to be paid. Each partial prepayment of the principal amount of LIBOR Loans shall be in a minimum amount of \$1,000,000 and integral multiples of \$250,000 in excess thereof and accompanied by the payment of all charges outstanding on such LIBOR Loans and of all accrued interest on the principal repaid to the date of payment. Borrowers acknowledge that prepayment or acceleration of a LIBOR Loan during an Interest Period may result in Lenders incurring additional costs, expenses and/or liabilities and that it is extremely difficult and impractical to ascertain the extent of such costs, expenses and/or liabilities. Therefore, all full or partial prepayments of LIBOR Loans on any date prior to the last day of an Interest Period shall be accompanied by, and Borrowers hereby promise to pay to Agent for the Pro Rata benefit of Lenders, on each such date or the date all sums payable hereunder become due and payable, by acceleration or otherwise, in addition to all other sums then owing, an amount (excluding in all events the loss of anticipated

profits) ("LIBOR Loan Prepayment Fee") determined by Agent pursuant to the following formula:

(a) the then current LIBOR Rate applicable to an Interest Period with a maturity date closest to the end of the Interest Period with respect to the LIBOR Loans being prepaid as to which prepayment is made, subtracted from

(b) the LIBOR Lending Rate applicable to the LIBOR Loan being prepaid.

If the result of this calculation is zero (0) or a negative number, then there shall be no LIBOR Loan Prepayment Fee. If the result of this calculation is a positive number, then the resulting percentage shall be multiplied by:

(i) the amount of the LIBOR Loan being prepaid.

The resulting amount shall be divided by:

and multiplied by:

(ii) (iii)

360

the number of days remaining in the Interest Period as to which the prepayment is being made.

The resulting amount of these calculations shall be the LIBOR Loan Prepayment Fee.

5.5.2 **Other Obligations.** Obligations (other than Loans, obligations under Hedging Agreements and Bank Product Debt), 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 written demand.

5.6 **Marshaling; Payments Set Aside.** None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Loan Party or against any Obligations. If any Loan Party makes a payment to Agent or Lenders, or if Agent or any Lender receives payment from the proceeds of Collateral, exercise of setoff or otherwise, and such payment is subsequently invalidated or required to be repaid to a trustee, receiver or any other Person, then the Obligations originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been received and any enforcement or setoff had not occurred.

5.7 **Post-Default Allocation of Payments.**

5.7.1 **Allocation.** Notwithstanding anything herein to the contrary (except, in the case of LC Obligations, Section 8.3.2), during an Event of Default, monies to be applied to the Obligations, whether arising from payments by Loan Party, realization on Collateral, setoff or otherwise, shall be allocated as follows:

(a) first, to all costs and expenses, including Extraordinary Expenses, and indemnities owing to Agent pursuant to the Loan Documents;

Loans; Loans;

(b) (c)

(d)

second, to interest owing to Agent on Protective Advances or Overadvance third, to pay the principal of all Protective Advances and Overadvance fourth, to all Obligations constituting fees (excluding amounts relating to

Bank Products);

(e)

fifth, to all Obligations constituting interest (excluding amounts relating to Bank Products, Protective Advances; and Overadvance Loans);

(f) sixth, to pay the principal of all Loans not paid pursuant to clause (d) above and/or to Cash Collateralize LC Obligations;

(g) seventh, to pay all other Obligations other than Obligations in connection with any Bank Product Debt;

(h)

(i)

eighth, to Bank Product Debt; and

ninth, as directed by a court of competent jurisdiction.

Amounts shall be applied to each category of Obligations set forth above until Full Payment of the Obligations thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. Amounts distributed with respect to any Bank Product Debt shall be the lesser of the applicable Bank Product Amount last reported to Agent and Administrative Borrower or the actual Bank Product Debt as calculated by the methodology reported to Agent and Administrative Borrower for determining the amount due. Agent shall have no obligation to calculate the amount to be distributed with respect to any Bank Product Debt, but may rely upon written notice of the amount (setting forth a reasonably detailed calculation) from the relevant Bank Product Provider. In the absence of such notice, Agent may assume the amount to be distributed is the Bank Product Amount last reported to it.

5.7.2 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 Lender 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 any Lender, such Lender hereby agrees to return it).

5.8 **Application of Payments**. During a Cash Dominion Trigger Period, in

accordance with Section 8.3.2, the collected funds in each Dominion Account as of the end of each Business Day (or less frequently if agreed to by Agent) shall be swept to the Master Account and promptly applied in accordance with Sections 5.4 and 8.3. If, as a result of Agent's receipt of Payment Items or proceeds of Collateral, a credit balance exists, the balance shall not

accrue interest in favor of any Loan Party and shall be made available to Borrowers as long as no Event of Default exists in accordance with Section 5.4.

**5.9 Loan Account; Account Stated.**

5.9.1 Loan Account. Agent shall maintain in accordance with its usual and customary practices an account or accounts ("Loan Account") evidencing the Debt of Borrowers resulting from each Loan or issuance of a Letter of Credit from time to time. Any failure of Agent to record anything in the Loan Account, or any error in doing so, shall not limit or otherwise affect the obligation of Loan Parties to pay any amount owing hereunder. Agent may maintain a single Loan Account in the name of Administrative Borrower, and each Borrower confirms that such arrangement shall have no effect on the joint and several character of its liability for the Obligations.

5.9.2 Entries Binding. Entries made in the Loan Account shall constitute presumptive evidence of the information contained therein. If any information contained in the Loan Account is provided to or inspected by any Person, then such 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 forty-five (45) days after receipt or inspection that specific information is subject to dispute.

**5.10 Taxes.**

5.10.1 Except as required by Applicable Law, any and all payments by Borrowers to or for the account of Agent or any Lender under any Loan Document shall be made free and clear of and without deduction for any and all present or future Taxes, other than Excluded Taxes. If Borrowers shall be required by Applicable Law to withhold or deduct any Taxes with respect to any sum payable under any Loan Documents, (a) except with respect to withholding or deductions in respect of Excluded Taxes, the sum payable to Agent or such Lender shall be increased as may be necessary so that, after making all required withholding or deductions, Agent or such Lender (as the case may be) receives an amount equal to the sum it would have received had no such withholding or deductions been made; (b) Borrowers shall make such withholding or deductions; and (c) Borrowers shall pay the full amount withheld or deducted to the relevant taxing or other authority in accordance with Applicable Law.

5.10.2 Borrowers shall indemnify Lenders, within thirty (30) days after written demand therefor, for the full amount of any Taxes (other than Excluded Taxes) paid or payable by such Lender on or with respect to any payment by or on account of any Obligations and any penalties, interest and reasonable expenses arising therefrom or with respect thereto; provided, that if any Borrower reasonably believes that such Taxes were not correctly or legally asserted, each Lender will use reasonable efforts to cooperate with such Borrower to obtain a refund of such Taxes so long as such efforts would not, in the reasonable determination of such Lender, result in any unreimbursed additional costs, expenses or risks or be otherwise disadvantageous to it; provided, further, that Borrowers shall not be required to compensate any Lender pursuant to this Section 5.10.2 for any amounts paid or incurred in any Fiscal Year for which such Lender is claiming compensation if such Lender does not furnish notice of such claim within 270 days from the end of such Fiscal Year; provided, further, that if the circumstances giving rise to such

claim have a retroactive effect, then the beginning of such 270-day period shall be extended to include such period of retroactive effect. A certificate as to the amount of such payment or liability delivered to Administrative Borrower by a Lender, or by Agent on its own behalf or on behalf of any Lender, setting forth in reasonable detail the manner in which such amount was determined, shall be conclusive absent manifest error. Without limiting the provisions of Sections 5.10.1 or 5.10.2, each Lender shall, and does hereby, indemnify each Borrower and Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, against any and all Excluded Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for such Borrower or Agent) incurred by or asserted against such Borrower or Agent by any Governmental Authority. Each Lender hereby authorizes Agent, Administrative Borrower or any Borrower 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 Agent under this Section

5.10.2. The agreements in this Section 5.10.2 shall survive the resignation and/or replacement of Agent, 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.

#### **5.11 Withholding Tax Exemption.**

5.11.1 Each Lender (with respect to the relevant lending office) and Agent shall, if reasonably requested by Administrative Borrower or Agent, deliver such documentation prescribed by Applicable Law or as reasonably requested by such party, as will enable such party to determine whether such Lender (with respect to the relevant lending office) is subject to withholding under Applicable Law, is entitled to an exemption from such withholding or is eligible for a reduced rate of withholding with respect to payments to be made to such Lender under the Loan Documents. In addition, each Lender (with respect to the relevant lending office) and Agent shall deliver updated or appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) promptly upon the obsolescence or invalidity of any documentation previously delivered by such party or promptly notify Administrative Borrower and Agent. In addition, each Lender (with respect to the relevant lending office) shall deliver to Administrative Borrower and Agent such other tax forms or other documents as shall be prescribed by Applicable Law, to the extent applicable, (x) to demonstrate that payments to such Lender (with respect to the relevant lending office) under this Agreement and the other Loan Documents are exempt from any withholding tax imposed pursuant to FATCA or (y) to allow Administrative Borrower and Agent to determine the amount to deduct or withhold. Without limiting the foregoing:

(a) On or before the date on which a Foreign Lender (or Agent that is not a "United States person" as defined under Section 7701(a)(30) of the Code) becomes a party to this Agreement, the Foreign Lender (or Agent that is not a "United States person" as defined under Section 7701(a)(30) of the Code) shall deliver to Administrative Borrower and Agent two duly completed and executed copies of IRS Form W-8BEN, W-8ECI or W-8IMY (or any subsequent replacement or substitute form therefor), certifying that such Lender (or Agent that is not a "United States person" as defined under Section 7701(a)(30) of the Code) can receive payment of Obligations or other amounts payable hereunder without deduction or withholding of any United States federal income taxes and such other form or forms, certificates or documentation as reasonably requested by Administrative Borrower or Agent to confirm or establish that such

party can receive payment of Obligations or other amounts payable hereunder without deduction or withholding of U.S. taxes. Without limiting the foregoing, any Foreign Lender that is relying on the portfolio interest exception of Section 871(h) or Section 881(c) of the Code, shall also provide Agent and Administrative Borrower with IRS Form W-8BEN (claiming exemption from

U.S. withholding tax under the portfolio interest exemption) and a certificate, in a form acceptable to Agent and Administrative Borrower, representing to Agent and Administrative Borrower that such Foreign Lender is not: (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of any Loan Party within the meaning of Section 871(h)(3)(B) of the Code, (3) a "controlled foreign corporation" receiving interest from a related person (within the meaning of Sections 881(c)(3)(C) of the Code) and (4) a conduit entity participating in a conduit financing arrangement as defined in Treasury Regulation Section 1.881-3 (a "U.S. Tax Compliance Certificate"). To the extent a Foreign Lender is not the beneficial owner, the Foreign Lender shall provide two (2) executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided, that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner. Each Foreign Lender shall deliver to Administrative Borrower and Agent two additional copies of any such form and any such other forms and certifications from time to time if requested by Administrative Borrower or Agent and before the preceding form expires or becomes obsolete or after the occurrence of any event requiring a change in the form, as well as any amendments, extensions or renewals thereof as may be reasonably requested by Administrative Borrower or Agent, in each case, certifying that the Foreign Lender can receive payment of Obligations without deduction or withholding of any such taxes, unless an event (including any change in treaty or law) has occurred that renders such forms inapplicable or prevents the Foreign Lender from certifying that it can receive payments without deduction or withholding of such taxes. During any period that a Foreign Lender does not or is unable to establish that it can receive payments without deduction or withholding of such taxes, other than by reason of an event (including any change in treaty or law) that occurs after it becomes a Lender, Agent may withhold taxes from payments to such Foreign Lender at the applicable statutory and treaty rates, and Borrowers shall not be required to pay any additional amounts under this Section 5.11 or Section 5.10 as a result of such withholding.

(b) On or before the date on which such a Lender or Agent becomes a party to this Agreement, each Lender or Agent that is a "United States person" as defined under Section 7701(a)(30) of the Code (a "U.S. Lender") shall deliver to Administrative Borrower and Agent such form or forms, certificates or documentation, including two (2) original executed copies of IRS Form W-9, and at all other times as reasonably requested by Administrative Borrower or Agent to confirm or establish that such Lender or Agent is not subject to deduction, withholding, or backup withholding of United States Tax with respect to any payments to such Lender. Such forms shall be delivered by each Lender to Administrative Borrower and Agent on or before the date such Lender becomes a party to this Agreement.

(c) Each Lender having sold a participation in any of its obligations shall collect from such Participant the documents described in this Section 5.11.1 and provide them to Administrative Borrower and Agent.

5.11.2 If the Internal Revenue Service or any other Governmental Authority of the United States or any other jurisdiction asserts a claim that Agent did not properly withhold tax from amounts paid to or for the account of any Lender due to a failure on the part of Lender to comply with the provisions of Section 5.11.1, such Lender shall indemnify and hold Agent harmless for all amounts paid, directly or indirectly, by Agent, as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent under this Section 5.11.2, together with all costs and expenses (including attorney's fees and expenses). The obligation of Lenders under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

5.11.3 If a Lender or Agent receives a refund of Taxes for which a payment has been made by a Borrower pursuant to Section 5.10, then such Lender or Agent shall reimburse such Borrower for such amount (but only to the extent of indemnity payments made, or additional amounts paid, by Borrowers under Section 5.10 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses by such Lender or Agent and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund).

**5.12 Nature and Extent of Each Borrower's Liability.**

**5.12.1 Joint and Several Liability.**

(a) ~~All Borrowers shall be liable for all amounts due to Agent and Lenders~~  
under this Agreement, regardless of which Borrower actually receives the Loans or Letters of Credit hereunder or the amount of such Loans received or the manner in which Agent and Lenders account for such Loans, Letters of Credit or other extensions of credit on its books and records. The Obligations with respect to Loans made to a Borrower, and the Obligations arising as a result of the joint and several liability of a Borrower hereunder, with respect to Loans made to the other Borrowers hereunder, shall be separate and distinct obligations, but all such Obligations shall be primary obligations of all Borrowers. The Obligations arising as a result of the joint and several liability of a Borrower hereunder with respect to Loans, Letters of Credit or other extensions of credit made to the other Borrowers hereunder shall, to the fullest extent permitted by law, be unconditional irrespective of (i) the validity or enforceability, avoidance or subordination of the Obligations of the other Borrowers or of any promissory note or other document evidencing all or any part of the Obligations of the other Borrowers, (ii) the absence of any attempt to collect the Obligations from the other Borrowers or any other security therefor, or the absence of any other action to enforce the same, (iii) the waiver, consent, extension, forbearance or granting of any indulgence by Agent or Lenders with respect to any provisions of any instrument evidencing the Obligations of the other Borrowers, or any part thereof, or any other agreement now or hereafter executed by the other Borrowers and delivered to Agent, for itself and on behalf of Lenders, except to the extent such waiver, consent, extension, forbearance or granting of any indulgence explicitly is effective with respect to such Borrower, (iv) the failure by Agent or Lenders to take any steps to perfect and maintain its security interest in, or to preserve its rights and maintain its security or collateral for the Obligations of the other Borrowers, (v) the election of Agent or Lenders in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, (vi) the disallowance of all or any portion of the claim(s) of Agent or Lenders for the repayment of the Obligations of the other Borrowers under Section 502 of the Bankruptcy Code, or (vii) any other

circumstances which might constitute a legal or equitable discharge or defense of the other Borrowers other than Full Payment of the Obligations. With respect to the Obligations arising as a result of the joint and several liability of a Borrower hereunder with respect to Loans, Letters of Credit or other extensions of credit made to the other Borrowers hereunder, each Borrower waives, until Full Payment of the Obligations and this Agreement shall have been terminated, any right to enforce any right of subrogation or any remedy which Agent or Lenders now has or may hereafter have against Borrowers, any endorser or any guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to Agent and Lenders. Upon any Event of Default and for so long as the same is continuing, Agent and Lenders may proceed directly and at once, without notice, against any Borrower to collect and recover the full amount, or any portion of the Obligations, without first proceeding against the other Borrowers or any other Person, or against any security or collateral for the Obligations. Each Borrower consents and agrees that Agent and Lenders shall be under no obligation to marshal any assets in favor of Borrower(s) or against or in payment of any or all of the Obligations.

(b) Each Borrower expressly subordinates (to the extent permitted by Applicable Law) any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution of any other claim which such Borrower may now or hereafter have against the other Borrowers or other Person directly or contingently liable for the Obligations hereunder, or against or with respect to the other Borrowers' property (including, without limitation, any property which is Collateral for the Obligations), arising from the existence or performance of this Agreement until Full Payment of the Obligations.

5.12.2

(a)

Waivers.

Each Borrower expressly subordinates all rights that it may have now or in

the future under any statute, at common law, in equity or otherwise, to compel Agent or Lenders to marshal assets or to proceed against any Loan Party, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. It is agreed among each Borrower, Agent and Lenders that the provisions of this Section are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and Lenders would decline to make Loans and issue Letters of Credit.

(b) Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral or any Real Property by judicial foreclosure or nonjudicial sale or enforcement, without affecting any rights and remedies under this Section 5.12. If, in the exercise of any rights or remedies, Agent or any Lender shall forfeit any of its rights or remedies, including its right to enter a deficiency judgment against any Loan Party, whether because of any Applicable Laws pertaining to "election of remedies" or otherwise, each Borrower consents to such action by Agent or such Lender and waives (to the extent permitted by Applicable Law) any claim based upon such action, even if the action may result in loss of any rights of subrogation that any Borrower might otherwise have had but for such action. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower's obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect

to any security for the Obligations, even though that election of remedies destroys such Borrower's rights of subrogation against any other Person. If Agent bids at any foreclosure or trustee's sale or at any private sale, Agent may bid all or a portion (in Agent's discretion) of the Obligations and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. Subject to Applicable Law, the amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be commercially reasonable, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of such Borrower's Obligations to Agent and Lenders, 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 or any Lender might otherwise be entitled but for such bidding at any such sale.

5.12.3 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 hereby represent and warrant to Agent and Lenders that (a) Borrowers' business is a mutual and collective enterprise, (b) Borrowers make up a related organization of various entities constituting a single economic and business enterprise in which Borrowers share an identity of interests such that any benefit received by any one of them benefits the other Borrowers; and (c) certain of Borrowers render services to or for the benefit of other Borrowers, as the case may be, purchase or sell and supply goods to or from or for the benefit of the others, make loans, advances and provide other financial accommodations to or for the benefit of the other Borrowers (including, inter alia, the payment by Borrowers of creditors of the other Borrowers and guarantees by Borrowers of indebtedness of the other Borrowers and the provision of administrative, marketing, payroll and management services to or for the benefit of the other Borrowers). Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease the administration of their relationship with Lenders, all to the mutual advantage of Borrowers. Borrowers acknowledge and agree that Agent's and Lenders' willingness to extend credit to Borrowers and to administer the Collateral on a combined basis, as set forth herein, is done solely as an accommodation to Borrowers and at Borrowers' request.

## SECTION 6.

### 6.1

#### CONDITIONS PRECEDENT

**Conditions Precedent to Initial Loans.** In addition to the conditions set forth in

Section 6.2, Lenders shall not be required to fund any requested Loan or issue any Letter of Credit until the date ("Closing Date") that each of the following conditions has been satisfied or waived in writing by Agent:

6.1.1 Loan Documents. This Agreement and the other Loan Documents, which shall be in form and substance reasonably satisfactory to Agent and Parent, shall have been duly executed by each Loan Party that is to be a party thereto. Agent on behalf of the Secured Parties shall, upon the filing of the applicable documentation (and the payment of applicable fees), notation of title, maintenance of control or possession, have a Lien in the Collateral (other than as set forth in the Post-Closing Side Letter) of the type and priority necessary to satisfy the Collateral and Guarantee Requirement.

6.1.2 Transactions. Prior to or substantially concurrently with the funding of the Loans on the Closing Date, each of the Transactions shall be consummated and Loan Parties shall have paid all fees and expenses which have been invoiced at least two (2) Business Days prior to the Closing Dates and were incurred in connection with the Transactions to the extent earned, due and payable on or before the Closing Date.

6.1.3 Dominion Accounts. Agent shall have received duly executed Deposit Account Control Agreements with respect to each deposit account maintained by Loan Parties at RBS on the Closing Date (other than Excluded Deposit Accounts).

6.1.4 Officer's Certificates. Agent shall have received certificates, in form and substance reasonably satisfactory to it, from a knowledgeable Responsible Officer of Administrative Borrower certifying that, after giving effect to the Transactions and the initial Loans and transactions hereunder, (i) Loan Parties on a consolidated basis are 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 (without duplication of other materiality qualifications contained therein) as of such date (except for representations and warranties that expressly relate to an earlier date and in such case are true and correct in all material respects (without duplication of other materiality qualifications contained therein) as of such date); and (iv) since December 31, 2012, there has not occurred any event or condition which could reasonably be expected to have a Material Adverse Effect.

6.1.5 Resolutions, Organization Documents, Incumbency Certificate. Agent shall have received a certificate of a duly authorized officer of each Loan Party, certifying (a) that attached copies of such Loan Party's Organization 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 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, and (c) to the title, name and signature of each Person authorized to sign the Loan Documents on the Closing Date. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Loan Party in writing. For the avoidance of doubt, it is understood and agreed that the same certificate delivered pursuant to the Term Debt Documents shall satisfy the requirement set forth herein; provided, that, (i) appropriate the certifications made in such certificate are also made to Agent and Lenders under this facility and (ii) such certificate is in form reasonably satisfactory to Agent.

6.1.6 Opinion. Agent shall have received, on behalf of itself and Lenders, an opinion of (i) Kirkland & Ellis LLP, counsel for Loan Parties, and (ii) from each local counsel for Loan Parties listed on Schedule 6.1.6, in each case, dated the Closing Date and addressed to Agent, Loan Parties and Lenders and in customary form and substance, and Loan Parties hereby request such counsel to deliver such opinions.

6.1.7 Good Standing Certificates. Agent shall have received copies of the charter documents of each Loan Party, certified as appropriate by the Secretary of State or another official of such Loan Party's jurisdiction of organization. Agent shall have received good standing certificates for each Loan Party, issued by the Secretary of State or other appropriate

official of (a) such Loan Party's jurisdiction of organization and (b) for Borrowers, each jurisdiction of such Borrower's chief executive office (to the extent such concept exists within such jurisdiction).

6.1.8 Insurance. To the extent required by Section 10.1.7, Agent shall have received (to the extent it is commercially reasonable for Loan Parties to provide) evidence of insurance and loss payee and additional insured endorsements required hereunder and under the other Loan Documents, in substance reasonably satisfactory to Agent, and certificates of insurance policies and/or endorsements naming Agent as loss payee and an additional insured.

6.1.9

(a)

Due Diligence.

Agent shall have received a set of projections of Parent and Restricted

Subsidiaries for the Fiscal Year 2014 and 2015 (on a month-by-month basis) and for Fiscal Years 2016, 2017 and 2018 (on a year-by-year basis).

(b) Agent shall have received, in form and substance reasonably satisfactory to Agent and Lenders, the results of background checks on the chairman, chief financial officer and chief executive officer of Parent.

6.1.10 Borrowing Base Certificate. Agent shall have received a Borrowing Base Certificate prepared as of the Closing Date or as of such other date as Agent and Administrative Borrower may mutually agree, accompanied by applicable documentation supporting the information contained therein, including but not limited to account aging reports.

6.1.11 Availability. After giving effect to the Transactions, (a) Availability shall not be less than fifteen percent (15%) of the Collateral Line Cap, and (b) Availability plus cash on the balance sheet of Parent and Restricted Subsidiaries (other than the Eligible Borrowing Base Cash or other restricted cash) shall not be less than \$200,000,000.

6.1.12 Searches/Discharge of Liens. Agent shall have received UCC, tax lien and judgment search results for the jurisdiction of organization of each Loan Party and each other jurisdiction or location reasonably requested by Agent, which search results shall be in substance reasonably satisfactory to Agent. Agent shall have received evidence that all Liens (other than Permitted Liens) affecting the assets of Loan Parties have been or will be discharged on or before the Closing Date.

6.1.13 Possessory Collateral. Term Agent shall have received all possessory collateral required to be delivered to Term Lender pursuant to the Term Debt Documents which shall contain provisions reasonably satisfactory to Agent pursuant to which the Term Lender agrees to hold such possessory collateral as agent (on a second priority basis) for Agent.

6.1.14 Third Party Waivers and Consents. Except as could not reasonably be expected to cause a Material Adverse Effect, Agent shall have received all consents, waivers, acknowledgements and other agreements from third persons necessary in order to permit, protect and perfect its Lien upon the Collateral or to effectuate the provisions and purposes of this Agreement and the other Loan Documents.

6.1.15 USA PATRIOT Act. Lenders shall have received all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, in each case, to the extent requested in writing to Administrative Borrower at least three (3) Business Days in advance of the Closing Date.

6.1.16 Absence of Material Litigation. There shall not be pending any litigation or other proceeding relating to this Agreement or the Transactions.

6.1.17 Organizational and Capital Structure. After giving effect to the Transactions, the organizational and capital structure of Parent and its Subsidiaries shall be reasonably satisfactory to Agent.

6.1.18 Governmental Approvals. All material governmental approvals necessary in connection with this Agreement shall have been obtained and be in full force and effect, and all waiting periods shall have expired without any action being taken or threatened by any Governmental Authority that would restrain or otherwise impose adverse conditions on this Agreement.

6.1.19 Other Debt for Borrowed Money. After giving effect to the Transactions, Loan Parties shall have outstanding no Debt for borrowed money other than (a) Debt under this Agreement, (b) the Term Debt, (c) Debt set forth on Schedule 10.2.3(b), and (d) Debt otherwise permitted pursuant to Section 10.2.

6.1.20 Intercompany Sale of Accounts. Substantially concurrent with the consummation of the Transactions, evidence reasonably satisfactory to Agent that all Accounts held by Receivables SPV prior to the Closing Date and intended to constitute Eligible Accounts have been duly transferred to one or more Loan Parties.

Execution and delivery to Agent by a Lender of a counterpart of this Agreement shall be deemed confirmation by such Lender that (i) all conditions precedent in this Section 6.1 have been fulfilled to the satisfaction of such Lender, (ii) the decision of such Lender to execute and deliver to Agent an executed counterpart of this Agreement was made by such Lender independently and without reliance on an Agent or any other Lender as to the satisfaction of any condition precedent set forth in this Section 6.1, and (iii) all documents sent to such Lender for approval, consent, or satisfaction were acceptable to such Lender.

**6.2 Conditions Precedent to All Credit Extensions.** Agent, Issuing Bank and Lenders shall not be required to fund any Loans or arrange for issuance of any Letters of Credit (or any amendment, renewal or extension of any Letter of Credit which increases the stated amount thereof) to or for the benefit of Borrowers, unless the following conditions are satisfied (or waived):

6.2.1 No Default or Event of Default. No Default or Event of Default shall exist at the time of, or result from, such funding, issuance or grant;

6.2.2 Representations and Warranties. The representations and warranties of each Loan Party in the Loan Documents shall be true and correct in all material respects (without

duplication of any materiality qualifications contained therein) 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 and on such date are true and correct in all material respects (without duplication of any materiality qualifications contained therein) as of such date);

6.2.3 No Overadvance. No Overadvance or unfunded Cash Collateralizing obligation shall exist or result from such funding or issuance; and

6.2.4 LC Conditions. With respect to issuance of a Letter of Credit, the LC Conditions shall be satisfied (or waived).

Each request (or deemed request) by Administrative Borrower, on behalf of Borrowers, for funding of a Loan or issuance of a Letter of Credit to or for the benefit of Borrowers (other than, for the avoidance of doubt, any conversion or continuation of an existing Loan) 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 or issuance.

**6.3 Limited Waiver of Conditions Precedent.** If Agent, Issuing Bank or Lenders fund any Loans or arrange for issuance of any Letters of Credit to or for the benefit of Borrowers when any conditions precedent are not satisfied (regardless of whether the lack of satisfaction was known or unknown at the time), it shall not operate as a waiver of (a) the right of Agent, Issuing Bank and Lenders to insist upon satisfaction of all conditions precedent with respect to any subsequent funding or issuance; nor (b) any Default or Event of Default due to such failure of conditions or otherwise.

## SECTION 7.

### 7.1

#### 7.1.1

#### **COLLATERAL**

##### **Grant of Security Interest.**

Pledge. As security for the payment or performance, as the case may be, in

full of the Obligations, each Loan Party hereby collaterally assigns and pledges to Agent, for the benefit of Secured Parties, and hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest in, all of such Loan Party's right, title and interest in, to and under (i) all Equity Interests held by it (including those Equity Interests listed on Schedule 7.1.1(a)) and any other Equity Interests obtained in the future by such Loan Party and the certificates representing all such Equity Interests (the "Pledged Equity"); provided, that the Pledged Equity shall not include (A) Margin Stock, (B) Equity Interests in a bona fide joint venture formed after the Amendment No. 5 Effective Date with any Person that is not an Affiliate of any Loan Party, other than Proceeds thereof, and only to the extent that the creation of a security interest in such Equity Interests is prohibited or restricted by the Organization Documents of such entity or Subsidiary or by any contractual restriction contained in any agreement with third party holders (which holders are not Affiliates of the ~~Borrower~~Borrowers) of other Equity Interests in such entity or Subsidiary (except to the extent any such prohibition or restriction is unenforceable under the UCC or other applicable Law and the consent of such third party holders (which holders are not Affiliates of the ~~Borrower~~Borrowers) has not been obtained) or (C) Equity Interests of (or held as assets by) Immaterial Subsidiaries or captive insurance Subsidiaries; (ii)(A) the Promissory Notes and any Instruments evidencing indebtedness owned by it listed

opposite the name of such Loan Party on Schedule 7.1.1(a) and (B) any Promissory Notes and Instruments evidencing indebtedness obtained in the future by such Loan Party (the "Pledged Debt"); (iii) all other property that may be delivered to and held by Agent pursuant to the terms of this Section 7.1; (iv) subject to Section 8.5, 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 securities referred to in clauses (i) and (ii) above; (v) subject to Section 8.5, all rights and privileges of such Loan Party with respect to the securities and other property referred to in clauses (i), (ii), (iii) and (iv) above; and (vi) all Proceeds of, and Security Entitlements in respect of, any of the foregoing (the items referred to in clauses (i) through (vi) above being collectively referred to as the "Pledged Collateral"). Notwithstanding the foregoing, if after the date hereof any Loan Party shall acquire any Equity Interest or Promissory Note (1) in which a pledge (or other security interest) is prohibited or restricted by applicable law or requires the consent of any governmental authority or third party, (2) to the extent a pledge of such Equity Interests or Promissory Note could result in adverse tax consequences as reasonably determined by Parent in consultation with Agent and as to which Parent shall have confirmed such determination by written notice to Agent or is otherwise listed on Schedule 7.1.1(a) on the Closing Date; provided, such asset is not specifically included in the Collateral or (3) in circumstances where the cost of obtaining a pledge of such Equity Interests or Promissory Note exceeds the practical benefit to Lenders afforded thereby as reasonably determined between Parent and the Collateral Agent and as to which Agent shall have confirmed such determination by written notice to Administrative Borrower or is otherwise listed on Schedule 7.1.1(a) on the Closing Date then such Equity Interest or Promissory Note shall not be included in the Pledged Collateral. In addition, notwithstanding the foregoing or anything else to the contrary in this Agreement or in any Loan Document, in no event shall any Excluded Property constitute Pledged Collateral.

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and assigns, for the benefit of the applicable Secured Parties, forever; subject, however, to the terms, covenants and conditions hereinafter set forth.

7.1.2 Security Interests in Personal Property. As security for the payment or performance, as the case may be, in full of the Obligations, each Loan Party hereby collaterally assigns and pledges to Agent, for the benefit of Secured Parties, and hereby grants to Agent, for the benefit of Secured Parties, a security interest (the "Security Interest") in, all right, title or interest in, to or under any and all of the following assets and properties now owned or at any time hereafter acquired by such Loan Party or in which such Loan Party now has or at any time in the future may acquire any right, title or interest (collectively, the "Article 9 Collateral"):

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Documents;

- (d) Stock);
- (e)
- (f)
- (g)
- (h)
- (i)
- (j)
- (k)
- (l)
- (m)

Rolling

all Equipment (including, without limitation, all Tractor Trailers and

all General Intangibles; all Instruments;  
all Inventory;

all Investment Property;

all books and records pertaining to the Article 9 Collateral; all Goods and Fixtures;  
all Money, cash, Cash Equivalents and Deposit Accounts; all Letter-of-Credit Rights;  
all Commercial Tort Claims described on Schedule 7.1(c) from time to

time; (n)

each Collateral Account, and all cash, Money, Securities and other

investments deposited therein;

- (o) all Supporting Obligations;
- (p) all Security Entitlements in any or all of the foregoing;
- (q) all Intellectual Property; and
- (r) to the extent not otherwise included, all Proceeds and products of any and

all of the foregoing (including proceeds of all insurance policies) and all collateral security and guarantees given by any Person with respect to any of the foregoing; ~~provided, that notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a grant of a security interest in or a pledge of Excluded Property or solely for purposes of this Agreement, the Limited States Vehicle Collateral (as defined in the Vehicle Collateral Agreement), such security interest in the Limited States Vehicle Collateral being granted as of the date hereof to Cortland Products Corp., as collateral agent under the Vehicle Collateral Agreement.~~

**72 Cash Collateral.** Any Cash Collateral may be invested, in Agent's reasonable discretion in consultation with Administrative Borrower, in Cash Equivalents (it being further understood and agreed that all interest on such Cash Equivalents belongs to Loan Parties), but Agent shall have no duty to do so, regardless of any agreement, understanding or course of dealing with any Loan Party, and shall have no responsibility for any investment or loss (other than in the case of gross negligence, willful misconduct or bad faith of the terms of this Agreement). Each Loan Party hereby grants to Agent, for the benefit of Secured Parties, a

security interest in all Cash Collateral held from time to time and all proceeds thereof, as security for the Obligations, whether such Cash Collateral is held in the Cash Collateral Account or elsewhere. Agent may apply Cash Collateral to the payment of any Obligations, as they become due and payable in accordance with the terms of this Agreement. The Cash Collateral Account and all Cash Collateral shall be under the sole dominion and control of Agent. No Loan Party or other Person claiming through or on behalf of any Loan Party shall have any right to any Cash Collateral, until the Full Payment of the Obligations or the termination or cancellation of such Obligations that are Cash Collateralized or until the conditions resulting in the requirement to provide such Cash Collateral cease to exist, whereupon all rights to such Cash Collateral will automatically revert to Loan Parties without further action of any Person.

**73** ~~Real Property Collateral~~ Except as otherwise provided herein, the Obligations shall also be secured by Mortgages upon all Material Real Property owned by Loan Parties in accordance with Section 10.1.11(c).

**74** ~~Other Collateral~~

**7.4.1** ~~Commercial Tort Claims~~. Each Loan Party shall concurrently with the delivery of next required Compliance Certificate notify Agent in writing if any Loan Party has a Commercial Tort Claim solely to the extent such claim is asserted in writing (other than a Commercial Tort Claim for less than \$5,000,000) and, promptly following upon Agent's reasonable written request, shall promptly execute such documents and take such actions as Agent deems reasonably necessary to confer upon Agent (for the benefit of Secured Parties) a duly perfected, second priority Lien upon such claim, subject to the Term Debt Intercreditor Agreement and Permitted Liens.

**7.4.2** ~~Certain After-Acquired Collateral~~. Subject to the Collateral and Guarantee Requirement, the Term Debt ~~Agreement, the UST Tranche A Facility Agreement, the UST Tranche B Facility~~ Agreement and the Loan Documents, each Loan Party shall, with the delivery of the next required Compliance Certificate, notify Agent in writing in such Compliance Certificate if, after the Closing Date, any Loan Party obtains any interest in any Collateral consisting of Deposit Accounts, Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights and, upon Agent's reasonable written request, shall promptly execute such documents and take such actions as Agent reasonably deems appropriate to effect Agent's duly perfected, Lien (subject to Permitted Liens) upon such Collateral, including obtaining any necessary possession or control agreement subject, in each instance, to the Term Debt Intercreditor Agreement. Within the same delivery period as required for the delivery of the annual Compliance Certificate required to be delivered under 10.1.2 of this Agreement, Administrative Borrower shall provide a list of any additional USPTO or USCO registrations of Intellectual Property of all Loan Parties not previously disclosed to Agent including such information as is necessary to make appropriate filings in the USPTO and USCO.

**75** ~~No Assumption of Liability~~. The Lien on Collateral granted hereunder is given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of Loan Parties relating to any Collateral.

Requirement, promptly following reasonable written request from Agent, Loan Parties shall deliver such instruments, assignments, supplements, title certificates, or Loan Documents or agreements, and shall take such actions, as Agent deems reasonably necessary under Applicable Law to evidence or perfect, preserve and protect its Lien on any Collateral, or otherwise to give effect to the intent of this Section 7, in each instance subject to the Term Debt Intercreditor Agreement and the Collateral and Guarantee Requirement. Each Loan Party authorizes Agent to file in any relevant jurisdiction any financing statement and any amendments thereto that indicates the Collateral as "all assets" or "all personal property" of such Loan Party, or words to similar effect. To the extent consistent with the Collateral and Guarantee Requirement, each Loan Party hereby further authorizes Agent to file filings with the USPTO and USCO (or any successor office or any similar office) or other necessary documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by such Loan Party hereunder in any Intellectual Property, without the signature of such Loan Party, and naming such Loan Party, as debtor, and Agent, as secured party.

## SECTION 8.

### 8.1

#### COLLATERAL ADMINISTRATION

**Borrowing Base Certificates.** By (i) the fifteenth (15th) day of each calendar

month, or (ii) during an Accelerated Reporting Trigger Event or the continuance of an Event of Default, on the third (3<sup>rd</sup>) Business Day of each week, Administrative Borrower, on behalf of Borrowers, shall deliver to Agent (and Agent shall promptly deliver same to Lenders) a Borrowing Base Certificate prepared (except as otherwise provided in the definition of "Eligible Borrowing Base Cash") (x) as of the close of business on the last Business Day of the previous fiscal month in the case of clause (i) above and (y) as of the close of business on the preceding Friday in the case of clause (ii) above; provided, that Administrative Borrower shall be entitled to give notice to Agent (no more frequently than once per Fiscal Quarter) of its intent to submit weekly Borrowing Base Certificates, and, upon giving such notice, shall submit weekly Borrowing Base Certificates in the manner set forth in clause (ii) above through the full fiscal month following the month during which such notice is delivered; provided further that the first weekly Borrowing Base Certificate may be delivered sooner than the third (3<sup>rd</sup>) Business Day of a week. All calculations of Availability in any Borrowing Base Certificate shall originally be made by Administrative Borrower, on behalf of Borrowers, and certified by a Responsible Officer of Administrative Borrower; provided, that Agent may from time to time review (with 2 Business Days prior written notice to Administrative Borrower) and adjust any such calculation in its Permitted Discretion after consultation with Administrative Borrower solely 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 Loan Party shall keep accurate and complete records of its Accounts in all material respects, including all payments and collections thereon, and shall submit to Agent, on such periodic basis as Agent may reasonably request (provided, that absent the occurrence and continuance of an Event of Default or an Accelerated Reporting Trigger Period, such reports shall not be required more than one time per month), a sales and collections report, in form reasonably satisfactory to Agent. Each Loan Party shall also

provide to Agent, on or before the fifteenth (15th) day of each calendar month (or on the third (3<sup>rd</sup>) Business Day of each week during an Accelerated Reporting Trigger Period), (x) a detailed aged trial balance of all Accounts as of the end of the preceding calendar month (or week, as the case may be), specifying each Account's Account Debtor name and address, amount, invoice date and due date, and (y) a reasonably detailed dilution report.

8.2.2 **Taxes.** If an Account of any Loan Party includes a charge for any Taxes, and if an Event of Default has occurred and is continuing, Agent, upon providing ten (10) days' prior notice to such Loan Party, is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Loan Party and to charge such Loan Party therefor; provided, however, that neither Agent nor Lenders shall be liable by exercise of Agent's rights under this Section 8.2.2 for any Taxes that may be due from any Loan Party or with respect to any Collateral.

8.2.3 **Account Verification.** Upon the occurrence and during the continuance of an Event of Default, upon notice to Administrative Borrower, Agent shall have the right at any time, in the name of Agent, any designee of Agent or any Loan Party to verify the validity, amount or any other matter relating to any Accounts of Loan Party by mail, telephone or otherwise. Loan Parties shall cooperate fully with Agent in an effort to facilitate and promptly conclude any such verification process.

8.2.4 **Proceeds of Collateral.** Loan Parties shall take all reasonable steps to ensure that all payments on Accounts or otherwise relating to Collateral and all other amounts received by any Loan Party or any Subsidiary are made directly to a Dominion Account. If any Loan Party or Subsidiary receives cash or Payment Items with respect to any Collateral, it shall hold same in trust for Agent and promptly deposit the same into a Dominion Account or, during a Cash Dominion Trigger Event, remit same to the Master Account in accordance with Section 8.3.

**8.3 Administration of Deposit Accounts; Cash Dominion Trigger Period; Borrowing Base Cash Account.**

8.3.1  
(a)

Deposit Accounts; Deposit Account Control Agreements.

Schedule 8.3 sets forth all deposit accounts maintained by Loan Parties.

Each Loan Party shall promptly notify Agent of any opening or closing of a deposit account and will amend Schedule 8.3 to reflect same at the next required delivery of a Compliance Certificate. Except for Excluded Deposit Accounts, each Loan Party shall be the sole account holder (unless co-owned with another Loan Party) of each deposit account owned by it and shall not allow any other Person (other than Agent ~~and~~, Term Agent, [UST Tranche A Facility Agent](#), [UST Tranche B Facility Agent](#) or any of ~~its~~ [their respective](#) agents or designees) to have control over any deposit account of Loan Parties or any Property deposited therein.

(b) Loan Parties shall obtain a Deposit Account Control Agreement covering, or otherwise take all reasonable actions necessary to establish Agent's control of, each deposit account of Loan Parties other than Excluded Deposit Accounts. Notwithstanding anything to the contrary contained in this Section 8.3, Agent and Lenders hereby agree that Loan Parties may have (x) up to forty-five (45) days following the Closing Date (or such later date as Agent shall

agree in its reasonable discretion) to obtain a Deposit Account Control Agreement covering, or otherwise take all reasonable actions necessary to establish Agent's control of, each deposit account (other than Excluded Deposit Accounts) maintained by Loan Parties with any bank or depository other than RBS, and (y) up to sixty (60) days following the consummation of any Permitted Acquisition or acquisition constituting an Investment permitted under this Agreement (or such later date as Agent shall agree in its reasonable discretion (not to be unreasonably withheld, delayed or conditioned)) to obtain a Deposit Account Control Agreement covering, or otherwise take all reasonable actions necessary to establish Agent's control of, each deposit account (other than Excluded Deposit Accounts) acquired by any Loan Party in connection with such transaction.

8.3.2  
(a)

Cash Dominion Trigger Period.

Loan Parties acknowledge and agree that, during a Cash Dominion Trigger

Period, all available funds constituting the proceeds of ABL Priority Collateral (whether or not on deposit in a Dominion Account) shall be transferred daily to the Master Account and, to the extent that there are any amounts outstanding hereunder or under any other Loan Document, to Agent Payment Account and applied by Agent in accordance with Sections 5.4 and 5.8 and this Section 8.3. Accordingly, each Loan Party hereby authorizes and directs each Dominion Account bank to deliver to the Master Account, on a daily basis, all balances in each Dominion Account. Each Loan Party irrevocably appoints Agent as such Loan Party's attorney-in-fact, during a Cash Dominion Trigger Period, to collect such balances to the extent any such delivery is not so made. Agent agrees that it shall not give any instructions under any Deposit Account Control Agreement, or withhold any withdrawal rights with respect to funds in any Dominion Account, unless, until and only for so long as a Cash Dominion Trigger Period is in effect.

(b) During the continuance of a Cash Dominion Trigger Period or, at the election of Agent, if an Event of Default has occurred and is continuing, Agent agrees that (x) each Loan Party may have unfettered access to cash on deposit in all Dominion Accounts to the extent not used to pay outstanding amounts under this Agreement in accordance with Sections 5.4 and 5.8 and this Section 8.3, and (y) Loan Parties shall have no obligation to Cash Collateralize the LC Obligations outstanding at such time.

(c) Following the end of any Cash Dominion Trigger Period, (x) those automatic transfers to the Master Account described above shall cease, (y) Agent shall promptly transfer all amounts on deposit in the Master Account to the Concentration Account or such other deposit account as directed by Administrative Borrower, and (z) Agent shall promptly revoke those instructions delivered by Agent during such Cash Dominion Trigger Period to each Dominion Account bank with respect to each Dominion Account.

8.3.3 Borrowing Base Cash Account. Loan Parties may deposit cash in the Borrowing Base Cash Account from time to time which cash, once deposited in such account, shall constitute Eligible Borrowing Base Cash for all purposes hereunder. No amounts may be withdrawn from the Borrowing Base Cash Account without the consent of Agent. Without limiting Agent's "control" over all amounts on deposit in the Borrowing Base Cash Account under Article 9 of the UCC, Agent hereby agrees to authorize the withdrawal of cash from the Borrowing Base Cash Account from time to time at the request of Administrative Borrower (any

such withdrawal, a "Borrowing Base Cash Release") so long as (x) no Event of Default then exists or would arise as a result of the proposed Borrowing Base Cash Release, and (y) Availability as of the proposed date of such Borrowing Base Cash Release after giving effect thereto is not less than ten percent (10%) of the Collateral Line Cap, in each case as certified by a Responsible Officer of Administrative Borrower and accompanied by such evidence as Agent may reasonably request.

8.3.4 Cash Management. Administrative Borrower, on behalf of Borrowers, will maintain the Borrowing Base Cash Account, Borrowers' primary unrestricted excess cash account, and their Master Account with Agent.

#### **8.4 General Provisions.**

8.4.1 Protection of Collateral. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral, shall be borne and paid by Loan Parties. Agent shall not be liable or responsible 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 and except for acts or omissions arising from Agent's gross negligence, willful misconduct or bad faith), 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 Loan Parties' sole risk.

8.4.2 Defense of Title to Collateral. Unless otherwise agreed by Administrative Borrower and Agent, each Loan Party shall at all times, at the reasonable request of Agent, use commercially reasonable actions necessary to defend its title to Collateral and Agent's Liens therein against all Persons, claims and demands whatsoever, except Permitted Liens.

8.4.3 Information Regarding Collateral. Each Loan Party shall within a reasonable time after written request by Agent, furnish or cause to be furnished to Agent, in such manner and in such detail as may be reasonably requested by Agent, additional information with respect to the Collateral which is necessary for the perfection of security interests in the Collateral.

**8.5 Power of Attorney.** Subject to the terms herein and, in any event, subject to five (5) Business Days' prior written notice to directly or indirectly exercise voting rights with respect to the Equity Interests of any Loan Party, each Loan Party hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as such Loan Party's true and lawful agent (and attorney-in-fact) for the purposes provided in this Section. Subject to the terms of the Term Debt Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default, Agent, or Agent's designee, may, without notice (except as otherwise expressly provided herein) and in either its or a Loan Party's name, but at the cost and expense of Loan Parties:

(a) ~~enclose a Loan Party'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) (i) subject to five (5) Business Days' prior written notice, notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts, by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Agent deems advisable; (iv) take control, in any manner, of any proceeds of Collateral; (v) prepare, file and sign a Loan Party's name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to a Loan Party, and notify postal authorities to change the address for delivery thereof to such address as Agent may designate; (vii) endorse any Chattel Paper, Document, Instrument, invoice, freight bill, bill of lading, or similar document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use a Loan Party's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use the information recorded on or contained in any data processing Equipment and computer hardware and software relating to any Collateral; (x) make and adjust claims under policies of insurance; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit or banker's acceptance for which a Loan Party is a beneficiary; and (xii) take all other actions as Agent deems appropriate in its Permitted Discretion to fulfill any Loan Party's obligations under the Loan Documents.

## SECTION 9.

### 9.1

#### REPRESENTATIONS AND WARRANTIES

##### General Representations and Warranties.

To induce Agent and Lenders to

enter into this Agreement and to make available the Commitments, Loans and Letters of Credit, each Loan Party represents and warrants that:

9.1.1 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each Restricted Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing (where relevant) under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite organizational power and authority to execute, deliver and perform its obligations under the Loan Documents to which it is a party and, in the case of Borrowers, to borrow hereunder, (c) is duly qualified and in good standing (where relevant) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs and injunctions, and (e) has all requisite franchises, licenses, authorizations, qualifications, consents and approvals to operate its business as currently conducted; except in each case, referred to in clause (a) (other than with respect to any Borrower), (c), (d) or (e), to the extent that failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

9.1.2 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, (a) are within such Loan Party's organizational powers, (b) have been duly authorized by all necessary corporate or other organizational action, and (c) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any

Lien under (other than as permitted by Section 10.2.1), or require any payment to be made under (x) any Debt of such Person in excess of the Threshold Amount or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any material Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clauses (c)(ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

9.1.3 Governmental Authorization; Other Consents.No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority 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 Loan Documents, (c) the perfection or maintenance of the Liens created under the Loan Documents (including the priority thereof) to the extent required thereunder or (d) the exercise by Agent, or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Loan Documents, except for (i) approvals, consents, exemptions, authorizations or other actions by, or notices to, or filings necessary to perfect the Liens on the Collateral granted by Loan Parties in favor of the Secured Parties (or release existing Liens), (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or to be in full force and effect pursuant to the Collateral and Guarantee Requirement), and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

9.1.4 Binding Effect.This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of each such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity.

9.1.5

(a)

Financial Statements; No Material Adverse Effect.

The Audited Financial Statements fairly present in all material respects the

financial condition of Parent and its consolidated Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(b)

The Unaudited Financial Statements fairly present in all material respects the financial condition of Parent and its consolidated Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein and the absence of footnotes.

(c) The forecasts of income statements of Parent and its Subsidiaries which have been furnished to Agent prior to the Closing Date have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such forecasts it being understood by Agent and Lenders that such projections as to future events (i) are not to be viewed as facts, (ii)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of Parent and Restricted Subsidiaries, (B) no assurance is given by Parent and Restricted Subsidiaries that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

(d) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

9.1.6 Compliance With Laws. Neither Parent nor any Restricted Subsidiary or any of their respective properties or assets is in violation of, nor will the continued operation of their properties and assets as currently conducted violate, any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting the Mortgaged Property, or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where in each case such violation or default, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

9.1.7

(a)

Ownership of Property; Liens.

Each of Parent and Restricted Subsidiaries has good record title to, or

valid leasehold interests in, or easements or other limited property interests in, all its properties and assets (including all Mortgaged Property material to its business), free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section

10.2.1 and except where the failure to have such title would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) As of the Closing Date, Schedule 9 to the Perfection Certificate dated the Closing Date contains a true and complete list of each Material Real Property owned by each Loan Party.

(c) As of the Closing Date, except as otherwise disclosed in writing to Agent, no Mortgage encumbers improved Mortgaged Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards within the meaning of the Flood Laws unless Evidence of Flood Insurance has been delivered to Agent.

9.1.8 Environmental Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) Parent and each Restricted Subsidiary is and has been in compliance with all applicable Environmental Laws, which includes obtaining and maintaining all Environmental Permits required under such Environmental Laws to carry on the business of Loan Parties and Restricted Subsidiaries;

(b) None of Parent nor any Restricted Subsidiary has received notice alleging any Environmental Liability or proposing or seeking to revoke, modify or deny the renewal of any Environmental Permit required to be held by Loan Parties or Restricted Subsidiaries, and none of Parent nor any Restricted Subsidiary have become subject to any Environmental Liability;

(c) there has been no Release, discharge or disposal of Hazardous Materials (i) on, to, at, under or from any Real Property or any vehicles or facilities owned or leased by Parent or any Restricted Subsidiary, or, to the Knowledge of Loan Parties, formerly owned, operated or leased by Parent or any Restricted Subsidiary, or (ii) arising out of the conduct of Parent or any Restricted Subsidiary; that, in the case of (i) or (ii), could reasonably be expected to require investigation, remedial activity or corrective action or cleanup by or on behalf of Parent or any Restricted Subsidiary or for which Parent or any Restricted Subsidiary reasonably could be expected to otherwise incur any Environmental Liability; and

(d) there are no facts, circumstances or conditions arising out of or relating to, and there are no pending or reasonably anticipated requirements under applicable Environmental Law associated with, the operations of Parent or Restricted Subsidiaries or any Real Property, vehicles or facilities currently or, to the knowledge of Loan Parties, previously owned or leased by Parent or any Restricted Subsidiary; that, in such case, are known to or would reasonably be likely to require investigation, remedial activity or corrective action or cleanup by or on behalf of Parent or any Restricted Subsidiary or that in such case are known to or would reasonably be likely to result in Parent or any Restricted Subsidiary incurring any Environmental Liability or capital expenditures to achieve or maintain compliance with applicable Environmental Laws.

This Section 9.1.8 contains the sole and exclusive representations and warranties of Loan Parties with respect to any environmental, health or safety matters, including any matters arising under Environmental Laws.

9.1.9 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of Parent and Restricted Subsidiaries have timely filed all tax returns required to be filed (including any extensions thereof), and have paid all Taxes levied or imposed upon them or their properties, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted if such contest shall have the effect of suspending enforcement or collection of such Taxes and for which adequate reserves have been provided in accordance with GAAP.

9.1.10 ERISA Compliance. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect:

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws (and the regulations and published interpretations thereunder); and

(b)

9.1.11

No ERISA Event has occurred.

Subsidiaries. As of the Closing Date (after giving effect to the Transactions),

none of Parent nor any Restricted Subsidiary has any direct or indirect Subsidiaries other than those specifically disclosed in Schedule 9.1.11, and all of the outstanding Equity Interests owned by Parent or any Restricted Subsidiary in such Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable and all Equity Interests owned by Parent or any Restricted Subsidiary in such Subsidiaries are owned free and clear of all Liens except (a) those created hereunder, under the other Security Documents or under the Term Debt Documents (which Liens shall be subject to the Term Debt Intercreditor Agreement) and (b) any other Lien that is permitted under Section 10.2.1. As of the Closing Date, (i) Section 2(c) of the Perfection Certificate sets forth the name and jurisdiction of each Loan Party and (ii) Schedule 5 to the Perfection Certificate sets forth the direct ownership interest of any Loan Party in each such Subsidiary, including the percentage of such ownership. Schedule 9.1.11 indicates, as of the Closing Date, whether each of the Subsidiaries identified therein is a Borrower, a Guarantor, a Restricted Subsidiary, an Unrestricted Subsidiary, an Excluded Subsidiary and/or an Immaterial Subsidiary.

9.1.12

(a)

Margin Regulations; Investment Company Act.

None of Parent nor any Restricted Subsidiary is engaged nor will it engage

principally, or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of the provisions of the Regulations of the Board, including Regulation T, U or X.

(b)

None of Parent nor any Restricted Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

9.1.13

Disclosure.

No confidential information memorandum, report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, pro forma financial information, budgets, estimates and information of a general economic or industry nature) to Agent or any Lender about Parent and its Subsidiaries in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains or will contain any material misstatement of fact or omits or will omit to state any material fact necessary to make the statements therein (when taken as a whole as modified or supplemented by other information so furnished), in the light of the circumstances under which they were or will be

made, not materially misleading. With respect to projected financial information and pro forma financial information, Loan Parties represent that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood and agreed by Agent and Lenders that such projections as to future events (i) are not to be viewed as facts, (ii)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of Parent and Restricted Subsidiaries, (B) no assurance is given by Parent and Restricted Subsidiaries that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

9.1.14  
(a)

Labor Matters.

Except as, in the aggregate, would not reasonably be expected to result in a

Material Adverse Effect: (i) there are no strikes or other labor disputes against Parent or any of Restricted Subsidiaries pending or, to the knowledge of Loan Parties, threatened in writing; (ii) hours worked by and payment made to employees of Parent or any of Restricted Subsidiaries have not been in violation of the FLSA or any other Applicable Law dealing with such matters; and (iii) all payments due from Parent or any of Restricted Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party. Except as disclosed on Schedule 9.1.14, as of the Closing Date no Loan Party is a party to or bound by any collective bargaining agreement or, with respect to any Foreign Subsidiary, any similar agreement. To the knowledge of any Loan Party, the consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party is bound to the extent that such would be reasonably expected to result in a Material Adverse Effect.

(b) (i) the IBT Agreement is in full force and effect and (ii) other than as contemplated by the IBT Transactions, the IBT Agreement has not been amended, waived or otherwise modified in any respect materially adverse to Parent and its Subsidiaries (taken as a whole). For purposes of this Section 9.1.14(b), it is understood that the resolution in the ordinary course of business of an employee grievance seeking to enforce the IBT Agreement terms will not be deemed to constitute an amendment, waiver of other modification to the IBT Agreement.

9.1.15 Insurance. Each of Parent and Restricted Subsidiaries maintains, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations; provided, that each of Parent and its Subsidiaries may self-insure to the same extent as other companies engaged in similar businesses and owning similar properties in the same general areas in which Parent or each such Subsidiary, as applicable, operates.

9.1.16

Solvent.

Solvency. Parent and Restricted Subsidiaries, on a consolidated basis, are

9.1.17 ~~Reserved-CARES Act.~~ [Parent and each Restricted Subsidiary \(a\) is in compliance, in all material respects, with the provisions of the CARES Act and all other applicable Laws, in each case relating to the Treasury Facility Indebtedness and the Treasury Equity Issuance and \(b\) meets all requirements under the CARES Act to incur the Treasury Facility Indebtedness and the Treasury Equity Issuance. All information submitted by any Loan Party or any Restricted Subsidiary to any Governmental Authority in respect of the Treasury Facility Indebtedness and the Treasury Equity Issuance, is true, correct and complete in all material respects.](#)

9.1.18  
(a)

Security Documents.

Valid Liens. The Security Documents are, or on execution and delivery

thereof by the parties thereto will be, effective to create in favor of Agent for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, the Collateral described therein to the extent intended to be created thereby (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally) and (i) when financing statements and other filings in appropriate form are filed in the offices specified in Section 2 of the Perfection Certificate (and payments of all applicable fees) and (ii) upon the taking of possession or control by Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to Agent to the extent possession or control by Agent is required hereby), and (iii) the Lien of Agent on all certificates of title in respect of any Collateral, the Liens created hereby or by the other Security Documents (other than the Mortgages) shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors in such Collateral, in each case prior and superior in right to any other Person, other than Liens permitted by Section 10.2.1 or any Permitted Refinancing thereof and Liens securing Term Debt, Term Refinancing Debt ~~or~~, [UST Tranche A Facility Indebtedness](#), [UST Tranche A Refinancing Debt](#), [UST Tranche B Facility Indebtedness](#) or [UST Tranche B Refinancing Debt or, in each case](#), any Permitted Refinancing thereof that are intended to be junior to the Liens of the Security Documents).

(b) PTO Filing; USCO Filing. When the Grant of Security Interest is properly filed (and payments of all fees) in the United States Patent and Trademark Office and the USCO, to the extent such filings may perfect such interests, the Liens created by such agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors thereunder in Patents and Trademarks registered or applied for with the United States Patent and Trademark Office or Copyrights registered or applied for with the United States Copyright Office, as the case may be, in each case prior and superior in right to any other Person, other than Liens permitted by Section 10.2.1 (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to establish a Lien on registered Patents, Trademarks and Copyrights acquired by the grantors thereof after the Closing Date).

(c) Mortgages. Upon recording thereof in the appropriate recording office (and payments of all fees), each Mortgage is effective to create, in favor of Agent, for the benefit of Secured Parties, legal, valid and enforceable perfected Liens on, and a security interest in, all of Loan Parties' right, title and interest in and to the Mortgaged Property thereunder and the

proceeds thereof, subject only to Liens permitted hereunder, and when such Mortgage is filed in the offices specified in the local counsel opinion delivered with respect thereto in accordance with the provisions of Sections 10.1.11 and 10.1.13 such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of Loan Party to such Mortgage in the Mortgaged Property described therein and the proceeds thereof, in each case prior and superior in right to any other Person, other than Liens permitted by Section 10.2.1.

(d) Rolling Stock. Upon the recording thereof on the applicable certificate of title (and the filing of financing statements and payment of applicable fees, which shall be for the account of the Loan Parties), the notation of Agent's lien on any Rolling Stock or other goods subject to a certificate of title is effective to create, in favor of Agent, for the benefit of the Secured Parties, legal, valid and enforceable perfected Liens on, and a security interest in, all of Loan Parties' right, title and interest in and to such Collateral and the proceeds thereof, subject only to the Term Debt Intercreditor Agreement and Liens permitted hereunder, in each case prior and superior in right to any other Person, other than Liens permitted by Section 10.2.1.

Notwithstanding anything herein (including this Section 9.1.18 or Section 9.1.4) or in any other Loan Document to the contrary, no Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of Agent or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) on the Closing Date and until required pursuant to Section 10.1.13, the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 6.1.

9.1.19  
(a)

Compliance with Anti-Terrorism and Corruption Laws.

To the extent applicable, Parent and Restricted Subsidiaries are in

compliance, in all material respects, with (i) the Trading with the Enemy Act and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, and (ii) the USA PATRIOT Act.

(b) None of Parent nor any Restricted Subsidiary nor, to the knowledge of Loan Parties, any director, officer, agent, employee or Controlled Affiliate of Parent or any Restricted Subsidiary, (i) is a Blocked Person or (ii) is currently subject to any U.S. sanctions administered by OFAC that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and none of Parent nor any Restricted Subsidiary will use the proceeds of the Loans on the Closing Date for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

(c) No part of the proceeds of the Loans will be used by Parent or any Restricted Subsidiary for any payments to any governmental official or employee, political party,

official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation in any material respect of the United States Foreign Corrupt Practices Act of 1977, as amended.

## SECTION 10. COVENANTS AND CONTINUING AGREEMENTS

**10.1 Affirmative Covenants.** Until Full Payment of the Obligations, each Loan Party shall, and shall cause each Restricted Subsidiary to:

10.1.1 **Financial Statements, Reports, Etc.** In the case of Parent, deliver to Agent for prompt further distribution to each Lender:

(a) within 90 days after the end of each Fiscal Year of Parent and its Subsidiaries (beginning with the Fiscal Year ending December 31, 2013), a consolidated balance sheet of Parent and its Subsidiaries as at the end of such Fiscal Year, and the related consolidated statements of 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 accompanied by a report and opinion of KPMG LLP, any other independent registered public accounting firm of nationally recognized standing or any other independent registered public accounting firm approved by Agent (such approval not to be unreasonably withheld, delayed or conditioned), which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards, (ii) shall not be subject to qualifications or exceptions as to the scope of such audit, (iii) shall be without a "going concern" disclosure or like qualification or exception ~~(it being understood that for the Fiscal Year ending December 31, 2013, the audit may have a going concern explanatory paragraph); provided, that solely with respect of the Fiscal Year ending December 31, 2018, the audited financial statements may have a "going concern" qualification arising other than with respect to, or disclosure or an exception or qualification solely due to resulting from (x) the pending maturity of the Obligations and/or the Term Debt (or any replacement or refinancing thereof) impending maturity of any Debt or (y) any prospective or actual default under any financial covenant or (z) the impact of COVID 19 on the business of the Parent and its Subsidiaries)~~, and (iv) shall be accompanied by customary management discussion and analysis;

(b) within 45 days after the end of each of the first three (3) Fiscal Quarters of each Fiscal Year of Parent (commencing with the Fiscal Quarter ended March 31, 2014), a consolidated balance sheet of Parent and its Subsidiaries as at the end of such Fiscal Quarter, and the related (x) consolidated statements of income or operations for such Fiscal Quarter and for the portion of the Fiscal Year then ended and (y) consolidated statements of cash flows for such Fiscal Quarter and the portion of the 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 and certified by a Responsible Officer of Parent as fairly presenting in all material respects the financial condition, results of operations and cash flows of Parent and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes (and accompanied by customary management discussion and analysis);

(c) within 90 days after the end of each Fiscal Year (commencing with the Fiscal Year ending December 31, 2013) of Parent, a reasonably detailed consolidated budget for the following Fiscal Year on a quarterly basis (including a projected consolidated balance sheet of Parent and its Subsidiaries as of the end of the following Fiscal Year, the related consolidated statements of projected cash flows and projected income and a summary of the material underlying assumptions applicable thereto) (collectively, the "Projections"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer of Parent stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood by Agent and Lenders that such projections as to future events (i) are not to be viewed as facts, (ii)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of Parent and Restricted Subsidiaries, (B) no assurance is given by Parent and Restricted Subsidiaries that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material; and

(d) within five (5) days of delivery of each set of consolidated financial statements referred to in Sections 10.1.1(a) and 10.1.1(b) above, the related consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form) from such consolidated financial statements.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 10.1.1 or Section 10.1.2(b) may be satisfied with respect to information of Parent and Restricted Subsidiaries by furnishing within the time period specified in the applicable paragraph (A) the applicable financial statements of Parent or (B) Parent's Form 10-K or 10-Q, as applicable, filed with the SEC; provided, that, with respect to clauses (A) and (B), to the extent such information is in lieu of information required to be provided under Section 10.1.1, such materials are accompanied by a report and opinion of KPMG LLP, any other independent registered public accounting firm of nationally recognized standing or any other independent public accounting firm approved by Agent (such approval not to be unreasonably withheld, conditioned or delayed), which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards, (ii) shall not be subject to qualifications or exceptions as to the scope of such audit and (iii) shall be without a "going concern" disclosure or like qualification or exception (other than with respect to, or disclosure or an exception or qualification solely resulting from, the (A) impending maturity of any Debt or (B) any prospective or actual default under any financial covenant or (C) in respect of the fiscal year ending December 31, 2013).

Documents required to be delivered pursuant to Section 10.1.1(a), (b), (c) and (d) or Section 10.1.2(b) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the earliest date on which (i) Parent posts such documents, or provides a link thereto on Parent's website on the Internet and provides notice thereof to Agent; (ii) such documents are posted on Parent's behalf on IntraLinks/IntraAgency or another website, if any, to which each Lender and Agent have access (whether a commercial, third-party website or whether sponsored by Agent), or (iii) such financial statements and/or other documents are posted on the SEC's

website on the internet at [www.sec.gov](http://www.sec.gov); provided, that: (i) promptly following written request by Agent, Parent shall deliver paper copies of such documents to Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by Agent and (ii) Parent shall notify (which may be by facsimile or electronic mail) Agent of the posting of any such documents and provide to Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from Agent and maintaining its copies of such documents. Notwithstanding anything contained herein, in every instance Parent shall be required to provide paper copies of the Compliance Certificates required by Section 10.1.2(a) to Agent; provided, however, that if such Compliance Certificate is first delivered by electronic means, the date of such delivery by electronic means shall constitute the date of delivery for purposes of compliance with Section 10.1.2(a).

10.1.2 Certificates; Other Information. Deliver to Agent for prompt further distribution to each Lender:

(a) Within five (5) Business Days of the delivery of the financial statements referred to in Sections 10.1.1(a) and 10.1.1(b) (or the date on which such delivery is required), commencing with the first full Fiscal Quarter completed after the Closing Date, a duly completed Compliance Certificate signed by a Responsible Officer of Parent;

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which Parent or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to Agent pursuant hereto;

(c) (i) promptly after the furnishing thereof, copies of any material notices of default received by Parent or any Restricted Subsidiary (other than in the ordinary course of business) or furnished to any holder of Debt or debt securities of Parent or any Restricted Subsidiary pursuant to the terms of the Term Debt, Documents, the UST Tranche A Facility Documentation, UST Tranche B Facility Documentation any Junior Financing Documentation, any documentation governing Permitted Junior Debt or Term Refinancing Debt, UST Tranche A Refinancing Debt, UST Tranche B Refinancing Debt or any Permitted Refinancing of any of the foregoing, in each case (other than with respect to the Term Debt, UST Tranche A Facility Indebtedness and UST Tranche B Facility Indebtedness) in a principal amount in excess of the Threshold Amount and not otherwise required to be furnished to Lenders pursuant to any clause of this Section 10.1.2 and (ii) promptly after the execution thereof, copies of any amendments, modifications or waivers to the Term Debt Documents, the UST Tranche A Facility Documentation or UST Tranche B Facility Documentation, and (iii) promptly after the execution thereof, copies of the Treasury Equity Documents;

(d) together with the delivery of each Compliance Certificate pursuant to Section 10.1.2(a), (i) in the case of annual Compliance Certificates only, a report setting forth the information required by sections of the Perfection Certificate describing the legal name and the

jurisdiction of organization or formation of each Loan Party and the location of the chief executive office of each Loan Party or confirming that there has been no change in such information since the Closing Date or the date of the last such report, (ii) a description of each event, condition or circumstance during the last Fiscal Quarter covered by such Compliance Certificate requiring a mandatory prepayment under Section 5.4 and (iii) a list of each Subsidiary of Parent that identifies each Subsidiary as a Restricted or an Unrestricted Subsidiary and as a Loan Party or a non-Loan Party as of the date of delivery of such Compliance Certificate;

(e) promptly, such additional information regarding the business, legal, financial or corporate affairs of Loan Parties or any of their respective Restricted Subsidiaries, as Agent or any Lender through Agent may from time to time reasonably request;

(f) promptly after the written request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable [the Beneficial Ownership Regulations](#), “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act;

(g) promptly after the receipt thereof by Parent or any of Restricted Subsidiaries, a copy of any final “management letter” received by any such Person from its certified public accountants and the management’s response thereto; and

(h) promptly following any request therefor by Agent or any Lender, copies of (i) any material documents described in Section 101(k) of ERISA that any Loan Party may request with respect to any Multiemployer Plan and (ii) any material notices described in Section 101(l) of ERISA that any Loan Party may request with respect to any Plan or Multiemployer Plan, provided, that if any Loan Party have not requested such material documents or material notices from the administrator or sponsor of the applicable Plan or Multiemployer Plan, such Loan Party shall make a request for such material documents or material notices from the such administrator or sponsor at the earliest date on which such Loan Party determines that it is commercially reasonable to so request in order to avoid the occurrence of an event that could reasonably be expected to result in a material liability, and shall provide copies of such material documents and material notices promptly after receipt thereof.

Notwithstanding anything to the contrary, neither 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 trade secrets or proprietary information, (ii) in respect of which disclosure to Agent or any Lender (or their 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.

10.1.3 Notices.Promptly after Parent or any Loan Party has obtained knowledge

thereof, notify Agent:

(a)

(b)

of the occurrence of any Default;

of any matter that has resulted or could reasonably be expected to result in

a Material Adverse Effect;

(c) of the filing or commencement of, or any written threat or written notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority, against Parent or any Restricted Subsidiary that has a reasonable likelihood of adverse determination and such determination could reasonably be expected to result in a Material Adverse Effect; and

(d) of the occurrence of any ERISA Event following the Closing Date that, alone or together with any other ERISA Events that have occurred following the Closing Date, could reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a written statement of a Responsible Officer of Parent (x) that such notice is being delivered pursuant to Section 10.1.3(a), (b), (c) or (d) (as applicable) and (y) setting forth details of the occurrence referred to in Section 10.1.3(a), (b), (c) or (d), as applicable, and stating what action Parent has taken and proposes to take with respect thereto.

10.1.4 Payment of Taxes. Promptly pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, to the extent any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP if such contest shall have the effect of suspending enforcement or collection of such Taxes or, where the failure to pay, discharge or otherwise satisfy the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

10.1.5 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 11.1.4 or Section 11.1.5 and (b) obtain, maintain, renew, extend and keep in full force and effect all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except, in the case of clause (a) (other than with respect to Parent) or (b), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

10.1.6 Maintenance of Properties. Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in satisfactory working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted, and (b) make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with prudent industry practice and in the normal conduct of its business.

10.1.7

(a)

Maintenance of Insurance.

Generally.

Maintain with financially sound and reputable insurance

companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such

types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as Parent and Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons in such similar or same locations.

(b) ~~Requirements of Insurance~~ (A) Use commercially reasonable efforts to cause, not later than 30 days after the Closing Date (or such longer period as Agent may agree in writing in its reasonable discretion), all insurance required pursuant to Section 10.1.7(a) (x) to provide (and to provide at all times thereafter) that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium upon not less than ten (10) days' prior written notice thereof by the insurer to Agent or (ii) for any other reason (except for events related to Inventory) upon not less than twenty (20) days' prior written notice thereof by the insurer to Agent and (y) subject to the terms, conditions and provisions of the Term Loan Agreement to name Agent as additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable (and to continue to so name Agent at all times thereafter), (B) use commercially reasonable efforts to deliver, not later than 30 days after the Closing Date (or such longer period as Agent may agree in writing in its reasonable discretion), a copy of the policy (and to the extent any such policy is cancelled or not renewed, a renewal or replacement policy) or other evidence thereof to Agent, or insurance certificate with respect thereto, and (C) in the case of all such property insurance policies located in the United States, not later than twenty (20) days after such date (or such longer period as Agent may agree in writing in its reasonable discretion) cause such policies to be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement, in form and substance reasonably satisfactory to Agent, which endorsement shall provide that, from and after such date, if the insurance carrier shall have received written notice from Agent of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to Loan Parties under such policies directly to Agent during the continuance of an Event of Default.

(c) ~~Flood Insurance~~ With respect to each Mortgaged Property with improvements that is located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a "special flood hazard area" with respect to which flood insurance has been made available under applicable flood insurance laws, the applicable Loan Party (A) has obtained and will maintain, with financially sound and reputable insurance companies (except to the extent that any insurance company insuring the improved Mortgaged Property of such Loan Party ceases to be financially sound and reputable after the Closing Date, in which case, such Loan Party shall promptly replace such insurance company with a financially sound and reputable insurance company), such flood insurance in such reasonable amount as the Agent may from time to time reasonably require, and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to applicable flood insurance laws and (B) promptly upon request of the Agent, will deliver to the Agent evidence of such compliance in form and substance reasonably acceptable to the Agent. Following the Closing Date, Parent shall deliver to Agent annual renewals of the flood insurance policies covering the property of the Loan Parties.

(d) ~~Reserved~~

(e) Notify Agent promptly whenever any separate insurance contract in form or contributing in the event of material loss with that required to be maintained under this Section 10.1.7 is taken out by any Loan Party; and promptly deliver to Agent a duplicate original copy of such policy or policies, or an insurance certificate with respect thereto once available.

10.1.8 Compliance with Laws. Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

10.1.9 Books and Records. Maintain proper books of record and account, in which entries are made that are full, true and correct in all material respects and are in conformity with GAAP (except as noted therein) and which reflect all material financial transactions and matters involving the assets and business of Parent or a Restricted Subsidiary, as the case may be.

10.1.10 Inspection Rights. Permit representatives and independent contractors of Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, to conduct commercial field exams, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of Parent and subject to bona fide confidentiality obligations, limitations imposed by law and attorney-client privilege and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Parent; provided, that, excluding any such visits and inspections during the continuation of an Event of Default, (x) only Agent on behalf of Lenders may exercise rights of Agent and Lenders under this Section 10.1.10 and (y) Agent shall not exercise such rights more often than one (1) time during any calendar year (or two (2) times per calendar year during an Accelerated Reporting Trigger Period); provided, further, that when an Event of Default exists, Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of Borrowers at any time during normal business hours and upon reasonable advance notice. Agent and Lenders shall give Loan Parties the opportunity to participate in any discussions with Loan Parties' independent public accountants. For purposes of clarity, Agent confirms that it shall conduct the commercial field exams referenced in clause (y) above.

10.1.11 Additional Collateral; Additional Guarantors. Subject to the terms, conditions and provisions of the Term Debt Intercreditor Agreement, at Borrowers' expense, take all actions which are necessary or reasonably requested by Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

- (a) Upon (x) the formation or acquisition of any new direct or indirect wholly owned Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by any Loan Party,
- (y) the designation in accordance with Section 10.1.14 of any existing direct or indirect wholly owned Domestic Subsidiary as a Restricted Subsidiary, or (z) any wholly owned Domestic Subsidiary that is an Excluded Subsidiary ceasing to be an Excluded Subsidiary necessary such that no direct or indirect wholly owned Domestic Subsidiary will be an Excluded Subsidiary by

virtue of the provisions set forth in clause (c) of the definition of "Excluded Subsidiary" in Section 1.1):

(i) within sixty (60) days after such formation, acquisition, designation or other event, or such longer period as Agent may agree in writing in its reasonable discretion:

(A) causing each such Domestic Subsidiary that is not an Excluded Subsidiary to duly execute and deliver to Agent joinders to this Agreement as Guarantors, Grants of Security Interest, and other security agreements and documents (including, with respect to such Mortgages, the documents listed in Section 10.1.13(b)), as reasonably requested by and in form and substance reasonably satisfactory to Agent (consistent with the Mortgages (if any), intellectual property security agreements, this Agreement and other security agreements in effect on the Closing Date) and Borrowers, in each case granting Liens required by the Collateral and Guarantee Requirement;

(B) subject to the Term Debt Intercreditor Agreement, causing each such Domestic Subsidiary that is not an Excluded Subsidiary (and the parent of each such Domestic Subsidiary that is a Loan Party) to deliver to Agent (or its bailee) any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) taking and causing each such Restricted Subsidiary and each direct or indirect parent of such Restricted Subsidiary to take whatever action (including the recording of Mortgages, ~~the~~ filing of UCC financing statements and the delivery of stock and membership interest certificates to Agent (or its bailee)) as may be necessary in the reasonable opinion of Agent to vest in Agent (or in any representative of Agent designated by it) valid and perfected Liens to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(ii) if reasonably requested by Agent, within 45 days after such request (or such longer period as Agent may agree in writing in its reasonable discretion), delivering to Agent a signed copy of an opinion, addressed to Agent and Lenders, of counsel for Loan Parties as to such matters set forth in this Section 10.1.11(a) as Agent may reasonably request;

(iii) promptly after the reasonable request therefor by Agent, delivering to Agent with respect to each Material Real Property, any existing surveys, title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of Borrowers; provided, however, that there shall be no obligation to deliver to Agent any existing environmental assessment report whose disclosure to Agent would require the consent of a Person other than a Loan Party or one of its Subsidiaries, and where, despite the commercially reasonable efforts of Loan Parties to obtain such consent, such consent cannot be obtained; and

(b) if reasonably requested by Agent, within 60 days (or 30 days with respect to the delivery of any Deposit Account Control Agreement) after such request (or such longer period as Agent may agree in writing in its reasonable discretion), delivering to Agent any other

items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to the validity, perfection, existence and priority of security interests with respect to property of any Guarantor acquired after the Closing Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii) or (iii) or clause (c) below.

(c) (i) Upon the acquisition by any Loan Party of any Material Real Property, (ii) the release of any first lien security interest on any Real Property securing the obligations under the Contribution and Deferral Agreement, or (iii) if any Real Property owned by any Loan Party not constituting Material Real Property otherwise becomes Material Real Property, in each case, providing prompt written notice of same to Agent (which written notice Agent shall promptly provide to the Lenders) and, to the extent required by Agent at Agent's discretion or at the direction of the Required Lenders, within the greater of (x) one hundred twenty (120) days after written notice to Agent of such acquisition, release or reclassification as required above, (y) the period of time granted pursuant to the Term Loan Debt Documents, if longer, or (z) such other longer period of time as agreed to in writing by Agent at its discretion or at the direction of the Required Lenders, causing such property to be subject to a Mortgage in favor of Agent for the benefit of Secured Parties and taking, or causing the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by Agent to grant and record such Mortgage, in each case, subject to the limitations and exceptions of, the Collateral and Guarantee Requirement and otherwise complying with the requirements of the Collateral and Guarantee Requirement and this Section 10.1.11(c).

Notwithstanding the foregoing, without limiting the requirements set forth in clause (c) of the definition of Collateral and Guarantee Requirement, the Agent shall not enter into any Mortgage in respect of any improved real property acquired by any Loan Party after the Closing Date or to be mortgaged in connection with a MIRE Event unless the Agent has provided to the Lenders (which may be delivered electronically):

(i) ~~(i)~~ if such Mortgage relates to improved real property not located in a "special flood hazard area," a complete flood hazard determination from a third party vendor at least ten (10) days prior to entering into such Mortgage, or

(ii) ~~(ii)~~ if such Mortgage relates to improved real property located in a "special flood hazard area," the following documents with respect to such improved real property at least thirty (30) days prior to entering into such Mortgage: (A) a flood complete flood hazard determination from a third party vendor, (B) a notification to the Administrative Borrower (or applicable Loan Party) of that fact and (if applicable) notification to the Administrative Borrower (or applicable Loan Party) that flood insurance coverage is not available, (C) evidence of the receipt by the Administrative Borrower (or applicable Loan Party) of such notice, and (D) if required by applicable law, evidence of required flood insurance (each of the time periods set forth in the foregoing clauses (i) and (ii), a "Flood Diligence Period"),

provided, that (x) the Agent may enter into any such Mortgage prior to the expiration of the applicable Flood Diligence Period if the Agent shall have received confirmation from each applicable Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction, and (y) the Agent shall not enter into the corresponding Mortgage if,

prior to the expiration of the applicable Flood Diligence Period, a Lender provides written notice to the Agent stating that such Lender will require additional time to complete any necessary flood insurance due diligence to its reasonable satisfaction. So long as such Lender provides the foregoing notice prior to the expiration of the applicable Flood Diligence Period, the Agent shall not enter into the corresponding Mortgage unless and until the Agent receives written confirmation from such Lender that all necessary flood due diligence has been completed to its reasonable satisfaction.

10.1.12 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all Environmental Permits necessary for its operations and properties; and, (c) in each case to the extent Loan Parties or Restricted Subsidiaries are required to do so by applicable Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

10.1.13 Further Assurances and Post-Closing Conditions.

(a) Within sixty (60) days after the Closing Date (subject to, [\(i\)](#) solely with respect to the Term Priority Collateral ([other than UST Tranche B Priority Collateral](#)), extension granted under the Term Loan Debt Documents or otherwise that the by Agent agrees to in its reasonable discretion [or \(ii\) solely with respect to the UST Tranche B Priority Collateral, extension granted under the UST Tranche B Facility Documentation or otherwise that the Agent agrees to in its reasonable discretion](#)), deliver each Loan Document set forth on Schedule 10.1.13(a) , duly executed by each Loan Party party thereto, together with all documents and instruments required to perfect the security interest of Agent in the Collateral free of any other pledges, security interests or mortgages, except Liens expressly permitted hereunder, to the extent required pursuant to the Collateral and Guarantee Requirement.

(b) Promptly upon reasonable request by Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Loan Document or other document or instrument relating to any Collateral (including, without limitation, any defect or error related to certificates of title for vehicles and other Rolling Stock) as to which Parent reasonably agrees is a defect or error, and (ii) subject to the terms of the Loan Documents, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Loan Documents and to cause the Collateral and Guarantee Requirement to be and remain satisfied. If Agent reasonably determines that it is required by Applicable Law to have appraisals prepared in respect of each Material Real Property of any Loan Party subject to a Mortgage, Borrowers shall cooperate with Agent, as applicable, in obtaining such appraisals and shall pay all reasonable costs and expenses relating thereto.

10.1.14 Reserved.

10.1.15 Reserved.

10.1.16 Use of Proceeds. Borrowers shall use the proceeds of the Loans borrowed on the Closing Date to fund the Transactions on the Closing Date, to pay Transaction Expenses, for working capital and for other general corporate purposes.

**10.2 Negative Covenants.** Until Full Payment of the Obligations, Parent shall not, and shall cause each Restricted Subsidiary not to:

10.2.1 Liens. Parent shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following (each, a "Permitted Lien"):

(a) Liens created pursuant to any Loan Document;

(b) Liens existing or contemplated on the Closing Date and listed on Schedule

10.2.1(b); provided, that (i) the Lien does not extend to any additional property other than (A) any replacements of such property or assets and additions and accessions thereto, after-acquired property subjected to a Lien securing Debt and other obligations incurred prior to such time and which Debt and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property (it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition, or asset of Parent or any Restricted Subsidiary and the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment provided by any lender, other equipment financed by such lender), and

(ii) such Lien does not secure any obligation (including unused commitments) other than those it secured on the Closing Date or, to the extent constituting Debt, any Permitted Refinancing of the Debt secured thereby on the Closing Date or, to the extent not constituting Debt, any extensions, renewals, restructurings, refinancings and replacements thereof;

(c) Liens for unpaid utilities, taxes, assessments or governmental charges that are (i) not overdue for a period of more than thirty (30) days and are not otherwise delinquent, securing obligations in an amount not to exceed \$5,000,000, or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or (ii) otherwise not required to be paid pursuant to Section 10.1.4;

(d) Statutory, lease, contractual or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, or other customary Liens (other than in respect of Debt) in favor of landlords, in each case arising in the ordinary course of business that secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, that either secure obligations in an amount not to exceed \$1,000,000 or are being contested in good faith and by appropriate actions if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) (i) Liens in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation (other than any Lien imposed pursuant to Section 430(k) of the Code or Section 303(k) of ERISA or a violation of Section 436 of the Code) and (ii) Liens in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Parent or any of Restricted Subsidiaries;

(f) Liens to secure the performance of bids, trade contracts, governmental contracts and leases (in the case of each of the foregoing, other than for Debt for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations), in each case incurred in the ordinary course of business;

(g) (i) easements, rights-of-way, restrictions (including zoning restrictions and other land use regulations), rights of way, encroachments, protrusions, reservations and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of Parent and Restricted Subsidiaries, taken as a whole, (ii) any exceptions to the Mortgage Policies issued in connection with the Mortgaged Properties (including, without limitation, any exceptions issued after the Closing Date in the reasonable discretion of Agent), and (iii) ground leases in respect of Real Property on which facilities owned or leased by Parent or any of Restricted Subsidiaries are located; provided in the case of this clause (ii) that such ground leases do not confer rights on the counter-party(ies) thereto superior to those of Agent in the relevant property;

(h) Section  
11.1(g);

(i) Liens securing judgments not constituting an Event of Default under

leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of Parent and Restricted Subsidiaries, taken as a whole, or (ii) secure any Debt;

(j) Liens (i) in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or (ii) on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such person to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection and (ii) arising in the ordinary course of business in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to the general terms and conditions of such banking institutions;

(l) Liens (i) on cash earnest money deposits or other cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Sections 10.2.2(e), (h), (l), (p), (r) or (v) in each case to be applied against the purchase price for such Investment, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 10.2.5 in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens (i) in favor of Parent or a Restricted Subsidiary on assets of a Restricted Subsidiary that is not a Loan Party securing Debt permitted under Section 10.2.3 and (ii) in favor of any Loan Party;

(n) any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor, sublessor, licensor or sublicensor under leases, subleases, licenses or sublicenses entered into by Parent or any of Restricted Subsidiaries in the ordinary course of business; provided, that no such lease or sublease shall constitute a Capitalized Lease;

(o) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 10.2.2(a);

(p) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(q) Liens (including any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor or sublessor under Capitalized Leases) securing Debt permitted under Section 10.2.3(e) or (ee); provided, that (i) such Liens are created within 270 days of the acquisition, construction, repair, lease or improvement, as applicable, of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Debt and the proceeds and products thereof and customary security deposits, and (iii) with respect to Capitalized Leases, such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to such Capitalized Leases and the proceeds and products thereof and customary security deposits; provided, that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(r) Liens on property (i) of any Foreign Subsidiary that is not a Loan Party and (ii) that does not constitute Collateral, which Liens secure Debt of the applicable Foreign Subsidiary permitted under Section 10.2.3;

(s) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 10.1.14), in each case after the Closing Date; provided, that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Debt and other obligations incurred prior to such time and

which Debt and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (iii) the Debt secured thereby is permitted under Section 10.2.3(g);

filings;

(t)

(u)

Liens arising from precautionary UCC financing statements or similar

Liens on insurance policies and the proceeds thereof securing the financing

of the premiums with respect thereto in the ordinary course of business;

(v) Liens on the Collateral and Disclaimed Real Property Assets, securing

Debt permitted under Section 10.2.3(o)(x) or other obligations otherwise secured pursuant to ~~the documentation~~ or in connection with the documents governing such Debt; provided, that such Liens shall be subject to the Term Debt Intercreditor Agreement or other intercreditor agreement reasonably satisfactory to the Agent;

(w) ~~Reserved: Liens on the Collateral, Disclaimed Real Property Assets and the~~

UST Only Collateral, securing Debt permitted under Section 10.2.3(o)(y) or other obligations otherwise secured pursuant to or in connection with the documents governing such Debt; provided that such Liens shall be subject to the Term Debt Intercreditor Agreement or other intercreditor agreement reasonably satisfactory to the Agent;

(x) Liens on the Equity Interests of any joint venture entity or non-wholly

owned Subsidiary of Parent consisting of a transfer restriction, purchase option, call or similar right of a third party joint venture partner;

(y) cash collateral posted as security for Parent's or any Restricted

Subsidiary's obligations under Hedging Agreements, in an aggregate amount for all such cash collateral at any time not to exceed \$15,000,000; provided, that cash collateral posted for the account of Lenders or Agent in respect of non-speculative currency or interest rate Hedging Agreements shall not be subject to such limit;

(z) ~~Reserved: Liens on the Collateral, Disclaimed Real Property Assets and the~~

UST Only Collateral, securing Debt permitted under Section 10.2.3(o)(z) or other obligations otherwise secured pursuant to or in connection with the documents governing such Debt; provided that such Liens shall be subject to the Term Debt Intercreditor Agreement or other intercreditor agreement reasonably satisfactory to the Agent;

(aa)

(bb)

Liens arising in connection with a Receivables Facility;

Liens (i) arising out of conditional sale, title retention, consignment or

similar arrangements for the sale of goods, or (ii) encumbering deposits made to secure obligations arising from contractual or warranty requirements;

(cc)

Utility and similar deposits in the ordinary course of business;

(dd) Liens in respect of (i) Unrestricted Subsidiaries and joint ventures or non-wholly owned Subsidiaries, or (ii) cash and Cash Equivalents, deposit accounts and securities accounts collateralizing letters of credit permitted by Section 10.2.3(y);

(ee) Liens related to Sale and Leaseback Transactions in an aggregate amount not to exceed ~~\$50,000,000~~ \$25,000,000; and

(ff) other Liens with respect to Property of Parent or any of Restricted Subsidiaries securing obligations in an aggregate principal amount outstanding at any time not to exceed the greater of (i) \$30,000,000 and (ii) 2% of Consolidated Total Assets at the time of such incurrence.

10.2.2 Investments. Parent shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make or hold any Investments, except:

Equivalents; (a)

(b) Investments by Parent or any of Restricted Subsidiaries in cash or Cash

loans or advances to officers, directors and employees of any Loan Party

or any of Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, in each case, consistent with past practices (including pursuant to use of any credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services), (ii) in connection with such Person's purchase of Equity Interests of Parent and (iii) for any other corporate purposes not described in the foregoing clauses (i) and (ii); provided, that the aggregate principal amount of loans and advances outstanding at any time under this Section 10.2.2(b)(ii) and (iii) shall not exceed \$2,000,000;

(c) Investments (i) by Parent or any Restricted Subsidiary in any Loan Party (or any newly formed wholly owned Restricted Subsidiary that is not an Excluded Subsidiary and is to become a Loan Party in accordance with Section 10.1.11), (ii) by any Restricted Subsidiary that is not a Loan Party in any other Restricted Subsidiary that is not a Loan Party, and (iii) by any Loan Party in a Restricted Subsidiary that is not a Loan Party; provided, that the aggregate amount of Investments at any time outstanding under this clause (iii) shall not exceed \$15,000,000;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit or other credits to suppliers in the ordinary course of business;

(e) Investments (i) existing or contemplated on the Closing Date and set forth on Schedule 10.2.2(e) (including unused commitments) and any modification, replacement, renewal or extension thereof and (ii) existing on the Closing Date by Parent or any other Restricted Subsidiary in any Restricted Subsidiary and any modification, replacement, renewal or extension thereof; provided, that in the case of clause (i) and clause (ii) the amount of the original Investment is not increased except by the terms of such original Investment as set forth on Schedule 10.2.2(e) or as otherwise permitted by this Section 10.2.2 (and in such case made in

reliance on the other paragraph of this Section 10.2.2 so permitting such modification, replacement, renewal or extension thereof);

(f)

Investments in Hedging Agreements permitted under Section 10.2.3;

(g)

promissory notes and other non-cash consideration received in connection

with Dispositions permitted by Section 10.2.5;

(h)

subject to the satisfaction (or waiver) of the Payment Conditions, any

acquisition by Parent or any Restricted Subsidiary of all or substantially all the assets of, or all the Equity Interests (other than directors' qualifying shares, shares issued to foreign nationals as required by Applicable Law or any options for Equity Interests that cannot, as a matter of law, be cancelled, redeemed or otherwise extinguished without the express agreement of the holder thereof at or prior to acquisition) in, a Person or division, business unit or line of business of a Person (or any subsequent investment made in a Person, division, business unit or line of business previously acquired in a Permitted Acquisition), in each case in a single transaction or series of related transactions, if (i) all transactions related thereto shall be consummated in all material respects in accordance with Applicable Laws; (ii) any acquired or newly formed Restricted Subsidiary shall not be liable for any Debt except for Debt otherwise permitted by Section 10.2.3; (iii) to the extent required by the Collateral and Guarantee Requirement, (x) the property, assets and businesses acquired in such purchase or other acquisition shall constitute Collateral and (y) any such newly created or acquired Subsidiary (other than an Excluded Subsidiary) shall become a Guarantor, in each case, to the extent required by and in accordance with Section 10.1.11; (iv) the businesses acquired in such purchase or other acquisition shall be in compliance with Section 10.2.7; and (v) Administrative Borrower shall have delivered to Agent a certificate of a Responsible Officer of Administrative Borrower certifying that the conditions set forth in the preceding clauses (i) through (iv) have been satisfied and that the Payment Conditions have been satisfied (any such acquisition, a "Permitted Acquisition"); provided, that the aggregate amount of Investments made by Loan Parties pursuant to this Section 10.2.2(h) in assets that are not (or do not become) owned by a Loan Party or in Equity Interests in Persons that do not become Loan Parties upon consummation of such Permitted Acquisition shall not exceed \$15,000,000 at any time outstanding;

(i)

Investments in the ordinary course of business consisting of UCC Article 3

endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(j)

Investments (including debt obligations and Equity Interests) received in

connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers;

business;

(k)

(l)

advances of payroll payments to employees in the ordinary course of

Investments to the extent that payment for such Investments is made with

Equity Interests (other than Disqualified Equity Interests) of Parent or the Net Proceeds received from the issuance thereof;

(m) Investments of a Restricted Subsidiary acquired after the Closing Date pursuant to a Permitted Acquisition or of a corporation merged or amalgamated or consolidated into Parent or any Restricted Subsidiary, in each case in accordance with this Section 10.2.2 and Section 10.2.4 after the Closing Date, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(n) Investments made by any Restricted Subsidiary that is not a Loan Party to the extent such Investments are financed with the proceeds received by such Restricted Subsidiary from an Investment in such Restricted Subsidiary made pursuant to Section 10.2.2(c)(i), Section 10.2.2(c)(iii) or Section 10.2.2(p);

(o) Guarantees by Parent or any Restricted Subsidiary of operating leases (other than Capitalized Leases) or of other obligations that do not constitute Debt, in each case, which leases or other obligations are entered into by any Loan Party in the ordinary course of business.

(p) other Investments (including for Permitted Acquisitions) in an aggregate amount outstanding pursuant to this clause (p) at any time not to exceed \$20,000,000;

(q) (i) make lease, utility and other similar deposits or any other advance or deposit permitted by this Agreement in the ordinary course of business or (ii) make prepayments and deposits to suppliers in the ordinary course of business;

(r) to the extent constituting Investments, capital expenditures otherwise permitted under this Agreement;

(s) Investments in deposit accounts or securities accounts opened in the ordinary course of business;

(t) solely to the extent not prohibited under Section 10.2.13, subject, in any event, to the conditions set forth therein (as applicable), the repurchase, retirement or repayment of any Debt, including, without limitation, the acquisitions of (i) Term Debt in accordance with the Term Debt Documents, (ii) [UST Tranche A Facility Indebtedness in accordance with the UST Tranche A Facility Documentation and](#) (iii) [UST Tranche B Facility Indebtedness in accordance with the UST Tranche B Facility](#);

(u)

(v)

Investments made in connection with a Receivables Facility;

Investments consisting of or resulting from (i) Debt permitted under

Section 10.2.3, (ii) Liens permitted under Section 10.2.1, (iii) Restricted Payments permitted under Section 10.2.6, (iv) Dispositions permitted by Section 10.2.5, and (v) fundamental changes permitted by Section 10.2.4;

(w) Investments solely to the extent such Investments reflect an increase in the value of Investments otherwise permitted under this Section 10.2.2;

(x) loans and advances to Parent in lieu of, and not in excess of the amount of (after giving effect to any other such loans or advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made in accordance with Section 10.2.6 (other than Section 10.2.6(e));

(y) Guarantee obligations of Parent or any Restricted Subsidiary in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of any Restricted Subsidiary of Parent to the extent required by law or in connection with any statutory filing or the delivery of audit opinions performed in jurisdictions other than within the United States;

(z) the repurchase, retirement, repayment, redemption, discharge, conversion or exchange of any other Debt relating to the Existing Series A Notes and Existing Series B Notes; and

(aa) other Investments not to exceed \$10,000,000 in any Fiscal Year, in each case so long as no Event of Default shall have occurred and be continuing at the time of such Investment or would result therefrom.

10.2.3 Debt. Parent shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Debt, except:

(a) Debt of any Loan Party under the Loan Documents;

(b) (i) Debt outstanding on the Closing Date and listed on Schedule 10.2.3(b) and any Permitted Refinancing thereof and (ii) intercompany Debt outstanding on the Closing Date and listed on Schedule 10.2.3(b) and any Permitted Refinancing thereof; provided, that (x) any intercompany Debt in excess of \$5,000,000 shall be evidenced by an Intercompany Note, and (y) any Intercompany Debt of any Loan Party owed to any Person that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to the subordination provisions reasonably acceptable to Agent;

(c) Guarantees by Parent and any Restricted Subsidiary in respect of Debt of Parent or any Restricted Subsidiary otherwise permitted hereunder; provided, that (i) no Guarantee by any Restricted Subsidiary of any Term Debt, [any UST Tranche A Facility Indebtedness](#), [any UST Tranche B Facility Indebtedness](#), any Permitted Junior Debt, any Term Refinancing Debt, [any UST Tranche A Refinancing Debt](#), [any UST Tranche B Refinancing Debt](#) or any Permitted Refinancing of any of the foregoing shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein (provided, further, that, this clause (i) shall not apply in the case of a Guarantee by any Foreign Subsidiary of any Debt of another Foreign Subsidiary), and (ii) if the Debt being Guaranteed is, or is required by this Agreement to be, Subordinated Debt, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms (taken as a whole) at least as favorable to Lenders as those contained in the subordination of such Debt;

(d) Debt (other than Debt permitted under Section 10.2.3(b)) of Parent or any Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or consisting

of a Guaranty on behalf of Parent or any Restricted Subsidiary) to the extent constituting an Investment permitted by Section 10.2.2; provided, that (x) all such Debt of any Loan Party shall be evidenced by any Intercompany Note, and (y) any intercompany Debt owed to any Person that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to the subordination provisions reasonably acceptable to Agent;

(e) Attributable Debt and other Debt of Parent or any Restricted Subsidiary (including Capitalized Leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred prior to or within 270 days after the acquisition, lease or improvement of the applicable asset in an aggregate amount (together with any Permitted Refinancings thereof) not to exceed ~~\$50,000,000~~25,000,000 at any time outstanding;

(f) Debt in respect of Hedging Agreements designed to hedge against Parent's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities (including fuel) pricing risks incurred not for speculative purposes;

(g) Debt of Parent or any Restricted Subsidiary (i) assumed in connection with any Permitted Acquisition or other Investment permitted hereunder, provided, that such Debt is not incurred in contemplation of such Investment, and any Permitted Refinancing thereof or (ii) incurred to finance a Permitted Acquisition or other Investment permitted hereunder and any Permitted Refinancing thereof; provided, that (w) in the case of clauses (i) and (ii), such Debt and all Debt resulting from a Permitted Refinancing thereof is unsecured (except for (A) Liens permitted by Section 10.2.1(s) and (B) Liens permitted by Section 10.2.1(ff)), (x) in the case of clauses (i) and (ii), both immediately prior and after giving effect thereto, (1) no Event of Default shall exist or result therefrom, and (2) immediately after giving effect to the incurrence of such Debt, the Total Leverage Ratio calculated on a Pro Forma Basis shall not be greater than the Total Leverage Ratio immediately prior to the consummation of the transaction, and (y) in the case of any such incurred Debt under clause (ii), such Debt matures after, and (except for any payments in respect of a Change of Control, asset sales, AHYDO catch-ups, and similar such payments) does not require any scheduled amortization or other scheduled payments of principal prior to, the then Latest Maturity Date;

(h) Debt representing deferred compensation to employees of Parent or any Restricted Subsidiary incurred in the ordinary course of business and other obligations and liabilities arising under employee benefit plans in the ordinary course of business;

(i) Debt consisting of unsecured promissory notes issued by Parent or any Restricted Subsidiary to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of Parent permitted by Section 10.2.6;

(j) Debt incurred by Parent or any Restricted Subsidiary in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition expressly permitted hereunder, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earnouts and holdbacks) or other similar adjustments;

(k) Debt in respect of treasury, depository, credit card, debit card and cash management services or automated clearinghouse transfer of funds, overdraft or any similar services incurred in the ordinary course of business or any similar cash management services relating or secured pursuant to this Agreement or the Term Debt Documents (including Bank Product Debt) and any hedges related to the Term Debt Documents or this Agreement;

(l) Debt consisting of the financing of insurance premiums or take-or-pay obligations contained in supply arrangements that do not constitute Guarantees, in each case, in the ordinary course of business;

(m) Debt incurred by Parent or any Restricted Subsidiary in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business and not in connection with the borrowing of money, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Debt incurred in the ordinary course of business with respect to reimbursement-type obligations regarding workers compensation claims;

(n) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Term Debt Documents, [UST Tranche A Facility Documentation](#), [UST Tranche B Facility Documentation](#) or any of Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice and not in connection with the borrowing of money or Hedging Agreements;

(o) ~~(x)~~(i) Term Debt of any Loan Party (including any Incremental Term Loans (as defined in the Term Debt Agreement)), ~~(y)~~(ii) Term Refinancing Debt of any Loan Party and ~~(z)~~(iii) any Permitted Refinancing of either of the foregoing, in each case to the extent permitted under, and subject to, the Term Debt Intercreditor Agreement or another intercreditor agreement in form and substance reasonably satisfactory to Agent and Administrative Borrower; provided that the aggregate principal amount outstanding (excluding interest paid in-kind or otherwise capitalize to principal) at any time of all such Debt under clauses (i) - (iii) of this Section 10.2.3(o)(x) shall not exceed \$615,000,000, (y)(i) UST Tranche A Facility Indebtedness of any Loan Party, (ii) UST Tranche A Refinancing Debt of any Loan Party and (iii) any Permitted Refinancing of either of the foregoing, in each case to the extent permitted under, and subject to, the Term Debt Intercreditor Agreement or another intercreditor agreement in form and substance reasonably satisfactory to Agent and Administrative Borrower; provided that the aggregate principal amount outstanding (excluding interest paid in-kind or otherwise capitalize to principal) at any time of all such Debt under clauses (i) - (iii) of this Section 10.2.3(o)(y) shall not exceed \$400,000,000 (and such Debt, together with all Debt under clauses (i) - (iii) of this Section 10.2.3(o)(z) shall not exceed \$700,000,000) and (z)(i) UST Tranche B Facility Indebtedness of any Loan Party, (ii) UST Tranche A Refinancing Debt of any Loan Party and (iii) any Permitted Refinancing of either of the foregoing, in each case to the extent permitted under, and subject to, the Term Debt Intercreditor Agreement or another intercreditor agreement in form and substance reasonably satisfactory to Agent and Administrative Borrower; provided that the aggregate principal amount outstanding (excluding interest paid in-kind or otherwise capitalize to principal) at any time of all such Debt under clauses (i) - (iii) of this Section 10.2.3(o)(z) shall

not exceed \$400,000,000 (and such Debt, together with all Debt under clauses (i) – (iii) of this Section 10.2.3(o)(v) shall not exceed \$700,000,000);

(p) Reserved.;

(q) Reserved.;

(r) Permitted Junior Debt of a Loan Party; provided, that (x) no Event of Default shall have occurred and be continuing at the time of the incurrence of such Debt or would result therefrom and (y) immediately after giving effect to the incurrence of such Permitted Junior Debt, the Total Leverage Ratio calculated on a Pro Forma Basis shall not be greater than 5.00 to 1.00 (as of the last day of the most-recently ended Fiscal Quarter for which financials statements have been delivered);

(s) Debt of Restricted Subsidiaries that are not Loan Parties in an aggregate principal amount at any time outstanding not to exceed \$25,000,000;

(t) all premiums (if any), interest (including post-petition interest and interest paid in kind), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (l) above and (u) through (ee) below;

(u) (i) Debt in respect of the Specified Pension Fund Obligations and Guarantees thereof, to the extent existing on the Closing Date, by any Guarantor in an aggregate principal amount at any time outstanding not to exceed the amount outstanding as of the Closing Date (and as adjusted from time to time pursuant to any audits), plus any interest paid in kind thereon and any accrued but unpaid interest thereon and (ii) any Permitted Refinancing (excluding clause (b) thereof, so long as the amortization payments under any such Permitted Refinancing do not exceed two percent (2%) per annum of the outstanding principal amount of the Specified Pension Fund Obligations immediately prior to giving effect to the One-Time Prepayment (as defined in Amendment No. 3) thereof;

(v)

(w)

Debt in respect of the Existing Series A Notes that is fully discharged;

Debt in respect of the Existing Series B Notes in an aggregate principal

amount not to exceed \$17,000,000 (plus any increase in the principal amount thereof in respect of any interest paid in kind (rather than in cash) thereunder in accordance with the terms and conditions of the applicable indenture in effect as of the Closing Date, but minus any principal payments in respect thereof made in accordance with the terms and conditions of this Agreement) at any time outstanding;

(x) Debt in respect of taxes, assessments or governmental charges to the extent that payment thereof shall not at the time be required to be made hereunder;

(y) Debt under any letter of credit (to the extent that such letter of credit is collateralized with cash, Cash Equivalents, deposit accounts or securities accounts maintaining cash, Cash Equivalents or investment property or the proceeds of the foregoing); provided, that the aggregate principal amount of Debt permitted by this clause (y) shall not exceed \$25,000,000 at any time outstanding;

(z) Debt arising under any Receivables Facility in an amount not to exceed \$20,000,000 in the aggregate at any one time outstanding; provided, that, for purposes of this clause (z), the obligations under any such Receivables Facility may be full-recourse to Parent or any Restricted Subsidiary; and provided, further, that Accounts sold or otherwise disposed of in connection with any full-recourse Receivables Facility described in the preceding proviso are limited to those Accounts permitted to be sold under Section 10.2.5(g);

(aa) Debt in respect of Sale and Leaseback Transactions in an amount not to exceed ~~\$50,000,000~~ 25,000,000 at any time outstanding;

(bb)

(cc)

Debt in respect of Investments not prohibited by Section 10.2.2;

Debt and other obligations in respect of Disqualified Equity Interests in an

amount not to exceed \$25,000,000 outstanding at any time;

(dd) Debt incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services, in each case, incurred in the Ordinary Course of Business; ~~and~~

(ee) other Debt of Parent or any Restricted Subsidiary, in an aggregate principal amount at any time outstanding not to exceed the greater of \$30,000,000 and 2% of Consolidated Total Assets at the time of such incurrence; and

(ff) obligations, charges or liabilities incurred in the ordinary course of business (and not representing indebtedness for borrowed money) outstanding as of the Amendment No. 6 Effective Date and identified to the Lenders in the schedule delivered to the Lenders on or prior to the Amendment No. 6 Effective Date.

Notwithstanding the provisions of Section 10.2.3(c) or any other provision hereof, no Restricted Subsidiary that is not a Loan Party may Guarantee any Term Debt, any Permitted Junior Debt, any Junior Financing or any Term Refinancing Debt (except for any Permitted Refinancing of any of the foregoing).

10.2.4 Fundamental Changes. Parent shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of related 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, amalgamate or consolidate with (i) Parent (including a merger, the purpose of which is to reorganize Parent into a new jurisdiction); provided, that (w) no Event of Default exists or would result therefrom, (x) Parent shall be the continuing or surviving Person, (y) such transaction does not result in Parent ceasing to be organized under the laws of the United States, any State thereof or the District of Columbia and

(z) such transaction does not have an adverse effect in any material respect on the perfection or priority of the Liens granted under the Loan Documents or (ii) one or more other Restricted



Party and/or a permitted Excluded Subsidiary, a Loan Party or a permitted Excluded Subsidiary shall be the continuing or surviving Person except to the extent otherwise constituting an Investment permitted by Section 10.2.2;

(c) ~~(i) any Restricted Subsidiary that is not a Loan Party may merge,~~  
amalgamate or consolidate with or into any other Restricted Subsidiary that is not a Loan Party and (ii) any Restricted Subsidiary may liquidate or dissolve or change its legal form if Parent determines in good faith that such action is in the best interest of Parent and Restricted Subsidiaries and is not disadvantageous to Lenders in any material respect (it being understood that (other than a transaction constituting a permitted Investment under Section 10.2.2 or involving a permitted Excluded Subsidiary) in the case of any liquidation or dissolution of a Guarantor, such Guarantor shall transfer its assets to a Loan Party, and in the case of any change in legal form, a Restricted Subsidiary that is a Guarantor will remain a Guarantor and such transaction shall not have an adverse effect on the perfection or priority of the Liens granted under the Security Documents);

(d) ~~any Restricted Subsidiary may Dispose of all or substantially all of its~~  
assets (upon voluntary liquidation or otherwise) to Parent or to another Restricted Subsidiary; provided, that if the transferor in such a transaction is a Guarantor, then (i) the transferee must be a Guarantor or Parent or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in or Debt of a Restricted Subsidiary which is not a Loan Party in accordance with Sections 10.2.2 and 10.2.3, respectively;

(e) ~~so long as no Event of Default exists or would result therefrom, Parent~~  
may merge with any other Person; provided, that (i) Parent shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not Parent (any such Person, "Successor Parent"), (A) Successor Parent shall be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia and such transaction shall not have an adverse effect in any material respect on the perfection or priority of the Liens granted under the Security Documents, (B) Successor Parent shall expressly assume all the obligations of Parent under this Agreement and the other Loan Documents to which Parent is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to Agent and Parent, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor Parent's obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Security Documents confirmed that the collateral granted by it to secure its obligations thereunder shall apply to secure its and Successor Parent's obligations under the Loan Documents, (E) if reasonably requested by Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to Agent) confirmed that the collateral granted by it to secure its obligations thereunder shall apply to secure its and Successor Parent's obligations under the Loan Documents, and (F) Parent shall have delivered to Agent an officer's certificate stating that such merger or consolidation and such supplement to this Agreement or any Security Document comply with this Agreement; provided, further, that if the foregoing are satisfied (or waived), Successor Parent will succeed to, and be substituted for, Parent under this Agreement; provided, further, that Parent agrees to provide any

documentation and other information about Successor Parent as shall have been reasonably requested in writing by any Lender through Agent that is required by regulatory authorities or under applicable [Beneficial Ownership Regulations](#), "know your customer" and anti-money laundering rules and regulations, including without limitation the USA Patriot Act;

(f) ~~any Restricted Subsidiary may merge, amalgamate or consolidate with any~~ other Person (other than Parent) in order to effect an Investment permitted pursuant to Section 10.2.2; provided, that either (x) the continuing or surviving Person shall be a Restricted Subsidiary, which together with each of Restricted Subsidiaries, shall have complied with the requirements of Section 10.11 to the extent required pursuant to the Collateral and Guarantee Requirement or (y) the transaction shall otherwise constitute a permitted Investment;

(g) ~~reserved;~~

(h) ~~any Restricted Subsidiary may effect a merger, dissolution, liquidation or~~ consolidation, the purpose of which is to effect a Disposition permitted pursuant to Section 10.2.5; and

(i) ~~any Restricted Subsidiary may Dispose of all or substantially all of its~~ assets (upon voluntary liquidation or otherwise) to the extent that such Disposition (or series of related Dispositions) is not prohibited under Section 10.2.5.

10.2.5 Dispositions. Parent shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make any Disposition, except:

(a) (w) Dispositions (including abandonment) of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business, (x) Dispositions (including abandonment) in the ordinary course of business of surplus property or property no longer used or useful in the conduct of the business of Parent or any Restricted Subsidiary, (y) Dispositions of immaterial assets (considered in the aggregate) in the ordinary course of business; and (z) Dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business;

(b) Dispositions of property to the extent that (i) such property or an interest therein is exchanged for credit against the purchase or lease price of similar replacement property, (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property, or (iii) such property is swapped in exchange for services or other assets of comparable or greater value or usefulness to the business of Parent and its Subsidiaries taken as a whole, as determined in good faith by the management of Parent;

(c) Dispositions of property to Parent or any Restricted Subsidiary; provided, that if the transferor of such property is a Loan Party (i) either (x) the transferee thereof must be a Loan Party and if such property constitutes Collateral, it shall continue to constitute Collateral after such Disposition or (y) the transferee is not a Loan Party and the aggregate amount disposed of in any calendar year shall not exceed \$10,000,000 or (ii) if such transaction constitutes an Investment, such transaction is permitted under Section 10.2.2;

(d) Dispositions of cash and Cash Equivalents;

(e) leases, subleases, licenses or sublicenses (including the provision of software under an open source license) or any abandonment thereof, in each case (i) in the ordinary course of business and without interfering in any material respect with the business of Parent or any of Restricted Subsidiaries, in each case, and any abandonment thereof;

(f) transfers of property subject to Casualty Events upon the receipt (where practical) of the Net Proceeds of such Casualty Event;

(g) the Disposition of Accounts that do not constitute Eligible Accounts in connection with the collection thereof in the Ordinary Course of Business; provided, that the aggregate face amount of all Accounts subject to Disposition under this clause (g) shall not exceed \$10,000,000 in any Fiscal Year;

(h) Dispositions consisting of write-offs, compromises and discounts without recourse of accounts receivable and related assets in connection with the compromise or collection thereof in the Ordinary Course of Business;

(i) any sale of Equity Interests in, or Debt or other securities of, an Unrestricted Subsidiary;

(j) Dispositions of Investments in joint ventures or other non-wholly owned Subsidiaries to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(k) the unwinding of any Hedging Agreement or cash management agreement;

(l) Dispositions of Property not otherwise permitted under this Section 10.2.5; provided, that (i) at the time of such Disposition (other than any such Disposition of Property made pursuant to a legally binding commitment entered into at a time when no Event of Default exists (including any Event of Default arising due to a change to the Borrowing Base arising from such Disposition) so long as such Disposition is consummated no later than ninety (90) days following the date Loan Parties entered into such legally binding commitment), no Event of Default shall exist or would result from such Disposition (including any Event of Default arising due to a change to the Borrowing Base arising from such Disposition), and (ii) with respect to any Disposition or series of related Dispositions pursuant to this clause (l) for a purchase price in excess of \$10,000,000, Parent or any Restricted Subsidiary shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 10.2.1 and Liens permitted by Section 10.2.1(a), (c), (d), (f), (i), (j), (k), (l) (o), (p), (v), (w), (z), (aa), (bb), (cc), (dd) and (ee); provided, however, that for the purposes of this clause (l)(iii), the following shall be deemed to be cash: (A) any liabilities contingent or otherwise (as shown on Parent's most recent consolidated balance sheet provided hereunder or in the footnotes thereto) of Parent or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to or in connection with the applicable Disposition and for which Parent and all Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received

by Parent or the applicable Restricted Subsidiary from such transferee that are converted by Parent or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of the applicable Disposition, (C) aggregate non-cash consideration received by Administrative Borrower or the applicable Restricted Subsidiary having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed \$10,000,000 at any time (net of any non-cash consideration converted into cash and Cash Equivalents), (D) Debt of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Disposition, to the extent Parent and each other Restricted Subsidiary are released from any Guarantee of payment of such Debt in connection with such Disposition, (E) consideration consisting of Debt of Parent (other than Subordinated Debt) received after the Closing Date from Persons who are not Parent or any Restricted Subsidiary, and (F) the fair market value (as determined by Parent) of non-cash consideration received by Parent or a Restricted Subsidiary in connection with a Disposition (and which will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with Section 10.2.5);

Facility;

(m)

(n)

any Disposition of Receivables Assets in connection with a Receivables

the disposition of any assets existing on the Closing Date that are set forth

on Schedule 10.2.5;

(o)

dispositions from and after the Closing Date of non-core or obsolete assets

acquired in connection with any Permitted Acquisition or other permitted Investments;

(p) the incurrence of Liens permitted hereunder;

(q) sales or dispositions of Equity Interests of any Subsidiary (other than Parent) in order to qualify members of the governing body of such Subsidiary if required by Applicable Law;

(r) sales, transfers and other dispositions of (i) any Equity Interests in Unrestricted Subsidiaries or their assets or (ii) other Excluded Property;

(s) Restricted Payments made pursuant to Section 10.2.6; ~~and~~

(t) Permitted Sale and Leaseback Transactions in an aggregate principal amount not to exceed ~~\$50,000,000~~ 25,000,000 at any time; and

discretion;

other Dispositions consented to by the Required Lenders in their sole

(u)

provided, that any Disposition of any property pursuant to this Section 10.2.5 (except pursuant to Sections 10.2.5(a), (c), (e), (f), (g), (j), (k), (m), (n), (o), (q), (r), ~~and~~ (s) and ~~(t)~~ ~~and~~ except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market



Collateral shall be automatically sold free and clear of the Liens created by the Loan Documents, and, if requested by Parent, upon the certification delivered to Agent by Parent that such Disposition is permitted by this Agreement, Agent shall be authorized to take, and shall take, any actions reasonably requested by Parent in order to effect the foregoing (at Borrowers' expense) and/or to expressly subordinate any Lien in favor of Agent on such Collateral that is disposed of.

10.2.6 Restricted Payments. Parent shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to Parent or any other Restricted Subsidiary (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to Parent and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) Parent and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in the Equity Interests (other than Disqualified Equity Interests unless such Disqualified Equity Interests would be permitted by Section 10.2.3) of such Person;

(c) (i) repurchases of Equity Interests in Parent deemed to occur upon the exercise of stock options or warrants or the settlement or vesting of other equity awards if such Equity Interests represent a portion of the exercise price of such options or warrants, (ii) cash payments in lieu of the issuance of fractional shares in connection with the exercise of stock options, warrants or other securities convertible into or exchangeable for Equity Interests of Parent or (iii) Restricted Payments made in respect of any other transaction involving fractional shares; provided, however, that any such cash payment shall not be for the purpose of evading the limitations of this Agreement;

(d) Parent may pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of Parent held by any present or former employee, officer, director or consultant of Parent or any Restricted Subsidiary or equity based awards held by such Persons, in each case, upon the death, disability, retirement or termination of employment of any such Person or pursuant to any employee or director equity plan, employee or director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, officer or consultant of Parent or any Restricted Subsidiary; provided, that the aggregate amount of Restricted Payments made pursuant to this clause (d) shall not exceed \$7,500,000 in any Fiscal Year plus the proceeds of any key man life insurance; and provided, further, that to the extent that the aggregate amount of Restricted Payments made by Parent and Restricted Subsidiaries pursuant to this clause (d) in any fiscal year is less than the amount set forth above, 100% of the amount of such difference may be carried forward and used to make such Restricted Payments pursuant to this clause (d) in the next two succeeding fiscal years (provided, that any such amount carried forward shall be deemed to be used to make such Restricted Payments in any fiscal year after the amount set forth above for such fiscal year shall be deemed to be used to make such Restricted Payments for such fiscal year;

(e) Restricted Payments made (i) in respect of working capital adjustments or purchase price adjustments pursuant to any Permitted Acquisition or other permitted Investments (other than pursuant to Section 10.2.2(x)) and (ii) to satisfy indemnity and other similar obligations under the Permitted Acquisitions or other permitted Investments;

(f) Parent may make Restricted Payments consisting of Equity Interests in any Unrestricted Subsidiary, whether pursuant to a distribution, dividend or any other transaction not prohibited hereunder;

(g) Restricted Payments in respect of transactions related to (i) fundamental changes permitted under Section 10.2.4 and (ii) Investments permitted under Section 10.2.5; and

(h) additional Restricted Payments subject to the satisfaction of the Payment Conditions in connection therewith.

10.2.7

(a)

Change in Nature of Business; Organization Documents.

Parent shall not, nor shall Parent permit any Restricted Subsidiary to,

directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by Parent and Restricted Subsidiaries on the Closing Date or any business reasonably related, complementary, synergistic or ancillary thereto or reasonable extensions thereof.

(b) Parent shall not, nor shall Parent permit any Restricted Subsidiary to, amend, restate, supplement or otherwise modify to, or waive of any of its rights under, its Organization Documents to the extent any of the foregoing could reasonably be expected to be material or adverse to Lenders (in their capacities as such).

10.2.8 Transactions with Affiliates. Parent shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into any transaction of any kind with any of its Affiliates, whether or not in the ordinary course of business, other than (a) transactions between or among Loan Parties or any entity that becomes a Loan Party as a result of such transaction and transactions between or among Restricted Subsidiaries that are not Loan Parties,

(b) on terms (taken as a whole) substantially not less favorable to Parent or such Restricted Subsidiary as would be obtainable by Parent or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (c) the Transactions and the payment of fees and expenses (including Transaction Expenses) as part of or in connection with the Transactions, (d) the issuance of Equity Interests or equity based awards to any officer, director, employee or consultant of Parent or any of Restricted Subsidiaries in the ordinary course of business, (e) Investments made pursuant to Section 10.2.2, Debt incurred pursuant to Section 10.2.3, Dispositions made pursuant to Section 10.2.5(c)(i)(y) and Restricted Payments permitted under Section 10.2.6, (f) customary employment, consulting and severance arrangements between Parent and Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and similar arrangements in the ordinary course of business, (h) the payment of customary fees and reasonable out of pocket costs to, and customary indemnities provided on behalf of, directors, officers, employees and consultants of Parent and Restricted

Subsidiaries in the ordinary course of business, (i) any customary transaction in connection with a Receivables Facility, (j) transactions pursuant to registration rights agreements and similar arrangements, (k) transactions in which Parent or any Restricted Subsidiary, as the case may be, delivers to Agent a letter from an independent financial advisor stating that such transaction is fair to Parent or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) of this Section 10.2.8, and (l) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 10.2.8 or any amendment thereto to the extent such an amendment (taken as a whole) is not adverse to Lenders in any material respect.

10.2.9 Burdensome Agreements. Parent shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into or permit to exist any Contractual Obligation (other than (i) this Agreement or any other Loan Document ~~or~~, (ii) any Term Debt Documents, or documents governing any Term Refinancing Debt ~~or~~, (iii) any UST Tranche A Facility Documentation or documents governing any UST Tranche A Refinancing Debt, (iv) any UST Tranche B Facility Documentation or documents governing any UST Tranche B Refinancing Debt, or (v) any Permitted Refinancing thereof (i) through (iv) that limits the ability of (a) any Restricted Subsidiary that is not a Loan Party to make Restricted Payments to any Loan Party or to make or repay loans or advances to or otherwise transfer assets to or make Investments in any Loan Party or (b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person to secure the Obligations; provided, that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which (i) (x) exist on the Closing Date and (to the extent not otherwise permitted by this Section 10.2.9) are listed on Schedule 10.2.9 hereto and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Debt, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Debt so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation in any material respect (as determined in good faith by Administrative Borrower), (ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such Contractual Obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary, (iii) represent Debt of a Restricted Subsidiary which is not a Loan Party which is permitted by Section 10.2.3, (iv) arise in connection with any Disposition permitted by Section 10.2.4 or 10.2.5 and relate solely to the assets or Person subject to such Disposition, (v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures or other non-wholly owned Subsidiaries permitted under Section 10.2.2 and applicable solely to such joint venture or non-wholly owned Subsidiaries and are entered into in the ordinary course of business, (vi) are negative pledges and restrictions on Liens in favor of any holder of Debt (other than any Junior Financing) permitted under Section 10.2.3 but solely to the extent any negative pledge relates to the property financed by such Debt, (vii) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto, (viii) comprise restrictions imposed by any agreement governing secured Debt permitted pursuant to Section 10.2.3 to the extent that such restrictions apply only to the property or assets securing such Debt, (ix) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of Parent or any Restricted Subsidiary entered into in the ordinary course of business, (x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (xi) are customary restrictions contained in the Term Debt Documents, the UST Tranche A Facility Documentation and the UST Tranche B Facility

Documentation, (xii) arise in connection with cash or other deposits permitted under Sections 10.2.1 and 10.2.2 and limited to such cash or deposit, (xiii) are customary restrictions set forth in the documentation governing any Receivables Facility covering the Receivables Assets related thereto, (xiv) comprise restrictions imposed by any agreement governing Debt entered into on or after the Closing Date and permitted under Section 10.2.3 if the restrictions contained in any such agreement taken as a whole (a) are not materially less favorable to Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by Parent) or (b) either (I) Parent determines at the time of entry into such agreement or instrument that such encumbrances or restrictions will not adversely affect, in any material respect, Borrowers' ability to make principal or interest payments required hereunder or (II) such encumbrance or restriction applies only during the continuance of a default relating to such agreement or instrument.

10.2.10 Financial Covenant. At all times on or after March 31, 2014 during a Financial Covenant Trigger Period, Parent and Restricted Subsidiaries, on a consolidated basis, shall not permit the Consolidated Fixed Charge Coverage Ratio to be less than 1.10 to 1.00 tested

(x) immediately upon the occurrence of a Financial Covenant Trigger Event as of the last day of the most recent Fiscal Quarter for which financial statements have been delivered pursuant to Section 10.1.1 (or, in the event of the occurrence of a Financial Covenant Trigger Event prior to delivery of the financial statements for the Fiscal Quarter ended March 31, 2014, as of December 31, 2013), and (y) thereafter, as of the last day of each Fiscal Quarter, in each case calculated for the immediately preceding twelve Fiscal Months.

10.2.11 Capital Expenditures. ~~Parent and Restricted Subsidiaries shall not make Capital Expenditures during any period set forth below in excess of the amount set forth below for such period:~~

<u>Calendar Year</u>	<u>Amount</u>
2014	\$200,000,000
2015	\$200,000,000
2016	\$200,000,000
2017	\$200,000,000
2018	\$200,000,000

~~The amount of permitted Capital Expenditures set forth above in respect of any Fiscal Year commencing with the Fiscal Year ending on December 31, 2015, shall be increased (but not decreased) by (a) the amount of unused permitted Capital Expenditures for the immediately preceding Fiscal Year less (b) the amount (if any) equal to unused Capital Expenditures carried forward to such preceding Fiscal Year. The amount of permitted Capital Expenditures set forth above in respect of any Fiscal Year may at the option of Administrative Borrower be increased by the amount of Capital Expenditures scheduled to be available for the next succeeding year, with a corresponding reduction in the amount of permitted Capital Expenditures for such next succeeding year. In no event shall Parent or Restricted Subsidiaries permit the aggregate amount of Capital Expenditures during all periods set forth above to exceed the aggregate amount of permitted Capital Expenditures during all such periods as a result of the carry-forward and carry-back provisions set forth in the two immediately preceding sentences and/or the unlimited amount subject to meeting Payment Conditions when such Capital Expenditures are incurred.~~

10.2.11 ~~Notwithstanding the foregoing, Parent and Restricted Subsidiaries may make additional Capital Expenditures subject to the satisfaction of the Payment Conditions.~~ [Reserved].

10.2.12 Fiscal Year. Neither Parent nor any Restricted Subsidiary shall make any change in its Fiscal Year or Fiscal Quarters (it being understood that Parent's Fiscal Year ends on December 31 of each year, and that each of the first three Fiscal Quarters of each Fiscal Year of Parent ends on the March 31, June 30 and September 30, respectively); provided, however, that Parent may on its own behalf and on behalf of Restricted Subsidiaries, upon written notice to Agent, change its and Restricted Subsidiaries' Fiscal Year and Fiscal Quarters to any other Fiscal Year (and any other Fiscal Quarters), in which case, Parent and Agent will, and are hereby authorized by Lenders to, make any adjustments to this Agreement that are necessary to reflect such changes.

10.2.13 Prepayments, Etc. of Debt.

(a) Parent shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, (x) voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled interest shall be permitted unless such payments violate any subordination terms of any Junior Financing Documentation) any Permitted Junior Debt, Term Debt, Term Refinancing Debt, UST Tranche A Facility Indebtedness, UST Tranche A Refinancing Debt, UST Tranche B Facility Indebtedness, UST Tranche B Refinancing Debt, Specified Pension Fund Obligations or any Permitted Refinancing of any of the foregoing, or (y) prepay the Term Debt ~~or Term, Term Refinancing Debt, UST Tranche A Facility Indebtedness, UST Tranche A Refinancing Debt, UST Tranche B Facility Indebtedness, UST Tranche B Refinancing Debt~~ out of excess cash flow (or an equivalent terms) in accordance with the terms thereof, or (z) make any payment in violation of any subordination terms of any Junior Financing Documentation except (i) any Permitted Refinancing permitted in respect thereof, (ii) the conversion of any such Debt (or any Permitted Refinancing thereof) to Equity Interests (other than Disqualified Equity Interests unless such Disqualified Equity Interests would be permitted by Section 10.2.3) of Parent, (iii) the prepayment of Debt of Parent or any Restricted Subsidiary to Parent or any Restricted Subsidiary to the extent not prohibited by applicable subordination provisions, (iv) prepayments, redemptions, purchases, defeasances, other payments and satisfaction from the proceeds of equity issuances, (v) AHYDO catch-up payments, (vi) any payment permitted to be made pursuant to Section 10.2.6(i) if it were a Restricted Payment, and (vii) other prepayments, redemptions, purchases, defeasances and other payments in respect of Debt subject to the satisfaction of the Debt Repayment Conditions in connection therewith. For greater certainty, nothing in this Section 10.2.13(a) or elsewhere in this Agreement shall limit or restrict the ability of Parent or any Restricted Subsidiary to prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Existing Series A Notes or Existing Series B Notes or any Debt listed on Schedule 10.2.3(b), in each case that remain outstanding after the consummation of the Recapitalization Transactions and the other Transactions on the Closing Date or (ii) any ordinary course obligations that were deferred, partially paid, postponed or otherwise remaining outstanding as of the Amendment No. 6 Effective Date and permitted pursuant to Section 10.2.3(ff).

(b) (i) Parent shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, amend, modify, change, terminate or release in any manner materially adverse to the interests of Lenders any term or condition of any Junior Financing Documentation (or any Permitted Refinancing thereof) if the effect thereof would be to cause such Junior Financing to no longer constitute Junior Financing without the consent of Agent (which consent shall not be unreasonably withheld, conditioned or delayed).

(ii) Parent shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, amend, modify, change, terminate or release in any manner materially adverse to the interests of the Lenders any term or condition of the UST Tranche A Facility, indebtedness or the UST Tranche B Facility, indebtedness (it being understood and agreed that any amendment to reduce the commitments for the UST Tranche A Facility under the UST Tranche A Facility Credit Agreement to an amount less than \$300,000,000 and any amendment to increase the commitments for the UST Tranche B Facility under the UST Tranche B Credit Agreement to an amount in excess of \$400,000,000 shall be deemed to be materially adverse to the interests of the Lenders).

## SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

**11.1 Events of Default.** Each of the following shall be an "Event of Default" hereunder, if the same shall occur for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) Any Loan Party fails to pay (i) when and as required to be paid herein or in any other Loan Document, any amount of principal of any Loan, (ii) within five (5) Business Days after the same becomes due, any interest on any Loan, or (iii) within ten (10) days after the same becomes due, any other amount payable hereunder or with respect to any other Loan Document;

(b) Any representation or warranty made or deemed made or other written statement of any Loan Party made in connection with any Loan Documents is incorrect or misleading in any material respect when given;

(c) Any Loan Party breaches or fails to perform any covenant contained in Sections 7.2, 8.1, 10.1.3(a), 10.1.5 (solely as it relates to the maintenance of existence) or 10.2;

(d) Any Loan Party breaches or fails to perform any covenant contained in any Loan Document (and not specified in clause (c) above), and such breach or failure is not cured within thirty (30) days (or (x) three (3) Business Days with respect to a breach or failure under Section 8.2.4 or 8.3, or (y) five (5) Business Days with respect to a breach or failure under Section 10.1.1 or 10.1.2(a)) after a Responsible Officer of such Loan Party receives notice thereof from Agent, whichever is sooner;

(e) Any Guarantor repudiates, revokes or attempts to revoke in writing the Guaranty (other than in accordance with its terms); any Loan Party denies or contests in writing the validity or enforceability of the Loan Documents or the Loans, or the perfection or priority of

any Lien granted to Agent; or Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by Agent and Lenders);

(f) (1) Any Loan Party or any Restricted Subsidiary (i) fails to make any payment after the applicable grace period with respect thereto, if any, (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any other Debt (other than Debt hereunder) having an outstanding aggregate principal amount of not less than the Threshold Amount or (ii) fails to observe or perform any other agreement or condition relating to any such Debt, or any other event occurs (other than, with respect to Debt consisting of swap contracts, termination events or equivalent events pursuant to the terms of such swap contracts and not as a result of any other default thereunder by any Loan Party), after all grace periods having expired and all required notices having been given, the effect of which default or other event is to cause, or to permit the holder or holders of such Debt (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, after all grace periods having expired and all required notices having been given, such Debt to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Debt to be made, prior to its stated maturity;

(2) the UST Tranche A Agent or the Lenders under (and as defined in) under UST Tranche A Facility Documentation shall fail to honor request for borrowing or release of proceeds from any UST Tranche A Controlled Account (as defined in the UST Tranche A Credit Agreement as in effect on the date hereof) in each case in excess of \$25,000,000 and such failure continues for ten (10) Business Days; or

(3) the UST Tranche B Agent or the Lenders under (and as defined in) under UST Tranche B Facility Documentation shall fail to honor request for borrowing or release of proceeds from any UST Tranche B Controlled Account (as defined in the UST Tranche A Credit Agreement as in effect on the date hereof) in each case in excess of \$25,000,000 and such failure continues for ten (10) Business Days; or

(g) One or more final judgments, orders or decrees for the payment of money is entered against a Loan Party in an amount that exceeds, individually or cumulatively with all unsatisfied judgments or orders against all Loan Parties, the Threshold Amount (to the extent not covered by independent third-party insurance or indemnity and such insurer or indemnitor has not denied coverage thereof), unless a stay of enforcement of such judgment or order is in effect, by reason of a pending appeal or otherwise, unless such judgment is vacated, discharged or satisfied in full, in each case within sixty (60) consecutive days;

(h) Except as otherwise permitted hereunder, Parent and Restricted Subsidiaries (or any one of them) is enjoined, restrained or in any way prevented by any Governmental Authority from conducting any material part of the business of Parent and Restricted Subsidiaries (taken as a whole) or there is a cessation of any material part of the business of Parent and Restricted Subsidiaries (taken as a whole) for a material period of time;

(i) Any Loan Party agrees to or commences any liquidation, dissolution or winding up of its affairs, except to the extent otherwise permitted under this Agreement; or Loan Parties on a consolidated basis cease to be Solvent;

(j) (i) Any Insolvency Proceeding is commenced by any Loan Party; (ii) an Insolvency Proceeding is commenced against any Loan Party and such Loan Party consents to the institution of the proceeding against it, the petition commencing the proceeding is not timely controverted by such Loan Party, such petition is not dismissed within sixty (60) consecutive days after its filing, or an order for relief is entered in the proceeding; a trustee (including an interim trustee) is appointed to take possession of any substantial Property of or to operate any of the business of any Loan Party and such appointment continues undischarged or unstayed for sixty (60) days; or (iii) any Loan Party makes an offer of settlement, extension or composition to its unsecured creditors generally;

(k) an ERISA Event occurs that could reasonably be expected to result in a Material Adverse Effect;

(l) a Change of Control occurs;

(m) any security interest and Lien purported to be created by this Agreement or any Security Document shall cease to be in full force and effect, or shall cease to give Agent, for the benefit of Lenders, the Liens, rights, powers and privileges purported to be created and granted under such Security Documents (including a perfected first priority security interest in and Lien on all of the Collateral thereunder (except as otherwise expressly provided in this Agreement or in such Security Document and except to the extent such failure to be in full force and effect, or loss of rights, powers and privileges, results from the failure of Agent to maintain possession of Collateral actually delivered to it and pledged under the Security Documents or to file UCC amendments relating to a Loan Party's change of name or jurisdiction of formation (solely to the extent that a Loan Party provides Agent written notice thereof in accordance with the Loan Documents) and continuation statements) in favor of Agent, or shall be asserted in writing by Borrower or any other Borrower not to be a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in or Lien on the Collateral covered thereby;

(n) any Loan Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by any Loan Party or any Affiliate thereof, or by any Governmental Authority, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Loan Party shall repudiate or deny any portion of its liability or obligation for the Obligations in writing;

(o) the subordination and intercreditor provisions of the documents evidencing or governing any Term Debt, Term Refinancing Debt or Junior Financing (the "Intercreditor 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 Term Debt, Term Refinancing Debt or Junior Financing (other than expressly in accordance with the terms hereof or thereof); or (ii) any Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Intercreditor Provisions, (B) that the Intercreditor Provisions exist for the benefit of the Secured Parties, or (C) that all payments of principal of or premium and interest on the applicable Term Debt, Term Refinancing Debt or

Junior Financing or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Intercreditor Provisions; or

(p) The IBT Agreement, as modified and extended through the IBT Extension Agreement, shall terminate or cease to be legally valid and in full force and effect.

**11.2 Remedies upon Default.** If an Event of Default described in Section 11.1(j) occurs with respect to any Loan Party, then to the extent permitted by Applicable Law, all Obligations (other than Bank Product Debt and obligations of Loan Parties under Hedging Agreements) shall become automatically due and payable and all Commitments shall terminate, without any action by Agent or notice of any kind. In addition, if any Event of Default exists, Agent may (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:

(a) declare any 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 Loan Parties to the fullest extent permitted by law;

(b) terminate, reduce or condition any Commitment, or make any adjustment to the Borrowing Base;

(c) require Loan Parties to Cash Collateralize LC Obligations to the extent required by the definition of Cash Collateralization, and, if Loan Parties 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) subject to the Term Debt Intercreditor Agreement, 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. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Loan Parties to assemble Collateral, at Loan Parties' expense, and make it available to Agent at a mutually convenient place designated by Agent; (iii) peaceably enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by a Loan Party, Loan Parties 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, in its discretion, deems advisable. Each Loan Party agrees that ten (10) days' notice of any proposed sale or other disposition of Collateral by Agent shall be reasonable. Agent shall have the right to conduct such sales on any Loan Party's premises, without charge, and such sales may be adjourned from time to time in accordance with Applicable Law. Subject to the Term Debt Intercreditor Agreement, Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may set off the amount of such price against the Obligations.

**11.3 License.** Upon the occurrence and during the continuance of an Event of Default, subject to the Term Debt Intercreditor Agreement, Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property owned by Loan Parties (including any software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property), solely for the purpose of exercising Loan Parties' other rights or remedies with respect to, any Collateral.

**11.4 Setoff.** Agent, Lenders and their Affiliates are each authorized by Loan Parties at any time during an Event of Default with the consent of Agent, without notice to Loan Parties, to set off and to appropriate and apply any deposits (general or special (other than deposits in Excluded Deposit Accounts)), funds, claims, obligations, liabilities or other Debt at any time held or owing by Agent, any Lender or any such Affiliate to or for the account of any Loan Party against any Obligations then due.

**11.5 Remedies Cumulative; No Waiver; Commercial Reasonableness.**

**11.5.1 Cumulative Rights.** All covenants, conditions, provisions, warranties, guaranties, indemnities and other undertakings of Loan Parties contained in the Loan Documents are cumulative and not in derogation or substitution of each other. In particular, the rights and remedies of Agent and Lenders are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and shall not be exclusive of any other rights or remedies that Agent and Lenders may have, whether under any agreement, by law, at equity or otherwise.

**11.5.2 Waivers.** The failure or delay of Agent or any Lender to require strict performance by Loan Parties with any terms of the Loan Documents, or to exercise any rights or remedies with respect to Collateral or otherwise, shall not operate as a waiver thereof nor as establishment of a course of dealing. All rights and remedies shall continue in full force and effect until Full Payment of the Obligations. No modification of any terms of any Loan Documents (including any waiver thereof) shall be effective, unless such modification is made in accordance with Section 15.1. No waiver of any Default or Event of Default shall constitute a waiver of any other Default or Event of Default that may exist at such time, unless expressly stated. If Agent or any Lender accepts performance by any Loan Party under any Loan Documents in a manner other than that specified therein, or during any Default or Event of Default, or if Agent or any Lender shall delay or exercise any right or remedy under any Loan Documents, such acceptance, delay or exercise shall not operate to waive any Default or Event of Default nor to preclude exercise of any other right or remedy. It is expressly acknowledged by Loan Parties that any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date other than in respect of the covenant in Section 10.2.10.

**11.5.3 Commercial Reasonableness.** To the extent that Applicable Law imposes duties on Agent or any Lender to exercise remedies in a commercially reasonable manner (which duties cannot be waived under such law), each Loan Party acknowledges and agrees that it is not commercially unreasonable for Agent or any Lender (a) to fail to incur expenses reasonably deemed significant by Agent or any Lender to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for

disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain consents of any Governmental Authority or other third party for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors, secondary obligors or other persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as any Loan Party, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure Agent or Lenders against risks of loss, collection or disposition of Collateral or to provide to Agent or Lenders a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Agent in the collection or disposition of any of the Collateral. Each Loan Party acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by Agent or any Lender would not be commercially unreasonable in the exercise by Agent or any Lender of remedies against the Collateral and that other actions or omissions by Agent or any Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this Section. Without limitation of the foregoing, nothing contained in this Section shall be construed to grant any rights to any Loan Party or to impose any duties on Agent or Lenders that would not have been granted or imposed by this Agreement or by Applicable Law in the absence of this Section.

## SECTION 12.

### AGENT

#### 12.1 Appointment, Authority and Duties of Agent.

12.1.1 Appointment and Authority. Each Lender appoints and designates RBS as Agent hereunder. Agent may, and each Lender 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 Lenders. Each Lender agrees that any action taken by Agent or Required Lenders in accordance with the provisions of the Loan Documents, and the exercise by Agent or Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized and binding upon all Lenders. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from any Loan Party or other Person; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal

with Collateral; and (e) exercise all rights and remedies given to Agent with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. The duties of Agent shall be ministerial and administrative in nature, and Agent shall not have a fiduciary relationship with any Lender, Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto. Agent, on behalf of Lenders, shall be authorized to determine whether any Accounts constitute Eligible Accounts or whether to impose or release any component of the Availability Reserve in its Permitted Discretion, and to exercise its Permitted Discretion in connection therewith, which determinations and judgments, if exercised in good faith, shall exonerate Agent from liability to any Lender or other Person for any error in judgment.

12.12 Duties. Agent shall not have any duties except those expressly set forth in the Loan Documents, nor be required to initiate or conduct any Enforcement Action except to the extent directed to do so by Required Lenders while an Event of Default exists. The conferral upon Agent of any right shall not imply a duty on Agent's part to exercise such right, unless instructed to do so by Required Lenders in accordance with this Agreement.

12.13 Agent Professionals. Agent may perform its respective duties through agents and employees. Agent 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 shall not be responsible for the negligence (other than gross negligence) or misconduct (other than willful misconduct) of any agents, employees or Agent Professionals selected by it with reasonable care.

12.14 Instructions of Required Lenders. The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. Agent may request instructions from Required Lenders with respect to any act (including the failure to act) in connection with any Loan Documents, and may seek assurances to its satisfaction from Lenders of their indemnification obligations under Section 12.6 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 Lenders, and no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting in accordance with the instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of all Lenders shall be required in the circumstances described in Section 15.1.1, and in no event shall Required Lenders, without the prior written consent of each Lender, direct Agent to accelerate and demand payment of Loans held by one Lender without accelerating and demanding payment of all other Loans, nor to terminate the Commitments of one Lender without terminating the Commitments of all Lenders. In no event shall Agent be required to take any action that, in its opinion, is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to personal liability.

## 12.2 **Agreements Regarding Collateral and Field Examination Reports.**

12.2.1 Lien Releases; Care of Collateral. Lenders authorize Agent (a) to release any Lien with respect to any Collateral (b) upon Full Payment of the Obligations in accordance with

Section 4.6, (b) to release any Lien with respect to any Collateral that is the subject of a Disposition permitted hereunder, (c) to release any Lien with respect to any Collateral subject to a Lien permitted hereunder and entitled to priority over Agent's Liens (to the extent required by the terms of the obligations secured by such Liens), (d) to release any Lien with respect to any Collateral that constitutes Excluded Property, ~~(e)~~ (including for the avoidance of any doubt, any Lien on any Material Real Property located in a special flood hazard area), (e) in the case of Collateral subject to a Lien that is owned by a Guarantor (or Equity Interests issued by such Guarantor), to release any Lien with respect to any Collateral automatically upon the release of such Guarantor from its obligations under the Guaranty as permitted hereunder, (f) to release or subordinate any Lien (or other easement or encumbrance) on any property granted to or held by Agent under any Loan Document to the holder of any Lien on such property permitted hereunder (to the extent required by the terms of the obligations secured by such Liens (or other easements or encumbrances) and (g) in all other cases, the release ~~was~~ approved, ratified or consented to by Required Lenders or, in the case of a release of substantially all of the Collateral, all Lenders (except as otherwise permitted). In connection with any release pursuant to the immediately preceding sentence of this Section 12.2.1, Agent shall promptly (after reasonable advance notice) execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such release. Agent shall have no obligation whatsoever to any Lenders to assure that any Collateral exists or is owned by a Loan Party, or is cared for, protected, insured or encumbered, nor to assure that Agent'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.

12.2.2 Possession of Collateral. Agent and Lenders appoint each other Lender as agent for the purpose of perfecting Liens (for the benefit of Secured Parties) in any Collateral that, under the UCC or other Applicable Law, can be perfected by possession or control. If any Lender obtains possession or control of any such Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with such Collateral in accordance with Agent's instructions.

12.2.3 Reports. Agent shall promptly, upon receipt thereof, forward to each Lender copies of the results of any field audit or other examination or any appraisal prepared by or on behalf of Agent with respect to any Loan Party or Collateral ("Report"). Each Lender agrees (a) that neither RBS 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; (b) 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 Obligations or the Collateral and will rely significantly upon Loan Parties' books and records as well as upon representations of Loan Parties' officers and employees; and (c) to keep all Reports confidential and strictly for such Lender's internal use, and not to distribute any Report (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants) or use any Report in any manner other than administration of the Loans and other Obligations. Each Lender agrees to 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, as well as any Claims arising in connection with any third parties that obtain all or any part of a Report through such Lender.

**12.3 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, telegram, teletype or e-mail) believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and upon the advice and statements of Agent Professionals.

**12.4 Action Upon Default.** Agent shall not be deemed to have knowledge of any Default or Event of Default unless it has received written notice from a Lender or a Loan Party specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default or Event of Default, it shall promptly notify Agent and the other Lenders thereof in writing. Each Lender agrees that, except with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate its 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. Notwithstanding the foregoing, however, a Lender may take action to preserve or enforce its rights against a Loan Party where a deadline or limitation period is applicable that would, absent such action, bar enforcement of Obligations held by such Lender, including the filing of proofs of claim in an Insolvency Proceeding.

**12.5 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 5.7.1, as applicable, such Lender shall forthwith purchase from Agent, Issuing Bank and the other 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 5.7.1, 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.

**12.6 Indemnification of Agent Indemnitees.**

**1261** ~~Indemnification~~ EACH LENDER SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY LOAN PARTIES (BUT WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS OF LOAN PARTIES UNDER ANY LOAN DOCUMENTS), ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY AGENT INDEMNITEE, EXCEPT TO THE EXTENT SUCH CLAIMS ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION TO RESULT FROM AGENT INDEMNITEE'S GROSS NEGLIGENCE OF WILFUL MISCONDUCT. If Agent is sued by any receiver, trustee in bankruptcy, debtor-in-possession or other Person for any alleged preference from a Loan Party 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, as applicable, by Lenders to the extent of each Lender's Pro Rata share.

**1262** ~~Proceedings.~~ Without limiting the generality of the foregoing, if at any time (whether prior to or after the Commitment Termination Date) any proceeding is brought against any Agent Indemnitees by a Loan Party, or any Person claiming through a Loan Party, to recover

damages for any act taken or omitted by Agent in connection with any Obligations, Collateral, Loan Documents or matters relating thereto, or otherwise to obtain any other relief of any kind on account of any transaction relating to any Loan Documents, each Lender agrees to indemnify and hold harmless Agent Indemnitees with respect thereto and to pay to Agent Indemnitees such Lender's Pro Rata share of any amount that any Agent Indemnitee is required to pay under any judgment or other order entered in such proceeding or by reason of any settlement, including all interest, costs and expenses (including attorneys' fees) incurred in defending same, except to the extent such claims are determined by a court of competent jurisdiction to result from Agent Indemnitee's gross negligence or willful misconduct. In Agent's Permitted Discretion, Agent may reserve for any such proceeding, and may satisfy any judgment, order or settlement, from proceeds of Collateral prior to making any distributions of Collateral proceeds to Lenders.

**12.7 Limitation on Responsibilities of Agent.** Agent shall not be liable to Lenders for any action taken or omitted to be taken under the Loan Documents, except for losses to the extent caused by Agent's, as applicable, gross negligence or willful misconduct. Agent do not assume any responsibility for any failure or delay in performance or any breach by any Loan Party or Lender of any obligations under the Loan Documents. Agent does not make to Lenders any express or implied warranty, representation or guarantee with respect to any Obligations, Collateral, Loan Documents or Loan Party. No Agent Indemnitee shall be responsible to Lenders for any recitals, statements, information, representations or warranties contained in any Loan Documents; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectibility, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectibility of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Loan Party or Account Debtor. No Agent Indemnitee shall have any obligation to any Lender to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any Loan Party of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

**12.8 Successor Agent and Co-Agents.**

**12.8.1** ~~Resignation; Successor Agent.~~ Subject to the appointment and acceptance of a successor Agent as provided below, Agent may resign at any time by giving at least thirty (30) days written notice thereof to Lenders and Administrative Borrower (the date of resignation elected by Agent subject to the notice requirements set forth herein, the "Resignation Effective Date"). Upon receipt of such notice, Required Lenders shall have the right to appoint a successor Agent which shall be (a) a Lender or an Affiliate of a Lender; or (b) a commercial bank that is organized under the laws of the United States or any state or district thereof, has a combined capital surplus of at least \$200,000,000 and (provided no Event of Default exists under Sections 11.1(a) or (j)) is reasonably acceptable to Administrative Borrower. If no successor agent is appointed prior to the effective date of the resignation of Agent, then Agent may (but shall not be obligated to) appoint a successor agent from among Lenders which successor (provided no Event of Default exists under Sections 11.1(a) or (j)) shall be reasonably acceptable to Administrative Borrower. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date. Upon acceptance by a successor Agent of an appointment to serve as Agent 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 the benefits of the indemnification expressly set forth in Sections 12.6 and 15.2. Notwithstanding any Agent's resignation, the provisions of this Section 12 shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while Agent and such Agent shall continue to be subject to the confidentiality obligations set forth in Section 15.11. Any successor by merger or acquisition of the stock or assets of RBS shall continue to be Agent hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above.

12.82 ~~Separate Collateral Agent.~~ It is the intent of the parties that there shall be no violation of any Applicable Law denying or restricting the right of financial institutions to transact business in any jurisdiction. If Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any Applicable Law, Agent may appoint an additional Person who is not so limited, as a separate collateral agent or co-collateral agent; provided, that such Person shall not be a Disqualified Lender. If Agent so appoints a collateral agent or, each right and remedy intended to be available to Agent under the Loan Documents shall also be vested in such separate agent. Every covenant and obligation necessary to the exercise thereof by such agent shall run to and be enforceable by it as well as Agent. Lenders shall execute and deliver such documents as Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent shall die or dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

12.9 **Due Diligence and Non-Reliance.** Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any Lender, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Loan Party and its own decision to enter into this Agreement and to fund Loans and participate in LC Obligations hereunder. Each Lender has made such inquiries concerning the Loan Documents, the Collateral and each Loan Party as such Lender feels necessary. Each Lender further acknowledges and agrees that the other Lenders and Agent have made no representations or warranties concerning any Loan Party, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Lender will, independently and without reliance upon the other Lenders or Agent, 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 Lender with any notices, reports or certificates furnished to Agent by any Loan Party or any credit or other information concerning the affairs, financial condition, business or Properties of any Loan Party (or any of its Affiliates) which may come into possession of Agent, or any of its respective Affiliates.

12.10 **Replacement of Certain Lenders.** In the event that any Lender (a) fails to fund its Pro Rata share of any Loan or LC Obligation hereunder, and such failure is not cured within two (2) Business Days or such Lender is otherwise a Defaulting Lender, (b) defaults in

performing any of its obligations under the Loan Documents, (c) fails to give its consent to any amendment, waiver or action for which consent of all directly and adversely affected Lenders, all Lenders or Supermajority Lenders was required and Required Lenders consented, then, in addition to any other rights and remedies that any Person may have, of the then Administrative Borrower, may require such Lender to assign all of its rights and obligations under the Loan Documents to Eligible Assignee(s) pursuant to appropriate Assignment and Acceptance(s). Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment and Acceptance if Lender fails to execute same. Such Lender shall be entitled to receive, in cash, concurrently with any such assignment, all amounts owed to it under the Loan Documents, including all principal, interest and fees through the date of assignment (but excluding any prepayment charge).

**12.11 Remittance of Payments and Collections.**

12.11.1 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 11:00 a.m. on a Business Day, payment shall be made by Lender not later than 2:00 p.m. on such day, and if request is made after 11:00 a.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Agent to any Lender 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 Lender under the Loan Documents.

12.11.2 Failure to Pay. If any Lender 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 at the rate determined by Agent as customary in the banking industry for interbank compensation. In no event shall Loan Parties be entitled to receive credit for any interest paid by a Lender to Agent.

12.11.3 Recovery of Payments. If Agent pays any amount to a Lender in the expectation that a related payment will be received by Agent from a Loan Party and such related payment is not received, then Agent may recover such amount from each Lender that received it. If Agent determines at any time that an amount received under any Loan Document must be returned to a Loan Party or paid to any other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Agent shall not be required to distribute such amount to any Lender. If any amounts received and applied by Agent to any Obligations are later required to be returned by Agent pursuant to Applicable Law, Lenders shall pay to Agent, on demand, such Lender's Pro Rata share of the amounts required to be returned.

**12.12 Agent in its Individual Capacity.** As a Lender, RBS shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders" or any similar term shall include RBS in its capacity as a Lender. Each of RBS and its Affiliates may accept deposits from, maintain deposits or credit balances for, invest in, lend money to, provide Bank Products to, act as trustee under indentures of, serve as financial or other advisor to, and generally engage in any kind of business with, Loan Party and their Affiliates, as if RBS were any other bank, without any duty to account therefor (including any fees or other consideration received in connection therewith) to the other Lenders. In their

individual capacity, RBS and its Affiliates may receive information regarding Loan Party, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Lender agrees that RBS and its Affiliates shall be under no obligation to provide such information to Lenders, if acquired in such individual capacity and not as Agent hereunder.

**12.13 Agent Titles.** Each Lender, other than RBS, that is designated (on the cover page of this Agreement or otherwise) by RBS as an “Agent” or “Arranger” of any type shall not have any right, power, responsibility or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event be deemed to have any fiduciary relationship with any other Lender.

**12.14 No Third Party Beneficiaries.** Except for Section 12.1.1, Section 12.2.5, Section 12.8, Section 12.10 and this Section 12.14 is an agreement solely among Lenders and Agent, and does not confer any rights or benefits upon Loan Parties or any other Person. As between Loan Parties and Agent, any action that Agent may take under any Loan Documents shall be conclusively presumed to have been authorized and directed by Lenders as herein provided.

### SECTION 13. PARTICIPATIONS

#### BENEFIT OF AGREEMENT; ASSIGNMENTS

**13.1 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Loan Parties, Agent and Lenders and their respective successors and permitted assigns, ~~except that~~, (a) no Loan Party shall have the right to assign its rights or delegate its obligations under any Loan Documents except as permitted hereby, 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.** Any Lender may, in the ordinary course of its business and in accordance with Applicable Law, at any time sell to a financial institution (“Participant”) a participating interest in the rights and obligations of such Lender under any Loan Documents; provided, that no Disqualified Lender shall be permitted to be a Participant. Despite any sale by a Lender of participating interests to a Participant, such Lender’s obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for performance of such obligations, such Lender shall remain the holder of its Loans and Commitments for all purposes, all amounts payable by Loan Parties shall be determined as if such Lender had not sold such participating interests, and Loan Parties 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 that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 5.10 and Section 5.11 unless (x) the Participant

agrees to comply with, and does in fact comply with, Sections 5.10 and 5.11, and (y) Administrative Borrower agrees otherwise in writing that such Participant is so entitled.

13.22 ~~Voting Rights~~ Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of any Loan Documents other than pursuant to Section 15.1.1(c), 15.1.1(d)(ii) or 15.1.1(d)(iv).

13.23 ~~Benefit of Set-Off~~ Loan Parties 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 (without duplication of any amounts that may be set off by such Participant). 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 12.5 as if such Participant were a Lender.

13.24 ~~Participant Register~~ Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrowers, maintain a register on which it enters the name and address of each participant and the principal amounts (and interest thereon) of each participant's interest in the Loans or other Obligations under this Agreement (the "Participant Register"). Notwithstanding any other provision of this Agreement, no sale, grant or other transfer of a participation shall be effective until recorded in the Participant Register. The entries in the Participant Register shall be conclusive and Borrowers, Lenders and Agent 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 notice to the contrary. The Participant Register shall be available for inspection by Agent, any Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice. This Section 13.2.4 shall be construed so that all loans and other indebtedness pursuant to this Agreement are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

### 13.3 Assignments.

13.3.1 ~~Permitted Assignments~~ A Lender may assign to any 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, and so long as no Event of Default under Section 11.1(a) or (j) has occurred or is continuing, Administrative Borrower in their 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 \$10,000,000 (unless otherwise agreed by Agent in its Permitted Discretion); (c) reserved; (d) the parties to each such assignment shall execute and deliver to Agent, for its acceptance and recording, an Assignment and Acceptance; and (e) such assignment shall be recorded in the Register. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to (i) any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board and any

Operating Circular issued by such Federal Reserve Bank or to any central bank having authority over such Lender in accordance with Applicable Law, or (ii) counterparties to swap agreements relating to any Loans; provided, however, that any payment by Loan Parties to the assigning Lender in respect of any Obligations assigned as described in this sentence shall satisfy such Loan Parties' obligations hereunder to the extent of such payment, and no such assignment shall release the assigning Lender from its obligations hereunder. Notwithstanding anything contained in this Agreement to the contrary, no Lender shall need the prior consent of Administrative Borrower or Agent to consolidate with or merge into any other Person or to convey or transfer all or substantially all of its properties and assets to any Person.

13.3.2 **Effect; Effective Date.** Upon delivery to Agent of an assignment notice in the form of Exhibit J and a processing fee of \$3,500, and subject to acceptance and recording thereof by Agent pursuant to Section 13.3.3, such assignment shall become effective as specified in the notice, if it complies with this Section 13.3. From the effective date of such assignment, 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. Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new Notes, as appropriate.

13.3.3 **Register.** Agent, acting solely for this purpose as an agent of Borrowers, shall maintain at Agent's office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans and LC Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and Agent, Borrowers and Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as the owner of the related Commitments and Obligations as set forth next to the name of such Person in the Register, notwithstanding notice to the contrary. The Register shall be available for inspection by any Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. This Section 13.3.3 shall be construed so that all loans and other indebtedness pursuant to this Agreement are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

13.4 **Tax Treatment.** If any interest in a Loan Document is transferred, the transferor Lender shall cause such Transferee, concurrently with the effectiveness of such transfer, to comply with the provisions of Sections 5.10 and 5.11.

13.5 **Representation of Lenders.** Each Lender represents and warrants to each Loan Party, Agent and other Lenders that none of the consideration used by it to fund its Loans or to participate in any other transactions under this Agreement constitutes for any purpose of ERISA or Section 4975 of the Code assets of any "plan" as defined in Section 3(3) of ERISA or Section 4975 of the Code and the interests of such Lender in and under the Loan Documents shall not constitute plan assets under ERISA.

**14.1 Guaranty.** Each Guarantor hereby unconditionally guarantees, as a primary obligor and not merely as a surety, jointly and severally with each other Guarantor when and as due, whether at maturity, by acceleration, by notice of prepayment or otherwise, the Full Payment of the Obligations. Each payment made by any Guarantor pursuant to this Guaranty shall be made in lawful money of the United States in immediately available funds.

**14.2 Waivers.** Each Guarantor hereby absolutely, unconditionally and irrevocably waives, to the maximum extent permitted by law, (a) promptness, diligence, notice of acceptance, notice of presentment of payment and any other notice hereunder, (b) demand of payment, protest, notice of dishonor or nonpayment, notice of the present and future amount of the Obligations and any other notice with respect to the Obligations, (c) any requirement that Agent or any Lender protect, secure, perfect or insure any security interest or Lien or any Property subject thereto or exhaust any right or take any action against any other Loan Party, or any Person or any Collateral, (d) any other action, event or precondition to the enforcement hereof or the performance by each such Guarantor of the Obligations (other than Full Payment of the Obligations), and (e) any defense arising by any lack of capacity or authority or any other defense of any Loan Party or any notice, demand or defense by reason of cessation from any cause of Obligations other than Full Payment of the Obligations by Loan Parties and any defense that any other guarantee or security was or was to be obtained by Agent.

**14.3 No Defense.** No invalidity, irregularity, voidableness, voidness or unenforceability of this Agreement or any Loan Document or any other agreement or instrument relating thereto, or of all or any part of the Obligations or of any collateral security therefor shall affect, impair or be a defense hereunder (except (i) as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and (ii) any defense of payment or performance).

**14.4 Guaranty of Payment.** The Guaranty hereunder is one of payment and performance, not collection, and the obligations of each Guarantor hereunder are independent of the Obligations of the other Loan Parties, and a separate action or actions may be brought and prosecuted against any Guarantor to enforce the express terms and conditions of this Section 14, irrespective of whether any action is brought against any other Loan Party or other Persons or whether any other Loan Party or other Persons are joined in any such action or actions. Each Guarantor waives, to the maximum extent permitted by law, any right to require that any resort be had by Agent or any Lender to any security held for payment of the Obligations or to any balance of any deposit account or credit on the books of any Agent or any Lender in favor of any Loan Party or any other Person. No election to proceed in one form of action or proceedings, or against any Person, or on any Obligations, shall constitute a waiver of Agent's right to proceed in any other form of action or proceeding or against any other Person unless Agent has expressed any such right in writing. Without limiting the generality of the foregoing, no action or proceeding by Agent against any other Loan Party under any document evidencing or securing indebtedness of any such Loan Party to Agent shall diminish the liability of any Guarantor hereunder, except to the extent Agent receives actual payment on account of Obligations by such action or proceeding, notwithstanding the effect of any such election, action or proceeding upon the right of subrogation of any Guarantor in respect of any Loan Party.

**14.5 Liabilities Absolute.** The liability of each Guarantor hereunder shall be absolute, unlimited and unconditional, other than in connection with payment of the Obligations, shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason, including, without limitation, any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any claim, defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any other Obligation or otherwise (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally). Without limiting the generality of the foregoing, the obligations of each Guarantor shall not be discharged or impaired, released, limited or otherwise affected by:

(a) any change in the manner, place or terms of payment or performance, and/or any change or extension of the time of payment or performance of, release, renewal or alteration of, or any new agreements relating to any Obligation, any security therefor, or any liability incurred directly or indirectly in respect thereof, or any rescission of, or amendment, waiver or other modification of, or any consent to departure from, this Agreement or any Loan Document, including any increase in the Obligations resulting from the extension of additional credit to Borrowers or otherwise;

(b) any sale, exchange, release, surrender, loss, abandonment, realization upon any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, all or any of the Obligations, and/or any offset there against, or failure to perfect, or continue the perfection of, any Lien in any such property, or delay in the perfection of any such Lien, or any amendment or waiver of or consent to departure from any other guaranty for all or any of the Obligations;

(c) the failure of Agent or any Lender to assert any claim or demand or to enforce any right or remedy against any Loan Party or any other Person under the provisions of this Agreement or any Loan Document or any Loan Document or instrument executed and delivered in connection herewith or therewith;

(d) any settlement or compromise of any Obligation, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and any subordination of the payment of all or any part thereof to the payment of any obligation (whether due or not) of any Loan Party to creditors of any Loan Party other than any other Loan Party;

(e) any manner of application of Collateral, or proceeds thereof, to all or any of the Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Obligations or any other assets of any Loan Party; and

(f) other than payment of the Obligations, any other agreements or circumstance of any nature whatsoever that may or might in any manner or to any extent vary the risk of any Guarantor, or that might otherwise at law or in equity constitute a defense available to, or a discharge of, the Guaranty hereunder and/or the obligations of any Guarantor, or a defense to, or discharge of, any Loan Party or any other Person or party hereto or the Obligations

or otherwise with respect to the Advances, Letters of Credit or other financial accommodations to Borrowers pursuant to this Agreement and/or the Loan Documents.

**14.6 Waiver of Notice.** Agent shall have the right to do any of the above without notice to or the consent of any Guarantor and each Guarantor expressly waives, to the maximum extent permitted by law, any right to notice of, consent to, knowledge of and participation in any agreements relating to any of the above or any other present or future event relating to Obligations whether under this Agreement or otherwise or any right to challenge or question any of the above.

**14.7 Agent's Discretion.** Upon and during the continuance of an Event of Default, Agent may at any time and from time to time (during the term of this Agreement) without the consent of, or notice to, any Guarantor, and without incurring responsibility to any Guarantor or impairing or releasing the Obligations, apply any sums by whomsoever paid or howsoever realized to any Obligations regardless of what Obligations remain unpaid but otherwise in accordance with the terms of this Agreement.

**14.8 Reinstatement.**

(a) The Guaranty provisions herein contained shall continue to be effective or be reinstated, as the case may be, if claim is ever made upon Agent or any Lender for repayment or recovery of any amount or amounts received by Agent or such Lender in payment or on account of any of the Obligations and Agent or such Lender repays all or part of said amount by reason of any final judgment, decree or order of any court or administrative body having jurisdiction over Agent or such Lender or the respective property of each, or any settlement or compromise of any claim effected by Agent or such Lender with any such claimant (including any Loan Party); and in such event each Guarantor hereby agrees that any such final judgment, decree, order, settlement or compromise or other circumstances shall be binding upon such Guarantor, notwithstanding any revocation hereof or the cancellation of any note or other instrument evidencing any Obligation, and each Guarantor shall be and remain liable to Agent and/or Lenders for the amount so repaid or recovered to the same extent as if such amount had never originally been received by Agent or such Lenders.

(b) Agent shall not be required to marshal any assets in favor of any Guarantor, or against or in payment of Obligations.

(c) No Guarantor shall be entitled to claim against any present or future security held by Agent from any Person for Obligations in priority to or equally with any claim of Agent, or assert any claim for any liability of any Loan Party to any Guarantor in priority to or equally with claims of Agent for Obligations, and no Guarantor shall be entitled to compete with Agent with respect to, or to advance any equal or prior claim to any security held by Agent for Obligations.

(d) If any Loan Party makes any payment to Agent, which payment is wholly or partly subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to any Person under any federal or provincial statute or at common law or under equitable principles, then to the extent of such payment, the Obligation intended to be paid shall

be revived and continued in full force and effect as if the payment had not been made, and the resulting revived Obligation shall continue to be guaranteed, uninterrupted, by each Guarantor hereunder.

(e) All present and future monies payable by any Loan Party to any Guarantor as a result of its Guarantee hereunder, whether arising out of a right of subrogation or otherwise, are collaterally assigned to Agent for its benefit and for the ratable benefit of Lenders as security for such Guarantor's liability to Agent and Lenders hereunder and are postponed and subordinated to Agent's prior right to Full Payment of the Obligations. Except to the extent prohibited otherwise by this Agreement, all monies received by any Guarantor from any Loan Party as a result of its Guarantee hereunder shall be held by such Guarantor for the benefit of Agent on behalf of Secured Parties. This assignment, postponement and subordination shall only terminate upon the Full Payment of the Obligations and this Agreement is irrevocably terminated.

(f) Each Loan Party acknowledges this assignment, postponement and subordination and, except as otherwise set forth herein, agrees to make no payments to any Guarantor on account of its Guarantee of the Obligations hereunder without the prior written consent of Agent. Each Loan Party agrees to give full effect to the provisions hereof, except as permitted hereunder.

**14.9 Action Upon Event of Default.** Upon the occurrence and during the continuance of any Event of Default, Agent at written request of Required Lenders shall, without notice to or demand upon any Loan Party or any other Person, declare any Obligations of such Guarantor hereunder immediately due and payable, and shall be entitled to enforce the Obligations of each Guarantor. Subject to the Term Debt Intercreditor Agreement, each Guarantor agrees that at no time hereafter will any claims (other than those claims referred to in the immediately preceding paragraph) of any Guarantor against any Loan Party (the "Intercompany Claims") be represented by any notes, other negotiable instruments or writings, except and in such event they shall, to the extent such Intercompany Claim exceeds \$5,000,000, either be made payable to Agent (or its bailee), or if payable to any Guarantor, shall promptly be endorsed by such Guarantor to Agent (or its bailee). Each Guarantor agrees that no payment on account of the Intercompany Claims shall be created, received, accepted or retained during the continuance of an Event of Default described in Section 11.1(j) and notice with respect thereto by any Guarantor.

**14.10 Statute of Limitations.** To the extent permitted by Applicable Law, any new promise, whether by payment of principal or interest or otherwise by any Loan Party with respect to any of the Obligations shall, if the statute of limitations in favor of any Guarantor against Agent or Lenders shall have commenced to run, toll the running of such statute of limitations and, if the period of such statute of limitations shall have expired, prevent the operation of such statute of limitations.

**14.11 Reserved.**

**14.12 Guarantor's Investigation.** Each Guarantor acknowledges receipt of a copy of each of this Agreement and the Loan Documents. Each Guarantor has made an independent investigation of Loan Parties and of the financial condition of Loan Parties. Neither Agent nor

any Lender has made, and Agent and Lenders do not hereby make, any representations or warranties as to the income, expense, operation, finances or any other matter or thing affecting any Loan Party nor has Agent or any Lender made any representations or warranties as to the amount or nature of the Obligations of any Loan Party to which this Section 14 applies as specifically herein set forth, nor has Agent or any Lender or any officer, agent or employee of Agent or any Lender or any representative thereof, made any other oral representations, agreements or commitments of any kind or nature, and each Guarantor hereby expressly acknowledges that no such representations or warranties have been made and such Guarantor expressly disclaims reliance on any such representations or warranties.

**14.13 Keepwell.** Each Qualified ECP Loan Party, jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by any other Loan Party hereunder to honor all of such Loan Party's obligations under this Agreement in respect of Swap Obligations (provided, however, that each Qualified ECP Loan Party shall only be liable under this Section 14.13 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 14.13, or otherwise under this Agreement, voidable under Applicable Law, including Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Loan Party under this Section 14.13 shall remain in full force and effect until Full Payment of the Obligations. Each Qualified ECP Loan Party intends that this Section 14.12 constitute, and this Section 14.13 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**14.14 Termination.** The provisions of this Section 14 shall remain in effect until Full Payment of the Obligations and irrevocable termination of the Commitments; provided, that with respect to any Guarantor released pursuant to Section 15.19, the provisions of this Section 14 shall no longer apply to such Guarantor on and after such release.

**14.15 Parallel Debt.** In this Section 14.15, (x) "**Corresponding Liabilities**" means the obligation of a Loan Party, but excluding its Parallel Liability and (y) "**Parallel Liability**" means a Loan Party's undertaking pursuant to this Section 14.15. Each Loan Party irrevocably and unconditionally undertakes to pay to the Agent an amount equal to the aggregate amount of the Corresponding Liabilities (as these may exist from time to time). For purposes of this Section 14.15: (a) a Loan Party's Parallel Liability is due and payable at the same time as, for the same amount of and in the same currency as its Corresponding Liabilities; (b) a Loan Party's Parallel Liability is decreased to the extent that its Corresponding Liabilities have been irrevocably paid or discharged and its Corresponding Liabilities are decreased to the extent that its Parallel Liability has been irrevocably paid or discharged; (c) a Loan Party's Parallel Liability is independent and separate from, and without prejudice to, its Corresponding Liabilities, and constitutes a single obligation of that Loan Party to the Agent (even though that Loan Party may owe more than one separate claim of the Agent to receive payment of the Parallel Liability (in its capacity as the independent and separate creditor of that Parallel Liability and not as a co-creditor in respect of the Corresponding Liabilities); and (d) for purposes of this Section 14.15, the Agent acts in its own name and not as agent, representative or trustee of the Secured Parties and accordingly holds neither its claim resulting from Parallel Liability nor any Lien securing a Parallel Liability on trust.

## 15.1 Consents, Amendments and Waivers.

15.1.1 ~~Amendment~~ Except as provided in Section 23 and Section 24, no modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of an Event of Default, shall be effective without the prior written agreement of Required Lenders, and each Loan Party party to such Loan Document; provided, however, that:

(a) without the prior written consent of Agent, no modification shall be effective with respect to any provision in a Loan Document that adversely affects any rights, duties or discretion of Agent;

(b) without the prior written consent of each Issuing Bank, no modification shall be effective that would alter Section 2.3 in a manner adverse to the Issuing Bank, and without the prior written consent of the applicable Issuing Bank, no adverse modification shall be effective with respect to any LC Obligation of such Issuing Bank;

(c) without the prior written consent of each directly and adversely affected Lender or Issuing Bank, as applicable, no modification shall be effective that would (i) increase the Commitment of such Lender; (ii) increase the LC Issuance Sublimit of such Issuing Bank or (iii) reduce the amount of, or waive or delay payment of, any principal, interest (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 3.1.1, as a result of a change to the definition of Availability or waiver of a mandatory prepayment) or fees payable to such Lender or Issuing Bank, as applicable, or (iv) amend Section 15.1.1;

(d) without the prior written consent of all Lenders (except a Defaulting Lender), no modification shall be effective that would (i) alter Sections 5.4 (for the avoidance of doubt, amendments to the Borrowing Base shall not be deemed amendments to Section 5.4, but shall be governed by Section 15.1.1(e)), 5.7, 7.1 (except to add Collateral); (ii) amend the definitions of Pro Rata or Required Lenders, or Supermajority Lenders in a manner reducing the percent required to consent; (iii) except as permitted under this Agreement, release all or substantially all of the Collateral; or (iv) except as permitted under this Agreement, release all or substantially all Loan Parties from liability for any Obligations, if such Loan Party is Solvent at the time of the release; and

(e) without the prior written consent of the Supermajority Lenders amend the definition of Borrowing Base or component definitions thereof in a manner that would increase the Borrowing Base or increase Availability, provided, that nothing herein shall limit the discretion of Agent to change, establish, or eliminate any portion of the Availability Reserve in its Permitted Discretion.

Notwithstanding the foregoing, this Agreement and any other Loan Document may be amended solely with the consent of Agent and Administrative Borrower without the need to obtain the consent of any Lender if such amendment is delivered in order to (x) correct or cure

ambiguities, errors, omissions, defects, (y) effect administrative changes of a technical or immaterial nature or (z) incorrect cross references or similar inaccuracies in this Agreement or any other Loan Document. Guaranties, collateral documents, security documents, control agreements, custodial rights agreements, intercreditor agreements and related documents executed in connection with this Agreement may be in a form reasonably determined by Agent and may be amended, modified, terminated or waived, and consent to any departure therefrom (or any requirement of delivery including, without limitation, timeframe) may be given, without the consent of any Lender if such amendment, modification, waiver or consent is given in order to (x) comply with local law or advice of counsel or (y) cause such guaranty, collateral document, security document or related document to be consistent with this Agreement and the other Loan Documents or (z) due to administrative convenience. Administrative Borrower and Agent may, without the consent of any Lender, effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Administrative Borrower and Agent to effect the provisions of Sections 2.3, 2.4 and 3.2. Notwithstanding anything to the contrary contained herein, such amendment shall become effective without any further consent of any other party to such Loan Document.

In addition, notwithstanding anything else contained herein, Loan Parties (or any one of them) and Agent may enter into any other applicable intercreditor agreements for their financing sources without the consent, approval or ratification of Required Lenders.

**15.12** ~~Limitations.~~ Only the consent of the parties to the Fee Letter shall be required for any modification of such agreement, and no Affiliate of a Lender that is party to a Bank Product agreement shall have any other right to consent to or participate in any manner in modification of any other Loan Document. The making of any Loans during the existence of a Default or Event of Default shall not be deemed to constitute a waiver of such Default or Event of Default, nor to establish a course of dealing. Any waiver or consent granted by Lenders hereunder shall be effective only if in writing, and then only in the specific instance and for the specific purpose for which it is given.

**15.13** ~~Payment for Consents.~~ No Loan Party 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 other thing of value is offered to all Lenders and is paid to all such Lenders that so agree to modify in the time frame set forth in the solicitation documents relating to such modification.

**15.2 Indemnity.** EACH LOAN PARTY SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE. In no event shall any Loan Party have any obligation hereunder to indemnify or hold harmless an Indemnitee with respect to a Claim to the extent that is determined in a final, non-appealable judgment by a court of competent jurisdiction to have arisen from, for each such Indemnitee, (i) its own (or its affiliates', directors', officers', employees' or agents') gross negligence, bad faith or willful misconduct, (ii) its own (or its affiliates', directors', officers', employees' or agents') material breach of its obligations hereunder or (iii) any dispute among Indemnities that does not involve an act or omission by the

Loan Parties or any of their subsidiaries (other than any claims against Agent or an Arranger in their capacity as such but subject to clause (i) above. This Section 15.2 does not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, expenses, etc. arising from any non-Tax claim.

**15.3 Notices and Communications.**

15.3.1 **Notice Address.** Any notice or request hereunder may be given to any Loan Party or to Agent or any Lender at their respective addresses set forth below or at such other address as may hereafter be specified in a notice designated as a notice of change of address under this Section 15.3.1:

If to Agent and RBS as Agent and Issuing Bank:

~~RBS Citizens Business Capital, Citizens Commercial Banking a division of RBS Asset Finance, Inc., a subsidiary of RBS Citizens, N.A. 71 South Wacker Drive, Suite 2900 Chicago, Illinois 60606~~  
1215 Superior Ave. 6th Flr Cleveland, Ohio 44114  
Attention: ~~Kimberly A. Crotty~~ David J. Slattery, Vice President Direct: ~~312-777-3500~~ 216-277-1106  
~~Facsimile: 312-777-4001~~  
Email: ~~kim.crotty@rbscitizens~~ david.slattery@citizensbank.com

If to a Lender or Issuing Bank other than RBS, as specified on the signature pages hereof.

If to any Borrower or any Loan Party

c/o Administrative Borrower:  
YRC Worldwide Inc.  
Attention of Chief Financial Officer and General Counsel 10990 Roe Avenue  
Overland Park, Kansas 66211 Fax No. 913-696-6116  
Tel. No. 913-696-6111 or 913-696-6132  
Email: jamie.pierson@yrcw.com and michelle.friel@yrcw.com

with a copy to:

Kirkland & Ellis LLP 300 North LaSalle  
Chicago, Illinois 60654  
Attention:  
Kilkenney  
Facsimile:  
862-2487

Michelle  
312-

Subject to Section 4.1.3, all notices, requests and other communications by or to a party hereto shall be in writing and shall be given to any Loan Party, at Administrative Borrower's address shown above, and to any other Person at its address shown above (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 15.3.1. Each such notice, request or other 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 (3) 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 electronic mail, when transmitted to the applicable e-mail address; (d) 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, 2.3, 3.1.2, 4.1.1 or 5.3.2 shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any written notice, request or other 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 Administrative Borrower shall be deemed received by all Loan Parties.

1532 Electronic Communications Voice Mail Unless otherwise agreed by Agent, electronic mail and internet websites may be used only for routine communications, such as financial statements, Borrowing Base Certificates and other information required by Section 10.1.2, administrative matters, distribution of Loan Documents for execution, and matters permitted under Section 4.1.3. Electronic and voice mail may not be used as effective notice under the Loan Documents.

1533 Non-Conforming Communications Agent and Lender may rely upon any notices purportedly given by or on behalf of any Loan Party even if such notices 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 Loan Party shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any telephonic communication purportedly given by or on behalf of a Loan Party, other than any liabilities, actual losses, costs and expenses resulting from (i) its own (or its affiliates', directors', officers', employees' or agents') gross negligence or willful misconduct as determined by a court of competent jurisdiction, (ii) its own (or its affiliates', directors', officers', employees' or agents') material breach of its obligations hereunder or (iii) any dispute among Indemnitees that does not involve an act or omission by any Loan Party or any of Loan Party's subsidiaries (other than any claims against Agent or an Arranger in their capacity as such but subject to clause (i) above. Each Indemnitee agrees (by accepting the benefits hereof) to refund and return any and all amounts paid by any Loan Party to such indemnities to the extent any of the foregoing items described in clauses (i), (ii) or, if applicable, (iii) occurs. The Loan Parties shall not, without the prior written consent of each Indemnitee affected thereby (which consent will not be unreasonably withheld, delayed or conditioned), settle any threatened or pending claim or action that would give rise to the right of any Indemnified Party to claim indemnification hereunder unless such settlement includes a full and unconditional release of all liabilities arising out of such claim or action against such Indemnitee and (b) does not include any statement as to or an

admission of fault, culpability or failure to act by or on behalf of any Indemnitee. In case any proceeding is instituted involving any Indemnitee for which indemnification is to be sought hereunder by such Indemnitee, then such Indemnitee will promptly notify the Administrative Borrower of the commencement of any proceeding; provided, however, that the failure so to notify the Administrative Borrower will not relieve the Loan Parties from any liability that they may have to such Indemnitee pursuant to this "Indemnity" section or from any liability that the Loan Parties may have to such Indemnitee other than pursuant to this "Indemnity" section, except and solely to the extent that the Loan Parties are materially prejudiced by such failure. Notwithstanding the above, following such notification, the Loan Parties may elect in writing to assume the defense of such proceeding, and, upon such election, the Loan Parties will not be liable for any legal costs subsequently incurred by such Indemnitee (other than reasonable costs (including reasonable attorneys' fees and out-of-pocket expenses of one counsel for the Indemnitees of monitoring such proceeding, investigation and providing evidence) in connection therewith, unless (i) the Loan Parties have failed to provide counsel reasonably satisfactory to such Indemnitee in a timely manner, (ii) counsel provided by the Loan Parties reasonably determines that its representation of such Indemnitee would present it with a conflict of interest, or (iii) the Indemnitee reasonably determines that there are actual conflicts of interest between the Loan Parties and the Indemnitee, including situations in which there may be legal defenses available to it which are different from or in addition to those available to the Loan Parties. In connection with any one proceeding, the Loan Parties will not be responsible for the fees and expenses of more than one separate law firm for all Indemnitee plus additional conflicts and local counsel as provided herein.

15.4 **Performance of Loan Parties' Obligations.** Upon the occurrence and during the continuance of an Event of Default, Agent may, in its Permitted Discretion at any time and from time to time with ten (10) days' prior notice, at Loan Parties' expense, pay any amount or do any act required of a Loan Party 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 Loan Parties, promptly following written demand. 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.

15.5 **Credit Inquiries.** Subject to Section 15.11, each Loan Party hereby authorizes Agent and Lenders (but they shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Loan Party or Subsidiary.

15.6 **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.

15.7 **Cumulative Effect; Conflict of Terms.** The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several different

limitations, tests or measurements to regulate the same or similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise specifically 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.

15.8 **Counterparts; Facsimile Signatures.** Any Loan Document may be executed in counterparts, each of which taken together shall constitute one instrument. Loan Documents may be executed and delivered by facsimile or other electronic transmission, and they shall have the same force and effect as manually signed originals. Agent may require confirmation by a manually-signed original, but failure to request or deliver same shall not limit the effectiveness of any facsimile signature.

15.9 **Entire Agreement.** The Loan Documents embody the entire understanding of the parties with respect to the subject matter thereof and supersede all prior understandings regarding the same subject matter.

15.10 **Obligations of 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, and each Lender shall be entitled, to the extent not otherwise restricted hereunder, to protect and enforce its rights arising out of the Loan Documents. 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 or Lenders pursuant to the Loan Documents shall be deemed to constitute Agent and Lenders to be a partnership, association, joint venture or any other kind of entity, nor to constitute Control of any Loan Party. Each Loan Party acknowledges and agrees that in connection with all aspects of any transaction contemplated by the Loan Documents, Loan Parties, Agent, any Issuing Bank and Lenders have an arms-length business relationship that creates no fiduciary duty on the part of Agent, any Issuing Bank or any Lender, and each Loan Party, Agent, Issuing Bank and Lender expressly disclaims any fiduciary relationship.

15.11 **Confidentiality.** Agent and Lenders agree to maintain the confidentiality of any information that Loan Parties deliver to Agent and Lenders and only use such information in connection herewith; except, that, Agent and any Lender may disclose such information (a) to their respective officers, directors, employees, Affiliates and agents, including legal counsel, auditors and other professional advisors on a need to know basis (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 any party to the Loan Documents from time to time; (c) pursuant to the order of any court or administrative agency; provided, that Agent or such Lender, as applicable, agrees that it will notify Administrative Borrower as soon as practicable prior to any such disclosure by such Person unless such notification is prohibited by law, rule or regulation; (d) upon the request of any Governmental Authority exercising regulatory authority over Agent or such Lender; provided, that Agent or such Lender, as applicable, agrees that it will notify Administrative Borrower as soon as practicable prior to any such disclosure by such Person unless such notification is prohibited by law, rule or regulation; (e) which becomes available to Agent or any Lender on a nonconfidential basis; (f) to the extent reasonably required in connection with any litigation relating to any Loan

Documents or transactions contemplated thereby, or otherwise as required by Applicable Law; provided, that Agent or such Lender, as applicable, agrees that it will notify Administrative Borrower as soon as practicable prior to any such disclosure by such Person unless such notification is prohibited by law, rule or regulation; (g) to the extent reasonably required for the exercise of any rights or remedies under the Loan Documents; (h) to any actual or proposed party to a Bank Product or to any Transferee, as long as such Person agrees to be bound by the provisions of this Section for the benefit of the Loan Parties; (i) to the National Association of Insurance Commissioners or any similar organization, or to any nationally recognized rating agency that requires access to information about a Lender's portfolio in connection with ratings issued with respect to such Lender; (j) to any investor or potential investor in an Approved Fund that is a Lender or Transferee, but solely for use by such investor to evaluate an investment in such Approved Fund, or to any manager, servicer or other Person in connection with its administration of any such Approved Fund; or (k) with the prior consent of Loan Parties provided, that in no event shall any such information be given to a Disqualified Lender. Notwithstanding the foregoing, Agent and Lenders may issue and disseminate to the public general information describing this credit facility, including the names and addresses of Loan Parties and a general description of Loan Parties' businesses, and may use Loan Parties' names in advertising and other promotional materials with the prior consent of Administrative Borrower.

15.12 **Reserved.**

15.13 **GOVERNING LAW.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF, BUT INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF LOAN PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF LOAN PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING

RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF LOAN PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 15.3. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) ACTIONS COMMENCED BY LOAN PARTIES. EACH LOAN PARTY AGREES THAT ANY ACTION COMMENCED BY ANY LOAN PARTY ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN OR ANY FEDERAL COURT SITTING THEREIN AS AGENT MAY ELECT IN ITS SOLE DISCRETION AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION..

15.14 **Consent to Forum**. EACH LOAN PARTY HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURT SITTING IN OR WITH JURISDICTION OVER THE STATE OF NEW YORK, IN ANY PROCEEDING OR DISPUTE RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY SUCH PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH LOAN PARTY IRREVOCABLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. Nothing herein shall limit the right of Agent or any Lender to bring proceedings against any Loan Party in any other court if required to realize upon any Collateral. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.

15.15 **Waivers by Loan Parties**. To the fullest extent permitted by Applicable Law, each Loan Party waives (a) the right to trial by jury (which Agent and each Lender hereby also waives) in any proceeding, claim or counterclaim of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) except as expressly set forth in this Agreement, presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, contract rights,

documents, instruments, chattel paper and guaranties at any time held by Agent on which a Loan Party may in any way be liable, and hereby ratifies anything Agent may do in this regard; (c) except as expressly set forth in this Agreement, 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 to exercise any rights or remedies; (e) the benefit of all valuation, appraisal and exemption laws; (f) any claim against Agent or any Lender, 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 material Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Loan Party acknowledges that the foregoing waivers are a material inducement to Agent and Lenders entering into this Agreement and that Agent and Lenders are relying upon the foregoing in their dealings with Loan Parties. Each Loan Party 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.

15.16 **Patriot Act Notice.** Agent and Lenders hereby notify Loan Parties that pursuant to the requirements of the Patriot Act, Agent and Lenders are required to obtain, verify and record information that identifies each Loan Party, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act. In order to comply with the requirements of the Patriot Act, Agent and Lenders may require information regarding Loan Parties' management and owners, such as legal name, address, social security number and date of birth.

15.17 **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.

15.18 **Term Debt Intercreditor Agreement.** Agent and each Lender hereunder, by its acceptance of the benefits provided hereunder, (a) consents to the Term Debt Intercreditor Agreement, (b) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Term Debt Intercreditor Agreement, and (c) authorizes and instructs Agent to enter into the Term Debt Intercreditor Agreement as Agent on behalf of each Lender. Agent and each Lender hereby agrees that the terms, conditions and provisions contained in this Agreement are subject to the Term Debt Intercreditor Agreement and, in the event of a conflict between the terms of the Term Debt Intercreditor Agreement and this Agreement, the terms of the Term Debt Intercreditor Agreement shall govern and control. No Lender that obtains the benefits of the Guaranty or any Collateral by virtue of the provisions hereof or of the Guaranty or any Security 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 Section 15 to the contrary, Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Swap Obligations or obligations under Hedging Agreements with Lenders unless Agent has received written notice of such obligations, together with such supporting documentation as Agent may

request, from the applicable Lender. Notwithstanding anything to the contrary herein, prior to the Discharge of Term Obligations (as defined in the Term Debt Intercreditor Agreement), the requirements of this Agreement to deliver possession, control or notations of Collateral to Agent shall be deemed satisfied by the delivery of possession, control or notation of such Collateral to a representative of the Secured Parties (as defined in the Term Debt Intercreditor Agreement) and as bailee for the Collateral Agent as provided in the Term Debt Intercreditor Agreement.

15.19 **Release of Guarantors.** If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests or Property of any Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party or (ii) any Guarantor becomes an Excluded Subsidiary (any such Guarantor, and any Guarantor referred to in clause (i), a "Transferred Guarantor"), such Transferred Guarantor shall, upon the consummation of such sale or transfer or other transaction, be automatically released from its obligations under this Agreement and its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Collateral Agent pursuant to the Collateral Documents shall be automatically released, and, the Collateral Agent shall take such actions as are necessary to effect each release described in this Section

15.19 in accordance with the relevant provisions of the Collateral Documents; provided, that no Guarantor shall be released as provided in this paragraph if such Guarantor continues to be a guarantor in respect of any Term Debt, any Term Refinancing Debt, [any UST Tranche A Facility Indebtedness](#), [any UST Tranche A Refinancing Debt](#), [any UST Tranche B Facility Indebtedness](#), [any UST Tranche B Refinancing Debt](#), any Permitted Junior Debt, any Junior Financing or any Permitted Refinancing of any of the foregoing.

When all Commitments hereunder have terminated, and all Loans or other Obligations hereunder which are accrued and payable have been paid or satisfied, this Agreement and the Guarantees made herein shall automatically terminate with respect to all Obligations, except with respect to Obligations that expressly survive such repayment pursuant to the terms of this Agreement.

15.20 **Release of Liens.** Upon any of (i) Payment in Full of the Obligations, (ii) the release of any Guarantor pursuant to Section 15.19, (iii) pursuant to a Disposition not prohibited hereunder or (iv) the release of such Lien in accordance with the Term Debt Intercreditor Agreement, then, in each case, the Liens on the relevant portion of the Collateral shall be released and discharged automatically without further action.

15.21 Acknowledgement and Consent to Bail-In of [EEA 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 Lender that is an [EEA Affected](#) Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of ~~an EEA~~[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 ~~an EEA~~[the applicable](#) Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an [EEA 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 ~~EEA~~Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of ~~any EEA~~the applicable Resolution Authority.

15.22 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Obligation 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 15.22, 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).

[SIGNATURE PAGES FOLLOW]



## AMENDMENT NO. 1

Dated as of April 7, 2020

to

## AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of September 11, 2019

THIS AMENDMENT NO. 1 (this "Amendment") is dated as of April 7, 2020 by and among YRC Worldwide Inc. (the "Borrower"), the other Guarantors party to the Credit Agreement, the financial institutions listed on the signature pages hereof and Cortland Products Corp., as administrative agent and collateral agent (the "Administrative Agent"), under that certain Amended and Restated Credit Agreement dated as of September 11, 2019 by and among the Borrower, the Guarantors party thereto from time to time, the Lenders and the Administrative Agent (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Credit Agreement.

WHEREAS, the Borrower and the Guarantors have requested that the Lenders amend the Credit Agreement on the terms more fully set forth herein; and

WHEREAS, the Lenders party hereto constituting all Lenders party to the Credit Agreement have agreed to make the amendments described herein pursuant to this Amendment on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Guarantors party hereto and the Lenders party hereto constituting all Lenders party to the Credit Agreement have agreed to enter into this Amendment.

1. Amendments to Credit Agreement. Effective as of the date of satisfaction or waiver of the conditions precedent set forth in Section 2 below (the "Amendment No. 1 Effective Date"), the Credit Agreement is hereby amended to delete the bold, stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold, double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto.

2. Conditions of Effectiveness. The effectiveness of this Amendment on the Amendment No. 1 Effective Date is subject to the satisfaction (or waiver by the Lenders) of the following conditions precedent:

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(a) the Administrative Agent shall have received counterparts of this Amendment duly executed by the Borrower, the Guarantors party hereto and the Lenders party to the Credit Agreement and acknowledged by the Administrative Agent;

(b) the Borrower shall have paid all invoiced expenses of the Administrative Agent and the Lenders (including, without limitation, all previously invoiced, reasonable, out-of-pocket expenses of the Administrative Agent (including, to the extent invoiced, reasonable attorneys' fees and expenses of Holland & Knight LLP, Milbank LLP and White & Case LLP, in each case to the extent reimbursable under the terms of the Credit Agreement);

(c) the Administrative Agent and the Lenders shall have received (i) a thirteen (13) week cash flow forecast (each, a "Cash Flow Forecast") for the Borrower and its Subsidiaries for the 13-week period commencing on April 6, 2020 (the "Forecast Date"), which Cash Flow Forecast shall be reasonably satisfactory to the Required Lenders and (ii) a form of variance report for purposes of Section 4(a), which report shall be reasonably satisfactory to the Required Lenders; and

(d) the Borrower shall have paid the Administrative Agent for the benefit of the Lenders an amount equal to \$1,584,304.31, which amount is equal to the Cash Interest Portion (as defined in the Amendment) due and payable on the Amendment No. 1 Effective Date.

3. Representations and Warranties of the Borrower. Each of the Borrower and each of the Guarantors party hereto hereby represents and warrants as follows as of the closing date of this Amendment:

(a) This Amendment has been duly authorized, executed and delivered by the Borrower and each Guarantor and this Amendment and the Credit Agreement, as modified hereby, constitute legal, valid and binding obligations of the Borrower and the Guarantors and are enforceable against the Borrower and the Guarantors in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) As of the date hereof, the representations and warranties of the Borrower and the Guarantors set forth in the Credit Agreement, as modified hereby, are true and correct in all material respects on and as of the date hereof, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; *provided*, that any such representation and warranty that is qualified by "materiality", "material adverse effect" or similar language shall be true and correct in all respects (after giving effect to such qualification therein) on and as of the date hereof with the same effect as though made on and as of such date or such earlier date, as applicable.

4. Covenants. The Borrower hereby covenants and agrees that during the period commencing on the Amendment No. 1 Effective Date and ending on the first date occurring after January 1, 2021 for which (i) Consolidated EBITDA for a Test Period ending on the last day of a fiscal quarter ending on or after March 31, 2021 is greater than \$200,000,000 and (ii) the Borrower shall have delivered a Compliance Certificate for such fiscal quarter pursuant to Section

6.02(a) of the Credit Agreement demonstrating compliance with Section 7.10 of the Credit Agreement as at the end of such fiscal quarter (such period, the "Specified Period"), the Borrower shall and (except in the case of the covenants set forth in Sections 4(a) and 4(b)) shall cause each of the Subsidiaries to:

(a) Reporting.

(i) Provide the Lenders by 5.00 p.m. New York time on the third Business Day of the second week after the Forecast Date (i.e. commencing on Wednesday April 22, 2020), and on the third Business Day of each week occurring in each week thereafter, (x) an updated Cash Flow Forecast, substantially in the form delivered to the Lenders pursuant to Section 2(c), together with (y) a report, in form reasonably satisfactory to the Lenders (it being agreed that the form delivered to the Lenders pursuant to Section 2(c)(ii) prior to the Amendment No. 1 Effective Date is reasonably satisfactory), setting forth for the second immediately preceding week (ending on the second Sunday immediately preceding the applicable third Business Day reporting deadline; i.e. with respect to the reporting deadline occurring on Wednesday April 22, 2020, the week ending Sunday April 12, 2020) and for the cumulative period from the Forecast Date through the second Sunday immediately preceding the applicable third Business Day reporting deadline (i.e. with respect to the reporting deadline occurring on Wednesday April 22, 2020, the week ending Sunday April 12, 2020), the actual and forecasted results for such week and cumulative post-Forecast Date time period by line item in the Cash Flow Forecast, together with a written explanation of all material variances (clauses (x) and (y) collectively, the "Variance Report").

(ii) Prior to 5:00 p.m. New York time on the third Business Day occurring of each week occurring after the Amendment No. 1 Effective Date (i.e. commencing on Wednesday April 15, 2020), deliver to the Lenders a liquidity report (each, a "Liquidity Report") setting forth the aggregate amount of Liquidity (as defined below) of the Loan Parties as of the end of the immediately preceding week (ending on the Sunday immediately preceding the applicable third Business Day reporting deadline; i.e. with respect to the reporting deadline occurring on Wednesday April 15, 2020, the week ending Sunday April 12, 2020) and a comparison of the amount set forth on the prior delivered Liquidity Report.

(b) Lender Calls. Commencing with the week immediately following the week in which the Amendment No. 1 Effective Date occurs, provide for a weekly update call with the Lenders and senior management of the Borrower with appropriate expertise to discuss the then current Cash Flow Forecast, the Variance Report, efforts to obtain government financing, union matters and any other matters (including business, operational and due diligence matters) reasonably requested by the Lenders. Notwithstanding anything to the contrary, neither the Borrower nor any Subsidiary will be required to disclose or discuss any matter (i) that constitutes trade secrets or proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their 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.

(c) Minimum Liquidity. Not permit Liquidity to be less than \$55,000,000 on Tuesday and Friday of each week during the Specified Period (or if any such day is not a Business Day, then the next succeeding Business Day). As used herein, "Liquidity" means, as of any date of determination, the sum of (A) unrestricted cash and Cash Equivalents of the Loan Parties as of such date and (B) the aggregate amount of "Availability" under the ABL Credit Agreement (as such term is defined in the ABL Credit Agreement as in effect as of the date hereof and without giving effect to proviso in such definition) so long the conditions for utilizing have been satisfied other than with respect to the delivery of a borrowing request or similar funding notice, which the Borrower is permitted to deliver.

5. Reference to and Effect on the Credit Agreement; Interest.

(a) Upon the effectiveness hereof, each reference to the Credit Agreement in the Credit Agreement or any other Loan Document shall mean and be a reference to the Credit Agreement as modified hereby. This Amendment shall constitute a Loan Document.

(b) Except as specifically set forth above, the Credit Agreement and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed.

(c) Other than as set forth above, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders, nor constitute a waiver of any provision of the Credit Agreement or any other documents, instruments and agreements executed and/or delivered in connection therewith.

(d) Set forth in Schedule A hereto are the "Scheduled Properties" referred to in the Credit Agreement, as amended hereby and set forth in Schedule B is the list of Pension Real Property referred to in the last paragraph of Section 7.05 of the Credit Agreement.

(e) The Borrower acknowledges and agrees that the amount of accrued and unpaid interest of the Term Loans as of the First Amendment Effective Date to be capitalized and added to the principal of the Term Loans on the First Amendment Effective Date pursuant to Section 2.06(d) of the Credit Agreement (as amended hereby) is \$20,595,956.06.

(f) The Lenders party hereto hereby waive the notice requirements of Section 6.03(a) of the Credit Agreement with respect to any Default arising under Section 8.01(a)(ii) of the Credit Agreement due to the Loan Parties' failure to pay the interest payable on March 31, 2020.

6. Acknowledgements. By executing this Amendment, each of the Loan Parties (a) consents to this Amendment and the performance by the Borrower and each of the other Loan Parties of their obligations hereunder, (b) acknowledges that notwithstanding the execution and delivery of this Amendment, the obligations of each of the Loan Parties under each of the Collateral Documents and each of the other Loan Documents to which such Loan Party is a party, are not impaired or affected and each such Collateral Document and each such other Loan Document continues in full force and effect, (c) affirms and ratifies, its Obligations under the Credit Agreement as expanded or amended hereby are entitled to the benefits of the pledges set

forth in each Collateral Document to the extent it is a party thereto, (d) confirms that its Obligations under the Credit Agreement as expanded or amended hereby constitute "Secured Obligations" (as defined in the Collateral Documents) and (e) confirms that the Secured Obligations shall remain in full force and effect, and such Secured Obligations shall continue to be entitled to the benefits of the grant set forth in the Collateral Documents. Each Guarantor (a) confirms its Guaranteed Obligations under the Credit Agreement, (b) confirms that the Guaranteed Obligations under the Credit Agreement as expanded or amended hereby are entitled to the benefits of the guarantee set forth in Article 11 of the Credit Agreement and (c) confirms that the Obligations under the Credit Agreement as expanded or amended hereby constitute "Guaranteed Obligations". Each Loan Party, by its execution of this Amendment, hereby confirms that the Guaranteed Obligations shall remain in full force and effect.

7. **No Novation or Mutual Departure.** The Borrower expressly acknowledges and agrees that there has not been, and this Amendment does not constitute or establish, a novation with respect to the Credit Agreement or any other Loan Document, or a mutual departure from the strict terms, provisions, and conditions thereof, other than with respect to the amendments contained in Section 2 hereof.

8. **Release.** Each Loan Party, on behalf of itself, its Subsidiaries and controlled Affiliates, and each of their successors, representatives, assignees and, whether or not claimed by right of, through or under any Loan Party, past, present and future employees, agents, representatives, officers, directors, members, managers, principals, affiliates, shareholders, trustees, consultants, experts, advisors, attorneys and other professionals (each, a "**Releasing Party**" and collectively, the "**Releasing Parties**"), does hereby fully, finally, and forever remise, release and discharge, and shall be deemed to have forever remised, released and discharged, the Agents and the Lenders, and the Agents' and each Lender's respective successors, representatives, assignees and past, present and future employees, agents, representatives, officers, directors, members, managers, principals, affiliates, shareholders, trustees, consultants, experts, advisors, attorneys and other professionals and all other persons and entities to whom any of the foregoing would be liable if such persons or entities were found to be liable to any Releasing Party, or any of them (collectively hereinafter the "**Released Parties**"), from any and all manner of action and actions, cause and causes of action, claims, defenses, rights of setoff, charges, demands, counterclaims, suits, debts, obligations, liabilities, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, damages, judgments, expenses, executions, liens, claims of liens, claims of costs, penalties, attorneys' fees, or any other compensation, recovery or relief on account of any liability, obligation, demand or cause of action of whatever nature, whether in law, equity or otherwise (including without limitation those arising under the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, joint and/or several, secured or unsecured, due or not due, primary or secondary, liquidated or unliquidated, contractual or tortious, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, circumstance, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with, in respect of or relating to this Credit Agreement or any other Loan Document and

the transactions contemplated thereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing (each, a "Claim" and collectively, the "Claims").

9. Governing Law. This Amendment shall be construed in accordance with and governed by the law of the State of New York.

10. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

11. Counterparts. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Signatures delivered by facsimile or PDF shall have the same force and effect as manual signatures delivered in person.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

YRC WORLDWIDE INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

EXPRESS LANE SERVICE, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

NEW PENN MOTOR EXPRESS LLC  
(F/K/A NEW PENN MOTOR EXPRESS INC.)

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

ROADWAY EXPRESS INTERNATIONAL, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

ROADWAY LLC

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

ROADWAY NEXT DAY CORPORATION

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

HENRY LOGISTICS, INC.

By: /s/ Jason W. Bergman  
Name: Jason W. Bergman  
Title: President

---

USF BESTWAY INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

USF DUGAN INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

USF GLEN MOORE INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

USF HOLLAND LLC  
(F/K/A USF HOLLAND INC.)

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

USF REDSTAR LLC

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

USF REDDAWAY INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

---

YRC ASSOCIATION SOLUTIONS, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

YRC INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

YRC INTERNATIONAL INVESTMENTS, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

YRC LOGISTICS SERVICES, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

YRC MORTGAGES, LLC

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

YRC ENTERPRISE SERVICES, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

YRC REGIONAL TRANSPORTATION, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

---

1105481 ONTARIO INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

By: /s/ Richard J. Bronk  
Name: Richard J. Bronk  
Title: President

YRC LOGISTICS INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

By: /s/ James Faught  
Name: James Faught  
Title: Vice President

USF HOLLAND INTERNATIONAL SALES  
CORPORATION

By: /s/ James Faught  
Name: James Faught  
Title: Vice President

By: /s/ Thomas J. O'Connor  
Name: Thomas J. O'Connor  
Title: President

YRC FREIGHT CANADA COMPANY

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President and Treasurer

By: /s/ Richard J. Bronk  
Name: Richard J. Bronk  
Title: Vice President

---

REIMER HOLDING B.V.

By: /s/ M.F. A van Schijndel

Name: M.F. A van Schijndel

Title: Managing Director A

By: /s/ Terry Gerrond

Name: Terry Gerrond

Title: Managing Director B

---

**APOLLO CREDIT STRATEGIES MASTER FUND, LTD.,** as a Lender

By: Apollo ST Fund Management LLC, its investment manager

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

**APOLLO ATLAS MASTER FUND, LLC,** as a Lender

By: Apollo Atlas Management, LLC, its investment manager

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

**AP KENT CREDIT MASTER FUND, L.P.,** as a Lender

By: AP Kent Management, LLC, the investment manager

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

**MPI (LONDON) LIMITED,** as a Lender

By: Apollo TRF MP Management, LLC, its investment manager

By: Apollo Capital Management, L.P. its sole member

By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

---

**APOLLO MOULTRIE CREDIT FUND, L.P.**, as a Lender

By: Apollo Moultrie Credit Fund Management, LLC its investment manager

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

**APOLLO TACTICAL VALUE SPN INVESTMENTS, L.P.**, as a Lender

By: Apollo Tactical Value SPN Management, LLC, its investment manager

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

**APOLLO ACCORD MASTER FUND III, L.P.**, as a Lender

By: Apollo Accord Management III, LLC, its investment manager

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

**CADBURY MONDELEZ PENSION TRUST LIMITED**, as a Lender

By: Apollo TRF CM Management, LLC, its investment manager

By: Apollo Capital Management, L.P., its member

By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

---

**APOLLO CREDIT FUNDS ICAV**, as a Lender

an Umbrella Irish Collective Asset Management Vehicle with Segregated Liability between its Sub-Funds, acting in respect of its Sub-Fund Apollo Helius Loan Fund

By: ACF Europe Management, LLC, its portfolio manager

By: Apollo Capital Management, L.P., its sole member

By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

**AMISSIMA DIVERSIFIED INCOME ICAV**, as a Lender

an Umbrella Irish Collective Asset-Management Vehicle with Segregated Liability between its Sub-Funds, acting in respect of its Sub-Fund, Amissima Loan Origination Fund

By: Apollo Management International LLP, solely in its capacity as Portfolio Manager and not in its individual corporate capacity

By: AMI (Holdings), LLC, its member

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

---

**ATHORA LUX INVEST**, as a Lender

a reserved alternative investment fund in the form of a Luxembourg special limited partnership (société en commandite spéciale), acting in respect of its compartment, Athora Lux Invest - Loan Origination, acting through its managing general partner

Athora Lux Invest Management and represented by its delegate portfolio manager,  
Apollo Management International LLP

By: Apollo Management International LLP, its portfolio manager

By: AMI (Holdings), LLC, its member

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

---

**ACE GLOBAL MULTI-CREDIT LLC**, as a Lender

By: ACE Credit Fund, LP, its sole member

By: ACE Credit Advisors, LP, its general partner

By: ACE Credit Advisors GP, LLC, its general partner

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

**APOLLO CREDIT MASTER FUND LTD.**, as a Lender

By: Apollo ST Fund Management LLC, as its investment manager

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

**APOLLO LINCOLN FIXED INCOME FUND, L.P.**, as a Lender

By: Apollo Lincoln Fixed Income Management, LLC, its investment manager

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

---

**APOLLO PPF OPPORTUNISTIC CREDIT PARTNERS (LUX), SCSP, as a Lender**

By: Apollo PPF Credit Management, LLC, its investment manager

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

---

**ASPEN AMERICAN INSURANCE COMPANY**, as a Lender

By: Apollo Asset Management Europe PC LLP, its investment manager

By: /s/ Seda Yalcinkaya

Name: Seda Yalcinkaya

Title: Authorized Signatory

---

BEAL BANK USA, as a Lender

By: /s/ Jacob C. Cherner

Name: Jacob C. Cherner

Title: Authorized Signatory

---

BTC HOLDINGS FUND I, LLC, as a Lender

By: Blue Torch Credit Opportunities Fund I LP, its sole member

By: Blue Torch Credit Opportunities GP LLC, its general partner

By: /s/ Kevin Genda

Name: Kevin Genda

Title: Authorized Signor

BTC HOLDINGS SC FUND LLC, as a Lender

By: Blue Torch Credit Opportunities SC Master Fund LP, its sole member

By: Blue Torch Credit Opportunities SC GP LLC, its General Partner

By: /s/ Kevin Genda

Name: Kevin Genda

Title: Authorized Signor

---

Acknowledged by:

CORTLAND PRODUCTS CORP., as Administrative Agent

By: /s/ Jon Kirschmeier

Name: Jon Kirschmeier

Title: Associate Counsel

---

**Amended Credit Agreement**

[Attached]

---

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of

September 11, 2019

among

YRC WORLDWIDE INC.,

THE OTHER GUARANTORS PARTY HERETO FROM TIME TO TIME  
THE LENDERS PARTY HERETO

and

CORTLAND PRODUCTS CORP.,

as Administrative Agent and Collateral Agent

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Exhibit B	Form of Assignment and Acceptance
Exhibit C	Form of Request for Credit Extension
Exhibit D	[Reserved]
Exhibit E	Form of Intercompany Note
Exhibit F	Form of Compliance Certificate
Exhibit G-1	Form of United States Tax Compliance Certificate (For Non-U.S. Lenders that are not Partnerships)
Exhibit G-2	Form of United States Tax Compliance Certificate (For Non-U.S. Lenders that are Partnerships)
Exhibit G-3	Form of United States Tax Compliance Certificate (For Non-U.S. Participants that are not Partnerships)
Exhibit G-4	Form of United States Tax Compliance Certificate (For Non-U.S. Participants that are Partnerships)
Exhibit H	Form of Solvency Certificate
Exhibit I	[Reserved]
Exhibit J	Form of Term Note
Exhibit K	Auction Procedures

AMENDED AND RESTATED CREDIT AGREEMENT, dated as of September 11, 2019 (as amended by Amendment No. 1, this “Agreement”), among YRC WORLDWIDE INC., a Delaware corporation (the “Borrower”), the Guarantors party hereto from time to time, the Lenders (such term and each other capitalized term used but not defined in this introductory statement having the meaning given it in Article 1), and CORTLAND PRODUCTS CORP., as administrative agent (in such capacity, including any permitted successor or assign thereto, the “Administrative Agent”) and as collateral agent (in such capacity, including any permitted successor or assign thereto, the “Collateral Agent”) for the Lenders.

WHEREAS, the Borrower, the financial institutions party thereto and Credit Suisse AG, Cayman Islands Branch, as predecessor Administrative Agent and predecessor Collateral Agent, are parties to a Credit Agreement dated as of February 13, 2014 (as amendment, supplemented and modified and in effect on the Restatement Effective Date, the “Existing Credit Agreement”).

WHEREAS, (i) the Borrower has requested that the Tranche B-2 Term Lenders (as defined below) make, and the Tranche B-2 Term Lenders have agreed to make subject to the conditions set forth herein, the Tranche B-2 Term Loans the proceeds of which shall be used to refinance the Term Loans outstanding under the Existing Credit Agreement in full (the “Refinancing Transaction”), for working capital and other corporate purposes and (ii) in connection with the Refinancing Transaction, the Borrower and the other Loan Parties and the Tranche B-2 Term Lenders, have agreed to amend and restate the Existing Credit Agreement in its entirety pursuant to this Agreement (the “Restatement”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree that the Existing Credit Agreement shall be amended and restated in its entirety to read as follows:

## ARTICLE 1 DEFINITIONS

### Defined Terms

. As used in this Agreement, the following terms shall have the meanings specified below:

“**ABL Agent**” shall mean, as the context may require, Citizens Business Capital (a division of Citizens Asset Finance, Inc., a subsidiary of Citizens, N.A.), in its capacity as administrative agent under the ABL Facility Documentation, Citizens Business Capital (a division of Citizens Asset Finance, Inc., a subsidiary of Citizens, N.A.), in its capacity as collateral agent under the ABL Facility Documentation, such agents collectively or any permitted successor or assignee administrative agent or collateral agent under the ABL Facility Documentation.

“**ABL Credit Agreement**” shall mean that certain asset-based revolving credit agreement dated as of the Original Closing Date, among the Borrower, YRC Inc., a Delaware corporation, USF Reddaway Inc., an Oregon corporation, USF Holland LLC, a Delaware limited liability company (as successor to USF Holland, Inc., a Michigan corporation) and New Penn Motor Express, LLC, a Delaware limited liability company (as successor to New Penn Motor Express, Inc., a Pennsylvania corporation), the other subsidiaries of the Borrower party thereto, the lenders

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party thereto and the ABL Agent, as amended by that certain Amendment No. 1, dated September 23, 2015, Amendment No. 2, dated June 28, 2016, Amendment No. 3 and Limited Consent, dated January 30, 2018, Amendment No. 4, dated February 12, 2019 and Amendment No. 5, dated September 11, 2019, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents and resulting in a financing that constitutes (or that would constitute if incurred as a new financing) a Permitted Refinancing of the ABL Facility Indebtedness), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof), in each case as and to the extent permitted by this Agreement and, if applicable, the ABL Intercreditor Agreement; provided that any such amendment, restatement, modification supplement, extension, renewal, restructuring, refunding, replacement or refinancing shall be permitted hereunder only if not less than a majority of its aggregate commitments are provided by lenders who are third party commercial banks or other financial institutions that customarily provide asset based lending credit facilities and other financial institutions consented to by the Administrative Agent (such consent not to be unreasonably withheld or delayed).

“**ABL Facility**” shall mean the asset-based revolving credit facility made available to the Borrower and certain of its Subsidiaries pursuant to the ABL Credit Agreement.

“**ABL Facility Documentation**” shall mean the ABL Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith and including all “Loan Documents” (as defined in the ABL Credit Agreement) or similar term.

“**ABL Facility Indebtedness**” shall mean Indebtedness of the Borrower or any Restricted Subsidiary outstanding under the ABL Facility Documentation, including Bank Product Debt (as defined in the ABL Credit Agreement).

“**ABL Intercreditor Agreement**” shall mean the intercreditor agreement dated as of the Original Closing Date among the Administrative Agent and/or Collateral Agent, the ABL Agent and the Loan Parties, as amended by that Amendment No. 1 and Limited Waiver dated as of the Restatement Effective Date (the “**ABL Intercreditor Amendment**”), and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, waived or replaced from time to time.

“**ABL Intercreditor Amendment**” shall have the meaning assigned to such term in the definition of “ABL Intercreditor Agreement”.

“**ABL Priority Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**ABL Secured Parties**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

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“**ABR**”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“**Additional Lender**” shall mean, with respect to any Refinancing Amendment or in respect of any bank, financial institution or investor not thereto for a Lender that agrees to provide an Other Term Loan pursuant thereto, *provided* that the Administrative Agent shall have consented (not to be unreasonably withheld, conditioned or delayed) to such bank, financial institution or investor as would be required under Section 10.04(b) for an assignment of Loans to such bank, financial institution or investor.

“**Adjusted LIBO Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum equal to the greater of (a) 1.00% per annum and (b) the product of (i) the LIBO Rate in effect for such Interest Period and (ii) Statutory Reserves.

“**Administrative Agent**” shall have the meaning assigned to such term in the introductory statement to this Agreement, together with its successors and any replacement designated pursuant to Article 9 of this Agreement.

“**Administrative Agent Fee Letter**” means that certain fee letter dated as of the date hereof, by and between Borrower and Administrative Agent, as amended, amended and restated, supplemented, waived, replaced or otherwise modified from time to time.

“**Administrative Agent’s Office**” means the Administrative Agent’s office or account as it may from time to time designate, in writing, to the Borrower and each Lender.

“**Administrative Questionnaire**” shall mean an Administrative Questionnaire in the form of Exhibit A, or such other form as may be supplied from time to time by the Administrative Agent and approved by the Borrower (such approval not to be unreasonably withheld, conditioned or delayed).

“**Affiliate**” shall mean, 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. “**Control**” shall mean 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.

“**Agent Indemnitees**” shall have the meaning assigned to such term in Section 10.05(b).

“**Agents**” shall have the meaning assigned to such term in Article 9.

“**Agreement**” shall have the meaning assigned to such term in the introductory statement to this Agreement.

“**Alternate Base Rate**” shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if

such day is not a Business Day, the immediately preceding Business Day) plus 1.00%; *provided* that (i) for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the rate published on the applicable Bloomberg LIBOR screen page determined on such day at approximately 11 a.m. (London time) for deposits in Dollars (as set forth by any service selected by the Administrative Agent that has been nominated by the ICE Benchmark Administration as an authorized vendor for the purpose of displaying such rates) and (ii) in no event shall the Alternate Base Rate be less than 2.00% per annum. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective on the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, as the case may be.

“**Alternative Incremental Indebtedness**” shall mean all Permitted Additional Debt incurred pursuant to Section 7.03(p); *provided* that (i) the aggregate principal amount at the time of the incurrence thereof (when taken together with any Alternative Incremental Indebtedness that has been incurred or will be incurred simultaneously therewith) shall not exceed the Maximum Incremental Facility Amount, (ii) the maturity date of such Alternative Incremental Indebtedness shall not be earlier than 91 days after the Latest Maturity Date (measured as of the date of incurrence of such Permitted Additional Debt), (iii) such Permitted Additional Debt shall have no amortization, (iv) such Alternative Incremental Indebtedness shall either rank junior in right of security with the Term Loans or be unsecured, (v) at the time of incurrence thereof, no Event of Default shall have occurred or be continuing or would result therefrom (provided that, to the extent the proceeds of such Alternative Incremental Indebtedness are to be used by the Borrower or any other Loan Party to finance, in whole or in part, any Permitted Acquisition, other permitted ~~acquisition or permitted~~ Investment in third parties that become Collateral (in each case including any such transaction that is subject to a letter of intent or purchase agreement) whose consummation is not conditioned on the availability of, or on obtaining, third party financing, then the effectiveness of such incurrence shall instead be subject solely to the absence of any Event of Default under Section 8.01(a), (f) or (g) after giving effect to such incurrence), and (vi) the proceeds of such Permitted Additional Debt shall be in the form of cash and used solely (i) first, to make the mandatory prepayments required under Section 2.13(a)(iv), and (ii) second, with the remaining proceeds, to finance Permitted Acquisitions and Investments in third parties that become Collateral (and not, for the avoidance of doubt, to pay, redeem, defease, acquire or otherwise satisfy any Indebtedness or pension obligations, other than Indebtedness of the third party target of such Permitted Acquisition or Investment in connection with the consummation of such Permitted Acquisition or Investment).

“**Alternative Interest Rate Election Event**” shall have the meaning assigned to such term in Section 10.24.

“**Amendment No. 1**” means that certain Amendment No. 1 to Amended and Restated Credit Agreement, dated as of the Amendment No. 1 Effective Date, by and among the Borrower, the “Guarantors” referred to on the

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signature pages thereto, the Administrative Agent and the Lenders party thereto.

“Amendment No. 1 Effective Date” means the date on which the conditions set forth in Section 2 of the Amendment No. 1 were satisfied, which date was April 7, 2020.

“Anti-Cash Hoarding Sweep” shall have the meaning assigned to such term in Section 2.13(a)(vi).

“**Apollo**” means, collectively, Apollo Capital Management, L.P. and one or more funds and/or accounts managed by its affiliates.

“**Applicable ECF Percentage**” shall mean, for any Excess Cash Flow Period, (a) 75% if the Total Leverage Ratio as of the last day of such Excess Cash Flow Period is greater than 3.25:1.00, (b) 50% if the Total Leverage Ratio as of the last day of such Excess Cash Flow Period is less than or equal to 3.25:1.00 and greater than 3.00:1.00, (c) 25% if the Total Leverage Ratio as of the last day of such Excess Cash Flow Period is less than or equal to 3.00:1.00 but is greater than 2.50:1.00, and (d) 0% if the Total Leverage Ratio as of the last day of such Excess Cash Flow Period is less than or equal to 2.50:1.00.

“**Applicable Margin**” shall mean, with respect to any Loan, a percentage per annum equal to, (a) until delivery of financial statements and Compliance Certificate for the fiscal quarter ending September 30, 2019 pursuant to Sections 6.01(b) and 6.02(a), (i) 7.50% per annum for Eurodollar Term Loans and (ii) 6.50% per annum for ABR Term Loans; and (b) thereafter, the percentages per annum set forth in the table below, based upon Consolidated EBITDA for the most recent Test Period as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a).

<b>Pricing Level</b>	<b>Consolidated EBITDA</b>	<b>ABR Term Loans</b>	<b>Eurodollar Term Loans</b>
I	≤ \$400,000,000	6.50%	7.50%
II	> \$400,000,000	5.50%	6.50%

Any increase or decrease in the Applicable Margin resulting from a change in Consolidated EBITDA shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a).

In addition, at any time an Event of Default exists as a result of the Borrower failing to deliver the applicable Compliance Certificate, at the option of the Lenders having more than 50% of the sum of the outstanding Term Loans, Consolidated EBITDA shall be deemed to be in Pricing Level I solely for the purposes of determining the Applicable Margin (but only for so long as such failure continues, after which such ratio and the Pricing Level shall be determined based on Consolidated EBITDA as set forth in the most recently-delivered Compliance Certificate).

In the event that any financial statement or compliance certificate delivered pursuant to Sections 6.01 or 6.02 is inaccurate (and this Agreement remains in effect when such inaccuracy is

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discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “**Applicable Period**”) than the Applicable Margin applied for such Applicable Period, then (i) the Borrower shall promptly upon obtaining knowledge of such inaccuracy deliver to the Administrative Agent a corrected financial statement and a corrected compliance certificate for such Applicable Period, (ii) the Applicable Margin shall be determined based on the corrected financial statement and corrected compliance certificate for such Applicable Period and (iii) the Borrower shall promptly pay to the Administrative Agent (for the account of the Lenders during the Applicable Period or their successors and assigns) the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Period. This paragraph shall not limit the rights of the Administrative Agent or the Lenders with respect to [Section 2.07](#) hereof. No Default or Event of Default shall arise or exist as a result of the initial non-payment of such amounts so long as the Borrower complies with this paragraph.

“**Assignment and Acceptance**” shall mean an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in the form of [Exhibit B](#) or such other form as shall be approved by the Administrative Agent and the Borrower (such approval of the Borrower shall not be unreasonably withheld, conditioned or delayed).

“**Attorney Costs**” shall mean and shall include all reasonable and documented fees, expenses and disbursements of any law firm or other external legal counsel.

“**Attributable Indebtedness**” shall mean, 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.

“**Auction Procedures**” shall mean the auction procedures with respect to non-pro rata assignments of Term Loans pursuant to [Section 10.04\(k\)](#) set forth in [Exhibit K](#) hereto.

“**Audited Financial Statements**” shall mean the audited consolidated balance sheets of the Borrower and its consolidated subsidiaries for the fiscal years ending December 31, 2018 and December 31, 2017 and the related consolidated statements of operations, changes in shareholders’ equity and cash flows of the Borrower and its consolidated subsidiaries.

“**Available Cash**” means, at any time, the aggregate amount of all cash and Cash Equivalents on the balance sheet of the Borrower and its Subsidiaries in excess of the Available Cash Threshold, subject to the satisfaction of the condition to prepayment of the Term Loans contained in Section 10.2.13(a)(vii) of the ABL Credit Agreement (as in effect on the effective date of the Amendment).

“**Available Cash Threshold**” means \$200,000,000.

“**Blocked Person**” shall mean any Person that is publicly identified on the most current list of “Specially Designated Nationals and Blocked Persons” published by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”).

“**Board**” shall mean the Board of Governors of the Federal Reserve System of the United States of America.

“**Borrower**” shall have the meaning assigned to such term in the introductory statement to this Agreement.

“**Borrower Materials**” shall have the meaning assigned to such term in Section 10.01.

“**Borrowing**” shall mean Loans of the same Class and Type made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“**Business Day**” shall mean any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close; *provided, however*, that when used in connection with a Eurodollar Loan, the term “**Business Day**” shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

“**Canadian Subsidiary**” shall mean any Subsidiary that is organized under the Laws of Canada or any state or province thereof.

“**Capital Expenditures**” shall mean, for any period, the aggregate of (a) all amounts that would be reflected as additions to property, plant or equipment on a consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries in accordance with GAAP and (b) the value of all assets under Capitalized Leases incurred by the Borrower and its Restricted Subsidiaries during such period.

“**Capitalized Leases**” shall mean all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided that*, subject to Section 1.11, for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“**Cash Collateral Account**” shall mean a blocked account at a commercial bank reasonably satisfactory to the Required Lenders and the Administrative Agent, in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“**Cash Equivalents**” shall mean any of the following types of Investments, to the extent owned by the Borrower or any Restricted Subsidiary:

- (a) Dollars and, to the extent consistent with past practice, Canadian Dollars;
- (b) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of issuance thereof;
- (c) investments in commercial paper maturing within 270 days from the date of issuance thereof and having, at such date of acquisition, rated at least A-2 or P-2 by S&P or Moody's;

- (d) investments in demand deposits, certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Administrative Agent, the ABL Agent or any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000 and that issues (or the parent of which issues) commercial paper rated at least "Prime 1" (or the then equivalent grade) by Moody's or "A 1" (or the then equivalent grade) by S&P;
- (e) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (b) above and entered into with a financial institution satisfying the criteria of clause (d) above;
- (f) investments in "money market funds" within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (e) above; and
- (g) other short-term investments entered into in accordance with normal investment policies and practices of any Foreign Subsidiary consistent with past practices for cash management and constituting investments in governmental obligations and investment funds analogous to and having a credit risk not greater than investments of the type described in clauses (a) through (f) above.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than set forth in clause (a) above; *provided* that such amounts are converted into currencies listed in clause (a) within ten Business Days following the receipt of such amounts.

**"Cash Interest Portion" shall have the meaning assigned to such term in Section 2.06(d).**

**"Casualty Event"** shall mean any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Property (including any improvements thereon) to replace or repair such equipment, fixed assets or Real Property or as compensation for such condemnation event.

**"CDA First Lien Obligations"** shall have the meaning assigned to such term in the definition of "Net Proceeds".

**"Change of Control"** shall mean:

- (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof), of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower;

- (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated or approved by the board of directors of the Borrower nor (ii) appointed by directors so nominated or approved; or
- (c) a “**change of control**” (or similar event) shall occur under (i) the ABL Facility Documentation or any Permitted Refinancing thereof or (ii) any other Indebtedness for borrowed money, with an aggregate principal amount (in the case of this clause (ii)) in excess of the Threshold Amount.
- “**Charges**” shall have the meaning assigned to such term in Section 10.09.
- “**Class**” when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Tranche B-2 Term Loans, Other Term Loans or Extended Term Loans, (b) any Commitment, refers to whether such Commitment is a Term Loan Commitment, Other Term Loan Commitment (and, in the case of an Other Term Loan Commitment, the Class of Term Loans to which such commitment relates), or a commitment in respect of Term Loans to be made pursuant to an Extension Offer and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments. Other Term Loan Commitments, Other Term Loans and Extended Term Loans that have different terms and conditions, and each tranche of Extended Term Loans, shall be construed to be in different Classes.
- “**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.
- “**Collateral**” shall mean all the “**Collateral**” as defined in any Collateral Document and shall also include the Mortgaged Properties.
- “**Collateral Agent**” shall have the meaning assigned to such term in the introductory statement to this Agreement.
- “**Collateral and Guarantee Requirement**” shall mean, at any time, the requirement that:
- (a) on the Restatement Effective Date the Administrative Agent and the Collateral Agent shall have received each Collateral Document to the extent required to be delivered on the Restatement Effective Date pursuant to Section 4.02(d), subject to the limitations and exceptions of this Agreement, duly executed by each Loan Party that is a party thereto;
- (b) in each case subject to the limitations and exceptions set forth in this Agreement and the Collateral Documents, and to any action required to be taken by the Collateral Agent or the Administrative Agent to effectuate the same, the Obligations shall have been secured by:
- (i) a perfected second priority security interest (subject to Liens permitted by Section 7.01) in all personal property of the Borrower and each Guarantor consisting of all accounts receivable, cash and Cash Equivalents, deposit accounts (other than Term Loan Priority Accounts (as defined in the ABL Intercreditor)) and supporting obligations and books and records related to the foregoing and, in each case, proceeds thereof;

- (ii) a perfected first priority pledge (subject to Liens permitted by Section 7.01) of all Equity Interests directly held by the Borrower or any Guarantor;
  - (iii) with respect to each Material Real Property, (1) a first priority mortgage, deed of trust or deed to secure debt (as applicable) (subject to Liens permitted by Section 7.01) on such Material Real Property pursuant to Mortgages that satisfy the requirements of clause (c)(i) below and (2) a perfected first priority security interest (subject to Liens permitted by Section 7.01) in all personal property relating to such Material Real Property and all fixtures thereon, provided, that, to the extent the opinion delivered to Collateral Agent confirms that the filing of the applicable Mortgage itself perfects Collateral Agent's first priority security interest in such fixtures, no separate fixture filing shall be required; and
  - (iv) within one hundred twenty (120) days following the repayment in full of the CDA First Lien Obligations (or, if the proviso to this clause (iv) applies, the date the Requisite CDA Consent is obtained, as applicable), a first priority mortgage, deed of trust or deed to secure debt (as applicable) on each Pension Real Property (such mortgage, deed of trust or deed, a "**Pension Property Mortgage**") pursuant to Mortgages that satisfy the requirements of clause (c)(i) below (subject to Liens permitted by Section 7.01) and a perfected first priority security interest (subject to Liens permitted by Section 7.01) in all personal property relating to such Pension Real Property and all fixtures thereon; *provided* that to the extent such Pension Property Mortgage is prohibited under the terms of the Contribution Deferral Agreement (as in effect as of the date hereof), the Loan Parties shall use commercially reasonable efforts to obtain the necessary consents under the Contribution Deferral Agreement to permit such Pension Property Mortgage (the "Requisite CDA Consent") and if after using such commercially reasonable efforts, such consent is not obtained, the Loan Parties shall not be required to deliver such Pension Property Mortgage until all obligations under the Contribution Deferral Agreement to the extent permitted under Section 7.03(u) shall have been paid in full; and
  - (v) a perfected first priority security interest (subject to Liens permitted by Section 7.01) in substantially all other personal property of the Borrower and each Guarantor, including Term Loan Priority Accounts (as defined in the ABL Intercreditor), investment property, contracts, patents, copyrights, trademarks and other general intangibles (subject to a license in favor of the ABL Agent to use intellectual property, subject to the ABL Intercreditor Agreement), commercial tort claims, letter of credit rights, intercompany notes and proceeds of the foregoing;
- (c) subject to the limitations and exceptions set forth in this Agreement and the Collateral Documents, to the extent a security interest in and mortgage lien on any Material Real Property (or, solely with respect to clause (b)(iv) above, any Pension Real Property) is required under Section 4.02, 6.11 or 6.13 (together with any Material Real Property that is subject to a Mortgage on the Restatement Effective Date pursuant to clause (b)(iii) above, each, a "**Mortgaged Property**"), the Administrative Agent and the Collateral Agent shall have received:

- (i) counterparts of a Mortgage with respect to such Real Property duly executed and delivered by the record owner of such property in form suitable for filing or recording in all filing or recording offices that the Collateral Agent may reasonably deem necessary or desirable in order to create a valid and subsisting perfected Lien on the property and/or rights described therein in favor of the Collateral Agent for the benefit of the Secured Parties, and evidence that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent and the Required Lenders (it being understood that if a mortgage tax will be owed on the entire amount of the indebtedness evidenced hereby, then the amount secured by the Mortgage shall be limited to 120% (or, in the case of Real Property located in the state of New York, 100%) of the fair market value of the property at the time the Mortgage is entered into if such limitation results in such mortgage tax being calculated based upon such fair market value);
- (ii) fully paid policies of title insurance (or marked-up title insurance commitments having the effect of policies of title insurance) with respect to such Material Real Property issued by the Title Company or another nationally recognized title insurance company reasonably acceptable to the Collateral Agent in form and in an amount reasonably acceptable to the Collateral Agent (not to exceed 100% of the fair market value of such Material Real Property (or interest therein, as applicable) covered thereby), insuring the Mortgages to be valid, subsisting Liens on the property described therein, free and clear of all Liens other than Liens permitted pursuant to Section 7.01 (such policies, "**Mortgage Policies**"), each of which shall (A) to the extent reasonably necessary, include such reinsurance arrangements (with provisions for direct access, if reasonably necessary) as shall be reasonably acceptable to the Collateral Agent, (B) contain a "tie-in" or "cluster" endorsement, if available under applicable law (i.e., policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), (C) have been supplemented by such endorsements (or where such endorsements are not available, customary opinions of special counsel, architects or other professionals reasonably acceptable to the Collateral Agent and the Required Lenders) as shall be reasonably requested by the Collateral Agent or the Required Lenders (including endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity, revolving credit (if available after the applicable Loan Party uses commercially reasonable efforts), doing business, public road access, variable rate, environmental lien, subdivision, mortgage recording tax, separate tax lot and so-called comprehensive coverage over covenants and restrictions);
- (iii) either (1) an American Land Title Association/National Society for Professional Surveyors (ALTA/NSPS) form of survey for which all charges have been paid, dated a date, containing a certification and otherwise being in form and substance reasonably satisfactory to the Collateral Agent (a "**Survey**") or (2) such documentation ("**Other Survey Documentation**") as may be required by the Title Company to omit the standard survey exception to coverage under the Mortgage Policy with respect to such Material Real Property and issue affirmative

endorsements reasonably requested by the Collateral Agent, including “same as” survey and comprehensive endorsements;

- (iv) a customary legal opinion, addressed to the Collateral Agent and the Secured Parties with respect to the Mortgage on such Material Real Property; provided, however, with respect to any Material Real Property as of the Restatement Effective Date, Borrower shall only be required to deliver a legal opinion if such Material Real Property is located in a Required Opinion State; and
- (v) in order to comply with the Flood Laws, the following documents: (A) a completed standard “life of loan” flood hazard determination form (a “**Flood Determination Form**”); (B) if any of the material improvement(s) to the improved Material Real Property is located in a special flood hazard area, a notification thereof to the Borrower (“**Borrower Notice**”) and, if applicable, notification to the Borrower that flood insurance coverage under the National Flood Insurance Program (“**NFIP**”) is not available because the community in which the property is located does not participate in the NFIP; (C) documentation evidencing the Borrower’s receipt of the Borrower Notice (e.g., a countersigned Borrower Notice or return receipt of certified U.S. Mail or overnight delivery); and (D) if the Borrower Notice is required to be given and flood insurance is available in the community in which such Material Real Property is located, a copy of one of the following: the flood insurance policy, the Borrower’s application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued or such other evidence of flood insurance reasonably satisfactory to the Required Lenders, Administrative Agent and the Collateral Agent (any of the foregoing being “**Evidence of Flood Insurance**”)(the foregoing, collectively, the “**Mortgage Policy Conditions**”);
- (d) after the Restatement Effective Date, each Restricted Subsidiary of the Borrower that is not an Excluded Subsidiary shall become a Guarantor and signatory to this Agreement pursuant to a joinder agreement in accordance with Section 6.11 or 6.13; *provided* that, notwithstanding the foregoing provisions, any Subsidiary of the Borrower that would otherwise constitute an Excluded Subsidiary that Guarantees any ABL Facility Indebtedness, any Junior Financing, Permitted Additional Debt, or any Permitted Refinancing of any Indebtedness thereof, or that is a borrower under the ABL Facility (or any Permitted Refinancing thereof) shall be a Guarantor hereunder for so long as it Guarantees such Indebtedness (or is a borrower with respect thereto); and
- (e) after the Restatement Effective Date, YRC Freight Canada Company and Reimer Holding B.V. shall become a Guarantor and signatory to this Agreement pursuant to a joinder agreement in accordance with, and take the other actions specified in, Schedule 6.13(a).

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary:

- (A) the foregoing definition shall not require, unless otherwise stated in this clause (A), the creation or perfection of pledges of, security interests in, Mortgages on, the obtaining of title

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insurance with respect to or the taking of any other actions with respect to: (i) any fee owned Real Property that is not Material Real Property (other than Pension Property Mortgages solely to the extent required to be delivered pursuant to clause (b)(iv) of this definition) and any Leasehold Property (it being understood there shall be no requirement to obtain any landlord waivers, estoppels or collateral access letters), (ii) motor vehicles (other than tractors, trucks, trailers and other rolling stock) consisting of an employee or light vehicle and other assets subject to certificates of title with an individual fair market value of less than \$40,000, *provided* that the aggregate fair market value of all assets excluded from the Collateral and Guarantee Requirement pursuant to this sub-clause (ii) of this clause (A), together with the aggregate book value of all assets excluded from the Collateral and Guarantee Requirement pursuant to sub-clause (xiv) of this clause (A), shall not exceed \$5,000,000 in the aggregate at any time outstanding, (iii) letter of credit rights (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a UCC financing statement) of an amount less than \$5,000,000 and commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than \$5,000,000, (iv) any governmental licenses or state or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby (except to the extent such prohibition or restriction is rendered ineffective under the UCC or other applicable law), (v) Collateral in which pledges or security interests are prohibited or restricted by applicable law or require the consent of any governmental authority or third party, which consent has not been obtained, (vi) Margin Stock, (vii) Equity Interests in a bona fide joint venture formed after the Restatement Effective Date with any Person that is not an Affiliate of any Loan Party (but only to the extent that the organizational documents of such Subsidiaries or agreements with other equity holders prohibit or restrict the pledge thereof without the consent of the other equity holders under restrictions that are enforceable under the UCC or other applicable law and such consent has not been obtained), (viii) Equity Interests of (or held as assets by) Immaterial Subsidiaries, or captive insurance Subsidiaries, (ix) any lease, license or agreement or any property to the extent a grant of a security interest therein would violate or invalidate such lease, license or agreement or similar arrangement or create a right of termination in favor of any other party thereto after giving effect to the applicable anti-assignment provisions of the UCC or other applicable law, other than proceeds and receivables thereof, the assignment of which is deemed effective under the UCC or other applicable law, notwithstanding such prohibition, (x) any assets or rights subject to a purchase money security interest, Capitalized Lease or similar arrangement, (xi) [reserved], (xii) any assets to the extent a security interest in such assets could result in adverse Tax consequences as reasonably determined by the Borrower, in consultation with the Administrative Agent (provided that the Borrower shall give notice of such determination to the Required Lenders and, at the request of the Required Lenders, shall consult with the Required Lenders), (xiii) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable Federal law, (xiv) any equipment or other collateral with a net book value in an aggregate amount not to exceed \$5,000,000 for all such equipment or other collateral (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a UCC financing statement); *provided* that the aggregate fair market value of all assets excluded from the Collateral and Guarantee Requirement pursuant to this sub-clause (xiv), together with the aggregate net book value of all assets excluded from the Collateral and Guarantee

Requirement pursuant to sub-clause (ii) of this clause (A), shall not exceed \$5,000,000 in the aggregate at any time outstanding, and (xv) other assets not specifically included in the Collateral in circumstances where the cost of obtaining a security interest in such assets exceeds the practical benefit to the Lenders afforded thereby as reasonably determined by the Administrative Agent in consultation with the Borrower.

(B) (i) the foregoing definition shall not require perfection by “**control**” except with respect to (1) Equity Interests or Indebtedness represented or evidenced by certificates or instruments and (2) deposit accounts and security accounts (which are required to be subject to Control Agreements pursuant to Section 3.04 of the Security Agreement), other than Excluded Accounts; (ii) perfection by possession or control shall not be required with respect to (x) any intercompany notes in an aggregate principal amount not to exceed \$5,000,000 and (y) any other notes or other evidence of Indebtedness in an aggregate principal amount not to exceed \$5,000,000; (iii) except in the case of (A) Canadian Subsidiaries, (B) Dutch Subsidiaries and (C) other Foreign Subsidiaries that are not Excluded Foreign Subsidiaries, no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the United States (including the Equity Interests of any Foreign Subsidiary) or to perfect such security interests (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction); and (iv) except to the extent that perfection and priority may be achieved (w) by the filing of a financing statement under the Uniform Commercial Code with respect to the Borrower or a Guarantor, (x) with respect to Real Property and the recordation of Mortgages in respect thereof, as contemplated by clauses (b)(iii) and (c) above, (y) with respect to Equity Interests or Indebtedness, by the delivery of certificates or instruments representing or evidencing such Equity Interests or Indebtedness along with appropriate undated instruments of transfer executed in blank or (z) by notation of liens on certificate of title, the Loan Documents shall not contain any requirements as to perfection or priority with respect to any assets or property described in clause (A) above and this clause (B);

(C) the Collateral Agent in its reasonable discretion may grant extensions of time for the creation or perfection of security interests in, and Mortgages on, or obtaining of title insurance or taking of other actions with respect to, particular assets (including extensions beyond the Restatement Effective Date) or any other compliance with the requirements of this definition (or any similar requirements set forth herein or in any other Loan Documents) where it reasonably determines, in consultation with the Borrower, that such creation or perfection of security interests or Mortgages, or such obtaining of title insurance or taking of other actions, or any other compliance with the requirements of this definition cannot be accomplished without undue delay, burden or expense by the time or times at which such act would otherwise be required by this Agreement or any Collateral Documents; *provided* that the Collateral Agent shall have received on or prior to the Restatement Effective Date, (i) UCC financing statements in appropriate form for filing under the UCC in the jurisdiction of incorporation or organization of each Loan Party, (ii) any certificates or instruments representing or evidencing Equity Interests of each direct wholly owned Subsidiary of the Borrower or any Guarantor, in each case accompanied by undated instruments of transfer and stock powers endorsed in blank and (iii) Mortgages and Mortgage Policies for each Material Real Property; and

(D) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to the exceptions and limitations set forth in this Agreement and the Collateral Documents.

“**Collateral Documents**” shall mean, collectively, the Security Agreement, each of the Mortgages, collateral assignments, security agreements, pledge agreements, intellectual property security agreements, Control Agreements or other similar agreements delivered to the Administrative Agent or the Collateral Agent pursuant to Section 4.02, Section 6.11 or Section 6.13, each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties, the ABL Intercreditor Agreement and the Second Lien Intercreditor Agreement (if any).

“**Commitment**” shall mean, with respect to any Lender, such Lender’s Term Loan Commitment (including pursuant to any Refinancing Amendment or Extension Amendment).

“**Communications**” shall have the meaning assigned to such term in Section 10.01.

“**Compliance Certificate**” shall mean a certificate substantially in the form of Exhibit F.

“**Consolidated EBITDA**” shall mean, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income (other than clauses (viii) or (xi)), the sum of the following amounts for such period with respect to Borrower and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, any expenses or losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations or other derivative obligations, letter of credit fees, costs of surety bonds in connection with financing activities and any bank fees and financing fees (including commitment, underwriting, funding, “rollover” and similar fees and commissions, discounts, yields and other fees, charges and amounts incurred in connection with the issuance or incurrence of Indebtedness and all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Contracts entered into for the purpose of hedging interest or commodity rate risk) and annual agency, unused line, facility or similar fees paid under definitive documentation related to Indebtedness (whether amortized or immediately expensed),

(ii) provision for taxes based on income, profits or capital gains of the Borrower and the Restricted Subsidiaries, including, without limitation, federal, state, local, franchise and similar taxes and foreign withholding taxes paid or accrued during such period,

(iii) depreciation and amortization,

(iv) extraordinary, unusual or non-recurring charges, expenses or losses, *provided* that the aggregate amount added to “Consolidated EBITDA” pursuant to this

clause (a)(iv) in any period, together with the aggregate amount added to Consolidated EBITDA pursuant to clause (a)(vi) of the definition of “Consolidated EBITDA”, shall not exceed in the aggregate 10.0% of Consolidated EBITDA for such period (as calculated prior to giving effect to any such adjustments),

(v) non-cash expenses, charges and losses (including reserves, impairment charges or asset write-offs, write-offs of deferred financing fees, losses from investments recorded using the equity method, purchase accounting adjustments and stock-based awards compensation expense), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to accounts receivable in the normal course or inventory; *provided* that if any of the non-cash charges referred to in this clause (v) represents an accrual or reserve for potential cash items in any future period, (1) the Borrower may determine not to add back such non-cash charge in the current period and (2) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to the extent paid,

(vi) restructuring costs and charges, integration costs, retention, recruiting, relocation and signing bonuses and expenses, and severance costs (including, for the avoidance of doubt, any bonuses payable in connection with the IBT Transactions); *provided* that the aggregate amount added to “Consolidated EBITDA” pursuant to this clause (a)(vi) in any period, together with the aggregate amount added to Consolidated EBITDA pursuant to clause (a)(iv) of the definition of “Consolidated EBITDA”, shall not exceed in the aggregate 10.0% of Consolidated EBITDA for such period (as calculated prior to giving effect to any such adjustments),

(vii) Transaction Expenses,

(viii) pro forma cost savings for acquisitions (including the commencement of activities constituting such business), material dispositions (including the termination or discontinuance of activities constituting such business) of business entities or properties or assets, constituting a division or line of business of any business entity, division or line of business that is the subject of any such acquisition or disposition and operational changes and operational initiatives (collectively, “**Cost Savings**”), scheduled to be executed and realized (in the good faith determination of a Senior Financial Officer of the Borrower) in connection with any such transaction permitted hereunder, net of the amount of actual Cost Savings realized from such actions during such period; *provided* that (A) such Cost Savings are factually supportable and specifically identified, (B) such Cost Savings are scheduled to be executed and realized within twelve (12) months after the consummation of such transaction, (C) the Administrative Agent and the Required Lenders shall have received a certificate of a Senior Financial Officer of the Borrower, certifying the foregoing requirements and accompanied by a reasonably detailed statement or schedule of such Cost Savings; (D) the actions responsible for any expected Cost Savings are actually taken within twelve (12) months of the consummation of the relevant transaction, (E) any projected Cost Savings in respect of actions which are not actually taken within such twelve (12)-month period or have not been realized within such (12)-month period may no longer

be added back in calculating Consolidated EBITDA pursuant to this clause (viii) for the applicable periods, (F) such Cost Savings are not duplicative of any other adjustments to Consolidated EBITDA pursuant to this definition and (G) the aggregate amount added to Consolidated EBITDA pursuant to this clause (a)(viii) in any period, together with the aggregate amount of all adjustments pursuant to Section 1.10(c), shall not exceed in the aggregate 5.0% of Consolidated EBITDA for such period (as calculated prior to giving effect to any such adjustments),

(ix)[reserved],

(x)other transaction specific accruals, costs, charges, fees and expenses (including legal, tax, structuring and other costs and expenses) related to the Transactions, acquisitions, investments, restricted payments, dispositions or issuances, amendments, waivers or modifications of debt or equity (whether or not consummated) reasonably expected to be permitted under this Agreement or the consummation of which would result in the repayment in full of the Obligations (other than unasserted contingent indemnity and reimbursement obligations) (it being understood and agreed that this clause (a)(x) shall not permit adjustments of the type specified in clauses (a)(iv), (vi) or (viii)),

(xi)to the extent not already included in Consolidated Net Income, proceeds of business interruption insurance (other than business interruption insurance relating to COVID 19 (or any related virus) or any related events) received or reasonably expected to be received within 365 days after the end of such period; *provided* that any such expected proceeds that are not actually received in such 365 day period shall be deducted from Consolidated EBITDA in the fiscal quarter immediately following such 365 day period,

(xii)charges, losses or expenses to the extent indemnified or insured or reimbursed or reasonably expected to be indemnified, insured or reimbursed by a third party within 365 days after the end of such period; *provided* that any such expected amounts that are not actually received in such 365 day period shall be deducted from Consolidated EBITDA in the fiscal quarter immediately following such 365 day period,

(xiii)the amount of any minority interest expense attributable to minority interests of third parties in the positive income of any non-wholly owned Restricted Subsidiary,

(xiv)any net loss from disposed, abandoned or discontinued operations,

(xv)the amount of loss on sale of Securitization Assets and related assets to the Securitization Subsidiary in connection with a Qualified Securitization Financing,

(xvi)net realized losses under any Swap Contract or embedded derivatives that require similar accounting treatment and the application of Accounting Standard Codification Topic 815 and related pronouncements,

(xvii)the cumulative effect of a change in accounting principles,

(xviii) realized non-cash foreign exchange losses resulting from the impact of foreign currency changes on the valuation of assets or liabilities on the balance sheet of the Borrower and its Restricted Subsidiaries,

(xix) any losses attributable to Dispositions of Real Property,

less (b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period) and all other non-cash items of income for such period, (ii) any gains and income from investments recorded using the equity method, (iii) extraordinary, unusual or non-recurring gains, (iv) non-cash gains representing adjustments to pension assets, (v) any gains attributable to Dispositions of Real Property and (vi) any gains arising out of transactions of the types described in clauses (a)(xii), (xiii), (xiv), (xv) and (xvi) above; *provided* that, for the avoidance of doubt, any gain representing the reversal of any non-cash charge referred to in clause (a)(v)(B) above for a prior period shall be added (together with, without duplication, any amounts received in respect thereof to the extent not increasing Consolidated Net Income) to Consolidated EBITDA in any subsequent period to such extent so reversed (or received).

**Notwithstanding the foregoing, Consolidated Net Income and Consolidated EBITDA shall be calculated to exclude any amounts otherwise increasing or included in Consolidated Net Income and/or Consolidated EBITDA relating to (x) business interruption insurance relating to COVID 19 (or any related virus) or any related events or (y) any assistance programs provided by Governmental Agencies (or the equivalent).**

“**Consolidated Net Income**” shall mean, with reference to any period, the net income (or loss) of the Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP on a consolidated basis (without duplication) for such period (without deduction for minority interests); *provided* that in determining Consolidated Net Income, (a) the net income of any other Person which is not a Subsidiary of the Borrower or is accounted for by the Borrower by the equity method of accounting shall be included only to the extent of the payment of cash dividends or cash distributions by such other Person to the Borrower or a Guarantor that could be made during such period; *provided, however*, that for purposes of calculating the Cumulative Credit for purposes of Section 7.06(e)(y), such income shall only be included (directly or indirectly) to the extent such cash dividends or other cash distributions are actually received from such other Person by the Borrower or a Guarantor, (b) the net income of any Subsidiary of the Borrower shall be excluded to the extent that the declaration or payment of cash dividends or similar cash distributions by that Subsidiary of that net income is not at the date of determination permitted by operation of its charter or any agreement, instrument or law applicable to such Subsidiary (other than (i) restrictions that have been waived or otherwise released, (ii) restrictions pursuant to the Loan Documents and or the ABL Facility Documentation or any agreements or documentation governing Alternative Incremental Indebtedness and (iii) restrictions arising pursuant to an agreement or instrument if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by the Borrower in good faith)), and (c) the income or loss of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or

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any Subsidiary or the date that such Person's assets are acquired by the Borrower or any Subsidiary shall be excluded.

**"Consolidated Total Assets"** shall mean the total assets of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the consolidated balance sheet of the Borrower for the most recently completed fiscal quarter for which financial statements have been delivered pursuant to Section 6.01(a) or (b).

**"Consolidated Total Debt"** shall mean, as of any date of determination, the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries (on a consolidated basis) outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP as long as such amount is no less than the aggregate face amount of such Indebtedness on such date, consisting of Indebtedness for borrowed money, Attributable Indebtedness or purchase money Indebtedness, debt obligations evidenced by bonds, debentures, promissory notes, loan agreements or similar instruments, and all Guarantees of any of the foregoing; *provided* that (i) Consolidated Total Debt shall not include Indebtedness in respect of letters of credit, bankers' acceptances and other similar contingent obligations, except to the extent of unreimbursed amounts thereunder, and (ii) Consolidated Total Debt shall not include obligations under Swap Contracts permitted hereunder.

**"Consolidated Working Capital"** shall mean, with respect to the Borrower and its Restricted Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; provided, that, increases or decreases in Consolidated Working Capital shall be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent or (b) the effects of purchase accounting.

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

**"Contribution Deferral Agreement"** means that certain Second Amended and Restated Contribution Deferral Agreement, dated as of January 31, 2014, by and between YRC Inc., USF Holland LLC (f/k/a USF Holland Inc.), New Penn Motor Express LLC (f/k/a New Penn Motor Express, Inc.), USF Reddaway Inc., certain other of the Subsidiaries of the Borrower, the Trustees for the Central States, Southeast and Southwest Areas Pension Fund, the Pension Fund Entities and each other pension fund from time to time party thereto and Wilmington Trust Company, all as the same may be amended, amended and restated, restated, supplemented or otherwise modified in accordance with the terms hereof.

**"Control"** shall have the meaning specified in the definition of "Affiliate".

**"Control Agreement"** means an agreement, in form and substance reasonably satisfactory to the Required Lenders, which provides for the Collateral Agent to have "control" (for purposes of this definition, as defined in Section 9 104 of the UCC of the State of New York or Section 8-

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“**Credit Agreement Refinancing Indebtedness**” shall mean Permitted Additional Debt or Indebtedness incurred pursuant to a Refinancing Amendment, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, restructure or refinance, in whole or part, existing Term Loans (including any successive Credit Agreement Refinancing Indebtedness) (“**Refinanced Debt**”); *provided* that (i) such extending, renewing, replacing, restructuring or refinancing Indebtedness is in an original aggregate principal amount (or accreted value, if applicable) not greater than the aggregate principal amount (or accreted value, if applicable) of the Refinanced Debt, except by an amount equal to accrued but unpaid interest, premiums and fees payable by the terms of such Indebtedness and reasonable fees, expenses, original issue discount and upfront fees incurred in connection with such exchange, modification, refinancing, refunding, renewal, restructuring, replacement or extension, (ii) such Refinanced Debt shall be repaid, defeased or satisfied and discharged with 100% of the Net Proceeds of the applicable Credit Agreement Refinancing Indebtedness and all accrued, due and payable interest, fees and premiums (if any) in connection therewith shall be paid promptly upon receipt of the proceeds of such Credit Agreement Refinancing Indebtedness, (iii) such Indebtedness does not have an earlier maturity and has a Weighted Average Life to Maturity equal to or greater than the Refinanced Debt; and (iv) and, in the case of any high yield notes constituting Credit Agreement Refinancing Indebtedness, such Indebtedness will not have mandatory prepayment provisions (other than related to customary asset sale and change of control and similar offers and AHYDO “catch up” payments) that would result in mandatory prepayment of such Indebtedness prior to the Refinanced Debt.

“**Credit Extension**” shall mean a Borrowing.

“**Cumulative Credit**” shall mean, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) the Cumulative Retained Excess Cash Flow Amount at such time, plus

(b) the cumulative amount of cash and Cash Equivalent proceeds from the sale of Equity Interests of the Borrower or of any direct or indirect parent of the Borrower after the Restatement Effective Date to the extent Not Otherwise Applied, plus

(c) the aggregate amount of Declined Proceeds at such time that have been retained by the Borrower in accordance with Section 2.13(d), plus

(d) to the extent not already included in the Cumulative Retained Excess Cash Flow Amount, an amount equal to any returns in cash and Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Borrower or any Restricted Subsidiary after the Restatement Effective Date in respect of any Investments made pursuant to Section 7.02(p)(y), and *provided* in each case that such amount does not exceed the amount of the original Investment made pursuant to Section 7.02(p)(y); minus

(e) any amount of the Cumulative Credit used to make Investments pursuant to Section

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7.02(p)(y) after the Restatement Effective Date and prior to such time, minus

(f) any amount of the Cumulative Credit used to pay dividends or make distributions or other Restricted Payments pursuant to Section 7.06(d)(ii) or Section 7.06(e)(y) after the Restatement Effective Date and prior to such time, minus

(g) any amount of the Cumulative Credit used to make payments or distributions in respect of Permitted Additional Debt or Junior Financing (or any Permitted Refinancing thereof) pursuant to Section 7.13(a)(vi) after the Restatement Effective Date and prior to such time.

Notwithstanding anything to the contrary in this Agreement, during the Specified Amendment No. 1 Period, the Cumulative Credit shall be unavailable for use under this Agreement and shall be disregarded in any calculation of or reference to any other term or provision herein.

“**Cumulative Retained Excess Cash Flow Amount**” shall mean, at any date, an amount, not less than zero in any fiscal year, determined on a cumulative basis equal to the aggregate cumulative sum of the Retained Percentage of Excess Cash Flow for all Excess Cash Flow Periods ending after the Restatement Effective Date and prior to such date; *provided*, that for purposes of Section 7.06(e)(y), (a) the Cumulative Retained Excess Cash Flow Amount shall only be available if the Total Leverage Ratio at the time of the making of such Investment, Restricted Payment or prepayment, redemption, purchase, defeasance or other payment, as the case may be, calculated on a Pro Forma Basis, is less than or equal to 3.75 to 1.00 and (b) the Cumulative Retained Excess Cash Flow Amount shall be reduced by the amount of Excess Cash Flow attributable to Foreign Subsidiaries to the extent and for so long as such Excess Cash Flow is excluded from Excess Cash Flow prepayments pursuant to Section 2.13(f).

“**Current Assets**” shall mean, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all assets that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current assets at such date of determination, other than (a) cash and Cash Equivalents, (b) amounts related to current or deferred Taxes based on income or profits, (c) assets held for sale, (d) loans (permitted) to third parties, (e) pension assets, (f) deferred bank fees, and (g) derivative financial instruments.

“**Current Liabilities**” shall mean, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current liabilities at such date of determination, other than, without duplication (and to the extent otherwise included therein) (a) the current portion of any Indebtedness, (b) accruals of interest expense (excluding interest expense that is past due and unpaid), (c) accruals for current or deferred Taxes based on income or profits, (d) accruals of any costs or expenses related to restructuring reserves, (e) the current portion of pension liabilities and (f) revolving loans, swing line loans and letter of credit obligations under the ABL Facility or any other revolving credit facility.

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“**Custodial Administration Agreement**” shall mean the custodial administration agreement, dated as of the Restatement Effective Date, by and among the Borrower, the Subsidiaries from time to time parties thereto, VINtek, Inc., as custodial administrator, the Collateral Agent, as administrative and collateral agent for the benefit of the Secured Parties, the ABL Agent, as administrative and collateral agent for the benefit of the ABL Secured Parties and the Collateral Agent, as collateral agent for the benefit of the Secured Parties and the ABL Secured Parties.

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

“**Declined Proceeds**” shall have the meaning assigned to such term in [Section 2.13\(d\)](#).

“**Default**” shall mean any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of any grace period, or both, without cure or waiver hereunder, would be an Event of Default.

“**Deposit Account**” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“**Disposition**” or “**Dispose**” shall mean the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“**Disqualified Equity Interests**” shall mean any Equity Interest that, 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 Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (c) provides for 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 ninety-one (91) days after the then Latest Maturity Date; *provided* that if such Equity Interests are issued pursuant to, or in accordance with a plan for the benefit of employees of the Borrower or the Restricted Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability.

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“**Disqualified Lenders**” shall mean (i) each of those banks, financial institutions and other entities identified in writing prior to the Restatement Effective Date by the Borrower to the Administrative Agent and the Required Lenders, (ii) competitors of the Borrower or the Guarantors identified in writing from time to time by the Borrower to the Administrative Agent, and (iii) any known affiliates of the Persons identified pursuant to clause (i) or (ii); provided that a “competitor” or an affiliate of a competitor or an entity referenced in clause (i) shall not include any bona fide debt fund or investment vehicle (other than a Person which is excluded pursuant to clause (i) above) that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business and whose managers are not involved with any equity or equity-like investments or other investments with an equity component or characteristic managed by any Person described in clause (i) or (ii) above.

“**Dollars**” or “**\$**” shall mean lawful money of the United States of America.

“**Domestic Subsidiary**” shall mean any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“**Dutch Auction**” shall mean an auction conducted by the Borrower in order to purchase Term Loans as contemplated by Section 10.04(k), in accordance in all material respects with the procedures set forth in Exhibit K.

“**Dutch Subsidiary**” shall mean any Subsidiary that is organized under the Laws of the Netherlands or any state or province thereof.

“**Eligible Assignee**” shall mean (i) a Lender, (ii) an Affiliate of a Lender, (iii) a Related Fund of a Lender, and (iv) any other Person (other than a natural person) approved by the Administrative Agent and, unless an Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) has occurred and is continuing and except during the primary syndication of the Commitments to those institutions disclosed in writing by the Required Lenders to the Borrower and approved by the Borrower prior to the Restatement Effective Date, the Borrower (each such approval not to be unreasonably withheld, conditioned or delayed and the Borrower’s approval being deemed to have been given in the event that the Borrower does not object in writing to an assignment within ~~10 days~~ **three (3) Business Days** after receipt of written notice of such assignment); *provided, that,* notwithstanding the foregoing, **(A) “Eligible Assignee” shall not include the Borrower or any other Controlled Affiliate of the Borrower (it being understood that assignments to the Borrower may only be made pursuant to Section 10.04(k)) and (B) no Borrower consent shall be required if any Lender is required to assign all or any portion of its Loans by any Governmental Authority.** “**Eligible Assignee**” shall not include any Disqualified Lender without the prior written consent of the Borrower (which may be withheld in the Borrower’s sole discretion). Notwithstanding the foregoing or anything else to the contrary in this Agreement, each of the parties hereto acknowledges and agrees that the Administrative Agent (in its capacity as such) (x) shall not have any responsibility or obligation to determine whether any Lender or any potential assignee Lender is a Disqualified Lender and (y) shall not have any liability with respect to any assignment or participation made to a Disqualified Lender.

“**Environmental Laws**” shall mean all federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders

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(including consent orders), and agreements in each case, relating to protection of the environment, natural resources, human health and safety (with respect to exposure to hazardous or toxic substances or wastes) or the presence, Release of, or exposure to, hazardous or toxic substances or wastes, or the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or the arrangement for such activities with respect to, hazardous or toxic substances or wastes.

**“Environmental Liability”** shall mean all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses and costs (including administrative oversight costs, capital and operating costs, injunctive relief, costs associated with financial assurance, permitting or closure requirements, natural resource damages and investigation or remediation costs), whether contingent or otherwise, arising out of or relating to (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release 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”** shall mean, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities) but excluding in each case any debt security that is convertible into, or exchanged for, Equity Interests.

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

**“ERISA Affiliate”** shall mean Person, any trade or business (whether or not incorporated) that, together with a Loan Party or any Restricted Subsidiary, is or, within the six year period immediately preceding the Original Closing Date, was treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

**“ERISA Event”** shall mean (a) a Reportable Event; (b) the failure to satisfy the minimum funding standard with respect to a Plan within the meaning of Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA, whether or not waived (unless such failure is corrected by the final due date for the plan year for which such failure occurred), (c) a determination that a Plan is, or is expected to be, in “at risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (d) the receipt by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of notice pursuant to Section 305(b)(3)(D) of ERISA that a Multiemployer Plan is or will be in “endangered status” or “critical status” (as defined in Section 305(b) of ERISA), or is, or is expected to be, “insolvent” (within the meaning of Section 4245 of ERISA); (e) the filing pursuant to Section 431 of the Code or Section 304 of ERISA of an application for the extension

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of any amortization period; (f) the failure to timely make a contribution required to be made with respect to any Plan or Multiemployer Plan; (g) the filing of a notice to terminate any Plan if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA; (h) the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Plan or the termination of any Plan under Section 4041(c) of ERISA; (i) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (j) the incurrence by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (k) the receipt by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates from the PBGC or a plan administrator of any notice of an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (l) the receipt by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability; (m) the occurrence of any event or condition that would reasonably be expected to result in the termination of a Plan or the appointment of a trustee to administer a Plan; (n) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to any Plan which could result in liability to a Loan Party or any Restricted Subsidiary or with respect to which a Loan Party or any Restricted Subsidiary is a "disqualified person" (as defined in Section 4975 of the Code) or a "party in interest" (as defined in Section 3(14) of ERISA); (p) the incurrence of any liability with respect to any Plan or Multiemployer Plan under Title IV of ERISA (other than premiums due and not delinquent under Section 4007 of ERISA); or (q) engagement in any transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

"**Eurodollar**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate (other than the Alternate Base Rate) determined by reference to the Adjusted LIBO Rate.

"**Event of Default**" shall have the meaning assigned to such term in Article 8.

"**Excess Cash Flow**" shall mean, for any period, an amount equal to:

(a) the sum, without duplication, of:

- (i) Consolidated Net Income for such period,
- (ii) an amount equal to the amount of all non-cash charges to the extent deducted in arriving at such Consolidated Net Income,
- (iii) decreases in Consolidated Working Capital for such period (other than any such decreases arising from acquisitions or dispositions by the Borrower and its Restricted Subsidiaries completed during such period),
- (iv) cash receipts in respect of Swap Contracts during such period to the extent such receipts were not otherwise included in arriving at such Consolidated Net Income,

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- (v) the amount of tax expense deducted in determining Consolidated Net Income for such period to the extent it exceeds the amount of cash taxes paid in such period,
- (vi) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income,
- minus
- (b) the sum, without duplication, of:
- (i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income,
- (ii) the amount of Capital Expenditures made in cash during such period (or committed to be made within 90 days after the end of such period) to the extent financed with Internally Generated Cash,
- (iii) the aggregate amount of payments made in cash during such period (or committed to be paid in cash within 90 days after the end of such period) (other than Capital Expenditures) and capitalized in accordance with GAAP to the extent financed with Internally Generated Cash,
- (iv) the aggregate amount of all principal payments of Indebtedness of the Borrower and its Restricted Subsidiaries during such period, in each case to the extent financed with Internally Generated Cash (including (A) the principal component of payments in respect of Capitalized Leases and (B) voluntary prepayments or buybacks of Term Loans made pursuant to Section 10.04(k) (in an amount equal to the discounted amount actually paid in respect of the principal amount of such Term Loans), but excluding (W) all voluntary prepayments of Term Loans (other than voluntary prepayments made pursuant to Section 10.04(k)), (X) all prepayments of Indebtedness on the Restatement Effective Date in connection with the Refinancing Transactions, (Y) all prepayments, redemptions or repurchases in respect of (i) Permitted Second Priority Additional Debt (or any Permitted Refinancing thereof), except to the extent permitted under Section 7.13(a) and (ii) Junior Financing, except to the extent permitted under Section 7.13(a) and (Z) all prepayments of loans under the ABL Facility or any other revolving credit facility made during such period unless there is a corresponding permanent commitment reduction in connection therewith (it being agreed that any amount excluded pursuant to clause (W), (X), (Y) or (Z) may not be deducted under any other clause of this definition),
- (v) an amount equal to the aggregate net non-cash gain on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,
- (vi) increases in Consolidated Working Capital for such period (other than any such increases arising from acquisitions or dispositions by the Borrower and its Restricted Subsidiaries during such period),
- (vii) cash payments by the Borrower and its Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and its Restricted Subsidiaries other than

Indebtedness and that were made with Internally Generated Cash and were not deducted or were excluded in calculating Consolidated Net Income,

- (viii) the amount of Investments and acquisitions made during such period (or committed to be made within 90 days after the end of such period) in cash pursuant to Section 7.02 (other than Section 7.02(a) or (c)) (net of the cash return on any such Investments received during such period, except to the extent such return was included in the determination of Consolidated Net Income) to the extent that such Investments and acquisitions were not expensed and were financed with Internally Generated Cash,
- (ix) the amount of cash taxes paid in such period (or reasonably expected to be paid within 90 days of the end of such period) to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period (which amounts shall be included in the calculation of Excess Cash Flow for the period in which they are expensed),
- (x) cash expenditures in respect of Swap Contracts during such fiscal year to the extent such expenditures were not deducted or were excluded in arriving at such Consolidated Net Income, and
- (xi) the aggregate amount of Restricted Payments made in cash permitted by Section 7.06(d)(i) during such period (or committed to be made or paid in cash within the next 90 days after the end of such period).

Notwithstanding anything in the definition of any term used in the definition of Excess Cash Flow to the contrary, (i) all components of Excess Cash Flow shall be computed for the Borrower and its Restricted Subsidiaries on a consolidated basis and (ii) for purposes of calculating Excess Cash Flow for any period with respect to each Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby consummated during such Excess Cash Flow Period and for the purposes of calculating Consolidated Working Capital, the (A) total assets of a target of such Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby (other than cash and Cash Equivalents), as calculated as at the date of consummation of the applicable Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby, which may properly be classified as current assets on a consolidated balance sheet of Borrower and its Restricted Subsidiaries in accordance with GAAP (assuming, for the purpose of this clause (A), that such Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby has been consummated) and (B) the total liabilities of Borrower and its Restricted Subsidiaries, as calculated as at the date of consummation of the applicable Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby, which may properly be classified as current liabilities (other than the current portion of any long term liabilities and accrued interest thereon) on a consolidated balance sheet of Borrower and its Restricted Subsidiaries in accordance with GAAP (assuming, for the purpose of this clause (B), that such Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby has been consummated), shall, in the case of both immediately preceding clauses (A) and (B), be calculated as the difference between the Consolidated Working Capital at the end of the applicable period from the date of

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consummation of the Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby. To the extent any amounts that are committed to be made or paid or are reasonably expected to be paid are deducted as permitted by clause (b) of the definition of Excess Cash Flow in respect of any period, such amounts shall not be deducted again for purposes of calculating Excess Cash Flow for the period in which such amounts are actually paid.

**“Excess Cash Flow Period”** shall mean each fiscal year of the Borrower commencing with the fiscal year ending December 31, 2019, but in all cases for purposes of calculating the Cumulative Retained Excess Cash Flow Amount shall only include such fiscal years for which financial statements and a Compliance Certificate have been delivered in accordance with Sections 6.01(a) and 6.02(a), respectively, and for which any prepayments required by Section 2.13(a)(i) (if any) have been made (it being understood that the Retained Percentage of Excess Cash Flow for any Excess Cash Flow Period shall be included in the Cumulative Retained Excess Cash Flow Amount regardless of whether a prepayment is required by Section 2.13(a)(i), except to the extent that a prepayment is not made in reliance on Section 2.13(f), in which case the Cumulative Retained Excess Cash Flow Amount shall be reduced by the Retained Percentage of the Excess Cash Flow for which the Applicable ECF Percentage has not been applied to make a prepayment pursuant to Section 2.13(a)(i)).

**“Exchange Act”** shall mean the Securities Exchange Act of 1934, as amended.

**“Excluded Account”** means (i) any Deposit Account specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Loan Parties’ salaried employees, (ii) any petty cash account to the extent the balance therein does not exceed (x) \$1,000,000 in the aggregate for more than five (5) Business Days, and/or (y) \$5,000,000 in the aggregate for more than one (1) Business Day, (iii) any zero-balance account, (iv) any account specifically and exclusively used to maintain cash collateral required pursuant to the ABL Credit Agreement, and (v) any escrow account.

**“Excluded CDA Proceeds”** shall have the meaning assigned to such term in the definition of “Net Proceeds”.

**“Excluded Foreign Subsidiary”** shall mean any Foreign Subsidiary (other than any Canadian Subsidiary or Dutch Subsidiary) of the Borrower that does not individually have total assets or revenues (for the period of four fiscal quarters most recently ended) that exceed 3.0% of the Borrower’s total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* that the aggregate amount of assets or revenues (for the period of four fiscal quarters most recently ended) of such Subsidiaries shall not at any time exceed 7.0% of the Borrower’s total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* further that if, as of the date the financial statements for any fiscal quarter of the Borrower are delivered or required to be delivered hereunder, the consolidated assets or revenues of all Excluded Foreign Subsidiaries shall have, as of the last day of such fiscal quarter, exceeded the limits set forth above, then within sixty (60) days (or such later date as agreed by the Administrative Agent and the Required Lenders in their reasonable discretion) after the date such financial statements are so delivered (or so required to be delivered), the Borrower shall cause one

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or more Foreign Subsidiaries to comply with Section 6.11 such that, as a result thereof, the consolidated assets and revenues of all Excluded Foreign Subsidiaries do not exceed such limits. For the avoidance of doubt, no Canadian Subsidiary or Dutch Subsidiary shall constitute an Excluded Foreign Subsidiary.

“**Excluded Property**” shall have the meaning assigned to such term in the Security Agreement.

“**Excluded Real Property**” shall mean (a) any Real Property set forth on Schedule 1.01(a) and (b) any Pension Real Property.

“**Excluded Subsidiary**” shall mean (a) any bona fide joint venture formed after the Restatement Effective Date with any Person that is not an Affiliate of any Loan Party, (b) any Immaterial Subsidiary, (c) any Subsidiary that is prohibited by applicable Law whether or not existing on the Restatement Effective Date or Contractual Obligations existing on the Restatement Effective Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from Guaranteeing the Obligations or if Guaranteeing the Obligations would require governmental (including regulatory) consent, approval, license or authorization (unless such contractual obligation is waived or otherwise removed or such consent, approval, license or authorization has been obtained), (d) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent (at the direction of the Required Lenders), in consultation with the Borrower, the burden or cost or other consequences (other than adverse tax consequences) of providing a Guarantee of the Obligations shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (e) any other Subsidiary with respect to which, in the reasonable judgment of the Borrower, the tax consequences of providing a Guarantee could be adverse in consultation the Administrative Agent (provided that the Borrower shall give notice of such determination to the Required Lenders and, at the request of the Required Lenders, shall consult with the Required Lenders), (f) any Excluded Foreign Subsidiary of the Borrower, and (g) any Securitization Subsidiary, captive insurance company or non-profit Subsidiary; provided that no Person shall be an Excluded Subsidiary to the extent it guarantees or pledges any of its assets to secure, directly or indirectly, any other Indebtedness of any Loan Party in excess of the Threshold Amount; provided, further, that in the event that any Excluded Subsidiary guarantees or otherwise becomes an obligor under any Indebtedness, the aggregate principal amount of which exceeds the Threshold Amount, then such Excluded Subsidiary shall, notwithstanding the foregoing, no longer constitute an Excluded Subsidiary, and shall become a Loan Party hereunder. If any Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall only be permitted to be released from its Guarantee so long as the fair market value of any and all Investments then held by the Loan Parties in such Person are permitted as an Investment under Section 7.02(c)(iii) and Section 7.02(p) at the time such Person becomes an Excluded Subsidiary pursuant to clause (a) of the definition of “Excluded Subsidiary”.

“**Existing Credit Agreement**” shall have the meaning assigned to such term in the recitals.

“**Existing Loan Documents**” shall have the meaning assigned to such term in Section 1.14.

“**Extended Term Loans**” shall have the meaning assigned to such term in Section 2.19(a).

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“**Extension**” shall have the meaning assigned to such term in [Section 2.19\(a\)](#).

“**Extension Amendment**” shall have the meaning assigned to such term in [Section 2.19\(c\)](#).

“**Extension Offer**” shall have the meaning assigned to such term in [Section 2.19\(a\)](#).

“**Facility**” shall mean the Tranche B-2 Term Loans, the Extended Term Loans or the Other Term Loans, as the context may require.

“**FATCA**” shall mean Sections 1471 through 1474 of the Code, as in effect on the Restatement Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“**Federal Funds Effective Rate**” shall mean, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“**Fee Letter**” shall mean the Fee Letter dated as of the Restatement Effective Date by and between the Borrower and Apollo.

“**Fees**” shall have the meaning assigned to such term in [Section 2.05](#).

“**Flood Laws**” shall mean the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board).

“**Foreign Disposition**” shall have the meaning set forth in [Section 2.13\(f\)](#).

“**Foreign Subsidiary**” shall mean any direct or indirect Subsidiary of the Borrower which is not a Domestic Subsidiary.

“**GAAP**” shall mean generally accepted accounting principles in the United States of America, as in effect from time to time, subject to [Section 1.11](#); *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Restatement Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“**Governmental Authority**” shall mean any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Granting Lender**” shall have the meaning assigned to such term in [Section 10.04\(i\)](#).

“**Guarantee**” shall mean, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness of the payment or performance of such Indebtedness, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of any other Person, whether or not such Indebtedness is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include (i) endorsements for collection or deposit, in either case in the ordinary course of business, (ii) customary and reasonable indemnity obligations in effect on the Restatement Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness) or (iii) product warranties. 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.

“**Guaranteed Obligations**” shall have the meaning specified in [Section 11.01](#).

“**Guarantors**” shall mean (i) each Domestic Subsidiary of the Borrower as of the Restatement Effective Date (other than an Excluded Subsidiary), (ii) each Canadian Subsidiary and Dutch Subsidiary of the Borrower that issues a Guarantee of the Obligations after the Restatement Effective Date pursuant to [Schedule 6.13\(a\)](#) and (iii) each Subsidiary that issues a Guarantee of the Obligations after the Restatement Effective Date pursuant to [Section 6.11](#) (which [Section 6.11](#), for the avoidance of doubt, does not require that any Excluded Subsidiary provide such a Guarantee) or otherwise. For avoidance of doubt, the Borrower may cause any Restricted Subsidiary that is not (and is not required to be) a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent, and any such Restricted Subsidiary shall be treated as a Guarantor hereunder for all purposes (each such Subsidiary, an “**Electing Guarantor**”) and may also cause the Guaranty of any such Electing Guarantor, and any Liens securing such Guaranty, to be released upon providing written notice to the Administrative Agent and the

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Collateral Agent that such Electing Guarantor shall be treated as an Excluded Subsidiary to the extent consistent with the definition of Excluded Subsidiary. The Guarantors as of the Restatement Effective Date are (A) set forth on Schedule 1.01(b) and (B) not Electing Guarantors.

“**Guaranty**” shall mean, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

“**Hazardous Materials**” shall mean (a) any petroleum products, distillates or byproducts and all other hydrocarbons, coal ash, radon gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, chlorofluorocarbons and all other ozone-depleting substances and (b) any chemical, material, substance or waste that is prohibited, limited or regulated by or pursuant to any Environmental Law.

“**IBT**” shall mean the International Brotherhood of Teamsters.

“**IBT Agreement**” shall mean that certain National Master Freight Agreement, effective April 1, 2019, among the IBT, YRC Inc. (formerly, Yellow Transportation, Inc. and Roadway Express, Inc.), USF Holland LLC and New Penn Motor Express LLC, as amended, restated, modified, supplemented, extended, renewed or replaced from time to time.

“**IBT Extension Agreement**” shall mean that certain Extension of the Agreement for the Restructuring of the YRC Worldwide Inc. Operating Companies, by and among YRC Inc., USF Holland, Inc., New Penn Motor Express, Inc., USF Reddaway and the Teamsters National Freight Industry Negotiating Committee of the IBT.

“**IBT Transactions**” shall mean the modification and extension through March 31, 2024 or any date thereafter, including pursuant to a subsequent modification, extension, approval and ratification, of the IBT Agreement, and the approval and ratification of the IBT Extension Agreement by the members of the IBT in accordance in all material respects with all applicable laws, rules, regulations and other requirements relating thereto.

“**Immaterial Subsidiary**” shall mean any Subsidiary of the Borrower that does not individually have total assets or revenues (for the period of four fiscal quarters most recently ended) that exceed 1.0% of the Borrower’s total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* that the aggregate amount of assets or revenues (for the period of four fiscal quarters most recently ended) of such Subsidiaries shall not at any time exceed 2.5% of the Borrower’s total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided further* that if, as of the date the financial statements for any fiscal quarter of the Borrower are delivered or required to be delivered hereunder, the consolidated assets or revenues of all Restricted Subsidiaries so designated by the Borrower as “**Immaterial Subsidiaries**” shall have, as of the last day of such fiscal quarter, exceeded the limits set forth above, then within 10 Business Days (or such later date as agreed by the Administrative Agent and the Required Lenders in their reasonable discretion) after the date such financial statements are so delivered (or so required to be delivered), the Borrower shall redesignate one or more Immaterial Subsidiaries, in each case in a written notice to the Required Lenders and Administrative Agent, such that, as a result thereof, the consolidated assets and revenues of all

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Restricted Subsidiaries that are still designated as “Immaterial Subsidiaries” do not exceed such limits. Upon any such Restricted Subsidiary ceasing to be an Immaterial Subsidiary pursuant to the preceding sentence, such Restricted Subsidiary, to the extent not otherwise qualifying as an Excluded Subsidiary, shall comply with Section 6.11, to the extent applicable.

“**Indebtedness**” shall mean, as to any Person at a particular time, without duplication and without reference to what constitutes indebtedness or a liability in accordance with GAAP, all of the following:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;
- (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;
- (e) indebtedness (excluding prepaid interest thereon) described in clauses (a) through (d) and (f) through (h) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness;
- (g) all obligations of such Person to purchase, redeem, retire or otherwise acquire for value any Disqualified Equity Interests (but solely to the extent required to occur on or prior to the Latest Maturity Date (other than as a result of a change of control, asset sale or similar event)); and
- (h) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person (i) 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 joint venturer, except to the extent such Person’s liability for such Indebtedness is otherwise expressly contractually limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Debt and (ii) shall exclude (A) trade accounts payable in the ordinary course of business, (B) any earn-out obligation until such earn-out obligation has become due and payable, (C) any current and undeferred pension contributions or health and welfare contributions due from such Person and/or its applicable Subsidiaries to any Pension Fund Entity, (D) liabilities accrued in the ordinary course, (E) deferred revenues, liabilities associated with customer prepayments and deposits and

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any such obligations incurred under ERISA, and other accrued obligations (including transfer pricing), in each case incurred in the ordinary course of business, (F) operating leases, (G) customary obligations under employment agreements and deferred compensation and (H) deferred tax liabilities. 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. The amount of Indebtedness of any Person for purposes of clause (e) that is limited in recourse to the property encumbered thereby shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

“**Indemnified Taxes**” shall have the meaning assigned to such term in [Section 3.01\(a\)](#).

“**Indemnitee**” shall have the meaning assigned to such term in [Section 10.05\(b\)](#).

“**Information**” shall have the meaning assigned to such term in [Section 10.16](#).

“**Intellectual Property Security Agreement**” shall have the meaning assigned to such term “Grant of Security Interest” in the Security Agreement.

“**Intercompany Note**” shall mean (i) for existing promissory notes as of the Restatement Effective Date, each promissory note (or amended and restated promissory note) with subordination language reasonably acceptable to the Required Lenders and (ii) for promissory notes issued after the Restatement Effective Date, a promissory note substantially in the form of [Exhibit E](#).

“**Intercreditor Agreement**” shall include all permitted intercreditor agreements.

“**Interest Payment Date**” shall mean (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months’ duration been applicable to such Borrowing.

“**Interest Period**” shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last Business Day) in the calendar month that is 1, 2, 3 or 6 (or, if agreed by all applicable Lenders, 12) months thereafter (or any shorter period agreed by all applicable Lenders), as the Borrower may elect; *provided, however*, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period and (c) no Interest Period for any Loan shall extend beyond the maturity date of such Loan. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period. For purposes hereof, the date of a Borrowing initially

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shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

**"Internally Generated Cash"** shall mean cash resulting from operations of the Borrower and the Restricted Subsidiaries and not constituting (x) proceeds of the issuance of (or contributions in respect of) Equity Interests, (y) proceeds of Dispositions (other than in the ordinary course of business) and Casualty Events or (z) proceeds of the incurrence of Indebtedness.

**"Investment"** shall mean, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of related transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, (i) the amount of any Investment shall equal (A) the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment minus, except for purposes of calculating the Cumulative Credit, (B) the aggregate amount of dividends, distributions or other payments received in cash in respect of such Investment (including by way of a sale or other disposition of such Investment) but not in excess of the original amount invested and (ii) the fair market value of any and all Investments (which for the avoidance of doubt shall include all debt, equity and other items described in the foregoing provisions of this definition) held by any Loan Party in any Guarantor that becomes an Excluded Subsidiary pursuant to clause (a) of the definition of "Excluded Subsidiary" shall be deemed to be an Investment incurred on the date such Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of "Excluded Subsidiary".

**"Junior Financing"** shall mean any unsecured Indebtedness incurred by the Borrower or a Guarantor in the form of one or more series of unsecured notes or loans having an outstanding aggregate principal amount of not less than the Threshold Amount and any Subordinated Indebtedness (for greater certainty, not including the ABL Facility Indebtedness).

**"Junior Financing Documentation"** shall mean any documentation governing any Junior Financing.

**"Latest Maturity Date"** shall mean, at any date of determination, the latest maturity or expiration date applicable to any Loan hereunder at such time, including the latest maturity or expiration date of any Tranche B-2 Term Loan, any Other Term Loan or any Extended Term Loan, in each case as extended in accordance with this Agreement from time to time.

**"Laws"** shall mean, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, requirements, and agreements with, any Governmental Authority.

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“**Leasehold Property**” shall mean any leasehold interest of any Loan Party as lessee under any lease of Real Property.

“**Lender**” shall mean each lender from time to time party hereto. For avoidance of doubt, each Additional Lender is a Lender to the extent any such Person has executed and delivered a Refinancing Amendment, as the case may be, and to the extent such Refinancing Amendment shall have become effective in accordance with the terms hereof and thereof. As of the Restatement Effective Date, Schedule 2.01 sets forth the name of each Lender.

“**Lender Indemnitees**” shall have the meaning assigned to such term in Section 10.05(b).

“**LIBO Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate per annum determined by the Administrative Agent by reference to the applicable Bloomberg LIBOR screen page at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the commencement of such Interest Period for deposits in Dollars (as set forth by any service selected by the Administrative Agent that has been nominated by the ICE Benchmark Administration as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; *provided* that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, and except as set forth in Section 10.24, the “**LIBO Rate**” shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period.

“**Lien**” shall mean any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease or financing lease having substantially the same economic effect as any of the foregoing).

“**Loan**” shall mean any Term Loan.

“**Loan Documents**” shall mean this Agreement (including, without limitation, any amendments to this Agreement), the Collateral Documents, the Custodial Administration Agreement, the Fee Letter, the Administrative Fee Letter, each Refinancing Amendment, each Extension Offer and each amendment of any Loan Document in connection therewith, and the Term Notes, if any, executed and delivered pursuant to Section 2.04(e).

“**Loan Parties**” shall mean, collectively, the Borrower and each Guarantor.

“**Margin Stock**” shall have the meaning assigned to such term in Regulation U.

“**Master Agreement**” shall have the meaning specified in the definition of “**Swap Contract**”.

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**“Material Adverse Effect”** shall mean a (a) material adverse effect on the business, operations, assets, liabilities (actual or contingent), operating results or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform their payment obligations under the Loan Documents to which the Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the rights and remedies available to the Lenders, the Administrative Agent or the Collateral Agent under any Loan Document (other than due to the action or inaction of any Agent or any Lender).

**“Material Real Property”** shall mean each Real Property that is (i) owned in fee by a Loan Party, (ii) located in the United States and (iii) not an Excluded Real Property.

**“Maturity Date”** shall mean, (i) with respect to the Tranche B-2 Term Loans, June 30, 2024 (the **“Original Term Loan Maturity Date”**), (ii) with respect to any tranche of Extended Term Loans, the final maturity date as specified in the applicable Extension Offer accepted by the respective Lender or Lenders and (iii) with respect to any Other Term Loans, the final maturity date as specified in the applicable Refinancing Amendment; *provided* that if any such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

**“Maximum Incremental Facility Amount”** shall mean an amount not to exceed \$200,000,000.

**“Maximum Rate”** shall have the meaning assigned to such term in [Section 10.09](#).

**“Minimum Extension Condition”** shall have the meaning assigned to such term in [Section 2.19\(b\)](#).

**“MNPI”** shall mean material information concerning the Borrower, Subsidiary or Controlled Affiliate of any of the foregoing or their securities that has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD under the Securities Act and the Exchange Act. For purposes of this definition, “material information” means information concerning the Borrower, the Subsidiaries or any Controlled Affiliate of any of the foregoing or any of their securities that could reasonably be expected to be material for purposes of the United States Federal and State securities laws and, where applicable, foreign securities laws.

**“Moody’s”** shall mean Moody’s Investors Service, Inc., or any successor thereto.

**“Mortgage Policies”** shall have the meaning specified in the definition of “Collateral and Guarantee Requirement.”

**“Mortgaged Property”** shall have the meaning specified in the definition of “Collateral and Guarantee Requirement.” The Mortgaged Properties as of the Restatement Effective Date are set forth on [Schedule 1.01\(c\)](#).

**“Mortgages”** shall mean, collectively, the mortgages, deeds of trust, trust deeds, hypothecs deeds to secure debt and similar instruments by the Loan Parties in favor or for the benefit of the

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Collateral Agent on behalf of the Secured Parties creating and evidencing a Lien on a Mortgaged Property in form and substance reasonably satisfactory to the Required Lenders, Collateral Agent and the Borrower, and any other mortgages executed and delivered pursuant to Section 4.02, 6.11 or 6.13.

“**Multiemployer Plan**” shall mean any multiemployer plan as defined in Section 4001(a)(3) of ERISA subject to the provisions of Title IV of ERISA to which a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates is an “employer” as defined in Section 3(5) of ERISA.

“**Net Equity Proceeds**” shall mean 50% of the cash proceeds from the issuance or sale by the Borrower (or contributions in respect) of any Equity Interests issued after the Restatement Effective Date, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale, provided, that, if the amount of any estimated taxes exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid.

“**Net Proceeds**” shall mean:

- (a) 100% of the cash proceeds actually received by the Borrower or any Restricted Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation and similar awards, but in each case only as and when received) from any Disposition or Casualty Event, net of the following:
- (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes,
  - (ii) other than with respect to a Pension Real Property Event, required debt payments and required payments (including principal amount, premium or penalty, if any, interest, fees and expenses and other amounts) of other obligations that are secured by the applicable asset or property (other than pursuant to the Loan Documents, the ABL Facility Documentation (other than in respect of ABL Priority Collateral) or any Permitted Second Priority Additional Debt),
  - (iii) in the case of a Disposition or a Casualty Event with respect to any Pension Real Property (a “**Pension Real Property Event**”), to the extent the Contribution Deferral Agreement (as in effect as of the date hereof) requires the repayment or prepayment with the Net Proceeds of such Pension Real Property Event of any Specified Pension Fund Obligations which are secured on a first lien basis by such Pension Real Property (such obligations, “**CDA First Lien Obligations**”), the Net Proceeds of such Pension Real Property Event shall be reduced by an amount equal to the amount of such Specified Pension Fund Obligations that are so repaid or prepaid with such proceeds and have not been declined by the holders thereof,

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(iv) in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iv)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof,

(v) taxes paid or reasonably estimated to be payable as a result thereof (provided, that if the amount of any such estimated taxes exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition or Casualty Event, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid),

(vi) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) or (v) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Restricted Subsidiaries with respect to the assets subject to the Disposition or Casualty Event including, without limitation, liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction), and

(vii) any funded escrow established pursuant to the documents evidencing any such sale or disposition to secure any indemnification obligations or adjustments to the purchase price associated with any such sale or disposition;

*provided*, that if no Event of Default exists such proceeds, other than Real Property Disposition Proceeds, may be applied by the Borrower or any Restricted Subsidiary to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions or any acquisition permitted hereunder of all or substantially all the assets of, or all the Equity Interests (other than directors' qualifying shares) in, a Person or division or line of business of a Person (or any subsequent investment made in a Person, division or line of business previously acquired) that in each case become Collateral (or, in the case of the acquisition of the Equity Interests of a Person, such Person becomes a Loan Party under the Loan Documents), in each case within 270 days of such receipt, and such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 270 days of such receipt, so used or contractually committed with a third party to be so used (it being understood that if any portion of such proceeds are not so used within such 270 day period but within such 270 day period are contractually committed with a third party to be used, then upon the termination of such contract or if such Net Proceeds are not so used within the later of such 270 day period and 180 days from the entry into such contractual commitment, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso; it being understood that such proceeds shall constitute Net Proceeds if there is a Specified Default at the time of a proposed reinvestment unless such proposed reinvestment is made pursuant to a binding commitment with a third party entered into at a time when no Specified Default was continuing); *provided, further* that, except with respect to (I) Real Property Disposition Proceeds and (II) at any time during the Amendment No. 1 Specified Period, any

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other Net Proceeds, no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless the aggregate net proceeds exceeds \$7,500,000 in any fiscal year, commencing upon the expiration of the Amendment No. 1 Specified Period (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (a)), and

- (b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale, *provided*, that if the amount of any estimated taxes exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Borrower or the Restricted Subsidiaries shall be disregarded.

“**Non-Consenting Lender**” has the meaning set forth in Section 3.06(b).

“**Not Otherwise Applied**” shall mean, with reference to any amount of net proceeds of any transaction or event, that such amount (a) was not required to be applied to prepay the Loans pursuant to Section 2.13(a) and (b) was not previously applied in determining the permissibility of a transaction under the Loan Documents where such permissibility was (or may have been) pursuant to Section 7.02(p)(y), Section 7.03(ee), Section 7.06(e)(y) or 7.13(a)(vi).

“**Obligations**” shall mean 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, 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 (or would accrue but for the operation of applicable Debtor Relief Laws), regardless of whether such interest and fees are allowed or allowable claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents include (a) the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Agent or Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

“**OFAC**” shall have the meaning assigned to such term in the definition of “Blocked Person”.

“**Organization Documents**” shall mean (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

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to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Original Closing Date**” shall mean February 13, 2014.

“**Original Term Loan Maturity Date**” shall have the meaning assigned to such term in the definition of “Maturity Date”.

“**Other Applicable Indebtedness**” shall have the meaning assigned to such term in Section 2.13(a)(ii).

“**Other Survey Documentation**” shall have the meaning specified in the definition of “Collateral and Guarantee Requirement”.

“**Other Taxes**” shall have the meaning assigned to such term in Section 3.01(b).

“**Other Term Loan Commitments**” shall mean one or more Classes of term loan commitments hereunder that result from a Refinancing Amendment entered into after the Restatement Effective Date.

“**Other Term Loans**” shall mean one or more Classes of Term Loans that result from a Refinancing Amendment entered into after the Restatement Effective Date.

“**Participant Register**” shall have the meaning assigned to such term in Section 10.04(f).

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**Pension Fund Entities**” shall mean those entities identified on Schedule 1.01(d) hereto.

“**Pension Contribution Cap**” means, as of any date of determination, (i) for any such date of determination occurring from and after the Restatement Effective Date and on or prior to the first anniversary of the Restatement Effective Date, \$150,000,000, (ii) for any such date of determination occurring after the first anniversary of the Restatement Effective Date but on or prior to the second anniversary of the Restatement Effective Date, \$153,000,000, (iii) for any such date of determination occurring after the second anniversary of the Restatement Effective Date but on or prior to the third anniversary of the Restatement Effective Date, \$156,060,000, (iv) for any such date of determination occurring after the third anniversary of the Restatement Effective Date but on or prior to the fourth anniversary of the Restatement Effective Date, \$159,181,200 and (v) for any such date of determination occurring thereafter, \$162,364,824.

“**Pension Real Property**” shall mean any Real Property for so long as such Real Property secures the obligations of the Borrower under the Contribution Deferral Agreement on a first lien basis on the Restatement Effective Date, as set forth on Schedule 1.01(a).

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“**Pension Real Property Event**” shall have the meaning assigned to such term in the definition of “Net Proceeds”.

“**Perfection Certificate**” shall mean a certificate substantially in the form of Exhibit II to the Security Agreement or any other form reasonably approved by the Collateral Agent and the Borrower, as the same shall be supplemented from time to time.

“**Permits**” shall mean all necessary certificates, licenses, permits, franchises, trade names, certificates of occupancy, consents and other approvals required under applicable Laws for the operation of any Real Property.

“**Permitted Acquisition**” shall have the meaning assigned to such term in [Section 7.02\(b\)](#).

“**Permitted Acquisition Provisions**” shall have the meaning assigned to such term in [Section 2.17\(c\)](#).

“**Permitted Additional Debt**” shall mean Indebtedness incurred by the Borrower or any Guarantor, which Indebtedness may be (x) in the form of one or more series of notes or in the form of bank loans and, in either case, secured by the Collateral on a junior basis to the Obligations (“**Permitted Second Priority Additional Debt**”) or (y) in the form of one or more series of notes or in the form of bank loans and unsecured; *provided* that (i) such Indebtedness is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, (ii) the other terms and conditions of such Indebtedness (excluding pricing, fees, rate floors and optional prepayment or redemption terms), if different from the Term Loans, are customary market terms for Indebtedness of such type but in no event shall such terms and conditions (taken as a whole) be materially more restrictive to the Borrower and its Subsidiaries than the terms and conditions hereof (*provided*, that the financial maintenance covenant on the then outstanding Term Loans shall be amended to provide the Lenders the benefit of any financial maintenance covenant of such Permitted Additional Debt that is in addition to or more restrictive in any material manner than the financial maintenance covenant on the then outstanding Term Loans) (*provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness (or such shorter period as the Administrative Agent with the consent of the Required Lenders may agree in their sole discretion), 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 of this clause (ii) shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent or the Required Lenders notify the Borrower within such five Business Day period (or such shorter period as the Administrative Agent with the consent of the Required Lenders may agree in its sole discretion) that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees)), (iii) [reserved], (iv) no Default shall exist immediately prior to or after giving effect to such incurrence subject, in the case of any such Indebtedness which is Alternative Incremental Indebtedness, to the Permitted Acquisition Provisions (if applicable) and (v) if such Indebtedness is Permitted Additional Debt that is secured, a Senior Representative acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of the Second Lien Intercreditor Agreement. Permitted Additional Debt will include any Registered Equivalent Notes issued in exchange therefor.

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**“Permitted Refinancing”** shall mean, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *provided* that (a) the original aggregate principal amount (or accreted value, if applicable) does not exceed the aggregate principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except (i) by an amount equal to accrued but unpaid interest, premiums and fees payable by the terms of such Indebtedness and reasonable fees, expenses, original issue discount and upfront fees incurred in connection with such modification, refinancing, refunding, renewal, replacement or extension and (ii) by an amount equal to any existing available commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to [Section 7.03\(e\)](#), the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement 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 greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to [Section 7.03\(e\)](#), at the time thereof, no Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is Indebtedness permitted pursuant to [Section 7.03\(b\)](#), [7.03\(p\)](#) or [7.03\(q\)](#), or is otherwise a Junior Financing, (i) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment or in lien priority to the Obligations, the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment or in lien priority, as applicable, to the Obligations on terms (taken as a whole) (x) at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended (*provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness (or such shorter period as the Administrative Agent with the consent of the Required Lenders may agree in its sole discretion), 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 foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent or the Required Lenders notify the Borrower within such five Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees)) or (y) otherwise reasonably acceptable to the Required Lenders), and (ii) the obligors (including any guarantors) in respect of the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement or extension shall not include any Person other than the obligors (including any guarantors) of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended unless otherwise permitted hereby, (e) in the case of any Permitted Refinancing in respect of the ABL Facility, such Permitted Refinancing is a revolving working capital facility and is secured only by all or any portion of the collateral securing the ABL Facility (but not by any other assets) pursuant to one or more security agreements subject, in the case of assets constituting (or required to constitute) Collateral, to the ABL Intercreditor Agreement, (f) in the case of any Credit Agreement Refinancing Indebtedness, the Permitted Refinancing shall constitute Credit Agreement Refinancing Indebtedness and (g) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is unsecured, the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement or extension must be unsecured. When used with respect to any specified Indebtedness, **“Permitted Refinancing”** shall mean the Indebtedness incurred to effectuate a Permitted Refinancing of such specified Indebtedness.

**“Permitted Repricing Amendment”** shall have the meaning set forth in [Section 10.08\(b\)](#).

**“Permitted Second Priority Additional Debt”** shall have the meaning assigned to such term in the definition of “Permitted Additional Debt”.

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

**“PIK Amount”** shall have the meaning assigned to such term in [Section 2.06\(d\)](#).

**“PIK Interest”** shall have the meaning assigned to such term in [Section 2.06\(d\)](#).

**“PIK Period”** shall have the meaning assigned to such term in [Section 2.06\(d\)](#).

**“Plan”** shall mean any employee pension benefit plan within the meaning of Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Sections 412 and 430 of the Code or Sections 302 and 303 of ERISA and in respect of which a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates is, or if such plan were terminated would under Section 4069 of ERISA be deemed to be, or within the six year period immediately preceding the date hereof was, a “contributing sponsor” as defined in Section 4001(a)(13) of ERISA or an “employer” as defined in Section 3(5) of ERISA.

**“Platform”** shall have the meaning assigned to such term in [Section 10.01](#).

**“Prepayment Premium”** shall have the meaning assigned to such term in [Section 2.12\(d\)](#).

**“Prime Rate”** shall mean, as of any day, the rate last quoted by The Wall Street Journal as the “Prime Rate” in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as reasonably determined by the Administrative Agent).

**“Pro Forma Basis”** shall mean, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with [Section 1.10](#).

**“Pro Rata Share”** shall mean, with respect to each Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments (or, if Commitments have been terminated, the principal amount of the Loans) under the applicable Facility or Facilities of such Lender at such time and the denominator of which is the amount of the aggregate Commitments (or, if the Commitments have

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been terminated, the principal amount of the Loans) under the applicable Facility or Facilities at such time.

“**Projections**” shall have the meaning set forth in Section 6.01(c).

“**Public Lender**” shall have the meaning assigned to such term in Section 10.01.

“**Qualified Equity Interests**” shall mean any Equity Interests that are not Disqualified Equity Interests.

“**Qualified Securitization Financing**” means any Securitization Facility of a Securitization Subsidiary that meets the following conditions: (i) the Borrower shall have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and its Restricted Subsidiaries party to the Securitization Facility; (ii) all sales of Securitization Assets and related assets by the Borrower or any Restricted Subsidiary to the Securitization Subsidiary or any other Person are made at fair market value (as determined in good faith by the Borrower); (iii) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings; and (iv) the obligations under such Securitization Facility are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Borrower or any of its Restricted Subsidiaries (other than a Securitization Subsidiary).

“**Real Property**” shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“**Real Property Disposition Proceeds**” shall mean any Net Proceeds realized from a Disposition of, or Sale and Leaseback Transaction with respect to, any Real Property, including, for the avoidance of doubt, any Pension Property (in each case, consummated on or after the Restatement Effective Date); ~~provided, that, with respect to Dispositions of, or Sale and Leaseback Transactions with respect to, Real Property on which a trucking terminal is located and vacant/adjacent property located nearby, an initial amount of Net Proceeds not exceeding \$40,000,000 for all such Dispositions and Sale and Leaseback Transactions in the aggregate for the term of this Agreement shall not constitute Real Property Disposition Proceeds, and all such Net Proceeds thereafter shall constitute Real Property Disposition Proceeds.~~

“**Receivables Assets**” shall mean (a) any accounts receivable owed to the Borrower or a Restricted Subsidiary subject to a Receivables Facility and the proceeds thereof and (b) all collateral securing such accounts receivable, all contracts and contract rights, in each case, of the type which would constitute ABL Priority Collateral (as defined in the ABL Intercreditor Agreement), guarantees or other obligations in respect of such accounts receivable, all records with respect to such accounts receivable and any other assets customarily transferred together with

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accounts receivable in connection with a non-recourse accounts receivable factoring arrangement, except for Standard Securitization Undertakings, assigned or otherwise transferred or pledged by the Borrower in connection with a Receivables Facility.

“**Receivables Facility**” shall mean an arrangement between the Borrower or a Restricted Subsidiary and another Person pursuant to which (a) the Borrower or such Restricted Subsidiary, as applicable, sells (directly or indirectly) in the ordinary course of business to such Person accounts receivable owing by customers, together with Receivables Assets related thereto, (b) the obligations of the Borrower or such Restricted Subsidiary, as applicable, thereunder are non-recourse (except for Securitization Purchase Obligations) to the Borrower and such Restricted Subsidiary and (c) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings.

“**Refinanced Debt**” shall have the meaning specified in the definition of “Credit Agreement Refinancing Indebtedness”.

“**Refinancing Amendment**” shall mean an amendment to this Agreement executed by each of (a) the Borrower, (b) the Administrative Agent, (c) each Additional Lender that will make an Other Term Loan pursuant to such Refinancing Amendment and (d) each existing Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with [Section 2.18](#).

“**Refinancing Transaction**” shall have the meaning assigned to such term in the recitals

“**Register**” shall have the meaning assigned to such term in [Section 10.04\(d\)](#).

“**Registered Equivalent Notes**” shall mean, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Regulation T**” shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Rejection Notice**” shall have the meaning assigned to such term in [Section 2.13\(d\)](#).

“**Related Fund**” shall mean, with respect to any Lender that is a fund or commingled investment vehicle that invests in loans, any other fund that invests in loans and is managed or advised by the same investment advisor/manager as such Lender or by an Affiliate of such investment advisor/manager.

“**Related Parties**” shall mean, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“**Release**” shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment or from, within or upon any vessel, vehicle, building, structure, facility or fixture.

“**Reportable Event**” shall mean any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived with respect to a Plan.

“**Request for Credit Extension**” shall mean a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C, or such other form as shall be approved by the Administrative Agent.

“**Required Class Lenders**” shall mean, as of any date of determination, Lenders of a Class having more than 50% of the sum of the outstanding Loans and unused Commitments of the applicable Class.

“**Required Lenders**” shall mean, at any time, Lenders having Loans and unused Term Loan Commitments representing more than 50% of the sum of all Loans outstanding and unused Term Loan Commitments at such time.

“**Required Opinion State**” shall mean each of the following states: Pennsylvania, California, Ohio, New York, Illinois, New Jersey, Texas, Michigan, Tennessee, North Carolina, Oregon, Georgia, Maryland, Indiana, Missouri, Wisconsin, South Carolina, Nevada, Minnesota and Utah.

“**Responsible Officer**” shall mean the chief executive officer, president, vice president, chief financial officer, treasurer, assistant treasurer, director of treasury or other similar officer of a Loan Party and, as to any document delivered on the Restatement Effective Date, any secretary or assistant secretary of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed by the recipient of such document 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 by the recipient of such document to have acted on behalf of such Loan Party.

“**Restatement Effective Date**” means the date on which the conditions specified in Section 4.02 are satisfied (or waived in accordance with Article 9), which date is September 11, 2019.

“**Restricted Payment**” shall mean any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest of the Borrower or any Restricted Subsidiary, or on account of any return of capital to the Borrower’s or a Restricted Subsidiary’s stockholders, partners or members (or the equivalent Persons thereof).

“**Restricted Subsidiary**” shall mean each Subsidiary of the Borrower.

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**“Retained Percentage”** shall mean, with respect to any Excess Cash Flow Period (a) 100% minus (b) the Applicable ECF Percentage with respect to such Excess Cash Flow Period.

**“S&P”** shall mean Standard & Poor’s Ratings Service, or any successor thereto.

**“Sale and Leaseback Transaction”** shall mean any arrangement, directly or indirectly, whereby a seller or transferor shall sell or otherwise transfer any real or personal property and then or thereafter lease, or repurchase under an extended purchase contract, conditional sales or other title retention agreement, the same property.

**“Scheduled Property” shall have the meaning assigned to such term in Section 7.05(l).**

**“SEC”** shall mean the Securities and Exchange Commission or any Governmental Authority that is the successor thereto.

**“Second Lien Intercreditor Agreement”** shall mean a “junior lien” intercreditor agreement among the Collateral Agent and one or more Second Lien Representatives for holders of Permitted Second Priority Additional Debt, in form and substance reasonably satisfactory to the Required Lenders and the Borrower.

**“Second Lien Representative”** shall mean, with respect to any series of Permitted Second Priority Additional Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

**“Secured Parties”** shall have the meaning assigned to such term in the Security Agreement.

**“Securities Account”** as defined in the UCC.

**“Securities Act”** shall mean the Securities Act of 1933, as amended.

**“Securitization Asset”** shall mean (a) any accounts receivable or related assets and the collections and proceeds thereof, in each case subject to a Securitization Facility and (b) all collateral securing such receivable or asset, all contracts and contract rights in each case, of the type which would constitute ABL Priority Collateral (as defined in the ABL Intercreditor Agreement), guaranties or other obligations in respect of such receivable or asset, lockbox accounts, books and records with respect to such account or asset and any other assets customarily transferred (or in respect of which security interests are customarily granted) together with accounts or assets in a securitization financing and which in the case of clause (a) and (b) above are sold, conveyed, assigned or otherwise transferred or pledged by any Loan Party in connection with a Qualified Securitization Financing.

**“Securitization Facility”** shall mean any transaction or series of securitization financings that may be entered into by the Borrower or any of its Restricted Subsidiaries pursuant to which the Borrower or any of its Restricted Subsidiaries may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) any Person that is not a Restricted

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Subsidiary or (b) any other Subsidiary of the Borrower (that in turn sells such Securitization Assets to a Securitization Subsidiary) or a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries; *provided* that, it is understood and agreed that the ABL Facility is deemed a Securitization Facility.

“**Securitization Fees**” shall mean distributions or payments made directly or by means of discounts with respect to any Securitization Asset or participation interest therein issued or sold in connection with, and other fees and expenses (including fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Financing or a Receivables Facility.

“**Securitization Purchase Obligation**” shall mean any obligation of the Borrower or a Restricted Subsidiary in respect of Securitization Assets or Receivables Assets in a Qualified Securitization Financing or a Receivables Facility to purchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including, without limitation, as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to such party.

“**Securitization Subsidiary**” shall mean any Subsidiary of the Borrower in each case formed for the purpose of and that solely engages in one or more Qualified Securitization Financings and other activities reasonably related thereto or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers Securitization Assets and related assets.

“**Security Agreement**” shall mean, except as the context may otherwise require, both (a) the Amended and Restated Security Agreement dated as of the Restatement Effective Date among the Borrower, the Guarantors party thereto and the Collateral Agent and (b) the Security and Collateral Agency Agreement, dated as of the date hereof, among the Collateral Agent, as collateral agent and term loan representative, the ABL Agent, as ABL representative, and the Borrower and the other Loan Parties party thereto, as each of the same may be further amended, restated, modified, supplemented, extended, renewed, restructured or replaced.

“**Security Agreement Supplement**” shall have the meaning specified in the Security Agreement.

“**Senior Financial Officer**” of any Person shall mean the chief financial officer, principal accounting officer, treasurer, controller or other similar officer of such Person.

“**Single-Employer Plans**” shall mean the Roadway LLC Pension Plan, the Yellow Corporation Pension Plan and the YRC Retiree Pension Plan or any other Plans sponsored or maintained by the Borrower or any Restricted Subsidiary.

“**Specified Amendment No. 1 Period**” shall mean the “**Specified Period**” as such term is defined in Amendment No. 1.

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“**Specified Default**” shall mean an Event of Default under Section 8.01(a), (f) or (g).

“**Specified Fiscal Quarter**” shall have the meaning assigned to such term in Section 2.06(d).

“**Specified Pension Fund Obligations**” shall mean the payment obligations due from the Borrower and/or its applicable Subsidiaries to the Pension Fund Entities under the terms and conditions of the Contribution Deferral Agreement.

“**Specified Transaction**” shall mean any Investment that results in a Person becoming a Restricted Subsidiary, any Permitted Acquisition, any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower, any Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person or any Disposition of a business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case consummated after the Restatement Effective Date and whether by merger, consolidation, amalgamation or otherwise, and any incurrence or repayment of Indebtedness or Restricted Payment, in each case, that by the terms of this Agreement requires a financial ratio or test to be calculated on a “Pro Forma Basis”.

“**SPV**” shall have the meaning assigned to such term in Section 10.04(j).

“**Standard Securitization Undertakings**” shall mean representations, warranties, covenants, guarantees and indemnities entered into by the Borrower or any Subsidiary of the Borrower which the Borrower has determined in good faith to be customary in a Securitization Facility, it being understood that any Securitization Purchase Obligation shall be deemed to be a Standard Securitization Undertaking or, in the case of a Receivables Facility, a non-credit related recourse accounts receivable factoring arrangement.

“**Statutory Reserves**” shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate or other fronting office making or holding a Loan) is subject for Eurocurrency Liabilities (as defined in Regulation D of the Board). Eurodollar Loans shall be deemed to constitute Eurocurrency Liabilities (as defined in Regulation D of the Board) and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“**Subordinated Indebtedness**” shall mean any Indebtedness that is, or is required to be, subordinated in right of payment to the Obligations.

“**Subsidiary**” of a Person shall mean a corporation, partnership, joint venture, limited liability company or other business entity of which (i) a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned or (ii) the management of which is otherwise Controlled, directly

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or indirectly, through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “**Subsidiary**” or to “**Subsidiaries**” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Succession Agreement**” means that certain Successor Agent Agreement dated as of the Restatement Effective Date, among Cortland Products Corp., as successor agent, Credit Suisse AG, as retiring agent, the Borrower and the Tranche B-2 Term Lenders.

“**Successor Borrower**” shall have the meaning specified in [Section 7.04\(d\)](#).

“**Survey**” shall have the meaning assigned to such term in the definition of “Collateral and Guarantee Requirement”.

“**Swap Contract**” shall mean (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 Termination Value**” shall mean, 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**” shall have the meaning assigned to such term in [Section 3.01\(a\)](#).

“**Term Borrowing**” shall mean a Borrowing comprised of Term Loans.

“**Term Lender**” shall mean a Lender with a Term Loan Commitment or an outstanding Term Loan.

“**Term Loan Commitment**” shall mean the Tranche B-2 Term Loan Commitment.

“**Term Loans**” shall mean the Tranche B-2 Term Loans, Extended Term Loans and Other Term Loans.

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“**Term Note**” shall mean a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit J hereto, evidencing the aggregate Indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

“**Term Priority Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**Test Period**” shall mean, for any date of determination under this Agreement, the most recent period as of such date of four consecutive fiscal quarters of the Borrower for which financial statements have been delivered (or were required to have been delivered) pursuant to Section 6.01(a) or 6.01(b), as applicable, or, prior to the first such requirement, the four fiscal quarter period ended June 30, 2019.

“**Threshold Amount**” shall mean \$30,000,000.

“**Title Company**” shall mean Chicago Title Insurance Company.

“**Total Leverage Ratio**” shall mean, as of any date, the ratio of (a) Consolidated Total Debt as of such date to (b) Consolidated EBITDA for the Test Period applicable as of such date.

“**tranche**” shall have the meaning assigned to such term in Section 2.19(a).

“**Tranche B-2 Term Lender**” shall mean a Lender with a Tranche B-2 Term Loan Commitment or an outstanding Tranche B-2 Term Loan.

“**Tranche B-2 Term Loan Commitment**” shall mean, with respect to each Lender, the commitment, if any, of such Lender to make a Tranche B-2 Term Loan hereunder, expressed as an amount representing the maximum principal amount of the Tranche B-2 Term Loan to be made by such Lender hereunder. The initial aggregate amount of the Tranche B-2 Term Loan Commitments as of the Restatement Effective Date is \$600,000,000.

“**Tranche B-2 Term Loans**” shall mean the term loans made by the Lenders on the Restatement Effective Date to the Borrower pursuant to Section 2.01(b). For the avoidance of doubt, a Term Loan shall no longer be a “Tranche B-2 Term Loan” when it shall have become an “Extended Term Loan”.

“**Transaction Expenses**” shall mean any costs, fees or expenses incurred or paid by the Borrower or any of its Subsidiaries in connection with the Transactions, this Agreement and the other Loan Documents; *provided* that the amount of Transaction Expenses attributable to clause (b) of the definition of Transactions shall not exceed \$250,000.

“**Transactions**” shall mean, collectively, (a) the execution and delivery by the Loan Parties of the Loan Documents to which they are a party and the making of the Borrowings hereunder on the Restatement Effective Date, (b) the execution and delivery by the Borrower and the Subsidiaries party thereto of an amendment to the ABL Facility Documentation in connection with the matters described in clause (a), (c) the Refinancing Transactions and (d) the payment of the Transaction Expenses.

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“**Transferred Guarantor**” shall have the meaning specified in the Section 11.10.

“**Type**”, when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term “**Rate**” shall mean the Adjusted LIBO Rate and the Alternate Base Rate.

“**Unaudited Financial Statements**” shall mean the unaudited consolidated balance sheets and related statements of operations and cash flows of the Borrower and its consolidated Subsidiaries as at the end of and for the fiscal quarter ended June 30, 2019.

“**Uniform Commercial Code**” or “**UCC**” shall mean the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

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

“**United States Tax Compliance Certificate**” shall have the meaning assigned to such term in Section 3.01(d).

“**USA PATRIOT Act**” shall mean The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“**Weighted Average Life to Maturity**” shall mean, 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 scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled 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 for purposes of determining the Weighted Average Life to Maturity of any Refinanced Debt or any Indebtedness that is being modified, refinanced, refunded, renewed, replaced, restructured or extended (the “**Applicable Indebtedness**”), the effects of any amortization of or prepayments made on such Applicable Indebtedness prior to the date of the applicable modification, refinancing, restructuring, refunding, renewal, replacement or extension shall be disregarded.

“**wholly owned**” shall mean, 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) 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.

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

Other Interpretive Provisions

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

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- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) (i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.
- (i) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.
- (ii) The term “including” is by way of example and not limitation.
- (c) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
- (d) 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.”
- (e) The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.
- (f) All references to “knowledge” or “awareness” of any Loan Party or a Restricted Subsidiary thereof means the actual knowledge of a Responsible Officer of a Loan Party or such Restricted Subsidiary.
- (g) 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.
- (h) The word “or” is not exclusive.
- (i) For purposes of determining compliance with any one of Sections 7.01, 7.02, 7.03, 7.05, 7.06, 7.08, 7.09 and 7.13, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of more than one of the categories of transactions permitted pursuant to any clause of such Section, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower (and the Borrower shall be entitled to redesignate use of any such clauses from time to time) in its sole discretion at such time; *provided* that the Borrower shall not be permitted to subsequently reclassify any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Indebtedness as having been incurred under a Non-Fixed Basket if such Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Indebtedness was originally incurred under a Fixed Basket or any other Basket that is not a Non-Fixed Basket. For all purposes hereunder, (x) “**Fixed Basket**” shall mean any Basket that is subject to a fixed-dollar limit and (y) “**Non-Fixed Basket**” shall mean any

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Basket that is subject to compliance with a financial ratio or test (including Total Net Leverage Ratio) or based on a percentage of Consolidated EBITDA or total assets.

(j) The usage of the term “written” includes electronic messages, including e-mail.

(k) Any reference herein or in any other Loan Document to (i) a transfer, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company, as if it were a transfer, assignment, sale or transfer, or similar term, as applicable, to a separate Person, and (ii) a merger, consolidation, amalgamation or consolidation, or similar term, shall be deemed to apply to the unwinding of such a division or allocation, as if it were a merger, consolidation, amalgamation or consolidation or similar term, as applicable, with a separate Person.

#### Certifications

. All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such a Person in his or her capacity solely as an officer or representative of such Loan Party, on such Loan Party’s behalf and not in such Person’s individual capacity.

#### Accounting Terms

. 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, except as otherwise specifically prescribed herein or therein.

#### Rounding

. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under 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).

#### References to Agreements, Laws, Etc

. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements, replacements, extensions, renewals, refinancings, restructurings and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements, replacements, extensions, renewals, refinancings, restructurings and other modifications are not prohibited by hereby; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

#### Times of Day

. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

#### Timing of Payment or Performance

. Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such

payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

#### Cumulative Credit Transactions

. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Credit immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

#### Pro Forma Calculations

.

(a) Notwithstanding anything to the contrary herein, the Total Leverage Ratio shall be calculated in the manner prescribed by this Section 1.10; *provided* that, notwithstanding anything to the contrary in clauses (b), (c) or (d) of this Section 1.10, when calculating the Total Leverage Ratio for purposes of the Applicable ECF Percentage of Excess Cash Flow, the events described in this Section 1.10 that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect (provided, further, that the foregoing limitation will not be constituted to limit the deductibility of any amounts that are committed to be made or paid or are reasonably expected to be paid in the calculation of Excess Cash Flow for any period as provided for in the definition of Excess Cash Flow).

(b) For purposes of calculating the Total Leverage Ratio, Specified Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (i) during the applicable Test Period or (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made 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 therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.10, then the Total Leverage Ratio shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.10.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Senior Financial Officer of the Borrower and may include, for the avoidance of doubt, Cost Savings to the extent permitted by, and subject to the requirements of, clause (a)(viii) of the definition of "Consolidated EBITDA". Notwithstanding the foregoing, all *pro forma* adjustments under this clause (c) shall not, taken together with those added pursuant to clause (a)(viii) of the definition of "Consolidated EBITDA", increase *pro forma* Consolidated EBITDA by more than 5% for any Test Period (calculated prior to giving effect to any addback pursuant to this clause (c) or clause (a)(viii) of the definition of "Consolidated EBITDA").

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or

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extinguishment) any Indebtedness included in the calculations of the Total Leverage Ratio (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes and not incurred in reliance on Section 7.03(t)), (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Total Leverage Ratio shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period of the Total Leverage Ratio. Interest on a Capitalized Lease shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Borrower to be the rate of interest implicit in such Capitalized Lease in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or Restricted Subsidiary may designate.

(e) Whenever any provision of this Agreement requires the Borrower to have a Total Leverage Ratio on a Pro Forma Basis in connection with any action to be taken by the Borrower hereunder, the Borrower shall deliver to the Administrative Agent a certificate of a Responsible Officer setting forth in reasonable detail the calculations demonstrating such compliance or such Total Leverage Ratio.

#### Certain Accounting Matters

. Notwithstanding any other provision contained herein or in any other Loan Document, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, (a) without giving effect to any election under Statement of Financial Accounting Standards 159 or Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any of its Restricted Subsidiaries at "fair value", as defined therein; and (b) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 and/or Statement of Financial Accounting Standards 150 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. Furthermore, unless the Borrower elects otherwise, notwithstanding any other provision contained herein or in any other Loan Document, for all purposes under this Agreement and the other Loan Documents, including negative covenants, financials covenants and component definitions, operating leases and Capitalized Leases will be deemed to be treated in a manner consistent with their current treatment under GAAP as in effect on December 31, 2018, notwithstanding any modifications or interpretive changes thereto that may occur thereafter. For the avoidance of doubt, the principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP, except as expressly set forth in clauses (a) and (b) of this Section 1.11.

#### Classification of Loans and Borrowings

. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "Tranche B-2 Term Loan") or by Type

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(e.g., a “Eurodollar Loan”) or by Class and Type (e.g., a “Eurodollar Term Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Term Borrowing”) or by Type (e.g., a “Eurodollar Borrowing”) or by Class and Type (e.g., a “Eurodollar Term Borrowing”).

#### Currency Equivalents Generally

(a) For purposes of determining compliance with Sections 7.01, 7.02, 7.03, 7.05, 7.06, 7.08, 7.09 and 7.13 with respect to any amount of Indebtedness, Lien, Asset Sale, Restricted Payment, Capital Expenditure, affiliate transaction, Contractual Obligation, prepayment of Indebtedness or Investment in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder) and once incurred or made, the amount of such Indebtedness, Lien, Asset Sale, Restricted Payment, Capital Expenditure, affiliate transaction, Contractual Obligation, prepayment of Indebtedness or Investment, shall be always deemed to be at the Dollar amount on such date, regardless of later changes in currency exchange rates.

(b) For purposes of determining the Total Leverage Ratio, amounts denominated in a currency other than Dollars will be converted to Dollars at the currency exchange rates used in preparing the Borrower’s financial statements corresponding to the Test Period with respect to the applicable date of determination and will, in the case of Indebtedness, reflect the currency translation effects, determined in accordance with GAAP, of Swap Contracts permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

#### Effect of Amendment and Restatement

On the Restatement Effective Date, the Existing Credit Agreement shall be amended and restated in its entirety in the form hereof. The parties hereto acknowledge and agree that except as modified in this Agreement and the other Loan Documents delivered on the Restatement Effective Date, the Existing Credit Agreement and all Loan Documents thereunder (collectively, together with the Existing Credit Agreement, the “**Existing Loan Documents**”) are hereby reaffirmed, ratified and confirmed on behalf of the parties hereto and thereto on the date hereof, and the Obligations thereunder shall be amended and completely restated hereby, but this Agreement shall not constitute a novation, extinguishment or substitution of such Obligations or in any way impair the Liens created pursuant to the Existing Loan Documents or affect the priority thereof, all of which are hereby reaffirmed, ratified and confirmed.

## ARTICLE 2 THE CREDITS

#### Tranche B-2 Term Loan Commitments

(a) [Reserved].

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(b) Subject to the terms and conditions and relying upon the representations and warranties set forth herein, each Tranche B-2 Term Lender agrees, severally and not jointly, to make a Tranche B-2 Term Loan to the Borrower on the Restatement Effective Date in a principal amount not to exceed its Tranche B-2 Term Loan Commitment. Amounts repaid or prepaid in respect of Tranche B-2 Term Loan may not be reborrowed.

#### Loans

(a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments; *provided, however*, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). The Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$1,000,000 and not less than \$5,000,000 (except, with respect to any Other Term Loans, to the extent otherwise provided in the applicable Refinancing Amendment) or (ii) equal to the remaining available balance of the applicable Commitments.

(b) Subject to Sections 2.08 and 3.02 each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan to such Lender in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; *provided, however*, that the Borrower shall not be entitled to request any Borrowing that, if made, would result in more than five Eurodollar Borrowings outstanding hereunder at any time plus up to an additional 3 Interest Periods in respect of each (i) [reserved], (ii) Extended Term Loans and (iii) Other Term Loans, *provided* that the total number of such additional Interest Periods does not exceed 15 at any one time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Each Lender shall make each Tranche B-2 Term Loan to be made by it hereunder on the Restatement Effective Date by wire transfer of immediately available funds to the Administrative Agent's Office not later than 1:00 p.m., New York City time, and upon receipt of all requested funds the Administrative Agent shall promptly credit the amounts so received to an account designated by the Borrower in the applicable Request for Credit Extension.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (c) above and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding

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amount together with interest thereon, for each day from the date such amount is made available to the Borrower to but excluding the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, a rate per annum equal to the interest rate applicable at the time to the Loans comprising such Borrowing, and (ii) in the case of such Lender, a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds (which determination shall be conclusive absent manifest error). If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

#### Borrowing Procedure

. In order to request a Borrowing, the Borrower shall notify the Administrative Agent of such request in writing (a) in the case of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three Business Days before a proposed Borrowing (or, in the case of the extension of credit on the Restatement Effective Date, prior to the proposed Borrowing), and (b) in the case of an ABR Borrowing, not later than 1:00 p.m., New York City time, one Business Day before a proposed Borrowing. Each such Request for Credit Extension shall be irrevocable (but may be conditioned upon the prepayment of indebtedness or the consummation of a specified transaction) and shall specify the following information: (i) the Class of Loans to be borrowed and whether such Borrowing is to be a Eurodollar Borrowing or an ABR Borrowing; (ii) the date of such Borrowing (which shall be a Business Day); (iii) the number and location of the account to which funds are to be disbursed; (iv) the amount of such Borrowing; and (v) if such Borrowing is to be a Eurodollar Borrowing, the Interest Period with respect thereto; *provided, however*, that, notwithstanding any contrary specification in any Request for Credit Extension, each requested Borrowing shall comply with the requirements set forth in Section 2.02. If no election as to the Type of Borrowing is specified in any such notice, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period with respect to any Eurodollar Borrowing is specified in any such notice, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall promptly advise the applicable Lenders of any notice given pursuant to this Section 2.03 (and the contents thereof), and of each Lender's portion of the requested Borrowing.

#### Evidence of Debt; Repayment of Loans

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the principal amount of each Term Loan of such Lender as provided in Section 2.11 (or, in the case of Extended Term Loans or Other Term Loans, as provided for in the applicable Extension Offer, Refinancing Amendment or other governing documentation).

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Class and Type thereof and, if applicable, the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum

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received by the Administrative Agent hereunder from the Borrower or any Guarantor and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be prima facie evidence of the existence and amounts of the obligations therein recorded; *provided, however*, that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms and (ii) in the event of any conflict between the accounts set forth in paragraphs (b) and (c) above, the amounts set forth in the accounts maintained pursuant to paragraph (c) shall prevail.

(e) Any Lender may request that Loans made by it hereunder be evidenced by a Term Note. In such event, the Borrower shall promptly execute and deliver to such Lender a Term Note payable to such Lender and its registered assigns in accordance with Section 10.04. Notwithstanding any other provision of this Agreement, in the event any Lender shall request and receive a Term Note, the interests represented by such Term Note shall at all times (including after any assignment of all or part of such interests pursuant to Section 10.04) be represented by one or more promissory notes payable to the payee named therein or its registered assigns, unless such Term Note is duly cancelled.

(f) This Section 2.04 shall at all times be interpreted and administered in such a way that the Term Notes will be issued in "registered form" within the meaning of Treasury Regulation Section 5f.163-1(a).

Fees

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(a) The Borrower agrees to pay to the Administrative Agent, for its own account, the administrative agent fees applicable to the Facilities payable in the amounts and at the times agreed upon between the Borrower and the Administrative Agent as set forth in the Administrative Agent Fee Letter (the "**Fees**").

(b) All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent. Once paid, none of the Fees shall be refundable under any circumstances.

Interest on Loans

.

(a) Subject to the provisions of Section 2.07, the Loans comprising each ABR Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, and calculated from and including the date of such Borrowing to but excluding the date of repayment thereof) at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin.

(b) Subject to the provisions of Section 2.07, the Loans comprising each Eurodollar Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

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(c) Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan except as otherwise provided in this Agreement. The applicable Alternate Base Rate or Adjusted LIBO Rate for each Interest Period or day within an Interest Period, as the case may be, shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(d) Notwithstanding anything to the contrary in this Section 2.06,

(i) on the Amendment No. 1 Effective Date and each Interest Payment Date during the PIK Period, the Borrower shall pay a portion of the interest due on each such date in cash in an amount equal to interest at a rate per annum equal to one percent (1%) (the "Cash Interest Portion");

(ii) all accrued but unpaid interest as of the Amendment No. 1 Effective Date (including all accrued and unpaid interest during the Interest Period that commenced on December 31, 2019 and ending on March 31, 2020) and all interest payable on each Interest Payment Date during the PIK Period (other than the Cash Interest Portion which is due and payable on each such Interest Payment Date) accruing during the period commencing on the Amendment No. 1 Effective Date and ending on June 30, 2020 (such period, the "PIK Period"), with respect to any ABR Term Loan or Eurodollar Term Loan, shall be payable in kind, with such interest amount being automatically added to, and made part of, the outstanding principal amount of Loans in the case of (x) accrued but unpaid interest as of the Amendment No. 1 Effective Date, on the Amendment No. 1 Effective Date, and (y) interest payable on each Interest Payment Date during the PIK Period, on such date (all interest payable in kind pursuant to this Agreement, "PIK Interest"; the aggregate amount of all interest payable in kind pursuant to this Agreement, the "PIK Amount"); provided that with respect to any such payment of PIK Interest pursuant to this clause (d), the then Applicable Margin in respect of such accrued and unpaid interest shall be increased by an additional amount of basis points such that the all-in interest rate for each such Borrowing, inclusive of the Adjusted LIBO Rate for such Interest Period then in effect or the Alternate Base Rate, as applicable, is equal to thirteen percent (13.00%) per annum, which increase shall also be paid in the form of PIK Interest.

Unless the context otherwise requires, for all purposes under this Agreement, references to the "principal" and the "principal amount" of any Term Loans include any increase in the principal amount thereof due to the addition of PIK Interest thereto pursuant to this clause (d). All interest payable after the PIK Period shall be payable in cash after the end of the PIK Period. After the second consecutive fiscal quarter following the PIK Period for which Consolidated EBITDA for the Test Period ending as of the last day of such fiscal quarter is greater than \$200,000,000 (the "Specified Fiscal Quarter"), an aggregate principal amount of Term Loans in an amount equal to the PIK Amount shall be due and payable in cash in four equal consecutive fiscal quarter installments each in the amount of 25% of the PIK Amount, commencing with the last Business Day of the fiscal quarter immediately following the Specified Fiscal Quarter. The Borrower shall provide written notice to the Administrative Agent once it has actual knowledge that the Specified Fiscal Quarter has occurred.

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*Default Interest*

. Automatically from and after the occurrence and during the continuance of an Event of Default under Section 8.01(a), (f) or (g) or at the election of the Required Lenders during the continuance of any other Event of Default, the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder, shall thereafter, after as well as before judgment, bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on written demand at a rate that is 2.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2.0% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans); *provided* that in the case of Eurodollar Term Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, if such Eurodollar Rate Loans shall become ABR Loans in accordance with Section 2.10(e), such Loans shall thereafter bear interest payable upon written demand at a rate which is 2.0% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans.

*Alternate Rate of Interest*

. In the event, and on each occasion, that on the day two Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing the Administrative Agent shall have determined that Dollar deposits in the principal amounts of the Loans comprising such Borrowing are not generally available in the London interbank market, or that the rates at which such Dollar deposits are being offered will not adequately and fairly reflect the cost to the majority of Lenders of making or maintaining Eurodollar Loans during such Interest Period, or that reasonable means do not exist for ascertaining the Adjusted LIBO Rate, the Administrative Agent shall, as soon as practicable thereafter, give written or fax notice of such determination to the Borrower and the Lenders. In the event of any such determination, until the Administrative Agent shall have revoked such notice, any request by the Borrower for a Eurodollar Borrowing pursuant to Section 2.03 or Section 2.10 shall be deemed to be a request for an ABR Borrowing. Each determination by the Administrative Agent under this Section 2.08 shall be conclusive absent manifest error.

*Termination and Reduction of Commitments*

.

(a) The Term Loan Commitment for the Tranche B-2 Term Loan in effect on the Restatement Effective Date shall automatically terminate upon the making of the Tranche B-2 Term Loans on the Restatement Effective Date.

(b) Upon at least one Business Days' prior irrevocable written or fax notice to the Administrative Agent, the Borrower may at any time in whole permanently terminate, or from time to time in part permanently reduce, any Class of unfunded Term Loan Commitments; *provided, however*, that each partial reduction of any Class of Term Loan Commitments shall be in an integral multiple of \$1,000,000 and in a minimum amount of \$1,000,000; *provided further* that, a notice of termination of the Commitments of any Class delivered by the Borrower may state that such notice is conditioned upon the consummation of an acquisition or sale transaction or upon the effectiveness of other credit facilities or the receipt of proceeds from the issuance of other Indebtedness or any other specified event, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

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(c) Each reduction in the Term Loan Commitments hereunder shall be made ratably among the Lenders in accordance with their respective applicable Commitments.

#### Conversion and Continuation of Borrowings

The Borrower shall have the right at any time upon prior irrevocable written notice to the Administrative Agent (a) not later than 1:00 p.m., New York City time, one Business Day prior to the day of any conversion, to convert any Eurodollar Borrowing into an ABR Borrowing, (b) not later than 1:00 p.m., New York City time, three Business Days prior to conversion or continuation, to convert any ABR Borrowing into a Eurodollar Borrowing or to continue any Eurodollar Borrowing as a Eurodollar Borrowing for an additional Interest Period, and (c) not later than 1:00 p.m., New York City time, three Business Days prior to conversion, to convert the Interest Period with respect to any Eurodollar Borrowing to another permissible Interest Period, subject in each case to the following:

(i)[reserved];

(ii)each conversion or continuation shall be made pro rata among the Lenders in accordance with the respective principal amounts of the Loans comprising the converted or continued Borrowing;

(iii)if less than all the outstanding principal amount of any Borrowing shall be converted or continued, then each resulting Borrowing shall satisfy the limitations specified in Sections 2.02(a) and 2.02(b) regarding the principal amount and maximum number of Borrowings of the relevant Type;

(b) each conversion shall be effected by each Lender and the Administrative Agent by recording for the account of such Lender the new Loan of such Lender resulting from such conversion and reducing the Loan (or portion thereof) of such Lender being converted by an equivalent principal amount; accrued interest on any Eurodollar Loan (or portion thereof) being converted shall be paid by the Borrower at the time of conversion;

(i)if any Eurodollar Borrowing is converted on a day prior to the last day of the Interest Period applicable thereto, the Borrower shall pay, upon demand, any amounts due to the Lenders pursuant to Section 3.04;

(c) any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a Eurodollar Borrowing, unless agreed by all applicable Lenders;

(d) any portion of a Eurodollar Borrowing that cannot be converted into or continued as a Eurodollar Borrowing by reason of the immediately preceding clause shall be automatically converted at the end of the Interest Period in effect for such Borrowing into an ABR Borrowing; and

(e) upon notice to the Borrower from the Administrative Agent given at the request of the Required Lenders, after the occurrence and during the continuance of an Event of Default, no outstanding Loan may be converted into, or continued as, a Eurodollar Loan.

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Each such Request for Credit Extension shall (except as set forth herein) be irrevocable and shall refer to this Agreement and specify (i) the identity and amount of the Borrowing that the Borrower requests be converted or continued, (ii) whether such Borrowing is to be converted to or continued as a Eurodollar Borrowing or an ABR Borrowing, (iii) if such Request for Credit Extension requests a conversion, the date of such conversion (which shall be a Business Day) and (iv) if such Borrowing is to be converted to or continued as a Eurodollar Borrowing, the Interest Period with respect thereto. If no Interest Period is specified in any such Request for Credit Extension with respect to any conversion to or continuation as a Eurodollar Borrowing, the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall promptly advise the Lenders of any Request for Credit Extension and of each Lender's portion of any converted or continued Borrowing. If the Borrower shall not have given a Request for Credit Extension in accordance with this Section 2.10 to continue any Borrowing into a subsequent Interest Period (and shall not otherwise have given notice in accordance with this Section 2.10 to convert such Borrowing), such Borrowing shall, at the end of the Interest Period applicable thereto (unless repaid pursuant to the terms hereof), automatically be converted into an ABR Borrowing.

#### Repayment of Term Borrowings

.

(a) The Borrower shall repay to the Administrative Agent for the ratable account of the applicable Term Lenders on the Maturity Date for such Tranche B-2 Term Loans, the aggregate principal amount of such Tranche B-2 Term Loans outstanding on such date, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment. Upon the conversion of Tranche B-2 Term Loans to Extended Term Loans or the refinancing of Tranche B-2 Term Loans with Credit Agreement Refinancing Indebtedness, all scheduled amortization payments, if any, shall be reduced ratably by the aggregate principal amount of the Tranche B-2 Term Loans so converted, refinanced or replaced. The Borrower shall repay Extended Term Loans and Other Term Loans in such amounts and on such date or dates as shall be specified therefor in the applicable Extension Offer, Refinancing Amendment or other governing documentation.

(b) To the extent not previously paid, all Term Loans (including, for avoidance of doubt, Term Loans that are not Tranche B-2 Term Loans) shall be due and payable on the applicable Maturity Date, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

(c) All repayments pursuant to this Section 2.11 shall be subject to Section 3.04, but shall otherwise be without premium or penalty.

#### Voluntary Prepayment

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(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, upon at least three Business Days' prior written (email) notice in the case of Eurodollar Loans, or written (email) notice at least one Business Day prior to the date of prepayment in the case of ABR Loans, to the Administrative Agent before 1:00 p.m., New York City time; *provided, however*, that each partial prepayment shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$2,500,000.

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(b) Except as may otherwise be set forth in any Extension Offer or any Refinancing Amendment, voluntary prepayments of Term Loans pursuant to this Section 2.12 shall be applied ratably to each Class of Term Loans then outstanding.

(c) Each notice of prepayment shall specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid shall be irrevocable and shall commit the Borrower to prepay such Borrowing by the amount stated therein on the date stated therein; *provided, however*, that a notice of prepayment delivered by the Borrower may state that such notice is conditioned upon the consummation of an acquisition or sale transaction or upon the effectiveness of other credit facilities or the receipt of proceeds from the issuance of other Indebtedness or any other specified event, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied (*provided*, that the provisions of Section 3.04 shall apply to any prepayment that is not made as a result of the failure of such condition). All prepayments under this Section 2.12 shall be subject to Section 2.12(d) (to the extent applicable) and Section 3.04 but otherwise without premium or penalty. All prepayments under this Section 2.12 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment.

(d) In the event that, (i) the Borrower voluntarily prepays any Tranche B-2 Term Loans, (ii) the Borrower makes any mandatory prepayment of the Tranche B-2 Term Loans pursuant to Sections 2.13(a)(ii), 2.13(a)(iii), 2.13(a)(iv) or 2.13(a)(v), (iii) a Term Lender is deemed a Non-Consenting Lender and must assign its Tranche B-2 Term Loans pursuant to Section 3.06(a) or (iv) the Tranche B-2 Term Loans are accelerated, then in each case, the Borrower shall pay to the Administrative Agent on the date of such prepayment, assignment or acceleration, for the ratable account of each applicable Term Lender, a prepayment premium equal to (x) 3% of the aggregate amount of the applicable Tranche B-2 Term Loans being prepaid, accelerated or assigned if such prepayment, acceleration or assignment occurs after the Restatement Effective Date but prior to the first anniversary of the Restatement Effective Date, (y) 2% of the aggregate amount of the applicable Tranche B-2 Term Loans being prepaid, accelerated or assigned if such prepayment or assignment occurs on or after the first but prior to the second anniversary of the Restatement Effective Date and (z) 1% of the aggregate amount of the applicable Tranche B-2 Term Loans being prepaid, accelerated or assigned if such prepayment, acceleration or assignment occurs on or after the second but prior to the third anniversary of the Restatement Effective Date (the foregoing premiums, the “**Prepayment Premium**”); *provided that* (A) for the avoidance of doubt, no Prepayment Premium shall be payable on or following the third anniversary of the Restatement Effective Date ~~and~~, (B) the Prepayment Premium shall not apply to mandatory prepayments of the Tranche B-2 Term Loans pursuant to Section 2.13(a)(ii) that do not exceed \$100,000,000 in the aggregate during the term of this Agreement and (C) for the avoidance of doubt, the Prepayment Premium shall not apply to mandatory prepayments of the Tranche B-2 Term Loans pursuant to the Anti-Cash Hoarding Sweep in Section 2.13(a)(vi). Without limiting the generality of the foregoing, it is understood and agreed that if the Tranche B-2 Term Loans are accelerated or otherwise become due prior to their maturity date, in each case, in respect of any Event of Default (including upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), the Prepayment Premium applicable with respect to a voluntary prepayment of the Tranche B-2 Term Loans will also be due and payable on the date of such acceleration or such other prior due date as though the Tranche B-2 Term Loans were

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voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Term Lender's loss as a result thereof. Any premium payable above shall be presumed to be the liquidated damages sustained by each Term Lender and the Borrower agrees that it is reasonable under the circumstances currently existing. THE BORROWER EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. The Borrower expressly agrees (to the fullest extent it may lawfully do so) that: (A) the Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Term Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Premium; and (D) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph.

#### Mandatory Prepayments

(a) (i) Within five (5) Business Days after the earlier of (x) 90 days after the end of each Excess Cash Flow Period and (y) the date on which financial statements have been delivered pursuant to Section 6.01(a) (commencing with the Excess Cash Flow Period ended December 31, 2019) and the related Compliance Certificate has been delivered pursuant to Section 6.02(a), the Borrower shall cause to be prepaid an aggregate amount of Term Loans in an amount equal to (A) the Applicable ECF Percentage of Excess Cash Flow, if any, for the Excess Cash Flow Period covered or required to have been covered by such financial statements minus (B) the sum of (1) all voluntary prepayments of principal of Term Loans (including the amount of cash used to make all debt buybacks and repurchases pursuant to Section 10.04(k)) ~~and~~, (2) all prepayments of principal of Term Loans made pursuant to the terms of the Anti-Cash Hoarding Sweep, and (3) all voluntary prepayments of loans under the ABL Facility during such fiscal year to the extent accompanied by a corresponding permanent reduction in the commitments under the ABL Facility and, in the case of each of the immediately preceding clauses (1) ~~and~~, (2) and (3), to the extent such prepayments are funded with Internally Generated Cash; *provided that*, the amount of prepayment required under this Section 2.13(a)(i) shall be reduced to the extent (but only to the extent) that (x) after giving effect to such prepayment, the sum of (a) the maximum aggregate amount available to be drawn under the ABL Credit Agreement that would not result in a Financial Covenant Trigger Period under the ABL Facility (or any similar term under any replacement ABL Facility) plus (b) the aggregate amount of cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries (other than any cash or Cash Equivalents appearing on the consolidated balance sheet of the Borrower as "restricted" (or with a like designation)) would be less than \$200,000,000 and (y) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer certifying as to the foregoing. Notwithstanding anything to the contrary contained herein, the Borrower shall not be obligated to make any such prepayments described in this Section 2.13(a)(i) (and no Default or Event of Default shall arise as a result of such nonpayment) to the extent such payment would otherwise constitute a violation or breach of the ABL Credit Agreement in respect of minimum liquidity requirements (as in effect on the date

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hereof in respect of such restriction, or as otherwise modified, supplemented or amended in a manner not adverse to the Lenders).

(ii) If (1) the Borrower or any Restricted Subsidiary Disposes of any Real Property or Disposes of any other property or assets pursuant to Section 7.05 (j), (l) or (t) or under any transaction that would be prohibited by Section 7.05 (other than (x) so long as the ABL Credit Agreement is in effect, any Disposition of ABL Priority Collateral and (y) leases of Real Property entered into in the ordinary course of business (excluding Sale and Leaseback Transactions)), or (2) any Casualty Event occurs, which results in the realization or receipt by the Borrower or a Restricted Subsidiary of Net Proceeds, the Borrower shall cause to be prepaid on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or any Restricted Subsidiary of such Net Proceeds an aggregate principal amount of Term Loans in an amount equal to 100% of the Net Proceeds (or, in the case of any Disposition of, or Sale and Leaseback Transaction, with respect to Real Property, 100% of the Real Property Disposition Proceeds) realized or received.

(iii) If the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness after the Restatement Effective Date (other than Indebtedness permitted under Section 7.03 (other than any Credit Agreement Refinancing Indebtedness)), the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after (or, in the case of Credit Agreement Refinancing Indebtedness, one Business Day after) the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(iv) If the Borrower issues any Alternative Incremental Indebtedness or any Subordinated Indebtedness after the Restatement Effective Date, the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 33% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower of such Net Proceeds.

(v) If the Borrower issues any Equity Interests after the Restatement Effective Date, the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 50% of all Net Equity Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower of such Net Equity Proceeds; *provided*, that the Borrower shall only be required to apply up to \$30,000,000 in the aggregate of Net Equity Proceeds pursuant to this Section 2.13(a)(v).

**(vi) If, on any day, the Borrower and its Subsidiaries have Available Cash then, not later than two Business Days after such day, the Borrower shall prepay the outstanding Term Loans under this Agreement in an aggregate amount equal to the amount of such Available Cash (the "Anti-Cash Hoarding Sweep").**

(b) Except as may otherwise be set forth in any Extension Offer, any Refinancing Amendment, any Permitted Repricing Amendment or any other governing documentation, each prepayment of Term Loans pursuant to Section 2.13(a) shall be applied ratably to each Class of Term Loans then outstanding; *provided*, that any prepayment of Term Loans pursuant to the

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parenthetical in Section 2.13(a)(iii) shall be applied solely to each applicable Class of Refinanced Debt.

(c) With respect to each Class of Term Loans, each prepayment pursuant to Section 2.13(a) shall be paid to the Lenders in accordance with their respective Pro Rata Shares, subject to Section 2.13(d). For the avoidance of doubt, this Section 2.13(c) is applicable to any prepayment made with the Net Proceeds of Credit Agreement Refinancing Indebtedness.

(d) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to Section 2.13(a) (other than pursuant to clause (vi) of Section 2.13(a)) by 1:00 p.m., New York City time, least three (3) Business Days prior to the date of such prepayment (or, in the case of any mandatory prepayment of Term Loans required to be made pursuant to clause (vi) of Section 2.13(a), by 1:00 p.m., New York City time, on the date of such prepayment). Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such estimated prepayment. The Administrative Agent will promptly notify each applicable Lender of the contents of the Borrower's prepayment notice and of such Lender's Pro Rata Share or other applicable share of the prepayment. Each Term Lender may reject all of its Pro Rata Share or other applicable share of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Term Loans required to be made pursuant to Section 2.13(a) by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 5:00 p.m., New York City time, one Business Day prior to after the date of such prepayment; *provided that*, for the avoidance of doubt, no Lender may reject any prepayment made with proceeds of Credit Agreement Refinancing Indebtedness. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans unless the Borrower and the Administrative Agent, with the consent of the Required Lenders, agree to an extension of time for such failure to be corrected. Any Declined Proceeds shall be retained by the Borrower.

(e) *Funding Losses, Etc.* All prepayments under this Section 2.13 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment and shall be made together with, in the case of any such prepayment of a Eurodollar Loan on a day prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurodollar Loan pursuant to Section 3.04. All prepayments under Section 2.13(a)(iii) shall be subject to Section 2.12(d) (to the extent applicable). Notwithstanding any of the other provisions of Section 2.13(a), so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurodollar Loans is required to be made under Section 2.13(a) prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit the amount of any such prepayment otherwise required to be made thereunder (including accrued interest to the last day of such Interest Period) into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.13. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with Section 2.13(a).

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(f) *Foreign Dispositions; Foreign Excess Cash Flow.* Notwithstanding any other provisions of this Section 2.13, (A) to the extent that any or all of the Net Proceeds of any Disposition by a Foreign Subsidiary ("**Foreign Disposition**") or Excess Cash Flow attributable to Foreign Subsidiaries are (x) prohibited or delayed by applicable local law or (y) restricted by applicable organizational or constitutive documents or any agreement, from being repatriated to the United States, in each case the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.13 but may be retained by the applicable Foreign Subsidiary (the Borrower hereby agreeing to use reasonable efforts (as determined in the Borrower's reasonable business judgment) to otherwise cause the applicable Foreign Subsidiary to within one year following the date on which the respective payment would otherwise have been required, promptly take all actions reasonably required by the applicable local law, applicable organizational or constitutive document impediment to permit such repatriation), and if within one year following the date on which the respective payment would otherwise have been required, such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law, applicable organizational or constitutive document impediment, such repatriation will be promptly effected and such repatriated Net Proceeds or Excess Cash Flow will be promptly (and in any event not later than 5 Business Days after such repatriation could be made) applied (net of additional taxes, costs and expenses payable or reserved against as a result thereof) (whether or not repatriation actually occurs) to the repayment of the Term Loans pursuant to this Section 2.13 and (B) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Disposition or Foreign Subsidiary Excess Cash Flow could cause adverse tax consequences to the Borrower, such Net Proceeds or Excess Cash Flow so affected may be retained by the applicable Foreign Subsidiary. The non-application of any prepayment amounts as a consequence of the foregoing provisions will not, for the avoidance of doubt, constitute a Default or an Event of Default.

#### Pro Rata Treatment

. Except as required under Section 3.02, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each reduction of the Term Loan Commitments and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Lenders of the applicable Class in accordance with their respective applicable Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans); *provided* that the provisions of this Section 2.14 shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole Dollar amount.

#### Sharing of Setoffs

. Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Borrower or any other Loan Party, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any Loan or Loans as a result of which the unpaid principal portion of its Loans shall be proportionately less than the unpaid principal portion

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of the Loans of any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Loans of such other Lender, so that the aggregate unpaid principal amount of the Loans and participations in Loans held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Loans then outstanding as the principal amount of its Loans prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Loans outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; *provided, however*, that (i) if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.15 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest, and (ii) the provisions of this Section 2.15 shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower as to which the provisions of this Section 2.15 shall apply (*provided*, that if the applicable payment, assignment, sale or participation to the Borrower is expressly permitted under Section 10.04, the provisions of this Section 2.15 shall not be construed to apply). The Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in a Loan deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by the Borrower to such Lender by reason thereof as fully as if such Lender had made a Loan directly to the Borrower in the amount of such participation. For the avoidance of doubt, neither this Section nor Section 2.14 shall limit the ability of the Borrower to (i) purchase and retire Term Loans pursuant to an open market purchase or a Dutch Auction or (ii) pay principal, fees, premiums and interest with respect to Other Term Loans following the effectiveness of any Refinancing Amendment or any Extension Offer, as applicable, on a basis different from the Loans of such Class that will continue to be held by Lenders that were not Extending Lenders or Lenders pursuant to such Refinancing Amendment, as applicable.

#### Payments

(a) The Borrower shall make each payment (including principal of or interest on any Borrowing or any Fees or other amounts due and payable) hereunder and under any other Loan Document not later than 2:00 p.m., New York City time, on the date when due in immediately available Dollars, without setoff, defense or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. Each such payment shall be made to the Administrative Agent at the Administrative Agent's Office. The Administrative Agent shall promptly distribute to each Lender any payments received by the Administrative Agent on behalf of such Lender.

(b) Except as otherwise expressly provided herein, whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder or under any other Loan Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and

such extension of time shall in such case be included in the computation of interest or Fees, if applicable.

[Reserved]

#### Refinancing Amendments

(a) At any time after the Restatement Effective Date, the Borrower may obtain, from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness (other than Permitted Additional Debt) in respect of all or any portion of the Term Loans then outstanding under this Agreement, in the form of Other Term Loans or Other Term Loan Commitments pursuant to a Refinancing Amendment; *provided that* (A) such Credit Agreement Refinancing Indebtedness will rank *pari passu* in right of payment and of security with the other Loans and Commitments hereunder, (B) such Credit Agreement Refinancing Indebtedness will have such pricing, fees, interest, premiums and optional prepayment terms as may be agreed by the Borrower and the Lenders thereof (*provided, that such Credit Agreement Refinancing Indebtedness may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory prepayments hereunder, as specified in the applicable Refinancing Amendment*), (C) such Credit Agreement Refinancing Indebtedness will have a maturity date later than the maturity date of, and will have a Weighted Average Life to Maturity that is not shorter than, the Refinanced Debt, (D) the covenants, events of default and guarantees of such Credit Agreement Refinancing Indebtedness, if not consistent with the terms of the Tranche B-2 Term Loans, shall be on customary market terms for Indebtedness of such type (as determined by the Borrower in good faith) (*provided, that the financial maintenance covenant on the then outstanding Term Loans shall be amended to provide the Lenders the benefit of any financial maintenance covenant of such Credit Agreement Refinancing Indebtedness that is in addition to or more restrictive in any material manner than the financial maintenance covenant on the then outstanding Term Loans*)), (E) the proceeds of such Credit Agreement Refinancing Indebtedness shall be applied, substantially concurrently with the incurrence thereof, to the prepayment of outstanding Term Loans being so refinanced and (F) other than in the case of Credit Agreement Refinancing Indebtedness the proceeds of which are applied to pay all outstanding Term Loans and other Obligations in full in cash, the Borrower shall have obtained the consent of the Required Lenders. The effectiveness of any Refinancing Amendment shall be subject to the satisfaction (or waiver) on the date thereof of each of the conditions set forth in Section 4.01 (and for purposes thereof the incurrence of the Credit Agreement Refinancing Indebtedness shall be deemed to be a Request for Credit Extension) and, to the extent reasonably requested by the Administrative Agent and the Required Lenders, receipt by the Administrative Agent of customary legal opinions, board resolutions, officers' certificates and a solvency certification or representation, in each case materially consistent with those delivered on the Restatement Effective Date under Section 4.02 (other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent), and customary reaffirmation agreements. Each Class of Credit Agreement Refinancing Indebtedness incurred under this Section 2.18(a) shall be in an aggregate principal amount that is (x) not less than \$40,000,000 and (y) an integral multiple of \$1,000,000 in excess thereof. The

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Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment.

(b) Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to a Refinancing 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 Credit Agreement Refinancing Indebtedness incurred pursuant thereto and (ii) 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 2.18, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Refinancing Amendment. Without limiting the foregoing, in connection with any Refinancing Amendment, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the Latest Maturity Date after giving effect to such Refinancing Amendment so that such maturity date is extended to the then Latest Maturity Date (or such later date as may be advised by local counsel to the Collateral Agent).

(c) This Section 2.18 shall supersede any provisions in Section 2.14, 2.15 or 10.08 to the contrary.

#### Extensions of Term Loans

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an “**Extension Offer**”) made from time to time by the Borrower to all Lenders of a Class of Term Loans with a like Maturity Date on a pro rata basis (based on the aggregate outstanding principal amount of the respective Term Loans of such Class with the same Maturity Date) and on the same terms to each such Lender, the Borrower may from time to time with the consent of any Lender that shall have accepted such offer extend the maturity date of any Term Loans and otherwise modify the terms of such Term Loans of such Lender pursuant to the terms of the relevant Extension Offer (including, without limitation, by increasing the interest rate or fees payable in respect of such Term Loans and/or modifying the amortization schedule in respect of such Term Loans) (each, an “**Extension**”, and each group of Term Loans as so extended, as well as the group of original Term Loans not so extended, being a “**tranche**”; any Extended Term Loans shall constitute a separate tranche of Term Loans from the tranche of Term Loans from which they were converted and a separate Class of Term Loans), so long as the following terms are satisfied (or waived): (i) no Event of Default shall exist at the time the notice in respect of an Extension Offer is delivered to the Lenders, and no Event of Default shall exist immediately prior to or after giving effect to the effectiveness of any Extended Term Loans, (ii) except as to interest rates, fees, amortization, final maturity date, premium, AHYDO “catch up” payments, required prepayment dates and participation in prepayments (which shall, subject to immediately succeeding clauses (iii), (iv) and (v), be determined by the Borrower and set forth in the relevant Extension Offer), the Term Loans of any Term Lender extended pursuant to any Extension (“**Extended Term Loans**”) shall have the same terms and conditions that are substantially identical to, or less favorable to the lenders or investors providing such Extended Term Loans as the tranche of Term Loans subject to such

Extension Offer, (iii) the final maturity date of any Extended Term Loans shall be no earlier than the then Latest Maturity Date and the amortization schedule, if any, applicable to Term Loans for periods prior to the then applicable Latest Maturity Date may not be increased, (iv) the Weighted Average Life to Maturity of any Extended Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans extended thereby, (v) any Extended Term Loans may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory prepayments hereunder, as specified in the applicable Extension Offer, (vi) if the aggregate principal amount of Term Loans (calculated on the face amount thereof) in respect of which Term Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans of such Term Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Term Lenders have accepted such Extension Offer, (vii) all documentation in respect of such Extension shall be consistent with the foregoing, and (viii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower.

(b) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.19, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.12, 2.13 or 2.15 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment, *provided* that the Borrower may at its election specify as a condition (a “**Minimum Extension Condition**”) to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower’s sole discretion and may be waived by the Borrower) of Term Loans of any or all applicable Classes be tendered. The Administrative Agent and the Lenders hereby consent to the Extensions and the other transactions contemplated by this Section 2.19 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.12, 2.13, 2.14 and 2.15) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.19.

(c) Each of the parties hereto hereby (A) agrees that this Agreement and the other Loan Documents may be amended to give effect to each Extension (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 Term Loans incurred pursuant thereto, (ii) modify the scheduled repayments set forth in Section 2.11 with respect to any Class of Term Loans subject to an Extension to reflect a reduction in the principal amount of the Term Loans thereunder in an amount equal to the aggregate principal amount of the Extended Term Loans amended pursuant to the applicable Extension (with such amount to be applied ratably to reduce scheduled repayments of such Term Loans required pursuant to Section 2.11), (iii) modify the prepayments set forth in Sections 2.12 and 2.13 to reflect the existence of the Extended Term Loans and the application of prepayments with respect thereto, and (iv) 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 2.19, and the Required Lenders hereby expressly and irrevocably, for the benefit of all parties hereto, authorize the Administrative Agent to enter into any such Extension Amendment and (B) consent to the transactions contemplated by this Section 2.19 (including, for the avoidance of doubt, payment of interest, fees or premiums in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Amendment). Without limiting the foregoing, in connection with any Extension, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the then Latest Maturity Date so that such maturity date is extended to the Latest Maturity Date after giving effect to such Extension (or such later date as may be advised by local counsel to the Collateral Agent).

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five (5) Business Days' (or such shorter period as may reasonably be agreed by the Administrative Agent at the direction of the Required Lenders) prior written notice thereof, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.19.

(e) This Section 2.19 shall supersede any provisions in Section 2.14, 2.15 or 10.08 to the contrary.

### ARTICLE 3

#### TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Taxes

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(a) Except as provided in this Section 3.01, any and all payments made by or on account of the Borrower or any Guarantor under any Loan Document to any Lender or Agent shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, assessments, withholdings (including backup withholding), fees or similar charges imposed by any Governmental Authority including interest, penalties and additions to tax (collectively "**Taxes**"), excluding (i) Taxes imposed on or measured by net income, however denominated, and franchise (and similar) Taxes imposed on it in lieu of net income Taxes, (ii) Taxes attributable to the failure by the relevant Lender or Agent to deliver the documentation required to be delivered pursuant to clause (d) of this Section 3.01, (iii) Taxes imposed by a jurisdiction as a result of any connection between such Lender or Agent and such jurisdiction other than any connection arising from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, or enforcing any Loan Document, (iv) any branch profits Taxes imposed by the United States or any similar Tax imposed by any other jurisdiction in which the Borrower or any Guarantor (as appropriate) is located, (v) any U.S. federal withholding tax imposed on amounts payable hereunder pursuant to a law in effect at such time the Lender or Agent becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower under Section 3.06), or designates a new lending office, except in each case to the extent such Lender (or its assignor, if any) was entitled at the time of designation of a new lending office (or assignment) to receive additional amounts with respect to such withholding tax pursuant to this Section 3.01 and (vi) any Tax imposed under FATCA (all such non-excluded

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Taxes imposed on such payments, being hereinafter referred to as “**Indemnified Taxes**”). If the Borrower, any Guarantor or other applicable withholding agent shall be required by any Laws to deduct any Indemnified Taxes or Other Taxes (as defined below) from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) the sum payable by the Borrower or Guarantor shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), such Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions, (iii) the applicable withholding agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), if the Borrower or any Guarantor is the applicable withholding agent, the applicable withholding agent shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise, property, intangible or mortgage recording taxes, or charges or levies of the same character, imposed by any Governmental Authority, which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (including additions to tax, penalties and interest related thereto) excluding, in each case, such amounts that result from an Agent or Lender’s Assignment and Acceptance, grant of a Participation, transfer or assignment to or designation of a new applicable lending office or other office for receiving payments under any Loan Document (collectively, “**Assignment Taxes**”) except for Assignment Taxes resulting from assignment or participation that is requested or required in writing by the Borrower (all such non-excluded taxes described in this Section 3.01(b) being hereinafter referred to as “**Other Taxes**”).

(c) Without duplication of Section 3.01(a) or (b), the Borrower and each Guarantor agree to indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes and Other Taxes paid by such Agent or Lender (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and (ii) any expenses arising therefrom or with respect thereto, *provided* such Agent or Lender, as the case may be, provides Borrower or Guarantor with a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts.

(d) Each Lender and Agent shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law certifying as to any entitlement of such Lender or Agent to an exemption from, or reduction in, withholding tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender and Agent shall, whenever a lapse in time or change in circumstances renders such documentation obsolete or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent of its inability to do so. Unless the applicable withholding agent has received forms or other

documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrower, the Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Notwithstanding the foregoing, a Lender shall not be required to deliver any form pursuant to this clause (d) that such Lender is not legally able to deliver. In addition, each Lender and Agent shall deliver to the Borrower and the Administrative Agent such other tax forms or other documents as shall be 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 or Agent is subject to backup withholding or information reporting requirements. Without limiting the foregoing:

(i) Each Lender and Agent that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed executed copies of Internal Revenue Service Form W-9 certifying that such Lender or Agent (as the case may be) is exempt from federal backup withholding.

(ii) Each Lender and Agent that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement whichever of the following is applicable:

(A) two properly completed and duly signed executed copies of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(B) two properly completed and duly signed executed copies of Internal Revenue Service Form W-8ECI (or any successor forms) and, in the case of an Agent, a withholding certificate that satisfies the requirements of Treasury Regulation Sections 1.1441-1(b)(2)(iv) and 1.1441-1(e)(3)(v) as applicable to a U.S. branch that has agreed to be treated as a U.S. person for withholding tax purposes,

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (A) a certificate substantially in the form of Exhibit G-1, G-2, G-3 or G-4, as applicable (any such certificate a “**United States Tax Compliance Certificate**”) and (B) two properly completed and duly signed executed copies of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E, or

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a participant holding a participation granted by a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information from each beneficial owner, as applicable (*provided* that, if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such

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beneficial owner). Each Lender and Agent shall deliver to the Borrower and the Administrative Agent two further executed copies of any previously delivered form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete or inaccurate and promptly after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower or the Administrative Agent, or promptly notify the Borrower and the Administrative Agent that it is unable to do so. Each Lender and Agent shall promptly notify the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered form or certification to the Borrower or the Administrative Agent.

(e) Any Lender or Agent claiming any additional amounts payable pursuant to this Section 3.01 shall use its reasonable efforts to change the jurisdiction of its lending office (or take any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the reasonable, good faith determination of such Lender, result in any unreimbursed cost or expense or be otherwise materially disadvantageous to such Lender.

(f) If any Lender or Agent determines, in its reasonable, good faith discretion, that it has received a refund in respect of any Taxes as to which indemnification or additional amounts have been paid to it by the Borrower pursuant to this Section 3.01 (including by payment of additional amounts pursuant to this Section) it shall promptly remit such refund to the Borrower or Guarantor, net of all out-of-pocket expenses of the Lender or Agent, as the case may be and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund net of any Taxes payable by any Agent or Lender on such interest); *provided* that the Borrower and Guarantors, upon the request of the Lender or Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such party in the event such party is required to repay such refund to the relevant Governmental Authority. This section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Borrower or any other person.

(g) If a payment made to a Lender or Agent under any Loan Document would be subject to withholding Tax imposed by FATCA if such Lender or Agent 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 or Agent 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 or Agent has complied with such Lender's or Agent's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 3.01(b), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

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(h) Each party's obligations under this Section 3.01 shall survive any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Each Lender shall indemnify each Agent, within 10 days following written demand therefor, for (i) the full amount of any Indemnified Taxes and Other Taxes attributable to such Lender (but only to the extent that such Agent has not already been indemnified by the Borrower and each Guarantor for such Indemnified Taxes and Other Taxes and without limiting the obligation of the Borrower and each Guarantor to do so), and (ii) any Taxes attributable to such Lender's failure to comply with the provision of Section 10.04(f) relating to the maintenance of a Participant Register, in each case, that are payable or paid by such Agent in connection with any Loan Documents, and any expenses arising therefrom or with respect thereto; *provided* that such Agent provides such lender with a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts.

#### Illegality

If any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the LIBO Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended 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, the Borrower shall promptly following written demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all applicable Eurodollar Loans of such Lender to ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.04. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

#### Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Loans

(a) If any Lender reasonably determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the Restatement Effective Date, or such Lender's compliance therewith, there shall be any material increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Eurodollar Loans, or a material reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.03(a)) any such increased costs or reduction in amount resulting from (i) Indemnified Taxes or Other Taxes for which additional amounts are payable pursuant to Section 3.01, or any Taxes excluded from the definition of Indemnified Taxes under exception (iii) thereof to the extent such Taxes are imposed on or measured by net income or profits or are franchise taxes (imposed in lieu of the foregoing taxes) and any Taxes excluded from the definition of Indemnified Taxes under exceptions (i), (ii), (iv),

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(v) and (vi) thereof or (ii) reserve requirements contemplated by Section 3.03(c) or reflected in the Adjusted LIBO Rate) and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligations to make any Loan), or to reduce the amount of any sum received or receivable by such Lender, then from time to time within fifteen (15) days after written demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such written demand to the Administrative Agent given in accordance with Section 3.05), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or liquidity or any change therein or in the interpretation thereof, in each case after the Restatement Effective Date, or compliance by such Lender (or its lending office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any entity controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and liquidity and such Lender's desired return on capital), then from time to time upon written demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such written demand to the Administrative Agent given in accordance with Section 3.05), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender or controlling entity for such reduction within fifteen (15) days after receipt of such written demand.

(c) Except to the extent already reflected in the Adjusted LIBO Rate, the Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurodollar funds or deposits, additional interest on the unpaid principal amount of each applicable Eurodollar Loan of the Borrower 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 in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurodollar Loans of the Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least fifteen (15) days' prior written notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give written notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such written notice.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.03 shall not constitute a waiver of such Lender's right to demand such compensation.

(e) If any Lender requests compensation under this Section 3.03, then such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another lending office for any Loan affected by such event; *provided* that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its lending office(s) to suffer no

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material economic, legal or regulatory disadvantage, and *provided further* that nothing in this Section 3.03(e) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.03(a), (b), (c) or (d).

#### Funding Losses

. Promptly following written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

(i) any continuation or conversion of any Eurodollar Loan of the Borrower on a day prior to the last day of the Interest Period for such Loan, or any payment or prepayment of any Eurodollar Loan of the Borrower on a day prior to the last day of the Interest Period for such Loan; or

(ii) 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 Eurodollar Loan of the Borrower on the date or in the amount notified by the Borrower;

including an amount equal to the excess, as reasonably determined by such Lender, of (1) its cost of obtaining funds for the Eurodollar Loan that is the subject of such event for the period from the date of such event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (2) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such event for such period, but excluding (a) loss of anticipated profits, and (b) any loss, cost or expense resulting from Indemnified Taxes or Other Taxes for which additional amounts are payable pursuant to Section 3.01, or any Taxes excluded from the definition of Indemnified Taxes under Section 3.01.

#### Matters Applicable to all Requests for Compensation

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(a) Any Agent or any Lender claiming compensation under this Article 3 shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable and customary averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.02 or 3.03, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; *provided* that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation by the Borrower under Section 3.03, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another any applicable Eurodollar Loan, or, if applicable, to convert ABR Loans into Eurodollar Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions

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of Section 3.05(c) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue any Eurodollar Loan, or to convert ABR Loans into Eurodollar Loans shall be suspended pursuant to Section 3.05(b) hereof, such Lender's applicable Eurodollar Loans shall be automatically converted into ABR Loans (or, if such conversion is not possible, repaid) on the last day(s) of the then current Interest Period(s) for such Eurodollar Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02 or 3.03 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurodollar Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurodollar Loans shall be applied instead to its ABR Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurodollar Loans shall be made or continued instead as ABR Loans (if possible), and all ABR Loans of such Lender that would otherwise be converted into Eurodollar Loans shall remain as ABR Loans.

(d) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02 or 3.03 hereof that gave rise to the conversion of any of such Lender's Eurodollar Loans pursuant to this Section 3.05 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Loans made by other Lenders under the applicable Facility are outstanding, if applicable, such Lender's ABR Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurodollar Loans under such Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

(e) 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 or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to have been adopted or made after the Restatement Effective Date, regardless of the date enacted or adopted.

#### Replacement of Lenders under Certain Circumstances

(a) If at any time (i) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01 or 3.03 as a result of any condition described in such Sections or any Lender ceases to make any Eurodollar Loans as a result of any condition described in Section 3.02 or Section 3.03 or (ii) any Lender becomes a Non-Consenting Lender, then the Borrower may, on prior written notice to the Administrative Agent and such Lender, (x)

replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.04(b) (unless otherwise agreed, with the assignment fee to be paid by the Borrower in such instance) (it being understood that any such assignment shall become effective only in accordance with Section 10.04(e)), all of its rights and obligations under this Agreement (in respect of any applicable Facility only in the case of clause (i) or, with respect to a Class vote, clause (ii)) to one or more Eligible Assignees; *provided* that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; and *provided further* that (A) in the case of any such assignment resulting from a claim for compensation under Section 3.03 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments and (B) in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to, and shall be sufficient (together with all other consenting Lenders) to cause the adoption of, the applicable departure, waiver or amendment of the Loan Documents; or (y) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date; *provided* that in the case of any such termination of a Non-Consenting Lender, such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable departure, waiver or amendment of the Loan Documents and such termination shall be in respect of any applicable Facility only in the case of clause (i) or, with respect to a Class vote, clause (ii).

(b) In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, each directly and adversely affected Lender, each Lender with respect to a certain Class of Loans or each directly and adversely affected Lender with respect to a certain Class of Loans, in each case in accordance with Section 10.08, and (iii) the Required Lenders (or, in the case of a consent, waiver or amendment involving all Lenders or all directly and adversely affected Lenders of a certain Class, the Required Class Lenders) have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “**Non-Consenting Lender.**”

(c) Any Lender being replaced pursuant to Section 3.06(a) above shall (i) execute and deliver an Assignment and Acceptance with respect to such Lender’s applicable Commitment and outstanding Loans, and (ii) deliver any Term Notes evidencing such Loans to the Borrower or Administrative Agent. Pursuant to such Assignment and Acceptance, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender’s outstanding Loans, (B) all obligations of the Borrower owing to the assigning Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Acceptance and (C) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate Term Note executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender. In connection with any such replacement, if any such Non-Consenting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Acceptance reflecting such replacement

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within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Acceptance to such Non-Consenting Lender, then such Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Acceptance without any action on the part of the Non-Consenting Lender.

(d) Notwithstanding anything to the contrary contained above, the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with Article 9.

#### Survival

. All of the Borrower's obligations under this Article 3 shall survive termination of the Commitments and repayment of all other Obligations hereunder.

### ARTICLE 4 CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

#### All Credit Extensions

. The obligation of each Lender to honor any Request for Credit Extension (other than a Request for Credit Extension requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Loans) is subject to satisfaction (or waiver) of the following conditions precedent:

(a) The representations and warranties set forth in Article 5 and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; *provided*, that any such representation and warranty that is qualified by "materiality", "material adverse effect" or similar language shall be true and correct in all respects (after giving effect to such qualification therein) on and as of the date of such Credit Extension with the same effect as though made on and as of such date or such earlier date, as applicable.

(b) No Default shall exist or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(c) The Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) The Collateral and Guarantee Requirement shall have been satisfied in all material respects with respect to each Material Real Property and, solely to the extent required under clause (b)(iv) of the definition of "Collateral and Guarantee Requirement", each Pension Real Property.

Each Request for Credit Extension (other than a Request for Credit Extension requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Loans) submitted by the Borrower shall be deemed to be a representation and warranty by the Borrower that the conditions specified in Sections 4.01(a) and (b) have been satisfied or waived on and as of the date of the applicable Credit Extension.

#### First Credit Extension

. The amendment and restatement of the Existing Credit Agreement provided for hereby and the obligation of each Tranche B-2 Term Lender to

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make Tranche B-2 Term Loans, shall be subject to satisfaction (or waiver) of the following conditions precedent:

(a) The Administrative Agent and the Required Lenders shall have received the following, each properly executed by a Responsible Officer of the signing Loan Party, each dated as of the Restatement Effective Date:

(i) executed counterparts of this Agreement duly executed by the Borrower and each Guarantor;

(ii) a Term Note executed by the Borrower in favor of each Lender that has requested a Term Note at least two Business Days in advance of the Restatement Effective Date;

(iii) the Security Agreement duly executed by the parties thereto; and

(iv) the Fee Letter and the Administrative Fee Letter duly executed by the respective parties thereto.

(b) The Administrative Agent and the Required Lenders shall have received, on behalf of themselves, the Collateral Agent and the Lenders, an opinion of (i) Kirkland & Ellis LLP, counsel for the Loan Parties, and (ii) from each local counsel for the Loan Parties listed on Schedule 4.02(b), in each case, dated the Restatement Effective Date and addressed to the Administrative Agent, the Collateral Agent and the Lenders and in customary form and substance, and the Borrower hereby requests such counsel to deliver such opinions.

(c) The Administrative Agent and the Required Lenders shall have received (i) a copy of the certificate or articles of incorporation or organization or certificate of formation, including all amendments thereto, of each Loan Party, certified, if applicable, as of a recent date by the Secretary of State of the state of its organization, and a certificate as to the good standing (to the extent applicable) of each Loan Party as of a recent date, from such Secretary of State or similar Governmental Authority; (ii) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Restatement Effective Date and certifying (A) that attached thereto is a true and complete copy of the by-laws or operating (or limited liability company) agreement of such Loan Party as in effect on the Restatement Effective Date and at all times since a date prior to the date of the resolutions described in clause (B) below, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or equivalent governing body) of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Loan Party is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation or organization or certificate of formation of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to clause (i) above, (D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party on the Restatement Effective Date, and (E) as to the absence of any proceeding for the dissolution or liquidation of such Loan Party;

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and (iii) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to clause (ii) above.

(d) (i) The Administrative Agent and the Required Lenders shall have received the results of (x) searches of the Uniform Commercial Code filings (or equivalent filings) and (y) judgment and tax lien searches, made with respect to each Loan Party in the states or other jurisdictions of formation of such Loan Party and with respect to such other locations and names listed on the Perfection Certificate, together with copies of the financing statements (or similar documents) disclosed by such search and (ii) each of the Security Agreement, the Custodial Administration Agreement and the Intellectual Property Security Agreement shall have been duly executed and delivered by each Loan Party that is to be a party thereto, together with (x) certificates, if any, representing the Equity Interests pledged by the Borrower and the Guarantors accompanied by undated stock powers executed in blank and (y) documents and instruments to be recorded or filed that the Administrative Agent may deem, subject to Section 6.13 reasonably necessary to satisfy the Collateral and Guarantee Requirement.

(e) The Collateral and Guarantee Requirement shall have been satisfied in all material respects with respect to each Material Real Property.

(f) Prior to or substantially concurrently with the funding of the Loans on the Restatement Effective Date, the Administrative Agent, the ABL Agent and the Borrower shall have executed and delivered the ABL Intercreditor Amendment.

(g) The Succession Agreement shall have been duly executed and delivered by the parties thereto and actions required to assign the Collateral to the Collateral Agent shall have been consummated.

(h) Prior to or substantially concurrently with the funding of the Loans on the Restatement Effective Date, (i) the IBT Agreement shall be in full force and effect, and (ii) the Refinancing Transaction shall have been consummated and the Administrative Agent shall have received evidence thereof reasonably satisfactory to the Administrative Agent. Immediately after giving effect to the Refinancing Transaction and the other transactions contemplated hereby, the Borrower and the Subsidiaries shall have outstanding no Indebtedness for borrowed money other than (i) Indebtedness outstanding under this Agreement, (ii) the ABL Facility Indebtedness, and (iii) Indebtedness permitted pursuant to Section 7.03.

(i) The Administrative Agent and the Required Lenders shall have received a solvency certificate, substantially in the form set forth in Exhibit H, from the chief financial officer or chief accounting officer or other officer with equivalent duties of the Borrower, or in lieu thereof at the option of the Borrower, an opinion of a nationally recognized valuation firm as to the solvency (on a consolidated basis) of the Borrower and its Subsidiaries as of the Restatement Effective Date.

(j) The ABL Credit Agreement shall have been amended pursuant to an amendment agreement, in form and substance reasonably satisfactory to the Required Lenders, to permit the Transactions.

(k) The Administrative Agent and the Required Lenders shall have received all documentation and other information about the Borrower and the Guarantors required under

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applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, including without limitation, a duly executed W-9 tax form (or such other applicable IRS tax form) of the Borrower, that has been reasonably requested in writing at least five Business Days prior to the Restatement Effective Date.

(l) The Administrative Agent and the Required Lenders shall have received a certificate from an officer of the Borrower certifying that since December 31, 2018, there has not occurred any Material Adverse Effect.

(m) The Administrative Agent and the Required Lenders shall have received all applicable fees and other amounts due and payable on or prior to the Restatement Effective Date, including, to the extent invoiced at least three Business Days prior to the Restatement Effective Date (except as otherwise reasonably agreed by the Borrower), reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document on or prior to the Restatement Effective Date.

(n) To the extent required by Section 6.07, the Administrative Agent shall have received evidence that the insurance required by Section 6.07 is in effect, together with endorsements naming the Administrative Agent, for the benefit of the Secured Parties, as additional insured and loss payee thereunder.

Solely for purposes of determining whether the conditions set forth in Section 4.01 or 4.02 have been satisfied in respect of any Credit Extension, the Agents and each Lender party hereto shall be deemed to have consented to, approved, accepted or be reasonably satisfied with any document delivered prior to such Credit Extension or other matter (in each case, for which such consent, approval, acceptance or satisfaction is expressly required by Section 4.01 or 4.02, as applicable) by releasing its signature page to this Agreement or to an Assignment and Acceptance, as the case may be.

**ARTICLE 5**  
REPRESENTATIONS AND WARRANTIES

Each of the Borrower and each of the Guarantors party hereto represents and warrants to the Administrative Agent, the Collateral Agent and each of the Lenders that:

Existence, Qualification and Power; Compliance with Laws

. Each Loan Party and each Restricted Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing (where relevant) under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite organizational power and authority to execute, deliver and perform its obligations under the Loan Documents to which it is a party and, in the case of the Borrower, to borrow hereunder, (c) is duly qualified and in good standing (where relevant) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs and injunctions, and (e) has all requisite franchises, licenses, authorizations, qualifications, consents and approvals to operate its business as currently conducted; except in each case, referred to in clause (a) (other than with respect to any Loan Party), (c), (d) or (e), to the extent that failure to do

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so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Authorization; No Contravention

. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, (a) are within such Loan Party's organizational powers, (b) have been duly authorized by all necessary corporate or other organizational action, and (c) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (x) any Indebtedness of such Person in excess of the Threshold Amount or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any material Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (c)(ii)(x), to the extent that such violation, conflict, breach, contravention or payment, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Governmental Authorization; Other Consents

. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority 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, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) to the extent required thereunder or (d) the exercise by the Administrative Agent, the Collateral Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) approvals, consents, exemptions, authorizations or other actions by, or notices to, or filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties (or release existing Liens), (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or to be in full force and effect pursuant to the Collateral and Guarantee Requirement) and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Binding Effect

. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of each such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity.

Financial Statements; No Material Adverse Effect

.  
(a) (i) The Audited Financial Statements fairly present in all material respects the financial condition of the Borrower and its consolidated Subsidiaries as of the dates thereof and

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their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(i)The Unaudited Financial Statements fairly present in all material respects the financial condition of the Borrower and its consolidated Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein and the absence of footnotes.

(b) The forecasts of income statements of the Borrower and its Subsidiaries which have been furnished to the Administrative Agent and the Required Lenders prior to the Restatement Effective Date have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such forecasts it being understood by the Agents and the Lenders that such projections as to future events (i) are not to be viewed as facts, (ii)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower and its Restricted Subsidiaries, (B) no assurance is given by the Borrower and its Restricted Subsidiaries that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

(c) Since December 31, 2018, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

#### Compliance With Laws

. Neither the Borrower nor any of the Restricted Subsidiaries or any of their respective properties or assets is in violation of, nor will the continued operation of their properties and assets as currently conducted violate, any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting the Mortgaged Property, or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where in each case such violation or default, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

#### Ownership of Property; Liens

.

(a) Schedule 1.01(c) sets forth a true, complete and correct list of all Real Property owned (whether in fee or through a leasehold estate under any ground lease) by Borrower and the Restricted Subsidiaries as of the Restatement Effective Date.

(b) Each of the Borrower and the Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all its properties and assets (including all Mortgaged Property material to its business), free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and except where the failure to have

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such title or interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) As of the Restatement Effective Date, Schedule 9 to the Perfection Certificate dated the Restatement Effective Date contains a true and complete list of each Material Real Property owned by the Borrower each other Loan Party and its Restricted Subsidiaries.

(d) As of the Restatement Effective Date, except as otherwise disclosed in writing to the Collateral Agent and the Required Lenders, no Mortgage encumbers improved Mortgaged Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards within the meaning of the Flood Laws unless Evidence of Flood Insurance has been delivered to the Collateral Agent.

#### Environmental Matters

. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) Each Loan Party and each Restricted Subsidiary is and has been in compliance with all Environmental Laws, which includes obtaining and maintaining all Environmental Permits required under such Environmental Laws to carry on the business of the Loan Parties and the Restricted Subsidiaries;

(b) the Loan Parties and the Restricted Subsidiaries have not received notice alleging any Environmental Liability or proposing or seeking to revoke, modify or deny the renewal of any Environmental Permit required to be held by the Loan Parties or the Restricted Subsidiaries, and neither the Loan Parties nor the Restricted Subsidiaries have become subject to any Environmental Liability;

(c) there has been no Release, discharge or disposal of Hazardous Materials (i) on, to, at, under or from any Real Property or any vehicles or facilities owned or leased by any of the Loan Parties or the Restricted Subsidiaries, or, to the knowledge of the Borrower, formerly owned, operated or leased by any Loan Party or any Restricted Subsidiary, or (ii) arising out of the conduct of the Loan Parties or the Restricted Subsidiaries that, in the case of (i) or (ii), could reasonably be expected to require investigation, remedial activity or corrective action or cleanup by or on behalf of any Loan Party or any Restricted Subsidiary or for which any Loan Party or Restricted Subsidiary reasonably could be expected to otherwise incur any Environmental Liability; and

(d) there are no facts, circumstances or conditions arising out of or relating to, and there are no pending or reasonably anticipated requirements under Environmental Law associated with, the operations of the Loan Parties or the Restricted Subsidiaries or any Real Property, vehicles or facilities currently or, to the knowledge of the Borrower, previously owned or leased by the Loan Parties or any Restricted Subsidiary that, in such case, are known to or would reasonably be likely to require investigation, remedial activity or corrective action or cleanup by or on behalf of any Loan Party or any Restricted Subsidiary or that are known to or would reasonably be likely to result in the Borrower or any other Loan Party or Restricted Subsidiary incurring any Environmental Liability or capital expenditures to achieve or maintain compliance with Environmental Laws.

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*Taxes*

. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: each of the Loan Parties and their Restricted Subsidiaries have timely filed all tax returns required to be filed (taking into account any extensions), and have paid all Taxes levied or imposed upon them or their properties, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted if such contest shall have the effect of suspending enforcement or collection of such Taxes and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax deficiency or assessment known to any Loan Party against any Loan Party or any Restricted Subsidiary that would, if made, individually or in the aggregate, have a Material Adverse Effect.

ERISA Compliance

.

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect:

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws (and the regulations and published interpretations thereunder).

(b) The Loan Parties, their Restricted Subsidiaries and their respective ERISA Affiliates may incur liability for ordinary course contributions to (and make payments in satisfaction of such liabilities) plans listed on Schedule 5.10(b), which are Multiemployer Plans.

(c) No ERISA Event has occurred.

Subsidiaries

. As of the Restatement Effective Date (after giving effect to the Transactions), no Loan Party has any direct or indirect Restricted Subsidiaries other than those specifically disclosed in Schedule 5.11, and all of the outstanding Equity Interests owned by the Loan Parties (or a Restricted Subsidiary of any Loan Party) in such Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable and all Equity Interests owned by a Loan Party (or a Restricted Subsidiary of any Loan Party) in such Subsidiaries are owned free and clear of all Liens except (a) those created under the Collateral Documents or under the ABL Facility Documentation (which Liens shall be subject to the ABL Intercreditor Agreement) and (b) any other Lien that is permitted under Section 7.01. As of the Restatement Effective Date, (i) Section 2(c) of the Perfection Certificate sets forth the name and jurisdiction of each Loan Party and (ii) Schedule 5 to the Perfection Certificate sets forth the direct ownership interest of the Borrower and any Loan Party thereof in each such Subsidiary, including the percentage of such ownership.

Margin Regulations; Investment Company Act

.

(a) No Loan Party or Restricted Subsidiary is engaged nor will it engage, principally, or as one of its important activities in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of the provisions of the Regulations of the Board, including Regulation T, U or X.

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Disclosure

. No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, pro forma financial information, budgets, estimates and information of a general economic or industry nature) to any Agent or any Lender about the Borrower and its Subsidiaries in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains or will contain any material misstatement of fact or omits or will omit to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were or will be made, not materially misleading. With respect to projected financial information and pro forma financial information, the Borrower represents that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood and agreed by the Agents and the Lenders that such projections as to future events (i) are not to be viewed as facts, (ii) are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower and its Restricted Subsidiaries and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

Labor Matters

(a) Except as, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect: (i) there are no strikes or other labor disputes against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing; (ii) hours worked by and payment made to employees of the Borrower or any of its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters; and (iii) all payments due from the Borrower or any of its Restricted Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party. Except as disclosed on Schedule 5.14, as of the Restatement Effective Date no Loan Party is a party to or bound by any collective bargaining agreement or, with respect to any Foreign Subsidiary, any similar agreement. To the knowledge of any Loan Party, the consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party is bound to the extent that such would be reasonably expected to result in a Material Adverse Effect.

(b) (i) The IBT Agreement is in full force and effect and (ii) other than as contemplated by the IBT Transactions, the IBT Agreement has not been amended, waived or otherwise modified in any respect materially adverse to the Borrower and its Subsidiaries (taken as a whole). For purposes of this Section 5.14(b), it is understood that the resolution in the ordinary course of business of an employee grievance seeking to enforce the IBT Agreement terms will not be deemed to constitute an amendment, waiver or other modification to the IBT Agreement.

Insurance

. Each of the Borrower and its Subsidiaries maintains, with financially sound and reputable insurance companies, insurance in such amounts and against such

risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations; *provided*, that each of the Borrower and its Subsidiaries may self-insure to the same extent as other companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or each such Subsidiary, as applicable, operates.

#### Solvency

. Immediately after giving effect to the consummation of the Transactions to occur on the Restatement Effective Date, including the making of the Loans under this Agreement, and immediately after giving effect to the application of the proceeds of such Loans, on the Restatement Effective Date (a) the fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis (on a going concern basis), exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the ordinary course of business; (c) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured; and (d) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital. For purposes of this Section 5.16, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability in the ordinary course of business.

#### No Other Borrowed Money Indebtedness

~~Section 5.17 Indebtedness~~. Immediately after giving effect to the consummation of the Transactions to occur on the Restatement Effective Date the Borrower and its Subsidiaries shall have outstanding no Indebtedness for borrowed money other than (a) Indebtedness outstanding under this Agreement, (b) the ABL Facility Indebtedness, (c) Indebtedness set forth on Schedule 7.03(b) and (d) Indebtedness permitted pursuant to Section 7.03.

#### Collateral Documents

(a) *Valid Liens*. The Collateral Documents are, on execution and delivery thereof by the parties thereto will be, effective to create in favor of the Collateral Agent for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, the Collateral described therein to the extent intended to be created thereby, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity and (i) when financing statements and other filings in appropriate form are filed in the offices specified in Section 2 of the Perfection Certificate (and payments of all fees) and (ii) upon the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent possession or control by the Collateral Agent is required by the Security Agreement), and (iii) upon the notating of the Lien of the Collateral Agent on all certificates of title in respect of any Collateral, the Liens created by the Collateral Documents (other than the Mortgages) shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors in such

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Collateral, in each case prior and superior in right to any other Person, other than Liens permitted by [Section 7.01](#) (other than Liens securing Permitted Second Priority Additional Debt or any Permitted Refinancing thereof and Liens securing ABL Facility Indebtedness or Permitted Refinancing thereof, that are intended to be junior to the Liens of the Collateral Documents).

(b) *PTO Filing; Copyright Office Filing.* When the Security Agreement or a short form thereof is properly filed (and payments of all fees) in the United States Patent and Trademark Office and the United States Copyright Office, to the extent such filings may perfect such interests, the Liens created by such Security Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors thereunder in Patents and Trademarks (each as defined in the Security Agreement) registered or applied for with the United States Patent and Trademark Office or Copyrights (as defined in such Security Agreement) registered or applied for with the United States Copyright Office, as the case may be, in each case prior and superior in right to any other Person, other than Liens permitted by [Section 7.01](#) (other than Liens securing Permitted Second Priority Additional Debt or any Permitted Refinancing thereof and Liens securing ABL Facility Indebtedness or Permitted Refinancing thereof, that are intended to be junior to the Liens of the Collateral Documents) (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to establish a Lien on registered Patents, Trademarks and Copyrights acquired by the grantors thereof after the Restatement Effective Date).

(c) *Mortgages.* Upon recording thereof in the appropriate recording office (and payments of all applicable fees), each Mortgage is effective to create, in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, legal, valid and enforceable (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity) perfected Liens on, and a security interest in, all of the Loan Parties' right, title and interest in and to the Mortgaged Property thereunder and the proceeds thereof, subject only to Liens permitted hereunder, and when such Mortgage is filed in the offices specified in the local counsel opinion delivered with respect thereto in accordance with the provisions of [Sections 6.11](#) and [6.13](#), such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Party to such Mortgage in the Mortgaged Property described therein and the proceeds thereof, in each case prior and superior in right to any other Person, other than Liens permitted by [Section 7.01](#).

(d) *Rolling Stock.* Upon the recording thereof on the applicable certificate of title (and filing of financing statements and payment of applicable fees, which shall be for the account of the Borrower), the notation of the Administrative Agent's lien on any rolling stock or other goods subject to a certificate of title is effective to create, in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, legal, valid and enforceable (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity) perfected Liens on, and a security interest in, all of the Loan Parties' right, title and interest in and to such Collateral and the proceeds thereof, subject only to Liens permitted hereunder, in each case prior and superior in right to any other Person, other than Liens permitted by [Section 7.01](#).

Notwithstanding anything herein (including this [Section 5.18](#) or [Section 5.04](#)) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any

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representation or warranty as to (A) [reserved] (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) on the Restatement Effective Date and until required pursuant to Section 4.02(d) or Section 6.13, the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Restatement Effective Date pursuant to Section 4.02(d).

#### Compliance with Anti-Terrorism and Corruption Laws

(a) To the extent applicable, the Borrower and the Restricted Subsidiaries are in compliance, in all material respects, with (i) the Trading with the Enemy Act and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, and (ii) the USA PATRIOT Act.

(b) None of the Borrower or any Restricted Subsidiary nor, to the knowledge of the Borrower, any director, officer, agent, employee or controlled Affiliate of the Borrower or any Restricted Subsidiary, (i) is a Blocked Person or (ii) is currently subject to any U.S. sanctions administered by OFAC that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and none of the Borrower or any Restricted Subsidiary will use the proceeds of the Loans for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

No part of the proceeds of the Loans will be used by the Borrower or any of the Restricted Subsidiaries, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

*Section 5.20. Real Property Permits.* Borrower has all Permits, all of which are in full force and effect as of the date hereof required by the applicable Governmental Authorities in connection with the ownership and operation of any Material Real Property, except to the extent that the failure to have any such Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### ARTICLE 6

#### AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation (other than contingent indemnification or reimbursement obligations) hereunder which is accrued or payable shall remain unpaid or unsatisfied, then from and after the Restatement Effective Date, the Borrower shall and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.15) cause each of the Restricted Subsidiaries to:

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. In the case of the Borrower, deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) within 90 days after the end of each fiscal year of the Borrower (beginning with the fiscal year ending December 31, 2019), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of 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 accompanied by a report and opinion of KPMG LLP, any other independent registered public accounting firm of nationally recognized standing or any other independent registered public accounting firm approved by the Administrative Agent and the Required Lenders (such approval not to be unreasonably withheld, conditioned or delayed), which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards, (ii) shall not be subject to qualifications or exceptions as to the scope of such audit, (iii) shall be without a "going concern" disclosure or like qualification or exception (other than with respect to, or disclosure or an exception or qualification solely resulting from, (x) the impending maturity of any Indebtedness or (y) any prospective or actual default under any financial covenant and (iv) shall be accompanied with customary management discussion and analysis;

(b) within 45 days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended September 30, 2019), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (x) consolidated statements of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (y) consolidated statements of cash flows for such fiscal quarter and the portion of the 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 and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and accompanied by customary management discussion and analysis; and

(c) within 90 days after the end of each fiscal year (commencing with the fiscal year ending December 31, 2019) of the Borrower, a reasonably detailed consolidated budget for the following fiscal year on a quarterly basis (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flows and projected income and a summary of the material underlying assumptions applicable thereto) (collectively, the "Projections"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood by the Agents and the Lenders that such projections as to future events (i) are not to be viewed as facts, (ii)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower and its Restricted Subsidiaries, (B) no assurance is given by the Borrower and its Restricted Subsidiaries that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (iii) are not a guarantee of performance and that actual results

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during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 or Section 6.02(b) may be satisfied with respect to information of the Borrower and the Subsidiaries by furnishing within the time period specified in the applicable paragraph (A) the applicable financial statements of the Borrower or (B) the Borrower's Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, with respect to clauses (A) and (B), to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are accompanied by a report and opinion of KPMG LLP, any other independent registered public accounting firm of nationally recognized standing or any other independent registered public accounting firm approved by the Administrative Agent and the Required Lenders (such approval not to be unreasonably withheld, conditioned or delayed), which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards, (ii) shall not be subject to qualifications or exceptions as to the scope of such audit and (iii) shall be without a "going concern" disclosure or like qualification or exception (other than with respect to, or disclosure or an exception or qualification solely resulting from, (A) the impending maturity of any Indebtedness or (B) any prospective or actual default under any financial covenant).

Documents required to be delivered pursuant to Section 6.01(a), (b), (c) and (d) or Section 6.02(b) or (c) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the earliest date on which (i) Borrower posts such documents, or provides a link thereto on Borrower's website on the Internet and provides notice thereof to the Administrative Agent; (ii) such documents are posted on Borrower's behalf on IntraLinks/IntraAgency or another website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent), or (iii) such financial statements and/or other documents are posted on the SEC's website on the internet at [www.sec.gov](http://www.sec.gov); *provided* that: (i) promptly following written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent; *provided*, however, that if such Compliance Certificate is first delivered by electronic means, the date of such delivery by electronic means shall constitute the date of delivery for purposes of compliance with Section 6.02(a).

Certificates; Other Information

. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) Business Days after the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(b) (or the date on which such delivery is required), commencing with the first full fiscal quarter completed after the Restatement Effective Date, a

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duly completed Compliance Certificate signed by a Responsible Officer of the Borrower; it being understood that , if applicable for such period of delivery, such Compliance Certificate shall include (i) information about Net Proceeds received in the period for individual amounts greater than \$5,000,000 and set forth statements of the Borrower's intention regarding the use of any portion of such Net Proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions or any acquisition permitted hereunder of all or substantially all the assets of, or all the Equity Interests (other than directors qualifying shares) in a Person, division or line of business previously acquired) and (ii) calculations setting forth in reasonable detail the amount of any Cumulative Credit available at the beginning of the applicable period and at the end of such period and the amount and application of any Cumulative Credit during such period (it being understood that the Borrower has the right to reallocate usage of the Cumulative Credit in accordance with [Section 1.02\(i\)](#) from time to time);

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(c) promptly after the furnishing thereof, copies of any material notices of default received by any Loan Party or Restricted Subsidiary (other than in the ordinary course of business) or furnished to any holder of Indebtedness or debt securities of any Loan Party or of any of its Restricted Subsidiaries pursuant to the terms of the ABL Facility Documentation, any Junior Financing Documentation, any Permitted Additional Debt or any Permitted Refinancing of any thereof, in each case in a principal amount in excess of the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to any clause of this [Section 6.02](#);

(d) together with the delivery of each Compliance Certificate pursuant to [Section 6.02\(a\)](#), (i) in the case of annual Compliance Certificates only, a report setting forth the information required by sections of the Perfection Certificate describing the legal name and the jurisdiction of organization or formation of each Loan Party and the location of the chief executive office of each Loan Party or confirming that there has been no change in such information since the Restatement Effective Date or the date of the last such report, (ii) a description of each (x) event, condition or circumstance during the last fiscal quarter covered by such Compliance Certificate requiring a mandatory prepayment under [Section 2.13\(a\)](#) and (y) Disposition of owned Real Property on which sits a trucking terminal and adjacent/vacant land located nearby and (iii) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Loan Party or a non-Loan Party as of the date of delivery of such Compliance Certificate;

(e) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Restricted Subsidiaries, [including the business performance and tax and collateral due diligence of the Borrower and its Restricted Subsidiaries](#), as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request;

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(f) promptly after the written request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act;

(g) promptly after the receipt thereof by the Borrower or any of the Restricted Subsidiaries, a copy of any final “management letter” received by any such Person from its certified public accountants and the management’s response thereto; ~~and~~

(h) promptly following any request therefor by the Administrative Agent or any Lender, copies of (i) any material documents described in Section 101(k) of ERISA that any Loan Party may request with respect to any Multiemployer Plan and (ii) any material notices described in Section 101(l) of ERISA that any Loan Party may request with respect to any Plan or Multiemployer Plan, *provided* that if any Loan Party has not requested such material documents or material notices from the administrator or sponsor of the applicable Plan or Multiemployer Plan, such Loan Party shall make a request for such material documents or material notices from the such administrator or sponsor at the earliest date on which such Loan Party determines that it is commercially reasonable to so request in order to avoid the occurrence of an event that could reasonably be expected to result in a material liability, and shall provide copies of such material documents and material notices promptly after receipt thereof; ~~and~~

(i) promptly after the furnishing thereof (and in no event later than three Business Days after the delivery thereof), a copy of each borrowing base certificate delivered under the ABL Credit Agreement.

Notwithstanding anything to the contrary, neither 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 trade secrets or proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their 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.

Notices

. Promptly after the Borrower or any Guarantor has obtained knowledge thereof, notify the Administrative Agent (which shall provide notice to the Lenders):

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) of the filing or commencement of, or any written threat or written notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority, against the Borrower or any of its Restricted Subsidiaries that has a reasonable likelihood of adverse determination and such determination could reasonably be expected to result in a Material Adverse Effect; and

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(d) of the occurrence of any ERISA Event following the Restatement Effective Date that, alone or together with any other ERISA Events that have occurred following the Restatement Effective Date, could reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a), (b), (c), or (d) (as applicable) and (y) setting forth details of the occurrence referred to in Section 6.03(a), (b), (c), or (d), as applicable, and stating what action the Borrower has taken and proposes to take with respect thereto.

#### Payment of Taxes

. Promptly pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, to the extent any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP if such contest shall have the effect of suspending enforcement or collection of such Taxes or, where the failure to pay, discharge or otherwise satisfy the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

#### Preservation of Existence, Etc

. (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or Section 7.05 and (b) obtain, maintain, renew, extend and keep in full force and effect all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except, in the case of clause (a) (other than with respect to the Borrower) or (b), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

#### Maintenance of Properties

. Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in satisfactory working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted, and (b) make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with prudent industry practice and in the normal conduct of its business.

#### Maintenance of Insurance

(a) *Generally.* Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business consistent in all material respects with the insurance maintained by Borrower and/or such Restricted Subsidiaries (as applicable) as of the Restatement Effective Date, which insurance shall insure against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, and which insurance shall be of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons in such similar or same locations.

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(b) *Requirements of Insurance.* (A) Use commercially reasonable efforts to cause, not later than 30 days after the Restatement Effective Date (or such longer period as the Required Lenders may agree in writing in their reasonable discretion), all insurance required pursuant to Section 6.07(a) and (d) (x) to provide (and to continue to provide at all times thereafter) that it shall not be canceled, materially modified or not renewed (i) by reason of nonpayment of premium upon not less than 10 days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent or (ii) for any other reason upon not less than 20 days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent and (y) subject to the terms, conditions and provisions of the ABL Intercreditor Agreement to name the Collateral Agent as additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable (and to continue to so name the Collateral Agent at all times thereafter), (B) use commercially reasonable efforts to deliver, not later than 30 days after the Restatement Effective Date (or such longer period as the Administrative Agent, with the consent of the Required Lenders, may agree in writing in its reasonable discretion), a copy of the policy (and to the extent any such policy is cancelled or not renewed, a renewal or replacement policy) or other evidence thereof to the Administrative Agent and the Collateral Agent, or insurance certificate with respect thereto, and (C) in the case of all property insurance policies located in the United States, not later than 30 days after the Restatement Effective Date (or such longer period as the Administrative Agent may agree in writing in its reasonable discretion) cause such policies to be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement, in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent, which endorsement shall provide that, from and after such date, if the insurance carrier shall have received written notice from the Administrative Agent or the Collateral Agent of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower or the Loan Parties under such policies directly to the Collateral Agent during the continuance of such Event of Default.

(c) *Flood Insurance.* Following the Restatement Effective Date, the Borrower shall deliver to the Collateral Agent and the Required Lenders annual renewals of the flood insurance policy under the property policy or annual renewals of a force-placed flood insurance policy.

(d) *Environmental Insurance.* Maintain with financially sound and reputable insurance companies, a premises pollution liability portfolio insurance and storage tank third-party liability, corrective and clean-up insurance policy with respect to its properties and business for an initial three year policy period commencing on the date hereof and with limits not less than, and with terms and conditions comparable to, the limits, terms and conditions in such policies that are in effect as of the date hereof, and subject to annual renewals after such initial three year policy period, which insurance shall be reasonably satisfactory to the Required Lenders. The Borrower shall purchase such insurance required under this Section 6.07(d) within 30 days following the Restatement Effective Date and provide evidence thereof to the Administrative Agent.

(e) Notify the Administrative Agent and the Collateral Agent (for distribution to the Lenders) promptly whenever any separate insurance concurrent in form or contributing in the event of material loss with that required to be maintained under this Section 6.07 is taken out by the Borrower or another Loan Party; and promptly deliver to the Administrative Agent and the

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Collateral Agent a duplicate original copy of such policy or policies, or an insurance certificate with respect thereto once available.

#### Compliance with Laws

. Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

#### Books and Records

. Maintain proper books of record and account, in which entries are made that are full, true and correct in all material respects and are in conformity with GAAP (except as noted therein) and which reflect all material financial transactions and matters involving the assets and business of the Borrower or a Restricted Subsidiary, as the case may be.

#### Inspection Rights

. Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and subject to *bona fide* confidentiality obligations, limitations imposed by law and attorney-client privilege and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that, excluding any such visits and inspections during the continuation of an Event of Default, (x) only the Administrative Agent may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and (y) the Administrative Agent shall not exercise such rights more often than one time during any calendar year; *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 upon reasonable advance notice. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants.

#### Additional Collateral; Additional Guarantors

. Subject to the terms, conditions and provisions of the Intercreditor Agreement, at the Borrower's expense, take all reasonable actions which are necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) Upon (x) the formation or acquisition of any new direct or indirect Subsidiary (in each case, other than an Excluded Subsidiary) by the Borrower or (y) any Subsidiary that is an Excluded Subsidiary ceasing to be an Excluded Subsidiary:

(i) within 60 days after such formation, acquisition, designation or other event, or such longer period as the Administrative Agent, with the consent of the Required Lenders (not to be unreasonably withheld, delayed, conditioned or denied), may agree in writing in its reasonable discretion:

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(A) causing each such Subsidiary to duly execute and deliver to the Administrative Agent or the Collateral Agent (as appropriate) joinders to this Agreement as Guarantors, Security Agreement Supplements, Intellectual Property Security Agreements, a counterpart of the Intercompany Note and other security agreements and documents (including, (I) with respect to any Foreign Subsidiary, local law security agreements and documents in each case consistent with market practice, and (II) with respect to such Mortgages, the documents listed in Section 6.13(b)), as reasonably requested by the Required Lenders and in form and substance reasonably satisfactory to the Required Lenders, Administrative Agent and the Borrower (consistent with the Mortgages (if any), Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Restatement Effective Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(B) causing each such Subsidiary (and the parent of each such Subsidiary that is a Loan Party) to deliver to the Collateral Agent any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) taking and causing each such Restricted Subsidiary and each direct or indirect parent of such Restricted Subsidiary to take whatever action (including the recording of Mortgages, the filing of UCC financing statements and the delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected Liens to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(ii) if reasonably requested by the Required Lenders, Administrative Agent or the Collateral Agent, within 45 days after such request (or such longer period as the Administrative Agent may agree in writing in its reasonable discretion), delivering to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties as to such matters set forth in this Section 6.11(a) as the Administrative Agent and the Required Lenders may reasonably request; and

(iii) promptly after the reasonable request therefor by the Administrative Agent or Collateral Agent, delivering to the Collateral Agent with respect to each Material Real Property, any existing surveys, title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; *provided, however,* that there shall be no obligation to deliver to the Collateral Agent any existing environmental assessment report whose disclosure to the Collateral Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, and where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained.

(b) if reasonably requested by the Required Lenders, Administrative Agent or the Collateral Agent, within 60 days after such request (or such longer period as the Administrative Agent may agree in writing in its reasonable discretion), delivering to the Collateral Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with

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respect to the validity, perfection, existence and priority of security interests with respect to property of any Guarantor acquired after the Restatement Effective Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii) or (iii) or clause (c) below.

(c) not later than 120 days after (i) the acquisition by any Loan Party of Material Real Property or (ii) the release of any first lien security interest on any Real Property securing the obligations under the Contribution Deferral Agreement, in each case, that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement (or such longer period as the Administrative Agent, with the consent of the Required Lenders, may agree in writing in its reasonable discretion), which Material Real Property would not be automatically subject to another Lien pursuant to pre-existing Collateral Documents, causing such property to be subject to a Lien in favor of the Collateral Agent for the benefit of the Secured Parties and taking, or causing the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Required Lenders, Administrative Agent or the Collateral Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of, the Collateral and Guarantee Requirement and to otherwise comply with the requirements of the Collateral and Guarantee Requirement.

#### Compliance with Environmental Laws

. Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all Environmental Permits necessary for its operations and properties; and, (c) in each case to the extent the Loan Parties or the Restricted Subsidiaries are required to do so by Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

#### Further Assurances and Post-Closing Conditions

(a) Within the time periods after the Restatement Effective Date set forth in Schedule 6.13(a), deliver each Collateral Document set forth on Schedule 6.13(a), duly executed by each Loan Party party thereto, together with all documents and instruments required to perfect the security interest of the Collateral Agent in the Collateral free of any other pledges, security interests or mortgages, except Liens expressly permitted hereunder, to the extent required pursuant to the Collateral and Guarantee Requirement.

(b) Promptly upon reasonable request by the Required Lenders, Administrative Agent or the Collateral Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral (including, without limitation, any defect or error related to certificates of title for vehicles and other rolling stock) as to which the Borrower reasonably agrees is a defect or error, and (ii) subject to the terms of the Collateral Documents, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Required Lenders, the Administrative Agent or the Collateral Agent may reasonably request from time to time in order

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to carry out more effectively the purposes of the Loan Documents and to cause the Collateral and Guarantee Requirement to be and remain satisfied. If the Required Lenders, Administrative Agent or the Collateral Agent reasonably determines that it is required by applicable Law to have appraisals prepared in respect of any Material Real Property of any Loan Party subject to a Mortgage, the Borrower shall cooperate with the Required Lenders, Administrative Agent and/or Collateral Agent, as applicable, in obtaining such appraisals and shall pay all reasonable out-of-pocket costs and expenses relating thereto.

[Reserved]

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#### Maintenance of Ratings

. In the case of the Borrower, use commercially reasonable efforts to maintain a public corporate rating from S&P and a public corporate family rating from Moody's, in each case in respect of the Borrower.

#### Use of Proceeds

. The Borrower shall use the proceeds of the Term Loans borrowed on the Restatement Effective Date to fund the Transactions on the Restatement Effective Date, to pay Transaction Expenses and for general corporate purposes.

#### 2020 Financial Plan

. From and after the Amendment No. 1 Effective Date, the Borrower shall use its commercially reasonable efforts to achieve the aggregate amount of cost savings and other operational initiatives set forth in the updated consolidated budget for the fiscal year ending December 31, 2020 delivered to the Required Lenders on March 28, 2020.

### ARTICLE 7 NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation (other than contingent indemnification or reimbursement obligations) hereunder which is accrued or payable shall remain unpaid or unsatisfied, then from and after the Restatement Effective Date:

#### Liens

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens created pursuant to any Loan Document;

(b) Liens existing or contemplated on the Restatement Effective Date and listed on Schedule 7.01(b); provided that, (i) the Lien does not extend to any additional property other than (A) any replacements of such property or assets and additions and accessions thereto, after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property (it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition, or asset of the Borrower or any Restricted Subsidiary and the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment provided by any lender, other equipment financed

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by such lender), and (ii) such Lien does not secure any obligation (including unused commitments) other than those it secured on the Restatement Effective Date or, to the extent constituting Indebtedness, any Permitted Refinancing of the Indebtedness secured thereby on the Restatement Effective Date and any extensions, renewals, restructurings, refinancings and replacements thereof;

(c) Liens for unpaid utilities, taxes, assessments or governmental charges that are (i) not overdue for a period of more than thirty (30) days and are not otherwise delinquent, securing obligations in an amount not to exceed \$500,000, or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or (ii) otherwise not required to be paid pursuant to Section 6.04;

(d) Statutory, lease or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, or other customary Liens (other than in respect of Indebtedness) in favor of landlords, in each case arising in the ordinary course of business that secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, that either secure obligations in an amount not to exceed \$1,000,000 or are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) (i) Liens in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation (other than any Lien imposed pursuant to Section 430(k) of the Code or Section 303(k) of ERISA or a violation of Section 436 of the Code) and (ii) Liens in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any of its Restricted Subsidiaries; *provided* that this Section 7.01(e) shall not permit liens securing letters of credit;

(f) Liens to secure the performance of bids, trade contracts, governmental contracts and leases (in the case of each of the foregoing, other than for Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations), in each case incurred in the ordinary course of business; *provided* that this Section 7.01(f) shall not permit liens securing letters of credit;

(g) (i) easements, rights-of-way, restrictions (including zoning restrictions and other land use regulations), encroachments, protrusions, reservations and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower and the Restricted Subsidiaries, taken as a whole and (ii) ground leases in respect of Real Property on which facilities owned or leased by the Borrower or any of the Restricted Subsidiaries are located; *provided* in the case of this clause (ii) that such ground leases do not confer rights on the counter-party(ies) thereto superior to those of the Collateral Agent in the relevant property;

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- (h) Liens securing judgments not constituting an Event of Default under Section 8.01(h);
- (i) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole, or (ii) secure any Indebtedness;
- (j) Liens (i) in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or (ii) on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such person to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;
- (k) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) arising in the ordinary course of business in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to the general terms and conditions of such banking institutions;
- (l) Liens (i) on cash earnest money deposits or other cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Sections 7.02(e), (h), (l), (p), (r) or (v), in each case to be applied against the purchase price for such Investment, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;
- (m) Liens (i) in favor of the Borrower or a Restricted Subsidiary on assets of a Restricted Subsidiary that is not a Loan Party securing Indebtedness permitted under Section 7.03 and (ii) in favor of the Borrower or any Guarantor;
- (n) any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor, sublessor, licensor or sublicensor under leases, subleases, licenses or sublicenses entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business; *provided*, that no such lease or sublease shall constitute a Capitalized Lease;
- (o) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 7.02(a);
- (p) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;
- (q) Liens (including any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor or sublessor under Capitalized Leases) securing Indebtedness constituting Capital Leases and purchase money security interests permitted under

Section 7.03(e) or Section 7.03(ff); *provided* that (i) such Liens are created within 270 days of the acquisition, construction, repair, lease or improvement, as applicable, of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits, and (iii) such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to Capitalized Leases and the proceeds and products thereof and customary security deposits; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(r) Liens on property (i) of any Foreign Subsidiary that is not a Loan Party and (ii) that does not constitute Collateral, which Liens secure Indebtedness of the applicable Foreign Subsidiary that is not a Loan Party permitted under Section 7.03;

(s) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary, in each case after the Restatement Effective Date; *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (iii) the Indebtedness secured thereby is permitted under Section 7.03;

(t) Liens arising from precautionary Uniform Commercial Code financing statements or similar filings;

(u) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto in the ordinary course of business;

(v) Liens on the Collateral securing Indebtedness permitted under Section 7.03(o) or other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness; *provided*, that such Liens shall be subject to the ABL Intercreditor Agreement; *provided, further, that in the case of any Lien (as defined in the ABL Intercreditor Agreement) in respect of all or any portion of the Term Priority Collateral (as defined in the ABL Intercreditor Agreement) now or hereafter held by or on behalf of the ABL Agent (as defined in the ABL Intercreditor Agreement) or any ABL Secured Party (as defined in the ABL Intercreditor Agreement) that secures all or any portion of the ABL Obligations (as defined in the ABL Intercreditor Agreement) shall in all respects be junior and subordinate to all Liens granted to the Term Agent (as defined in the ABL Intercreditor Agreement) and the Term Secured Parties (as defined in the ABL Intercreditor Agreement) in such Term Priority Collateral to secure all or any portion of the Term Obligations (as defined in the ABL Intercreditor Agreement);*

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(w) Liens on the Collateral securing Credit Agreement Refinancing Indebtedness that is Permitted Second Priority Additional Debt and any Permitted Refinancing of the foregoing; *provided*, that any such Liens are secured on a junior lien basis to the Liens securing the Obligations pursuant to, and subject at all times to, the Second Lien Intercreditor Agreement;

(x) Liens on the Equity Interests of any joint venture entity of the Borrower consisting of a transfer restriction, purchase option, call or similar right of a third party joint venture partner;

(y) [reserved];

(z) Liens on the Collateral securing Alternative Incremental Indebtedness that is Permitted Second Priority Additional Debt and any Permitted Refinancing of the foregoing; *provided*, that any such Liens are secured on a junior lien basis to the Liens securing the Obligations pursuant to the Second Lien Intercreditor Agreement;

(aa) Liens on (i) the Securitization Assets arising in connection with a Qualified Securitization Financing or (ii) the Receivables Assets arising in connection with a Receivables Facility;

(bb) Liens (i) arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods or (ii) encumbering deposits made to secure obligations arising from contractual or warranty requirements;

(cc) Utility and similar deposits in the ordinary course of business;

(dd) [reserved];

(ee) Liens related to Sale and Leaseback Transactions in an aggregate amount of \$50,000,000; *provided that, during the Specified Amendment No. 1 Period (and during the continuance of an Event of Default at any time after the end of the Specified Amendment No. 1 Period), this clause (ee) shall be unavailable for use under this Agreement and the dollar amount specified in this clause (ee) shall be \$0;*

(ff) other Liens with respect to property or assets securing obligations of the Borrower or any Restricted Subsidiary in an aggregate principal amount outstanding at any time not to exceed \$5,000,000; *provided* that such Liens do not secure Indebtedness for borrowed money and are not incurred in respect of any pension obligations of the Borrower or any of its Restricted Subsidiaries; and

(gg) Liens on Pension Real Property related to or arising on account of Indebtedness in respect of Specified Pension Fund Obligations permitted pursuant to Section 7.03(u); *provided* that the aggregate amount of Indebtedness in respect of Specified Pension Fund Obligations permitted to be secured by such Liens on Pension Real Property under this Section 7.01(gg) shall not at any time exceed (x) the aggregate amount of Specified Pension Fund Obligations that are secured by such Liens on Pension Real Property on the Restatement Effective Date less (y) payments of Specified Pension Fund Obligations after the Restatement Effective Date.

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Investments

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make or hold any Investments, except:

(a) Investments by the Borrower or any of the Restricted Subsidiaries in cash or Cash Equivalents;

(b) loans or advances to officers, directors and employees of any Loan Party or any of its Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, in each case, consistent with past practice (including pursuant to use of any credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services), (ii) in connection with such Person's purchase of Equity Interests of the Borrower and (iii) for any other corporate purposes not described in the foregoing clauses (i) and (ii); *provided* that the aggregate principal amount of loans and advances outstanding at any time under this Section 7.02(b)(i) and (ii) shall not exceed \$2,000,000;

(c) Investments (i) by the Borrower or any Restricted Subsidiary in any Loan Party (or any newly formed wholly owned Restricted Subsidiary that is not an Excluded Subsidiary and is to become a Loan Party in accordance with Section 6.11), (ii) by any Restricted Subsidiary that is not a Loan Party in any other Restricted Subsidiary that is not a Loan Party and (iii) by any Loan Party in a Restricted Subsidiary that is not a Loan Party; *provided*, that the aggregate amount of Investments at any time outstanding under this clause (iii) shall not exceed ~~\$15,000,000~~ (x) during the Specified Amendment No. 1 Period, \$5,000,000, and (y) after the Specified Amendment No. 1 Period shall have ended, \$15,000,000, provided that, if after the end of the Specified Amendment No. 1 Period an Event or Default shall occur and be continuing, such dollar amount in this clause (y) shall be reduced to \$5,000,000;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit or other credits to suppliers in the ordinary course of business;

(e) Investments (i) existing or contemplated on the Restatement Effective Date and set forth on Schedule 7.02(e) (including unused commitments) and any modification, replacement, renewal or extension thereof and (ii) existing on the Restatement Effective Date by the Borrower or any other Restricted Subsidiary in any Restricted Subsidiary and any modification, replacement, renewal or extension thereof; *provided*, that in the case of clause (i) and clause (ii) the amount of the original Investment is not increased except by the terms of such original Investment as set forth on Schedule 7.02(e) or as otherwise permitted by this Section 7.02 (and in such case made in reliance on the other paragraph of this Section 7.02 so permitting such modification, replacement, renewal or extension thereof);

(f) Investments in Swap Contracts permitted under Section 7.03;

(g) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.05;

(h) any acquisition by the Borrower or any Restricted Subsidiary of all or substantially all the assets of, or all the Equity Interests (other than directors' qualifying shares, shares issued to

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foreign nationals as required by applicable law or any options for Equity Interests that cannot, as a matter of law, be cancelled, redeemed or otherwise extinguished without the express agreement of the holder thereof at or prior to acquisition) in, a Person or division, business unit or line of business of a Person (or any subsequent investment made in a Person, division, business unit or line of business previously acquired in a Permitted Acquisition), in each case in a single transaction or series of related transactions, if (i) no Event of Default shall have occurred and be continuing or would result therefrom at the time of entering in the agreement to consummate such acquisition; (ii) all transactions related thereto shall be consummated in all material respects in accordance with applicable Laws; (iii) as of the most recently ended fiscal quarter for which financial statements of the Borrower and the target are available, (A) the Borrower and the Restricted Subsidiaries shall be in compliance, on a Pro Forma Basis, with the covenant set forth in Section 7.10 and (B) the Total Leverage Ratio, on a Pro Forma Basis, for the Test Period most recently ended shall not be greater than 3.00:1.00, in each case, after giving effect to such acquisition or investment and any related transactions; (iv) any acquired or newly formed Restricted Subsidiary shall not be liable for any Indebtedness except for Indebtedness otherwise permitted by Section 7.03; (v) to the extent required by the Collateral and Guarantee Requirement, (A) the property, assets and businesses acquired in such purchase or other acquisition shall constitute Collateral and (B) any such newly created or acquired Subsidiary (other than an Excluded Subsidiary) shall become a Guarantor, in each case, to the extent required by and in accordance with Section 6.11; (vi) the businesses acquired in such purchase or other acquisition shall be in compliance with Section 7.07; and (vii) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower certifying that the conditions set forth in the preceding clauses (i) through (v) have been satisfied (any such acquisition, a “**Permitted Acquisition**”); *provided* that the aggregate amount of Investments made by Loan Parties pursuant to this Section 7.02(b) in assets that are not (or do not become) owned by a Loan Party or in Equity Interests in Persons that do not become Loan Parties upon consummation of such Permitted Acquisition shall not exceed \$15,000,000 at any time outstanding; provided, further, that notwithstanding anything to the contrary, during the Specified Amendment No. 1 Period, this clause (h) shall be unavailable under this Agreement and no Permitted Acquisitions may be made (and Permitted Acquisitions shall be disregarded in any reference in any other term or provision herein);

(i) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(j) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers;

(k) advances of payroll payments to employees in the ordinary course of business;

(l) Investments to the extent that payment for such Investments is made with Equity Interests (other than Disqualified Equity Interests) of the Borrower or the Net Proceeds received from the issuance thereof;

(m) Investments of a Restricted Subsidiary acquired after the Restatement Effective Date pursuant to a Permitted Acquisition or of a corporation merged or amalgamated or

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consolidated into the Borrower or merged, amalgamated or consolidated with a Restricted Subsidiary, in each case in accordance with this [Section 7.02](#) and [Section 7.04](#) after the Restatement Effective Date, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(n) Investments made by any Restricted Subsidiary that is not a Loan Party to the extent such Investments are financed with the proceeds received by such Restricted Subsidiary from an Investment in such Restricted Subsidiary made pursuant to [Section 7.02\(c\)\(iii\)](#) or [Section 7.02\(p\)](#);

(o) Guarantees by the Borrower or any Restricted Subsidiary of operating leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness, in each case, which leases or other obligations are entered into by the Borrower or any Guarantor in the ordinary course of business;

(p) other Investments (including [after the Specified Amendment No. 1 Period](#) for Permitted Acquisitions) in an aggregate amount outstanding pursuant to this clause (p) at any time not to exceed (x) together with (I) the aggregate amount of Restricted Payments made under sub-clause (x) of [Section 7.06\(e\)](#) and (II) the aggregate amount of prepayments, redemptions, purchases, defeasances and other payments made pursuant to sub-clause (x) of [Section 7.13\(a\)\(vi\)](#), [\(A\) during the Amendment No. 1 Specified Period, \\$20,000,000, and \(B\) after the Specified Amendment No. 1 Period shall have ended](#), \$30,000,000 plus, (y) the portion, if any, of the Cumulative Credit on the date of such election that the Borrower elects to apply to this subclause (y); *provided*, that with respect to any Investment made pursuant to this [Section 7.02\(p\)](#), (A) no Event of Default shall have occurred and be continuing or would result from the making of any such Investment and (B) with respect to Investments made in reliance on this subclause (y) (i) other than Investments made in Restricted Subsidiaries organized under the laws of Canada or Mexico or, in each case, any political subdivision thereof, on a Pro Forma Basis after giving effect thereto the Total Leverage Ratio is equal to or less than 2.00:1.00 or (ii) with respect to Investments in Restricted Subsidiaries organized under the laws of Canada or Mexico or, in each case, any political subdivision thereof, on a Pro Forma Basis after giving effect thereto the Total Leverage Ratio is equal to or less than 4.00:1.00;

(q) (i) make lease, utility and other similar deposits or any other advance or deposit permitted by this Agreement in the ordinary course of business or (ii) make prepayments and deposits to suppliers in the ordinary course of business;

(r) to the extent constituting Investments, capital expenditures otherwise permitted under this Agreement;

(s) Investments in deposit accounts or securities accounts opened in the ordinary course of business;

(t) repurchase, retirement or repayment of any Indebtedness to the extent not otherwise prohibited by this Agreement, including, without limitation, acquisitions of Term Loans pursuant to [Section 10.04](#);

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(u) (a) Investments (including by consideration in the form of cash, Cash Equivalents, contributing receivables and through subordinated notes) in any Receivables Facility or any Securitization Subsidiary or other Subsidiary that in turn then transfers Securitization Assets to a Securitization Subsidiary in order to effectuate a Qualified Securitization Financing, including the ownership of Equity Interests in such Securitization Subsidiary and (b) distributions or payments of Securitization Fees and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Purchase Obligation in connection with a Qualified Securitization Financing or a Receivables Facility;

(v) Investments consisting of or resulting from (i) Indebtedness permitted under Section 7.03, (ii) Liens permitted under Section 7.01, (iii) Restricted Payments permitted under Section 7.06, (iv) Dispositions permitted by Section 7.05 and (v) fundamental changes permitted by Section 7.04;

(w) Investments solely to the extent such Investments reflect an increase in the value of Investments otherwise permitted under this Section 7.02;

(x) loans and advances to Borrower in lieu of, and not in excess of the amount of (after giving effect to any other such loans or advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made in accordance with Section 7.06 (other than Section 7.06(i)); and

(y) Guarantee obligations of the Borrower or any Restricted Subsidiary in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of any Restricted Subsidiary of the Borrower to the extent required by law or in connection with any statutory filing or the delivery of audit opinions performed in jurisdictions other than within the United States.

#### Indebtedness

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party under the Loan Documents;

(b) (i) Indebtedness outstanding on the Restatement Effective Date and listed on Schedule 7.03(b), and any Permitted Refinancing thereof and (ii) intercompany Indebtedness outstanding on the Restatement Effective Date and any Permitted Refinancing thereof; *provided*, that (x) any intercompany Indebtedness shall be evidenced by an Intercompany Note and (y) any intercompany Indebtedness of any Loan Party owed to any Person that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to the subordination provisions reasonably acceptable to the Required Lenders;

(c) Guarantees by the Borrower and any Restricted Subsidiary in respect of Indebtedness of the Borrower or any Restricted Subsidiary of the Borrower otherwise permitted hereunder; *provided* that (i) no Guarantee by any Restricted Subsidiary of any ABL Facility Indebtedness, any Junior Financing, any Permitted Additional Debt or any Permitted Refinancing of any of the foregoing shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein (*provided further* that, clause (i) shall

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not apply in the case of a Guarantee by any Foreign Subsidiary that is not a Loan Party of any Indebtedness of another Foreign Subsidiary that is not a Loan Party), and (ii) if the Indebtedness being Guaranteed is Junior Financing that is, or is required by this Agreement to be, Subordinated Indebtedness, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms (taken as a whole) at least as favorable to the Lenders as those contained in the subordination of such Junior Financing;

(d) Indebtedness (other than Indebtedness permitted under Section 7.03(b)) of the Borrower or any Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or consisting of a Guaranty on behalf of any Loan Party or any other Restricted Subsidiary) to the extent constituting an Investment permitted by Section 7.02 (other than clause (v) thereof); *provided* that (x) all such Indebtedness shall be evidenced by an Intercompany Note and (y) all such Indebtedness of any Loan Party owed to any Person that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to the subordination provisions reasonably acceptable to the Required Lenders;

(e) Attributable Indebtedness and other Indebtedness of the Borrower or any Restricted Subsidiary (including Capitalized Leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred prior to or within 270 days after the acquisition, lease or improvement of the applicable asset in an aggregate amount (together with any Permitted Refinancings thereof) not to exceed \$50,000,000 at any time outstanding;

(f) Indebtedness in respect of Swap Contracts designed to hedge against the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities (including fuel) pricing risks incurred not for speculative purposes;

(g) Indebtedness of the Borrower or any Restricted Subsidiary assumed in connection with any Permitted Acquisition or other Investment permitted hereunder, *provided*, that (w) such Indebtedness is not incurred in contemplation of such Permitted Acquisition or Investment, and any Permitted Refinancing thereof, (x) such Indebtedness and all Indebtedness resulting from a Permitted Refinancing thereof is unsecured (except for Liens permitted by Section 7.01(s)), and (y) both immediately prior and after giving effect thereto, (1) no Event of Default shall exist or result therefrom, and (2) immediately after giving effect to the related Permitted Acquisition or Investment and the assumption of Indebtedness, the Total Leverage Ratio, on a Pro Forma Basis, for the Test Period most recently ended shall not be greater than 3.00:1.00;

(h) Indebtedness representing deferred compensation to employees of the Borrower or any of its Restricted Subsidiaries incurred in the ordinary course of business and other obligations and liabilities arising under employee benefit plans in the ordinary course of business;

(i) Indebtedness consisting of unsecured promissory notes issued by the Borrower or any of its Restricted Subsidiaries to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower permitted by Section 7.06;

(j) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition

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expressly permitted hereunder, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earnouts and holdbacks) or other similar adjustments;

(k) Indebtedness in respect of treasury, depository, credit card, debit card and cash management services or automated clearinghouse transfer of funds, overdraft or any similar services incurred in the ordinary course of business or any similar cash management services relating or secured pursuant to the ABL Facility and any hedges related to the ABL Facility;

(l) Indebtedness consisting of the financing of insurance premiums or take-or-pay obligations contained in supply arrangements that do not constitute Guarantees, in each case, in the ordinary course of business;

(m) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business and not in connection with the borrowing of money, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness incurred in the ordinary course of business with respect to reimbursement-type obligations regarding workers compensation claims;

(n) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice and not in connection with the borrowing of money or Swap Contracts;

(o) (i) ABL Facility Indebtedness and (ii) any Permitted Refinancing thereof, in each case, of the Loan Parties; *provided* that the aggregate principal amount outstanding at any time of all such Indebtedness under clauses (i) and (ii) and Section 7.03(z) shall not exceed ~~\$550,000,000~~ \$500,000,000;

(p) (i) Alternative Incremental Indebtedness and (ii) any Permitted Refinancing thereof;

(q) (i) Credit Agreement Refinancing Indebtedness (other than any Credit Agreement Refinancing Indebtedness incurred pursuant to a Refinancing Amendment) and (ii) any Permitted Refinancing thereof;

(r) [reserved];

(s) [reserved];

(t) all premiums (if any), interest (including post-petition interest and interest paid in kind), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (q) above and (u) through (ff) below;

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(u) (i) Indebtedness in respect of the Specified Pension Fund Obligations and Guarantees thereof, to the extent existing on the Restatement Effective Date, in an aggregate principal amount at any time outstanding not to exceed the amount outstanding as of the Restatement Effective Date (and as adjusted from time to time pursuant to any audits), plus any interest paid in kind thereon and any accrued but unpaid interest thereon, and (ii) any Permitted Refinancing (disregarding clauses (b) and (c) of the definition of such term) thereof;

(v) [reserved];

(w) [reserved];

(x) Indebtedness in respect of taxes, assessments or governmental charges to the extent that payment thereof shall not at the time be required to be made hereunder;

(y) [reserved];

(z) Indebtedness of (i) any Securitization Subsidiary arising under any Securitization Facility or (ii) the Borrower or any Restricted Subsidiary arising under any Receivables Facility or Qualified Securitization Financing; *provided* that the aggregate principal amount of Indebtedness permitted under this Section 7.03(z), together with the aggregate principal amount of Indebtedness permitted under Section 7.03(q), shall not exceed ~~\$550,000,000~~ \$500,000,000 at any one time outstanding;

(aa) Indebtedness in respect of Sale and Leaseback Transactions in an amount not to exceed \$50,000,000 at any time outstanding; *provided that, during the Specified Amendment No. 1 Period, this clause (aa) shall be unavailable for use under this Agreement and the dollar amount specified in this clause (aa) shall be \$0;*

(bb) Indebtedness in respect of Investments not prohibited by Section 7.02 (other than clause (v) thereof);

(cc) [reserved];

(dd) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services, in each case, incurred in the ordinary course of business consistent with past practice;

(ee) [reserved]; and

(ff) other Indebtedness of the Borrower or any of its Restricted Subsidiaries, in an aggregate principal amount at any time outstanding not to exceed \$30,000,000; *provided* that the aggregate principal amount of Indebtedness of Restricted Subsidiaries that are not Guarantors permitted under this Section 7.03(ff) at any time outstanding shall not exceed \$5,000,000.

#### Fundamental Changes

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of related transactions) all

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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, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that (w) no Event of Default exists or would result therefrom, (x) the Borrower shall be the continuing or surviving Person, (y) such transaction does not result in the Borrower ceasing to be organized under the laws of the United States, any State thereof or the District of Columbia and (z) such transaction does not have an adverse effect in any material respect on the perfection or priority of the Liens granted under the Collateral Documents or (ii) one or more other Restricted Subsidiaries; *provided*, in the case of this clause (ii), that when such transaction involves a Loan Party, a Loan Party shall be the continuing or surviving Person except to the extent otherwise constituting an Investment permitted by Section 7.02;

(b) (i) any Restricted Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Restricted Subsidiary that is not a Loan Party and (ii) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interest of the Borrower and the Restricted Subsidiaries and is not disadvantageous to the Lenders in any material respect (it being understood that (other than a transaction constituting a permitted Investment under Section 7.02 or involving an Excluded Subsidiary) in the case of any liquidation or dissolution of a Guarantor, such Guarantor shall transfer its assets to a Loan Party, and in the case of any change in legal form, a Restricted Subsidiary that is a Guarantor will remain a Guarantor and such transaction shall not have an adverse effect on the perfection or priority of the Liens granted under the Collateral Documents);

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Guarantor, then (i) the transferee must be a Guarantor or the Borrower or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in or Indebtedness of a Restricted Subsidiary which is not a Loan Party in accordance with Sections 7.02 and 7.03, respectively;

(d) so long as no Event of Default exists or would result therefrom, the Borrower may merge with any other Person; *provided* that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the "**Successor Borrower**"), (A) the Successor Borrower shall be an entity organized or existing under the Laws of the United States, any state thereof or the District of Columbia and such transaction shall not have an adverse effect in any material respect on the perfection or priority of the Liens granted under the Collateral Documents, (B) the Successor Borrower shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor Borrower's obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that the collateral granted by it to secure its obligations thereunder shall apply to secure its and the Successor

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Borrower's obligations under the Loan Documents, (E) if reasonably requested by the Collateral Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Collateral Agent) confirmed that the collateral granted by it to secure its obligations thereunder shall apply to secure its and the Successor Borrower's obligations under the Loan Documents, and (F) the Borrower shall have delivered to the Administrative Agent an officer's certificate and an opinion, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; *provided further*, that if the foregoing are satisfied (or waived), the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement; *provided further* that the Borrower agrees to provide any documentation and other information about the Successor Borrower as shall have been reasonably requested in writing by any Lender through the Administrative Agent that is required by regulatory authorities or under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA Patriot Act;

(e) any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person (other than the Borrower) in order to effect an Investment permitted pursuant to Section 7.02; *provided* that either (x) the continuing or surviving Person shall be a Restricted Subsidiary, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of Section 6.11 to the extent required pursuant to the Collateral and Guarantee Requirement or (y) the transaction shall otherwise constitute a permitted Investment;

(f) any Restricted Subsidiary may effect a merger, dissolution, liquidation or consolidation, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05; and

(g) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the extent that such Disposition (or series of related Dispositions) is not prohibited under Section 7.05.

#### Dispositions

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make any Disposition, except:

(a) (i) Dispositions (including abandonment) of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business, (ii) Dispositions (including abandonment) in the ordinary course of business of surplus property or property no longer used or useful in the conduct of the business of the Borrower or any of the Restricted Subsidiaries, (iii) Dispositions of immaterial assets (considered in the aggregate) in the ordinary course of business and (iv) Dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business;

(b) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property, (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property, or (iii) such property is swapped in exchange for services or other assets of comparable or greater value or usefulness to

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the business of the Borrower and the Subsidiaries as a whole, as determined in good faith by the management of the Borrower;

(c) Dispositions of property to the Borrower or any Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party and if such property constitutes Collateral, it shall continue to constitute Collateral after such Disposition or (ii) if such transaction constitutes an Investment, such transaction is permitted under [Section 7.02](#);

(d) Dispositions of cash and Cash Equivalents;

(e) leases, subleases, licenses, sublicenses (including the provision of software under an open source license) or any abandonment thereof, in each case (i) in the ordinary course of business and (ii) without interfering in any material respect with the business of the Borrower or any of its Restricted Subsidiaries;

(f) transfers of property subject to Casualty Events upon the receipt (where practical) of the Net Proceeds of such Casualty Event;

(g) Dispositions (including write-offs, discounts, and compromises in clause (b) above) or discounts without recourse of accounts receivable and related assets in connection with the compromise or collection thereof in the ordinary course of business;

(h) [reserved];

(i) [reserved];

(j) Dispositions of Investments in joint ventures or other non-wholly owned Subsidiaries to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(k) the unwinding of any Swap Contract or cash management agreement;

(l) Dispositions of property not otherwise permitted under this [Section 7.05](#); *provided* that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default exists), no Event of Default shall exist or would result from such Disposition, (ii) any prepayment required to be made in connection with the receipt of Net Proceeds in respect of such Disposition pursuant to Section 2.13 shall be made in accordance therewith, (iii) the Borrower or any of the Restricted Subsidiaries shall receive not less than 75% of the consideration for such Disposition in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(a), (c), (d), (f), (i), (j), (k), (l), (o), (p), (v), (w), (z), (aa), (bb), (cc) and (ee), (iv) any portion of the consideration for such Disposition that is not in the form of cash or Cash Equivalents shall become Collateral ~~and~~ (v) this Section 7.05(l) shall not permit the Disposition of all or substantially all of the assets of the Borrower and its Subsidiaries (taken as a whole); **and (vi) during the Specified Amendment No. 1 Period, (A) no Dispositions shall be permitted under this Section 7.05(l)**

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except for (1) Dispositions of Real Property specified in Schedule A to Amendment No. 1 (such Real Property, "Scheduled Property") to the extent (x) such Real Property is subject to a bona fide sale agreement with a third party purchaser entered into prior to March 23, 2020 and (y) the Disposition of such Real Property shall be made for gross consideration not less than the amount specified for such Scheduled Property identified to the Lenders as of the Amendment No. 1 Effective Date (subject to customary purchase price adjustments and working capital adjustments), (2) Dispositions of property (other than Real Property), provided that the aggregate fair market value of property Disposed pursuant to this clause (vi)(A)(2) shall not exceed \$10,000,000 in the aggregate during the Specified Amendment No. 1 Period, and (3) Dispositions of Pension Real Property set forth on Schedule B to Amendment No. 1 and (B) the Net Proceeds of each Disposition permitted under the foregoing clause (vi)(A) shall be applied to the prepayment of the Term Loans in accordance with Section 2.13(a)(ii) without giving effect to any thresholds or reinvestment rights;

(m) (i) any Disposition of Securitization Assets or Receivables Assets, or participations therein, in connection with any Qualified Securitization Financing or Receivables Facility, in the case of this clause (i) to the extent permitted under Section 7.03(z), or (ii) the Disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with past practice;

(n) [reserved];

(o) dispositions from and after the Restatement Effective Date of non-core or obsolete assets acquired in connection with any Permitted Acquisition or other permitted Investments; provided that, during the Specified Amendment No. 1 Period, no Dispositions shall be permitted under this clause (o);

(p) the incurrence of Liens permitted hereunder;

(q) sales or dispositions of Equity Interests of any Subsidiary (other than the Borrower) in order to qualify members of the governing body of such Subsidiary if required by applicable law;

(r) [reserved];

(s) Restricted Payments made pursuant to Section 7.06; and

(t) Sale and Leaseback Transactions in an aggregate principal amount not to exceed \$50,000,000 during the term of this Agreement; provided that, during the Specified Amendment No. 1 Period, this clause (t) shall be unavailable for use under this Agreement and the dollar amount specified in the clause (t) shall be \$0;

provided that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(a)-(c)-(e)-(f)-(g)-(i)-(j)-(k)-(m)-(n)-(o)-(p)-(q)-(r) and (s) and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than a Loan Party, such Collateral shall be automatically sold free and clear of the Liens created by the Loan Documents, and, if

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requested by the Borrower, upon the certification delivered to the Administrative Agent by the Borrower that such Disposition is permitted by this Agreement, the Administrative Agent or the Collateral Agent, as applicable, shall be authorized to take, and shall take, any actions reasonably requested by the Borrower in order to effect the foregoing (at the Borrower's expense) and/or to expressly subordinate any Lien in favor of the Collateral Agent on such Collateral that is disposed of.

Notwithstanding anything herein to the contrary in this Agreement, during the Specified Amendment No. 1 Period, the Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make any Disposition of Real Property (other than (a) Dispositions of Scheduled Property pursuant to Section 7.05(l), (b) leases of Real Property entered into in the ordinary course of business (excluding Sale and Leaseback Transactions), (c) transfers of property subject to condemnation and Casualty Events) and (d) Dispositions of Pension Real Property set forth on Schedule B to Amendment No. 1 so long as the proceeds thereof are applied to repay CDA First Lien Obligations (or, if the CDA First Lien Obligations shall have been paid in full, to prepay the Term Loans in accordance with Section 2.13(a)(ii) without giving effect to any thresholds or reinvestment rights).

#### Restricted Payments

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower or any other Restricted Subsidiary (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in the Equity Interests (other than Disqualified Equity Interests unless such Disqualified Equity Interests would be permitted by Section 7.03) of such Person;

(c) (i) repurchases of Equity Interests in the Borrower deemed to occur upon the exercise of stock options or warrants or the settlement or vesting of other equity awards if such Equity Interests represent a portion of the exercise price of such options or warrants, (ii) cash payments in lieu of the issuance of fractional shares in connection with the exercise of stock options, warrants or other securities convertible into or exchangeable for Equity Interests of the Borrower or (iii) Restricted Payments made in respect of any other transaction involving fractional shares; *provided, however*, that any such cash payment shall not be for the purpose of evading the limitations of this Agreement;

(d) the Borrower may pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of the Borrower held by any present or former employee, officer, director or consultant of the Borrower or any Restricted Subsidiary or equity based awards held by such Persons, in each case, upon the death, disability, retirement or termination of employment of any such Person or pursuant to any employee or director equity plan, employee or

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director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, officer or consultant of the Borrower or any Restricted Subsidiary; *provided*, that the aggregate amount of Restricted Payments made pursuant to this clause (d) shall not exceed (i) \$7,500,000 in any fiscal year plus (ii) the then applicable Cumulative Credit plus (iii) the proceeds of any key man insurance policies; *provided, further*, that to the extent that the aggregate amount of Restricted Payments made by the Borrower and the Restricted Subsidiaries pursuant to this clause (d) in any fiscal year is less than the amount set forth above, 100% of the amount of such difference may be carried forward and used to make such Restricted Payments pursuant to this clause (d) in the next two succeeding fiscal years (*provided*, that any such amount carried forward shall be deemed to be used to make such Restricted Payments in any fiscal year after the amount set forth above for such fiscal year shall be deemed to be used to make such Restricted Payments for such fiscal year);

(e) the Borrower may make Restricted Payments in an aggregate amount not to exceed (x) together with (I) the aggregate amount of Investments made under sub-clause (x) of Section 7.02(p) and (II) the aggregate amount of prepayments, redemptions, purchases, defeasances and other payments made pursuant to sub-clause (x) of Section 7.13(a)(vi), \$30,000,000, plus (y) the portion, if any, of the Cumulative Credit on such date that the Borrower elects to apply to this subclause (y); *provided*; that (A) with respect to any Restricted Payment made pursuant to this Section 7.06(e), ~~(A1)~~ no Event of Default has occurred and is continuing or would result therefrom and ~~(B2)~~ on a Pro Forma Basis after giving effect thereto the Total Leverage Ratio is equal to or less than 2.00:1.00; and (B) no Restricted Payments shall be permitted under this clause (e) until (1) the Specified Amendment No. 1 Period shall have ended and (2) the Borrower shall have repaid an aggregate principal amount of the Term Loans equal to the PIK Amount pursuant to the last sentence of Section 2.06(d);

(f) distributions or payments of Securitization Fees, sales, contributions and other transfers of Securitization Assets or Receivables Assets and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Purchase Obligations, in each case in connection with a Qualified Securitization Financing or a Receivables Facility;

(g) [reserved];

(h) the Restricted Subsidiaries may make a Restricted Payment in connection with the acquisition of additional Equity Interests in any Restricted Subsidiary from minority shareholders (in accordance with Section 7.08, if applicable);

(i) Restricted Payments made (i) in respect of working capital adjustments or purchase price adjustments pursuant to any Permitted Acquisition or other permitted Investments (other than pursuant to Section 7.02(x)) and (ii) to satisfy indemnity and other similar obligations under the Permitted Acquisitions or other permitted Investments; *provided that no Restricted Payments shall be permitted under this clause (i) during (x) the Specified Amendment No. 1 Period and (y) during the continuance of an Event of Default at any time after the end of the Specified Amendment No. 1 Period;*

(j) [reserved]; and

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(k) Restricted Payments in respect of transactions related to (i) fundamental changes permitted under Section 7.04 and (ii) Investments permitted under Section 7.02 (other than clause (v) thereof).

Change in Nature of Business; Organization Documents

(a) The Borrower shall not, nor shall the Borrower permit any of the Restricted Subsidiaries to, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Restatement Effective Date or any business reasonably related, complementary, synergistic or ancillary thereto or reasonable extensions thereof.

(b) The Borrower shall not, nor shall the Borrower permit any of the Restricted Subsidiaries to, amend, restate, supplement or otherwise modify to, or waive of any of its rights under, its Organization Documents to the extent any of the foregoing could reasonably be expected to be material and adverse to the Lenders (in their capacities as such).

Transactions with Affiliates

The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into any transaction of any kind with any of its Affiliates, whether or not in the ordinary course of business, other than (a) transactions between or among Loan Parties or any entity that becomes a Loan Party as a result of such transaction and transactions between or among Restricted Subsidiaries that are not Loan Parties, (b) on terms (taken as a whole) substantially not less favorable to the Borrower in any material respect or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (c) the Transactions and the payment of fees and expenses (including Transaction Expenses) as part of or in connection with the Transactions, (d) the issuance of Equity Interests or equity based awards to any officer, director, employee or consultant of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business, (e) Investments made pursuant to Section 7.02, Indebtedness incurred pursuant to Section 7.03 and Restricted Payments permitted under Section 7.06, (f) customary employment, consulting and severance arrangements between the Borrower and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and similar arrangements in the ordinary course of business, (h) the payment of customary fees and reasonable out of pocket costs to, and customary indemnities provided on behalf of, directors, officers, employees and consultants of the Borrower and the Restricted Subsidiaries in the ordinary course of business, (i) any customary transaction with a Receivables Facility or a Securitization Subsidiary effected as part of a Qualified Securitization Financing, (j) transactions pursuant to registration rights agreements and similar arrangements, (k) transactions in which the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent and the Required Lenders a letter from an independent financial advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) of this Section 7.08 and (l) transactions pursuant to agreements in existence on the Restatement Effective Date and set forth on Schedule 7.08 or any amendment thereto to the extent such an amendment (taken as a whole) is not adverse to the Lenders in any material respect.

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. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into or permit to exist any Contractual Obligation (other than (i) this Agreement or any other Loan Document, (ii) any ABL Facility Documentation or (iii) any documents governing Credit Agreement Refinancing Indebtedness, Alternative Incremental Indebtedness, or a Permitted Refinancing of (ii)-(iii)) that limits the ability of (a) any Restricted Subsidiary that is not a Guarantor to make Restricted Payments to the Borrower or any Guarantor or to make or repay loans or advances to or otherwise transfer assets to or make Investments in the Borrower or any Restricted Subsidiary that is a Guarantor or (b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person to secure the Obligations; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which (i) (x) exist on the Restatement Effective Date and (to the extent not otherwise permitted by this [Section 7.09](#)) are listed on [Schedule 7.09](#) hereto and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation in any material respect (as determined in good faith by the Borrower), (ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such Contractual Obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary, (iii) represent Indebtedness of a Restricted Subsidiary which is not a Loan Party which is permitted by [Section 7.03](#), (iv) arise in connection with any Disposition permitted by [Section 7.04](#) or [7.05](#) and relate solely to the assets or Person subject to such Disposition, (v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures or other non-wholly owned Subsidiaries permitted under [Section 7.02](#) and applicable solely to such joint venture or other non-wholly owned Subsidiaries and are entered into in the ordinary course of business, (vi) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness (other than any Junior Financing) permitted under [Section 7.03\(e\)](#) or (g) but solely to the extent any negative pledge relates to the property financed by such Indebtedness, (vii) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto, (viii) comprise restrictions imposed by any agreement governing secured Indebtedness permitted pursuant to [Section 7.03](#) to the extent that such restrictions apply only to the property or assets securing such Indebtedness, (ix) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary entered into in the ordinary course of business, (x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (xi) are customary restrictions contained in the ABL Facility Documentation and any Qualified Securitization Financing, (xii) arise in connection with cash or other deposits permitted under [Sections 7.01](#) and [7.02](#) and limited to such cash or deposit or (xiii) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Restatement Effective Date and permitted under [Section 7.03](#) if the restrictions contained in any such agreement taken as a whole (a) are not materially less favorable to the Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by the Borrower) or (b) either (I) the Borrower determines at the time of entry into such agreement or instrument that such encumbrances or restrictions will not adversely affect, in any material respect, the Borrower's ability to make principal or interest payments required

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hereunder or (II) such encumbrance or restriction applies only during the continuance of a default relating to such agreement or instrument.

#### Financial Covenant

. The Borrower shall not permit Consolidated EBITDA as of the last day of any Test Period ending as of the end of each of its fiscal quarters, commencing with the fiscal quarter ending September 30, 2019, to be less than \$200,000,000; provided that this Section 7.10 shall not apply with respect to the fiscal quarters ending on March 31, 2020, June 30, 2020, September 30, 2020 and December 31, 2020.

#### Anti-Cash Hoarding

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, request a borrowing under the ABL Credit Agreement that would have the effect of causing the Availability (as defined in the ABL Facility as in effect on the date of the Amendment) under the ABL Facility on the date of such proposed borrowing to be less than \$67,500,000, to the extent that (i) the Borrower and its Subsidiaries have cash and Cash Equivalents to make, apply to, or satisfy, the payments, expenses, obligations or other working capital requirements for which such borrowing is being requested and the application of such cash and Cash Equivalents to satisfy such payments, expenses, obligations or other working capital requirements is permitted under the ABL Credit Agreement (as in effect on the Amendment No. 1 Effective Date), (ii) such proposed borrowing under the ABL Facility (after applying the proceeds therefrom within two (2) Business Days of the date thereof) shall trigger a prepayment under the Anti-Cash Hoarding Sweep or (iii) the Borrower and its Subsidiaries have cash and Cash Equivalents greater than the Available Cash Threshold, provided that, solely in the case of any letters of credit requested under the ABL Credit Agreement, if the issuance of the letter of credit would have the effect of causing the Availability (as defined in the ABL Facility as in effect on the date of the Amendment) under the ABL Facility on the date of such proposed borrowing to be less than \$67,500,000 and the Borrower, and its Restricted Subsidiaries have cash and Cash Equivalents to cash collateralize such letter of credit obligations, the Borrower shall apply such Cash and Cash Equivalents to cash collateralize such letter of credit to the extent permitted under the ABL Credit Agreement (as in effect on the Amendment No. 1 Effective Date).

~~Section 7.11. [Reserved]~~

#### Fiscal Year

. The Borrower shall not make any change in its fiscal year or fiscal quarters (it being understood that the Borrower's fiscal year ends on December 31 of each year, and that each of the first three fiscal quarters of each fiscal year of the Borrower ends on the March 31, June 30 and September 30, respectively); *provided, however*, that the Borrower may, upon written notice to the Administrative Agent and the Required Lenders, change its fiscal year and fiscal quarters to any other fiscal year (and any other fiscal quarters) reasonably acceptable to the Administrative Agent and the Required Lenders, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such changes.

#### Prepayments, Etc. of Indebtedness

(a) The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled interest

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shall be permitted unless such payments violate any subordination terms of any Junior Financing Documentation) (x) any Permitted Additional Debt (or any Permitted Refinancing thereof) or (y) any Junior Financing that constitutes Subordinated Indebtedness (or any Permitted Refinancing thereof), or make any payment in violation of any subordination terms of any Junior Financing Documentation, if any, except (i) any Permitted Refinancing permitted in respect thereof (including any Permitted Refinancing set forth in Section 7.03(u) hereof), (ii) the conversion of any Permitted Additional Debt (or any Permitted Refinancing thereof) or Junior Financing that constitutes Subordinated Indebtedness (or any Permitted Refinancing thereof) to Equity Interests (other than Disqualified Equity Interests) of the Borrower, (iii) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary to the Borrower or any Restricted Subsidiary to the extent not prohibited by applicable subordination provisions, (iv) prepayments, redemptions, purchases, defeasances and other payments or satisfaction from the proceeds of equity issuances, (v) AHYDO "catch up" payments, and (vi) prepayments, redemptions, purchases, defeasances and other payments in respect of Permitted Additional Debt (or any Permitted Refinancing thereof) and Junior Financings that constitutes Subordinated Indebtedness (or any Permitted Refinancing thereof) prior to their scheduled maturity in an aggregate amount not to exceed (x) together with (I) the aggregate amount of Investments made under sub-clause (x) of Section 7.02(p) and (II) the aggregate amount of Restricted Payments made pursuant to sub-clause (x) of Section 7.06(e), \$30,000,000, plus (y) the portion, if any, of the Cumulative Credit on such date that the Borrower elects to apply to this subclause (y); *provided*, that (A) no prepayment, redemption, purchase, defeasance or other payment shall be made pursuant to this clause (vi) if an Event of Default has occurred and is continuing or would result therefrom and (B) no prepayments, redemptions, purchases, defeasances and other payments in respect of Permitted Additional Debt shall be permitted under this clause (vi) until (1) the Specified Amendment No. 1 Period shall have ended and (2) the Borrower shall have repaid an aggregate principal amount of the Term Loans equal to the PIK Amount pursuant to the last sentence of Section 2.06(d). For greater certainty, nothing in this Section 7.13(a) or elsewhere in this Agreement shall limit or restrict the ability of the Borrower or any Restricted Subsidiary to prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any ABL Facility Indebtedness or other obligations also secured pursuant to the ABL Credit Agreement.

(b) The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, amend, modify, change, terminate or release in any manner materially adverse to the interests of the Lenders any term or condition of any Junior Financing Documentation or the documentation governing any Permitted Additional Debt (or any Permitted Refinancing thereof) if the effect thereof would be to cause such Junior Financing or Permitted Additional Debt to no longer constitute Junior Financing or Permitted Additional Debt, as the case may be, without the consent of the Required Lenders (which consent shall not be unreasonably withheld, conditioned or delayed); *provided*, that the ABL Facility Indebtedness shall not be subject to this clause (b) unless expressly designated as Permitted Second Priority Additional Debt.

Section 7.14. *Prepayments, Etc. of Single-Employer Plans.* The Borrower shall not, except to the extent required by ERISA or other applicable Law, make any early lump sum payment to satisfy any liability under any Single-Employer Plan, in each case, directly from the cash or Cash Equivalents of the Borrower or the Restricted Subsidiaries (including, for the avoidance of doubt, the proceeds of any borrowing under the ABL Facility).

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**ARTICLE 8**  
EVENTS OF DEFAULT AND REMEDIES

Events of Default

. Any of the following from and after the Restatement Effective Date shall constitute an event of default (an “**Event of Default**”):

(a) *Non-Payment.* Any Loan Party fails to pay (i) when and as required to be paid herein or in any other Loan Document, any amount of principal of any Loan, (ii) within five (5) Business Days after the same becomes due, any interest on any Loan, or (iii) within ten (10) days after the same becomes due, any other amount payable hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants.* The Borrower fails to perform or observe (i) any term, covenant or agreement contained in any of Sections 6.03(a) (provided that the delivery of a notice of Default or Event of Default at any time will cure an Event of Default under Section 6.03(a) arising from the failure of the Borrower to timely deliver such notice of Default or Event of Default), 6.05(a) (solely with respect to the Borrower) or Article 7 or Section 4(c) of Amendment No. 1 or (ii) within three (3) Business Days after performance was required thereunder; any term, covenant or agreement contained in any of Section 4(a) or 4(b) of Amendment No. 1; or

(c) *Other Defaults.* Any Loan Party fails to perform or observe any other term, 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 thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent or the Required Lenders; or

(d) *Representations and Warranties.* Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any Compliance Certificate or other document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) *Cross-Default.* Any Loan Party or any Restricted Subsidiary (i) fails to make any payment after the applicable grace period with respect thereto, if any, (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any other Indebtedness (other than Indebtedness hereunder ) having an outstanding aggregate principal amount of not less than the Threshold Amount or (ii) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts and not as a result of any other default thereunder by any Loan Party), after all grace periods having expired and all required notices having been given, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, after all grace periods having expired and all required notices having been given, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such

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Indebtedness to be made, prior to its stated maturity; *provided* that any such failure or the occurrence of any such other event referred to in subclause (ii) relating to Indebtedness under the ABL Credit Agreement or any Permitted Refinancing thereof shall not constitute an Event of Default under this Section 8.01(e), until the earlier of (x) thirty days after the expiration of all grace periods relating to such failure or occurrence under the ABL Credit Agreement and (y) any acceleration of the ABL Obligations (as defined in the ABL Intercreditor Agreement) outstanding under the ABL Credit Agreement, whether automatic or otherwise; *provided* further that this clause (e)(ii) shall not apply to (I) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (II) Indebtedness which is convertible into Equity Interest and converts to Equity Interests in accordance with its terms or (III) any breach or default that (X) is remedied by the Borrower or the applicable Restricted Subsidiary or (Y) waived (including in the form of amendment) by the requisite holders of the applicable item of Indebtedness, in either case, prior to the acceleration of all the Loans pursuant to this Section 8.01; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any Restricted Subsidiary institutes or consents to the institution of any voluntary or involuntary proceeding under any Debtor Relief Law, or makes a general assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or substantially all of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) consecutive calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or substantially all of its property is instituted without the consent of such Person and continues undischarged or unstayed for sixty (60) consecutive calendar days, or an order for relief is entered in any such proceeding; or

(g) *Inability to Pay Debts; Attachment.* Any Loan Party or any Restricted Subsidiary becomes generally unable or admits in writing its general inability or fails generally to pay its debts as they become due, or any writ or warrant of attachment or execution or similar process is issued or levied against all or substantially all of the property of the Borrower and the Restricted Subsidiaries, taken as a whole, and is not released, vacated or fully bonded within sixty (60) consecutive days after its issue or levy; or

(h) *Judgments.* There is entered against any Loan Party or any Restricted Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance or indemnity as to which the insurer or third party indemnitor has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) *Invalidity of Loan Documents.* Any material provision of the Loan Documents, at any time after their execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the Administrative Agent or Collateral Agent or any Lender or the satisfaction in full of all the Obligations (other than other than contingent

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obligations), ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations), or purports in writing to revoke or rescind any Loan Document; or

(j) *Change of Control.* There occurs any Change of Control; or

(k) *Collateral Documents.* The Collateral Documents after delivery thereof pursuant to Sections 4.02, 6.11 or 6.13 shall for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction permitted under Section 7.04 or 7.05) cease to create, or shall be asserted by any Loan Party not to create, a valid and perfected Lien, with the priority required by the Collateral Documents on and security interest in Collateral purported to be covered thereby with an aggregate value equal to or greater than \$25,000,000, subject to Liens permitted under Section 7.01, (i) except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Administrative Agent or the Collateral Agent to maintain possession or control of certificates representing securities, other collateral requiring possession or control, or motor vehicle certificates of title (or notation thereon) pledged under the Collateral Documents, in each case actually delivered to it, or to file Uniform Commercial Code financing statements or continuation statements or any Collateral Documents and (ii) except as to Collateral consisting of Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

(l) *ERISA.* (i) An ERISA Event that occurs after the Restatement Effective Date and that, alone or together with any other ERISA Events that have occurred after the Restatement Effective Date, has resulted or could reasonably be expected to result in liability of a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates in an aggregate amount at any particular time that would reasonably be expected to have a Material Adverse Effect, or (ii) a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount, that, alone or together with any other such failures to pay, has resulted or would reasonably be expected to result in a Material Adverse Effect; or (iii) as of any date, a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates (x) shall have made contributions to any Multiemployer Plan during the immediately preceding twelve month period ending on such date that exceed in value in the aggregate among all such Persons the Pension Contribution Cap for such period or (y) is projected or reasonably expected (in each case by the Borrower in good faith) to make contributions to any Multiemployer Plan in the next twelve month period that exceed in the aggregate among all such Persons the Pension Contribution Cap for such period (*provided* that such Pension Contribution Cap may be exceeded solely to facilitate a compromise, settlement, rearrangement or other restructuring of liabilities under such Multiemployer Plan with the consent of the Required Lenders (such consent not to be unreasonably withheld, delayed or conditioned or denied)); *provided* that this clause (iii) shall not apply if on the applicable date of determination Consolidated EBITDA for the most recent Test Period ending prior to such date of determination as set forth in the most recent Compliance Certificate received

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by the Administrative Agent pursuant to Section 6.02(a) on or prior to such date of determination exceeds \$400,000,000; or

(m) *Junior Financing Documentation.* (i) Any of the Obligations of the Loan Parties under the Loan Documents for any reason shall cease to be, or shall be asserted by any Loan Party not to be, "Senior Indebtedness" (or any comparable term) or "Senior Secured Financing" (or any comparable term) under, and as defined in, any Junior Financing Documentation in respect of any Junior Financing that is, or is required by this Agreement to be, Subordinated Indebtedness or (ii) the subordination provisions set forth in any Junior Financing Documentation in respect of any Junior Financing that is, or is required by this Agreement to be, Subordinated Indebtedness shall, in whole or in part, cease to be, or shall be asserted by any Loan Party not to be, effective or legally valid, binding and enforceable against the holders of any such Junior Financing, if applicable (other than as a result of acts or omissions by the Administrative Agent or Collateral Agent or the satisfaction in full of all the Obligations (other than contingent obligations)); or

(n) *IBT Agreement.* The IBT Agreement shall be declared invalid or illegal, shall be terminated, or shall no longer be in full force and effect.

#### Remedies Upon Event of Default

. If any Event of Default occurs and is continuing the Administrative Agent may, and at the request of the Required Lenders shall, take any or all of the following actions:

(i) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, premium (including the Prepayment Premium) and all other amounts owing or payable or accrued 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 (to the extent permitted by applicable law) by the Borrower and each other Loan Party; and

(iii) subject to the terms, conditions and provisions of any Intercreditor Agreement, exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

*provided* 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, premium (including the Prepayment Premium) and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender, and without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived (to the extent permitted by applicable law) by the Borrower and each other Loan Party.

#### Exclusion of Immaterial Subsidiaries

. Solely for the purpose of determining whether a Default or an Event of Default has occurred under clause (f) or (g) of Section 8.01, any reference in any such clause to any Restricted Subsidiary or Loan Party shall be deemed not to

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include any Restricted Subsidiary affected by any event or circumstances referred to in any such clause that was, as of the last day of the most recent completed fiscal quarter of the Borrower, an Immaterial Subsidiary.

#### Application of Funds

. Subject to the terms, conditions and provisions of each Intercreditor Agreement, 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 be applied by the Administrative Agent in the following order (to the fullest extent permitted by mandatory provisions of applicable Law):

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.05 and amounts payable under Article 3) payable to the Administrative Agent or the Collateral Agent in its capacity as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities, premium (including the Prepayment Premium) and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.05 and amounts payable under Article 3), ratably among them in proportion to the 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, ratably among the Secured Parties 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, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Fourth* held by them;

*Fifth*, to the payment of all other Obligations of the Borrower that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

*Last*, the balance, if any, after all of the Obligations (other than contingent obligations) have been paid in full, to the Borrower or as otherwise required by Law.

#### ARTICLE 9

##### THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Each Lender hereby irrevocably appoints the Administrative Agent and the Collateral Agent (for purposes of this Article 9, the Administrative Agent and the Collateral Agent are referred to collectively as the "**Agents**") its agent and authorizes the Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental or related thereto. Without limiting the generality of the foregoing, the Agents are hereby expressly authorized to (i) execute any and all documents (including releases) with respect to the Collateral and the rights of

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the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents (including, for the avoidance of doubt, (x) the ABL Intercreditor Agreement, including any amendment or supplement expressly contemplated thereby and (y) upon the incurrence of any Permitted Second Priority Additional Debt, the Second Lien Intercreditor Agreement) and (ii) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the direction of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Lender.

The institution serving as the Administrative Agent and/or the Collateral 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 an Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not an Agent hereunder. The Agents 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 Loan Party that is communicated or obtained by the Person serving as Administrative Agent or Collateral Agent, as applicable, or any of their Affiliates in any capacity.

Neither Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) neither Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) neither Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that such Agent is instructed in writing to exercise by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in [Section 10.08](#)), and (c) except as expressly set forth in the Loan Documents, neither Agent shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to the Borrower or any of the Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent and/or Collateral Agent or any of its Affiliates in any capacity. Neither Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in [Section 10.08](#)) or in the absence of its own gross negligence or willful misconduct as determined by the final non-appealable judgment of a court of competent jurisdiction. Notwithstanding the foregoing, no action nor any omission to act, taken by either Agent at the direction of the Required Lenders (or such other number or percentage of Lenders as shall be expressly provided for herein or in the other Loan Documents) shall constitute gross negligence or willful misconduct. Neither Agent shall be deemed to have knowledge of any Default unless and until written notice thereof, conspicuously labeled as a "notice of default" and specifically describing such Default, is given to such Agent by the Borrower or a Lender, and neither Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in [Article 4](#) or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent.

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Each 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 believed by it in good faith to be genuine and to have been signed or sent by the proper Person. Each Agent may also rely upon any statement made to it orally or by telephone and believed by it in good faith to have been made by the proper Person, and shall not incur any liability for relying thereon. Each 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.

Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related Parties (other than Disqualified Lenders). The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties (other than Disqualified Lenders) of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the arrangement of the Facilities as well as activities as Agent.

Either Agent may resign at any time by notifying the Lenders and the Borrower in writing, and either Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to the Borrower and such Agent and signed by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right, with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g)), to appoint a successor. If no successor shall have been so appointed by the Required Lenders (with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g))) and shall have accepted such appointment within 30 days after (i) the retiring Agent gives notice of its resignation or (ii) the Required Lenders delivers removal instructions, then the retiring or removed Agent may, on behalf of the Lenders (with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g))), appoint a successor Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. If no successor Agent has been appointed pursuant to the immediately preceding, such Agent's resignation or removal shall become effective and the Required Lenders shall thereafter perform all the duties of such Agent hereunder and/or under any other Loan Document until such time, if any, as the Required Lenders (with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g))) appoint a successor Administrative Agent and/or Collateral Agent, as the case may be. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of its predecessor Agent, and its predecessor Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article and Section 10.05 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties (other than Disqualified Lenders) in respect of any actions taken or omitted to be taken by any of them while acting as Agent.

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Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

Each Lender acknowledges and agrees that Cortland Products Corp. or one or more of its Affiliates may (but is not obligated to) act as collateral agent or representative for the holders of ABL Facility Indebtedness, Permitted Second Priority Additional Debt, any Extended Term Loan or any Permitted Refinancing thereof under the collateral agreements with respect thereto and/or under the ABL Intercreditor Agreement or the Second Lien Intercreditor Agreement. Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against Cortland Products Corp. or any of its Affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

In case of the pendency of any case or proceeding under any insolvency or other similar 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 (but not obligated) 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, the Agents under Section 2.05, Section 3.01, and Section 10.05) 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, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agents 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 to the Agents under Section 2.05 and Section 10.05. 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 or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Lenders 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

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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 amounts owed to the Agents 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 stock 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 stock thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination 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 stock 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 the Administrative Agent 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 each Lenders pro rata and the stock 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 the Administrative Agent or any acquisition vehicle to take any further action.

**ARTICLE 10**  
MISCELLANEOUS

Notices; Electronic Communications

. 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 email or fax, as follows:

(a) if to the Borrower or any other Loan Party, to it at:

YRC Worldwide Inc.  
Attention of Chief Financial Officer and General Counsel  
10990 Roe Avenue  
Overland Park, Kansas 66211  
Fax No. 913-696-6116  
Tel. No. 913-696-6529 or 913-696-6132  
Email: stephanie.fisher@yrcw.com and jim.fry@yrcw.com

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With copy to:

Kirkland & Ellis LLP  
Attention of Michelle Kilkenney, Esq.  
300 North LaSalle  
Chicago, Illinois 60654  
Fax No. 312-862-2200  
Tel. No. 312-862-2487  
Email: michelle.kilkenney@kirkland.com

(b) if to the Administrative Agent, to:

Cortland Products Corp.  
225 W. Washington Street, 9<sup>th</sup> Floor  
Chicago, Illinois 60606  
Attention: Legal Department and Lisa Schutz  
Fax No.: 312-376-0751  
Tel. No.: 312-564-5100  
Email: legal@cortlandglobal.com and lisa.schutz@cortlandglobal.com

With a copy to:

Holland & Knight LLP  
150 N. Riverside Plaza, Suite 2700  
Chicago, Illinois 60606  
Fax No.: 312-578-6666  
Tel. No.: 312-263-3600  
Attention: Joshua M. Spencer  
Email: joshua.spencer@hklaw.com

(c) if to a Lender, to it at its address (email address or fax number) set forth on Schedule 2.01 or in the Assignment and Acceptance or Refinancing Amendment pursuant to which such Lender shall have become a party hereto.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or on the date three Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this [Section 10.01](#) or in accordance with the latest unrevoked direction from such party given in accordance with this [Section 10.01](#). As agreed to among the Borrower, the Administrative Agent and the applicable Lenders from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable Person provided from time to time by such Person.

The Borrower hereby agrees, unless directed otherwise by the Required Lenders or Administrative Agent or unless the electronic mail address referred to below has not been provided by the Administrative Agent to the Borrower, that it will, or will cause its Restricted Subsidiaries to, provide to the Administrative Agent and/or the Required Lenders all information, documents

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and other materials that it is obligated to furnish to the Administrative Agent and/or the Required Lenders pursuant to the Loan Documents or to the Lenders under Article 6, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) is or relates to a Request for Credit Extension or a notice pursuant to Section 2.10, (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, or (iii) provides notice of any Default or Event of Default under this Agreement or any other Loan Document, (all such non-excluded communications being referred to herein collectively as “**Communications**”), by transmitting the Communications in an electronic/soft medium that is properly identified in a format reasonably acceptable to the Administrative Agent and/or the Required Lenders to an electronic mail address as directed by the Administrative Agent and/or the Required Lenders. In addition, the Borrower agrees, and agrees to cause its Restricted Subsidiaries, to continue to provide the Communications to the Administrative Agent, the Required Lenders or the Lenders, as the case may be, in the manner specified in the Loan Documents but only to the extent requested by the Administrative Agent.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, the “**Borrower Materials**”) by posting the Borrower Materials on Intralinks or another similar electronic system (the “**Platform**”) and (b) certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower, its Restricted Subsidiaries or any of their respective securities) (each, a “**Public Lender**”). The Borrower hereby agrees (w) to use commercially reasonable effort to make all Borrower Materials that are to be made available to Public Lenders clearly and conspicuously “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or any of its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.16); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated as “Public Investor;” and (z) the Administrative Agent 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 marked as “Public Investor.” Notwithstanding the foregoing, the following Borrower Materials shall be marked “PUBLIC”, unless the Borrower notifies the Administrative Agent promptly that any such document contains material non-public information: (1) the Loan Documents, (2) financial statements and related documentation, in each case, provided pursuant to Section 6.01(a) or 6.01(b) and (3) notification of changes in the terms of the Facilities.

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 Communications that are not made available through the “Public Side Information” portion of the Platform and that may contain

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material non-public information with respect to the Borrower, its Restricted Subsidiaries or any of their respective securities for purposes of United States Federal or state securities laws.

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL NON-APPEALABLE RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON'S OR ITS RELATED PARTIES' GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BAD FAITH, IN EACH CASE, AS DETERMINED BY THE FINAL NON-APPEALABLE JUDGMENT OF A COURT OF COMPETENT JURISDICTION.

The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such e-mail address.

Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

#### Survival of Agreement

. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans, regardless of any investigation made by the Lenders or on their behalf or that any Agent or Lender may have had notice of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as the principal of or any accrued

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interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Commitments have not been terminated. The provisions of Sections 3.01, 3.03, 3.04 and 10.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent or any Lender.

#### Binding Effect

. This Agreement shall become effective when it shall have been executed and delivered by the Borrower, each other Loan Party party hereto on the Restatement Effective Date and the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto.

#### Successors and Assigns

(a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower, the Administrative Agent, the Collateral Agent or the Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns.

(b) Each Lender may assign to one or more Eligible Assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it), with the prior written consent of the Administrative Agent (not to be unreasonably withheld, conditioned or delayed); *provided, however*, that (i) if the approval of the Borrower is required for any such assignment pursuant to the definition of "Eligible Assignee", then the Borrower must also give its prior written consent to such assignment (which consent shall not be unreasonably withheld, conditioned or delayed), and the Borrower shall be deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the Administrative Agent within ~~ten~~three (~~10~~3) days Business Days after the Borrower having received written notice thereof, (ii) the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall be in an integral multiple of, and not less than, \$1,000,000 (or, if less, the entire remaining amount of such Lender's Commitment or Loans of the relevant Class) unless the Administrative Agent otherwise agrees; *provided* that simultaneous assignments by two or more Related Funds shall be combined for purposes of determining whether the minimum assignment requirement is met, (iii) the parties to each assignment shall (A) execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent or (B) if previously agreed with the Administrative Agent, manually execute and deliver to the Administrative Agent an Assignment and Acceptance, and, in each case, shall pay to the Administrative Agent a processing and recordation fee of \$3,500; *provided* that (x) simultaneous assignments by two or more Related Funds shall require the payment of a single processing and recordation fee of \$3,500 and (y) such processing and recordation fee may be waived or reduced in the sole discretion of the Administrative Agent and (iv) the assignee, if it shall not be a Lender,

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shall deliver to the Administrative Agent an Administrative Questionnaire (in which the assignee shall designate one or more credit contacts to whom all Lender-level information (which may contain material non-public information about the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable Laws, including Federal and state securities laws), all documentation and other information reasonably determined by the Administrative Agent to be required by applicable regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, and all applicable tax forms (including such documentation required under Section 3.01(d)). Upon acceptance and recording pursuant to paragraph (e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.03, 3.04 and 10.05). Upon request and the surrender by the assigning Lender of its Term Note (if any), the Borrower (at its expense) shall execute and deliver a Term Note to the assignee Lender.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and the outstanding balances of its Term Loans without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance; (ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is an Eligible Assignee legally authorized to enter into such Assignment and Acceptance; (iv) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with copies of the most recent financial statements referred to in Section 5.05 or delivered pursuant to Section 6.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon the Administrative Agent, the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vi) such assignee appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent and the Collateral Agent, respectively, by the terms hereof or thereof, together with such powers as are reasonably incidental

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or related thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of and the 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, the Collateral 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, the Collateral Agent and, as to entries pertaining to it, any Lender, at any reasonable time and from time to time upon reasonable prior written notice. Upon reasonable request by a Lender, the Administrative Agent shall make available to such Lender a schedule of Disqualified Lenders, to the extent the Borrower has provided such a schedule to the Administrative Agent. This Section 10.04(d) shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

(e) Upon its receipt of, and consent to, a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) above, if applicable, and the written consent of the Administrative Agent and, if required, the Borrower, to such assignment, and "know your customer" information requested by the Administrative Agent, and any applicable tax forms (including such documentation required under Section 3.01(d)), the Administrative Agent shall promptly (i) accept such Assignment and Acceptance and (ii) record the information contained therein in the Register. No assignment shall be effective unless it has been recorded in the Register as provided in this paragraph (e).

(f) Each Lender may without the consent of the Borrower or the Administrative Agent sell participations to one or more banks or other Persons (other than Disqualified Lenders) in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided, however*, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participating banks or other Persons shall be entitled to the benefit of the cost protection provisions contained in Sections 3.01, 3.03 and 3.04 (subject to the requirements and limitations therein, including the requirements under Section 3.01(d) (it being understood that the documentation required under Section 3.01(d) shall be delivered to the participating Lender)) to the same extent as if they were Lenders (but with respect to any particular participant, to no greater extent than the Lender that sold the participation to such participant and only if such participant has complied with the requirements of such provisions as if it were a Lender) and (iv) 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, and such Lender shall retain the sole right to enforce the

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obligations of the Borrower relating to the Loans and to approve any amendment, modification or waiver of (or consent under) any provision of this Agreement or any other Loan Document (provided that the agreement or instrument pursuant to which such Lender has sold a participation may provide that such Lender shall not agree to the following amendments without the consent of such participating bank or Person hereunder: amendments, modifications or waivers decreasing any fees payable to such participating bank or Person hereunder or the amount of principal of or the rate at which interest is payable on the Loans in which such participating bank has an interest; extending any scheduled principal payment date or scheduled date fixed for the payment of interest on the Loans in which such participating bank or Person has an interest; increasing or extending the Commitments in which such participating bank or Person has an interest; releasing all or substantially all of the Guarantors (other than in connection with the sale of any such Guarantor in a transaction permitted by [Section 7.05](#)) releasing all or substantially all of the Collateral or the Term Priority Collateral or reductions in the voting thresholds; or modifying the pro rata requirements of [Section 2.13\(b\)](#), [Section 2.13\(c\)](#) or [Section 2.14](#), in each case, which directly and adversely affects such participants; provided, further, that, notwithstanding the foregoing, only the consent of the Required Lenders shall be required in respect of any amendment, modification or waiver of (i) the payment of default interest, (ii) the occurrence of a default or an Event of Default, (iii) the mandatory prepayment requirements of [Section 2.13](#) or (iv) the payment or receipt of the fee or premium pursuant to [Section 2.12\(d\)](#)). To the extent permitted by law, each participating bank or other Person also shall be entitled to the benefits of [Section 10.06](#) as though it were a Lender, provided such participating bank or other Person agrees to be subject to [Section 2.15](#) as though it were a Lender. Each Lender that sells a participation or exercises its option under section 10.04(i) with respect to an SPV 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 SPV (other than any SPV that is treated as a disregarded entity of the Granting Lender for U.S. federal income tax purposes) and the principal amounts (and interest thereon) of each participant's interest in the Loans or other Obligations under this Agreement (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 SPV or any information relating to a Participant's or a SPV'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 in connection with a Tax audit or other proceeding to establish that such commitment, loan, letter of credit or other obligation is in registered form under United States Treasury Regulations Section 5f.103-1(c) and proposed United States Treasury Regulations Section 1.163-5(b) (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and the Borrower, the Lenders and each Agent 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 notice to the contrary.

(g) Any Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this [Section 10.04](#), disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; provided that (except during the arrangement by the Required Lenders when customary confidentiality arrangements shall apply), prior to any such disclosure of Information, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree to preserve the confidentiality of such confidential information on terms no less restrictive in any material respect

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than those applicable to the Lenders pursuant to Section 10.16 for the benefit of (and enforceable by) the Borrower.

(h) Any Lender may at any time assign all or any portion of its rights under this Agreement to secure extensions of credit to such Lender or in support of obligations owed by such Lender; *provided* that no such assignment shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(i) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle (an "**SPV**"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPV to make any Loan, (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof, and (iii) the Granting Lender shall for all purposes remain the Lender hereunder. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, it will not institute against, or join any other Person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 10.04, any SPV may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPV to support the funding or maintenance of Loans, and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV.

(j) The Borrower (except as expressly permitted by clause (ii) of Section 7.04(d)) shall not assign or delegate any of its rights or duties hereunder without the prior written consent of the Administrative Agent and each Lender, and any attempted assignment without such consent shall be null and void.

(k) So long as no Event of Default has occurred or is continuing or would result therefrom, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement in respect of its Term Loans to the Borrower or any of its Subsidiaries, subject to the following limitations and other provisions:

(i) such assignment shall be made pursuant to (A) an open-market transaction on a non-pro rata basis or (B) a Dutch Auction open to all Lenders of the applicable Class

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of Term Loans on a pro rata basis in accordance with the Auction Procedures (it being agreed that none of the Borrower or any other Restricted Subsidiary shall have any obligation to make any representation as to the absence of MNPI in connection therewith and such assignment shall be made pursuant to the form of Assignment and Acceptance, which shall contain customary "big boy" assurance by the assignor Lender to the effect that it is a sophisticated investor and is willing to proceed with the assignment);

(ii) the Borrower will not be entitled to receive, and will not receive, information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in, and will not attend or participate in, meetings or conference calls attended solely by the Lenders and the Administrative Agent;

(iii) [reserved];

(iv) the aggregate principal amount of Term Loans purchased by the Borrower may not exceed 20% of the aggregate principal amount of all Tranche B-2 Term Loans as of the Restatement Effective Date plus the aggregate amount of all Credit Agreement Refinancing Indebtedness incurred after the Restatement Effective Date;

(v) any Term Loans purchased by the Borrower shall be automatically and permanently cancelled immediately upon acquisition by the Borrower;

(vi) notwithstanding anything to the contrary contained herein (including in the definitions of "Consolidated Net Income" and "Consolidated EBITDA") any non-cash gains in respect of "cancellation of indebtedness" resulting from the cancellation of any Term Loans purchased by the Borrower shall be excluded from the determination of Consolidated Net Income and Consolidated EBITDA; and

(vii) the purchase and cancellation of Term Loans pursuant to this Section 10.04(k) shall not constitute a voluntary or mandatory prepayment for purposes of Section 2.12 or 2.13.

Expenses; Indemnity

(a) The Borrower agrees (i) promptly following (and in any event within thirty (30) days of) written demand (including documentation reasonably supporting such request) therefor, to pay or reimburse the Administrative Agent, the Collateral Agent and Apollo for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby (including Attorney Costs which shall be limited to Attorney Costs of one counsel to the Agents, and one counsel to the Lenders (and one local counsel in each applicable jurisdiction for each group and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel of each type to similarly situated parties)) and (ii) from and after the Restatement Effective Date, promptly following (and in any event within thirty (30) days of) written demand (including documentation reasonably supporting such request) therefor, to pay or reimburse the Administrative Agent, the Collateral Agent, Apollo

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and each Lender promptly following written demand for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of any rights or remedies under this Agreement or the other Loan Documents (including all such out-of-pocket costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective Attorney Costs which shall be limited to Attorney Costs of one counsel to the Agents and one counsel to the Lenders (and one local counsel in each applicable jurisdiction for each group and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel of each type to similarly situated parties)). To the extent otherwise reimbursable by the foregoing sentence of this section, the foregoing costs and expenses shall include all reasonable search, filing, recording, title insurance, survey, environmental, property condition report and zoning report charges and fees related thereto, and other reasonable and documented out of pocket expenses incurred by any Agent. The foregoing costs and expenses shall also include all mortgage recording, recording and filing fees charged by governmental authorities to record and/or file Collateral Documents.

(b) Whether or not the transactions contemplated hereby are consummated, the Loan Parties shall, jointly and severally, indemnify and hold harmless the Administrative Agent, the Collateral Agent and their respective Affiliates, successors and permitted assigns (or the directors, officers, employees, agents, advisors and members of each of the foregoing) (each an "**Agent Indemnitee**" and collectively, the "**Agent Indemnitees**") and each Lender and their respective Affiliates, successors and permitted assigns (or the directors, officers, employees, agents, advisors and members of each of the foregoing) (each a "**Lender Indemnitee**" and collectively, the "**Lender Indemnitees**"; together with, the Agent Indemnitees, collectively the "**Indemnitees**") from and against any and all actual losses, damages, claims, liabilities and reasonable documented out-of-pocket costs and expenses (including Attorney Costs which shall be limited to Attorney Costs of one outside counsel for the Agent Indemnitees and Attorney Costs of one outside counsel for the Lender Indemnitees (and, if necessary, one local counsel in each applicable jurisdiction and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel for each type of similarly situated affected Indemnitees)) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any Agent Indemnitee or Lender Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the Transactions or the other transactions contemplated thereby, (ii) any Commitment or 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 from any property, vehicle or facility currently or formerly owned, leased or operated by the Loan Parties or any Subsidiary, or any other Environmental Liability related in any way to any Loan Parties or any Subsidiary, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Agent Indemnitee or Lender Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of its Affiliates or equityholders in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of any such Agent Indemnitee or Lender Indemnitee; *provided that*, notwithstanding the foregoing, such indemnity shall not, as to any Indemnitee, be available to the

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extent that such losses, damages, claims, liabilities and expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee, as determined by the final non-appealable judgment of a court of competent jurisdiction, (y) any dispute solely among the Indemnitees other than (1) any claim against an Indemnitee in its capacity or in fulfilling its role as Administrative Agent, Collateral Agent or similar role and (2) any claim arising out of any act or omission of the Borrower or any of its Affiliates or (z) the material breach by such Indemnitee of its obligations under the Loan Documents (or any related party), as determined by the final non-appealable judgment of a court of competent jurisdiction. No Indemnitee or any other party hereto shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement except to the extent that such damages resulted from the (A) gross negligence, bad faith or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee, as determined by the final non-appealable judgment of a court of competent jurisdiction or (B) the material breach by such Indemnitee of its or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee's obligations under the Loan Documents, as determined by the final non-appealable judgment of a court of competent jurisdiction. In the case of a claim, investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such claim, investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, any Loan Party's directors, stockholders or creditors or other Affiliates or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. For the avoidance of doubt, this paragraph shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. To the extent that any Loan Party fails to pay any amount required to be paid by them to the Administrative Agent or the Collateral Agent under paragraph (a) or (b) of this Section within the timeframe specified therein, each Lender severally agrees to indemnify and reimburse, and pay to the Administrative Agent or the Collateral Agent such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or the Collateral Agent in its capacity as such. For purposes hereof, if the Term Loans have been paid in full prior to such determination pursuant to the immediately preceding sentence, then each such Lender's "pro rata share" shall be determined as of the last date the Term Loans were in effect immediately prior to such payment in full.

(c) To the extent permitted by applicable Law, (i) no Loan Party shall assert, and each hereby waives, any claim against any Indemnitee and (ii) no Indemnitee shall assert, and each hereby waives, any claim against any Loan Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions or any Loan or the use of the proceeds thereof (whether before or after the Restatement Effective Date); *provided* that the foregoing shall in no event limit the Borrower's indemnification obligations under clause (b) above.

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(d) The provisions of this Section 10.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent or any Lender. All amounts due under this Section 10.05 shall be payable within 30 days after written demand therefor (including documentation reasonably supporting such request).

#### Right of Setoff

. In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Agents, in respect of any unpaid fees, costs and expenses payable hereunder) is authorized at any time and from time to time (with the prior consent of the Administrative Agent), without prior notice to any Loan Party, any such notice being waived by each Loan Party (on its own behalf and on behalf of each of its Subsidiaries), 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) (other than payroll accounts, trust accounts, escrow accounts, employee benefits accounts or petty cash accounts) at any time held by, and other indebtedness at any time owing by, such Lender and its Affiliates or the Collateral Agent to or for the credit or the account of the respective Loan Parties against any and all matured Obligations owing to such Lender and its Affiliates or the Collateral Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided*, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent, the Collateral Agent and each Lender under this Section 10.06 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent, the Collateral Agent and such Lender may have at Law.

#### Applicable Law

. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

#### Waivers; Amendment

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(a) No failure or delay of the Administrative Agent, the Collateral Agent or any Lender in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be

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effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Except as provided in Section 2.18, with respect to any Refinancing Amendment, in Section 2.19 with respect to an Extension Offer or as otherwise provided herein or in a Loan Document, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders and (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto with the consent of the Required Lenders (*provided*, that amendments to the ABL Intercreditor Agreement or the Second Lien Intercreditor Agreement shall require the agreement of the Loan Parties (or any of them) only to the extent required pursuant to the terms thereof); *provided, however*, that no such agreement shall (i) decrease the principal amount of, or extend the maturity of or any scheduled principal payment date or date for the payment of any fee or any interest on any Loan, or waive or excuse any such payment or any part thereof (other than with respect to any default interest), or decrease the amount of any fee or the rate of interest on any Loan (other than with respect to any default interest), without the prior written consent of each Lender directly and adversely affected thereby (it being understood that (x) the waiver 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, (y) any change to the definition of "Consolidated EBITDA" or in the component definitions thereof shall not constitute a reduction or forgiveness in any rate of interest pursuant to this clause (i), (ii) increase or extend the Commitment of any Lender without the prior written consent of such Lender (it being understood that a waiver of any condition precedent or of any Default or Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender), (iii) amend or modify the pro rata requirements of Section 2.13(b), Section 2.13(c) or Section 2.14, the provisions of Section 10.04(j) or the provisions of this Section or release all or substantially all of the Guarantors (other than in connection with the sale of such Guarantors in a transaction permitted by Sections 7.04 or 7.05) or all or substantially all of the Collateral (other than as permitted hereby), without the prior written consent of each Lender directly and adversely affected thereby (or, in the case of Section 10.04(j), each Lender), (iv) change the provisions of any Loan Document in a manner that by its terms materially and adversely affects the rights of Lenders holding Loans of one Class differently from the rights of Lenders holding Loans of any other Class without the prior written consent of the Required Class Lenders with respect to each materially and adversely affected Class, (v) modify the protections afforded to an SPV pursuant to the provisions of Section 10.04(i) without the written consent of such SPV (vi) reduce the percentage contained in the definition of the term "Required Lenders" without the prior written consent of each Lender (it being understood that, with the consent of the Required Lenders (if such consent is otherwise required), additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loan Commitments on the Restatement Effective Date) or (vii) modify the definition of "Required Class Lenders" without the consent of the Required Class Lenders with respect to each Class of Loans or Commitments; *provided further* that (w) no Lender consent is required to effect a Refinancing Amendment or an Extension (except as expressly provided in 2.18 or 2.19, as applicable) or to effect any amendment

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expressly contemplated by Section 7.12, (x) [reserved], (y) modifications to Section 2.14, 2.15 or any other provision requiring pro rata payments or sharing of payments in connection with (I) any buy back of Term Loans by the Borrower pursuant to Section 10.04(k) or pursuant to any similar program that may in the future be permitted hereunder, (II) [reserved] or (III) any Extension, shall only require approval (to the extent any such approval is otherwise required) of the Lenders participating and (z) no Lender consent other than the consent of the Required Lenders is required to effect any amendment or supplement to the ABL Intercreditor Agreement or the Second Lien Intercreditor Agreement (I) that the Administrative Agent is otherwise authorized to enter into with only the consent of the Required Lenders by Section 10.23, (II) that is for the purpose of adding the holders of Permitted Second Priority Additional Debt, (or a Senior Representative with respect thereto) as parties thereto, as expressly contemplated by the Second Lien Intercreditor Agreement (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided*, that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (III) that is expressly contemplated by Section 5.2(c) or the second paragraph of Section 7.4 of the ABL Intercreditor Agreement (or the comparable provisions, if any, of the Second Lien Intercreditor Agreement); *provided further* that no such agreement shall amend, modify or otherwise adversely affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Required Lenders, Administrative Agent or the Collateral Agent, as applicable.

Notwithstanding any other language to the contrary contained herein, with respect to any amendment, waiver or modification to which the Administrative Agent's consent is not required, the parties agree to deliver to the Administrative Agent a copy of each such amendment, waiver or modification; provided that, (i) no party shall be liable for its failure to comply with this sentence and (ii) the Administrative Agent shall not be bound by any such amendment unless and until it has received a copy thereof.

(c) Notwithstanding the foregoing, this Agreement and any other Loan Document may be amended solely with the consent of the Administrative Agent, the Required Lenders and the Borrower without the need to obtain the consent of any other Lender if such amendment is delivered in order to if such amendment is delivered in order to correct or cure (x) ambiguities, errors, omissions, defects, (y) to effect administrative changes of a technical or immaterial nature or (z) incorrect cross references or similar inaccuracies in this Agreement or the applicable Loan Document. This Agreement, guarantees, collateral documents, security documents, intercreditor agreements, and related documents executed in connection with this Agreement may be in a form reasonably determined by the Administrative Agent or Collateral Agent, as applicable, and may be amended, modified, terminated or waived, and consent to any departure therefrom may be given, without the consent of any Lender if such amendment, modification, waiver or consent is given in order to (x) comply with local law or advice of counsel or (y) cause such guarantee, collateral document, security document or related document to be consistent with this Agreement and the other Loan Documents. The Borrower, the Required Lenders and the Administrative Agent may, without the consent of any other Lender, effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Borrower, the Required Lenders and the Administrative Agent to effect the provisions of Section 2.05, Section 2.17, Section 2.18 and Section 2.19. Notwithstanding anything to the contrary contained herein,

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such amendment shall become effective without any further consent of any other party to such Loan Document.

#### Interest Rate Limitation

. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable Law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or participation in accordance with applicable Law, the rate of interest payable in respect of such Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or participation but were not payable as a result of the operation of this Section 10.09 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

#### Entire Agreement

. This Agreement, the Fee Letter and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder and, to the extent expressly contemplated hereby, the Related Parties of each of the Required Lenders, Administrative Agent, the Collateral Agent and the Lenders) any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

#### WAIVER OF JURY TRIAL

. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

#### Severability

. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the

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economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

#### Counterparts

. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 10.03. Delivery of an executed signature page to this Agreement by facsimile or other electronic imaging transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

#### Headings

. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

#### Jurisdiction; Consent to Service of Process

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(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in the Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

#### Confidentiality

. Each of the Administrative Agent, the Collateral Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' officers, directors, employees and agents, including accountants, financing sources, legal counsel and other advisors involved in the Transaction on a "need to know" basis (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 requested by any regulatory authority or quasi-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

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(and in such case, such Person shall promptly notify the Borrower of such disclosure), (d) in connection with the exercise of any remedies hereunder or under the other Loan Documents or any suit, action or proceeding relating to the enforcement of its rights hereunder or thereunder, (e) subject to an agreement containing provisions substantially the same as those of this Section 10.16, to (i) any actual or prospective assignee of or participant in any of its rights or obligations under this Agreement and the other Loan Documents or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any Subsidiary or any of their respective obligations, (f) with the prior written consent of the Borrower, (g) on a confidential basis to (x) any rating agency in connection with rating the Borrower or its Subsidiaries or the Facility or (y) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facility, or (h) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.16 or other confidentiality obligation owed to the Borrower or any of its Subsidiaries. For the purposes of this Article, “**Information**” shall mean all information received from the Borrower and related to the Borrower, its business, other than any such information that was available to the Administrative Agent, the Collateral Agent or any Lender on a nonconfidential basis prior to its disclosure by the Borrower not in violation of any confidentiality or obligation owed to the Borrower and the Subsidiaries. In addition, each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents. Any Person required to maintain the confidentiality of Information as provided in this Section 10.16 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 its own confidential information.

#### Lender Action

. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker’s lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, unless expressly provided for herein or in any other Loan Document, without the prior written consent of the Administrative Agent (which shall be given at the direction of the Required Lender).

#### USA PATRIOT Act Notice

. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the USA PATRIOT Act.

#### Collateral And Guaranty Matters

. The Lenders irrevocably agree:

(a) that any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document shall be automatically released (i) upon termination of all Commitments hereunder and payment in full of all Obligations (other than contingent

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obligations not yet accrued or payable), (ii) at the time the property subject to such Lien is disposed as part of or in connection with any disposition permitted hereunder or under any other Loan Document to any Person other than a Person required to grant a Lien to the Administrative Agent or the Collateral Agent under the Loan Documents (or, if such transferee is a Person required to grant a Lien to the Administrative Agent or the Collateral Agent on such asset, at the option of the applicable Loan Party, such Lien on such asset may still be released in connection with the transfer so long as (x) the transferee grants a new Lien to the Administrative Agent or Collateral Agent on such asset substantially concurrently with the transfer of such asset, (y) the transfer is between parties organized under the laws of different jurisdictions and at least one of such parties is a Foreign Subsidiary and (z) the priority of the new Lien is the same as that of the original Lien), (iii) subject to Section 10.08, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to Section 11.10, (v) any such property constitutes Excluded Property or (vi) in accordance with any Intercreditor Agreement;

(b) to release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.01(b), 7.01(g), 7.01(q) or 7.01(s) (in the case of Section 7.01(s)), to the extent required by the terms of the obligations secured by such Liens); and

(c) that any Guarantor shall be automatically released from its obligations under the Guaranty as provided in Section 11.10.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's or the Collateral 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 10.19. In each case as specified in this Section 10.19, the Administrative Agent or the Collateral Agent will (and each Lender irrevocably authorizes the Administrative Agent and the Collateral Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as the Borrower may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 10.19.

~~Section 10.20. [Reserved]~~

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#### Limitation on Liability

Section 10.21. . TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS: (A) NO INDEMNITEE SHALL BE LIABLE TO ANY PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THEIR RESPECTIVE ACTIVITIES RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, THE TRANSACTIONS CONTEMPLATED THEREBY, THE TERM LOANS, OR OTHERWISE IN CONNECTION WITH THE FOREGOING; (B) WITHOUT LIMITING THE FOREGOING, NO INDEMNITEE SHALL BE SUBJECT TO ANY EQUITABLE

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**REMEDY OR RELIEF, INCLUDING SPECIFIC PERFORMANCE OR INJUNCTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY; (C) NO INDEMNITEE SHALL HAVE ANY LIABILITY TO THE LOAN PARTIES, FOR DAMAGES OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY UNTIL THE AMENDMENT NO. 1 EFFECTIVE DATE HAS OCCURRED; AND (D) IN NO EVENT SHALL ANY INDEMNITEE'S LIABILITY TO THE LOAN PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY EXCEED ACTUAL DIRECT DAMAGES INCURRED BY THE LOAN PARTIES OF UP TO \$10,000,000 IN THE AGGREGATE; PROVIDED THAT THE FOREGOING SHALL IN NO EVENT LIMIT THE LENDERS' INDEMNIFICATION OBLIGATIONS TO THE AGENT INDEMNITEES UNDER SECTION 10.05 OF THIS AGREEMENT; PROVIDED FURTHER THAT SUCH LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY RESULTING FROM FRAUD BY THE INDEMNITEES.**

**Section 10.21.      *Payments Set Aside***

**~~Section 10.21. *Payments Set Aside*~~**

. To the extent that any payment by or on behalf of the Borrower or any other Loan Party is made to any Agent or any Lender, or any 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 such 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, to the fullest extent possible under provisions of applicable Law, 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 of any amount so recovered from or repaid by any 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 applicable Federal Funds Effective Rate from time to time in effect.

No Advisory or Fiduciary Responsibility

(a) In connection with all aspects of each transaction contemplated hereby, each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower and its Subsidiaries, on the one hand, and the Agents and the Lenders, on the other hand, and the Borrower and its Subsidiaries are capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof), (ii) the Agents, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Borrower

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and its Affiliates, and none of the Agents or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship, and (iii) the Agents and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

(b) Each Loan Party acknowledges and agrees that each Lender and any of its affiliates may lend money to, invest in, and generally engage in any kind of business with, the Borrower, any of its Affiliates or any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lender or Affiliate thereof were not a Lender (or an agent or any other person with any similar role under the Facilities) and without any duty to account therefor to any other Lender, the Borrower or any Affiliate of the foregoing. Each Lender and any of its Affiliates may accept fees and other consideration from the Borrower or any of its Affiliates for services in connection with this Agreement, the Facilities, the commitment letter or otherwise without having to account for the same to any other Lender, the Borrower or any Affiliate of the foregoing.

#### Intercreditor Agreements

(a) The Administrative Agent is authorized to become a party to the ABL Intercreditor Agreement pursuant to the ABL Intercreditor Amendment (and enter into the ABL Intercreditor Agreement in respect of any Permitted Refinancing of ABL Facility Indebtedness), and each of the parties hereto acknowledges that it has received a copy of the ABL Intercreditor Agreement and that the ABL Intercreditor Agreement is binding upon it. Each Lender (a) hereby consents to the subordination of the Liens on the ABL Priority Collateral securing the Obligations on the terms set forth in the ABL Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the ABL Intercreditor Agreement and (c) hereby authorizes and instructs the Administrative Agent to enter into the ABL Intercreditor Agreement and any amendments or supplements expressly contemplated thereby, and to subject the Liens on the ABL Priority Collateral securing the Obligations to the provisions of the ABL Intercreditor Agreement. The foregoing provisions are intended as an inducement to the ABL Secured Parties to extend credit to the borrowers under the ABL Credit Agreement and such ABL Secured Parties are intended third-party beneficiaries of such provisions and the provisions of the ABL Intercreditor Agreement.

(b) The Administrative Agent is authorized to enter into the Second Lien Intercreditor Agreement, and each of the parties hereto acknowledges that each such agreement shall be binding upon it. Each Lender (a) hereby consents to the intercreditor agreements in respect of the Collateral securing the Obligations on the terms set forth in the Second Lien Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Second Lien Intercreditor Agreement and (c) hereby authorizes and instructs the Administrative Agent to enter into the Second Lien Intercreditor Agreement and, without the further consent, direction or other action of any Lender, to enter into any amendments or supplements thereto, in each case solely if the form of the agreement as so amended or supplemented would constitute the Second Lien Intercreditor Agreement, as applicable, if being

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entered into as an original agreement. The foregoing provisions are intended as an inducement to the parties providing any Permitted Second Priority Additional Debt to extend credit to the borrowers thereof and such parties are intended third-party beneficiaries of such provisions and the provisions of the Second Lien Intercreditor Agreement.

(c) The extent of any conflict between the Loan Documents, on the one hand, and the ABL Intercreditor Agreement or other intercreditor agreement contemplated by this Section 10.23, on the other hand, such intercreditor agreement shall control.

#### Alternative Interest Rates

(a) If at least two (2) Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing, the Required Lenders reasonably determine that for any reason, adequate and reasonable means do not exist for determining the Adjusted LIBO Rate for any requested Interest Period with respect to a proposed Eurodollar Loan, or that the Adjusted LIBO Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, or that deposits are not being offered to banks in the relevant interbank market for the applicable amount and the Interest Period of such Eurodollar Loan, the Required Lenders shall notify the Administrative Agent in writing, and thereafter the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Adjusted LIBO Rate component of the Alternate Base Rate, the utilization of the Adjusted LIBO Rate component in determining the Alternate Base Rate shall be suspended, in each case until the Administrative Agent (upon the written instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of Base Rate ABR Loans (determined without reference to the Adjusted LIBO Rate component thereof) in the amount specified therein.

(b) If the Administrative Agent and the Borrower shall reasonably agree that either (i) the circumstances set forth in clause (a) of this Section 10.24 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a) of this Section 10.24 have not arisen but the supervisor for the administrator of the LIBO Rate (or any component thereof) or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate (or any component thereof) shall no longer be published for use in determining interest rates for loans (in the case of either such clause (i) or (ii), an "Alternative Interest Rate Election Event"), ~~the Administrative Agent, the Required Lenders and the Borrower (a) shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for leveraged syndicated loans in the United States at such time, and (b) shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 10.09, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days after the date notice of such alternate rate of interest is~~

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~~provided to the Lenders, a written notice from Required Lenders stating that they object to such amendment (which amendment shall not be effective prior to the end of such five (5) Business Day notice period). To the extent an alternate rate of interest is adopted as contemplated hereby, the approved rate shall be applied in a manner consistent with prevailing market convention; provided that, to the extent such prevailing market convention is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Required Lenders, Administrative Agent and the Borrower. From such time as an Alternative Interest Rate Election Event has occurred and continuing until an alternate rate of interest has been determined in accordance with the terms and conditions of this paragraph, (x) any Request for Credit Extension that requests the conversion of any Loan to, or continuation of any Loan as, a Eurodollar Loan shall be ineffective, and (y) if any Request for Credit Extension requests a Eurodollar Loan, such Loan shall be made as a Base Rate Loan; provided that, to the extent such Alternative Interest Rate Election Event is as a result of clause (ii) above, then clauses (x) and (y) of this sentence shall apply during such period only if the LIBO Rate for such Interest Period is not available or published at such time on a current basis. Notwithstanding anything contained herein to the contrary, if such alternate rate of interest as determined in this clause (b) is then then the LIBO Rate, for any day, shall mean the rate per annum equal to the Federal Funds Rate in effect on such day plus one half of one percent (0.50%) (subject at all times to the requirement that such rate per annum shall not be less than one percent (1.00%) per annum, ~~such rate shall be deemed to be 1% percent per annum for the purposes of this Agreement~~.~~

**ARTICLE 11**  
GUARANTEE

The Guarantee

. Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not as a surety to each Secured Party and their respective permitted successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of (i) Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws, whether or not such items are allowed or allowable as a claim in any applicable proceeding) on the Loans made by the Lenders to, and the Term Notes (if any) issued hereunder and held by each Lender of, the Borrower, and all other Obligations from time to time owing to the Secured Parties by any other Loan Party under any Loan Document strictly in accordance with the terms thereof (such obligations being herein collectively called the “**Guaranteed Obligations**”). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Obligations Unconditional

. The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the

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value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower or any other Guarantor under this Agreement, any Term Notes issued under this Agreement, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

- (a) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any of the acts mentioned in any of the provisions of this Agreement or the Term Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;
- (c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;
- (d) any Lien or security interest granted to, or in favor of, any Secured Party or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or
- (e) the release of any other Guarantor pursuant to Section 11.10.

#### Certain Waivers

. Etc. The Guarantors hereby expressly waive (to the extent permitted by applicable Law) diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Term Notes issued hereunder, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against the Borrower or against any other Person which may be

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or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and permitted assigns thereof, and shall inure to the benefit of the Secured Parties, and their respective successors and permitted assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding. Each Guarantor waives (to the extent permitted by Law) any rights and defenses that are or may become available to it by reason of §§ 2787 to 2855, inclusive, and §§ 2899 and 3433 of the California Civil Code. As provided in Section 10.07, the provisions of this Article 11 shall be governed by, and construed in accordance with, the laws of the State of New York. The foregoing waivers and the provisions hereinafter set forth in this Article 11 which pertain to California law are included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Article 11, to any other provision of this Agreement or to the Obligations.

#### Reinstatement

. The obligations of the Guarantors under this Article 11 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

#### Subrogation; Subordination

. Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations (other than contingent obligations) and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party to any Person that is not a Loan Party permitted pursuant to Section 7.03(b) or 7.03(d), shall be subordinated to such Loan Party's Obligations in a manner reasonably acceptable to the Required Lenders.

#### Remedies

. The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Term Notes issued hereunder, if any, may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.02) for purposes of Section 11.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 11.01.

#### Instrument for the Payment of Money

. Each Guarantor hereby acknowledges that the guarantee in this Article 11 constitutes an instrument for the payment of money, and consents and agrees that any Secured Party or Agent, at its sole option, in the event of

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a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

#### Continuing Guarantee

. The guarantee in this Article 11 is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

#### General Limitation on Guarantee Obligations

. In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other Person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.11) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

#### Release of Guarantors

. If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests or property of any Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party or (ii) any Guarantor becomes an Excluded Subsidiary (any such Guarantor, and any Guarantor referred to in clause (i), a "**Transferred Guarantor**"), such Transferred Guarantor shall, upon (x) the consummation of such sale or transfer or other transaction or (y) becoming an Excluded Subsidiary pursuant to clause (e) of the definition thereof, be automatically released from its obligations under this Agreement (including under Section 10.05 hereof) and its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Collateral Agent pursuant to the Collateral Documents shall be automatically released, and, the Collateral Agent shall take such actions as are necessary to effect each release described in this Section 11.10 in accordance with the relevant provisions of the Collateral Documents; *provided*, that no Guarantor shall be released as provided in this paragraph if such Guarantor continues to be a guarantor in respect of any Indebtedness incurred pursuant to Section 7.03(q), any Permitted Additional Debt, any Junior Financing or any Permitted Refinancing of any of the foregoing. Notwithstanding anything herein to the contrary, if any Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall only be permitted to be released from its Guarantee so long as the fair market value of any and all Investments then held by the Loan Parties in such Person are permitted as an Investment under Section 7.02(c)(iii), and Section 7.02(p) at the time such Person becomes an Excluded Subsidiary pursuant to clause (a) of the definition of "Excluded Subsidiary".

When all Commitments hereunder have terminated, and all Loans or other Obligations hereunder which are accrued and payable have been paid or satisfied, this Agreement and the Guarantees made herein shall automatically terminate with respect to all Obligations, except with respect to Obligations that expressly survive such repayment pursuant to the terms of this Agreement.

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*Right of Contribution*

. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.05. The provisions of this Section 11.11 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent and the Secured Parties, and each Guarantor shall remain liable to the Administrative Agent and the Secured Parties for the full amount guaranteed by such Guarantor hereunder.

Additional Guarantor Waivers and Agreements

(a) Each Guarantor understands and acknowledges that if the Collateral Agent or any other Secured Party forecloses judicially or nonjudicially against any real property security for the Obligations, that foreclosure could impair or destroy any ability that such Guarantor may have to seek reimbursement, contribution, or indemnification from the Borrower or others based on any right such Guarantor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by such Guarantor under the Guaranty. Each Guarantor further understands and acknowledges that in the absence of this paragraph, such potential impairment or destruction of such Guarantor's rights, if any, may entitle such Guarantor to assert a defense to this Guaranty based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968). By executing this Guaranty, each Guarantor freely, irrevocably, and unconditionally: (i) waives (to the extent permitted by Law) and relinquishes that defense and agrees that such Guarantor will be fully liable under this Guaranty even though the Collateral Agent or any other Secured Party may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations; (ii) agrees that such Guarantor will not assert that defense in any action or proceeding which the Administrative Agent, the Collateral Agent or any other Secured Party may commence to enforce this Guaranty; (iii) acknowledges and agrees that the rights and defenses waived by such Guarantor in this Guaranty include any right or defense that such Guarantor may have or be entitled to assert based upon or arising out of any one or more of §§ 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or § 2848 of the California Civil Code; and (iv) acknowledges and agrees that the Secured Parties are relying on this waiver in creating the Obligations, and that this waiver is a material part of the consideration which the Secured Parties are receiving for creating the Obligations.

(b) Each Guarantor waives (to the extent permitted by Law) all rights and defenses that such Guarantor may have because any of the Obligations is secured by real property. This means, among other things: (i) the Administrative Agent, the Collateral Agent and the other Secured Parties may collect from such Guarantor without first foreclosing on any real or personal property Collateral pledged by the other Loan Parties; and (ii) if the Collateral Agent or any other Secured Party forecloses on any real property Collateral pledged by the other Loan Parties: (A) the amount of the Obligations may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Administrative Agent, the Collateral Agent and the other Secured Parties may collect from such Guarantor even if the Secured Parties, by foreclosing on the real property Collateral, have destroyed any right such Guarantor may have to collect from the Borrower. This is an unconditional and irrevocable waiver

4830-5366-0817v1

of any rights and defenses such Guarantor may have because any of the Obligations is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon § 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(c) Each Guarantor waives (to the extent permitted by Law) any right or defense it may have at law or equity, including California Code of Civil Procedure § 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

~~4830-5366-0817v1~~

## AMENDMENT NO. 2

Dated as of July 7, 2020

to

## AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of September 11, 2019

THIS AMENDMENT NO. 2 (this "Amendment") is dated as of the date hereof by and among YRC Worldwide Inc. (the "Borrower"), the other Guarantors party to the Credit Agreement, the financial institutions listed on the signature pages hereof and Alter Domus Products Corp. (formerly known as Cortland Products Corp.), as administrative agent and collateral agent (the "Administrative Agent"), under that certain Amended and Restated Credit Agreement dated as of September 11, 2019 by and among the Borrower, the Guarantors party thereto from time to time, the Lenders and the Administrative Agent (as amended by Amendment No. 1 to Amended and Restated Credit Agreement dated as of April 7, 2020 and as further amended, amended and restated, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Credit Agreement, as amended hereby.

WHEREAS, the Borrower and the Guarantors have requested that the Lenders amend the Credit Agreement on the terms more fully set forth herein; and

WHEREAS, the Lenders party hereto constituting all of the existing Lenders party to the Credit Agreement as of the date hereof (the "Existing Lenders") and the Administrative Agent have agreed to make the amendments described herein pursuant to this Amendment on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Guarantors party hereto and the Existing Lenders and the Administrative Agent have agreed to enter into this Amendment.

1. Amendments to Credit Agreement. Effective as of the date of satisfaction or waiver of the conditions precedent set forth in Section 2 below (the "Amendment No. 2 Effective Date"), the Credit Agreement is hereby amended to delete the bold, stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold, double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto.

2. Amendments to Security Agreement. Effective as of the Amendment No. 2 Effective Date, the Security Agreement referenced in clause (a) in the definition thereof in the Credit Agreement is hereby amended and restated in its entirety with the Security Agreement attached as Exhibit B hereto.

3. Conditions of Effectiveness. The effectiveness of this Amendment

on the Amendment No. 2 Effective Date is subject to the satisfaction (or waiver by each of the Existing Lenders) of the following conditions precedent:

- (a) the Administrative Agent shall have received counterparts of this Amendment duly executed by the Borrower, the Guarantors party hereto and each of the Existing Lenders and acknowledged by the Administrative Agent;
- (b) the Administrative Agent shall have received an executed copy of that certain ABL Intercreditor Agreement dated as of the Amendment No. 2 Effective Date, between Administrative Agent, the ABL Agent, the UST Tranche A Agent, the UST Tranche B Agent and the Loan Parties, in form and substance reasonably satisfactory to Administrative Agent and the Existing Lenders;
- (c) the Administrative Agent shall have received an executed copy of that certain Amendment No. 6 to the ABL Credit Agreement dated as of the date hereof between the Loan Parties party thereto, the lenders party thereto and the ABL Agent, in form and substance reasonably satisfactory to Agent and the Existing Lenders;
- (d) (i) the Administrative Agent shall have received executed copies of (x) the UST Tranche A Credit Agreement dated as of the Amendment No. 2 Effective Date, between the Borrower, the other Subsidiaries of the Borrower party thereto, the lenders party thereto and the UST Tranche A Agent and (y) the UST Tranche B Credit Agreement dated as of the Amendment No. 2 Effective Date, between the Borrower, the other Subsidiaries of the Borrower party thereto, the lenders party thereto and the UST Tranche B Agent, each in form and substance reasonably satisfactory to Agent and the Existing Lenders and (ii) the conditions precedent set forth in Section 4.01 of each of the UST Tranche A Credit Agreement and the UST Tranche B Credit Agreement shall have been satisfied;
- (e) receipt by the Administrative Agent of a certificate executed by the Secretary (or other equivalent officer, partner or manager) of each Loan Party dated as of the Amendment No. 2 Effective Date certifying: (i) as true and correct a copy of resolutions in form and substance reasonably satisfactory to the Administrative Agent, of the board of directors (or other equivalent governing body, member or partner) of each Loan Party approving and authorizing the execution, delivery and performance by such Loan Party of this Amendment and all documents, instruments and agreements executed and/or delivered in connection herewith (if any) and of the transactions contemplated herein and therein, (ii) as true and correct and in full force and effect, without any amendment except as shown, a copy of the Organization Documents of each Loan Party, or that there have been no amendments, supplements, or other modifications to such Loan Party's Organizational Documents since the Restatement Effective Date and that the copies of such Loan Party's Organizational Documents delivered to Administrative Agent on such date as a part of the "secretary's certificate" delivered by such Loan Party are true, correct and complete copies of such Organizational Documents as currently in full force and effect, (iii) if available, a true and correct copy of a good standing certificate/certificate of status for each Loan Party certified by the applicable Governmental Authority of such Loan Party's jurisdiction of incorporation, organization or formation dated a recent date prior to the date hereof (except for those delivered pursuant to Section 4(a) below), and (iv) the names and

signatures of the officers of such Loan Party authorized to execute and deliver this Amendment and all documents, instruments and agreements executed and/or delivered in connection herewith (if any) on behalf of such Loan Party pursuant to the resolutions referenced in clause (i) above (and such certificate shall be countersigned by another officer of such Loan Party certifying the name, office and signature of the Secretary (or other equivalent officer, partner or manager) of such Loan Party giving such certificate); and

(f) no Default or Event of Default has occurred and is continuing, or would result from the execution of this Amendment or consummation of the transactions contemplated hereunder.

4. Conditions Subsequent. The Loan Parties shall satisfy the conditions described below within the time periods provided therewith (unless extended by the Administrative Agent in its sole discretion).

(a) Within ten (10) days following the Amendment No. 2 Effective Date, Borrower shall deliver to Administrative Agent true and correct copies of each good standing certificate/certificate of status of the Loan Parties not previously delivered on or prior to the Amendment No. 2 Effective Date, certified by the applicable Governmental Authority of such Loan Party's jurisdiction of incorporation, organization or formation dated a recent date prior to or after the date hereof;

(b) Within fifteen (15) days following the Amendment No. 2 Effective Date, Borrower shall deliver to the Administrative Agent completed copies of schedules I through IV to the Security Agreement attached hereto as Annex I that are true, complete and correct as of the Amendment No. 2 Effective Date;

(c) Within fifteen (15) days following the Amendment No. 2 Effective Date (or such later date as the Required Lenders may approve), Borrower shall execute any amendments to the Security and Collateral Agency Agreement and the Custodial Administration Agreement as may be requested by the Required Lenders to reflect the Liens granted to secure the UST Tranche A Facility Indebtedness and the UST Tranche B Facility Indebtedness, which amendments shall be in form and substance reasonably satisfactory to the Required Lenders; and

(d) Within five (5) Business Days following the Amendment No. 2 Effective Date, the Borrower shall have paid all invoiced expenses of the Administrative Agent and the Existing Lenders (including, without limitation, all previously invoiced, reasonable, out-of-pocket expenses of the Administrative Agent (including, to the extent invoiced, reasonable attorneys' fees and expenses of Holland & Knight LLP and Milbank LLP, in each case to the extent reimbursable under the terms of the Credit Agreement).

5. Representations and Warranties of the Borrower. Each of the Borrower and each of the Guarantors party hereto hereby represents and warrants as follows as of the Amendment No. 2 Effective Date:

Section 1.01. This Amendment has been duly authorized, executed and delivered by the Borrower and each Guarantor and this Amendment and the Credit Agreement, as

modified hereby, constitute legal, valid and binding obligations of the Borrower and the Guarantors and are enforceable against the Borrower and the Guarantors in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 1.02. As of the date hereof, the representations and warranties of the Borrowers and the Guarantors set forth in the Credit Agreement, as modified hereby, and the Loan Documents, are true and correct in all material respects on and as of the date hereof, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; *provided*, that any such representation and warranty that is qualified by "materiality", "material adverse effect" or similar language shall be true and correct in all respects (after giving effect to such qualification therein) on and as of the date hereof with the same effect as though made on and as of such date or such earlier date, as applicable.

6. Restatement. Effective as of the date of the Amendment No. 2 Effective Date, Section 4 of Amendment No. 1 is hereby deleted in its entirety. For the avoidance of doubt, the terms of the Credit Agreement, as set forth in Exhibit A, shall control in all respects.

7. Consent to Security Agreement and ABL Intercreditor Agreement. Subject to satisfaction or waiver of the conditions precedent set forth in Section 3 above, each Existing Lender agrees and acknowledges that it has received copies of the Security Agreement and the ABL Intercreditor Agreement being amended and restated on the Amendment No. 2 Effective Date and each Existing Lender further agrees that the Administrative Agent is authorized to enter into each of the Security Agreement and the ABL Intercreditor Agreement, as amended.

8. Reference to and Effect on the Credit Agreement.

(a) Upon the effectiveness hereof, each reference to the Credit Agreement in the Credit Agreement or any other Loan Document shall mean and be a reference to the Credit Agreement as modified hereby. This Amendment shall constitute a Loan Document.

Section 1.03. Except as specifically set forth above, the Credit Agreement and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed.

Section 1.04. Other than as set forth above, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders, nor constitute a waiver of any provision of the Credit Agreement, the Loan Documents or any other documents, instruments and agreements executed and/or delivered in connection therewith.

9. Acknowledgements. By executing this Amendment, each of the Loan Parties (a) consents to this Amendment and the performance by the Borrower and

each of the other Loan Parties of their obligations hereunder, (b) acknowledges that notwithstanding the execution and delivery of this Amendment, the obligations of each of the Loan Parties under each of the Collateral Documents and each of the other Loan Documents to which such Loan Party is a party, are not impaired or affected and each such Collateral Document and each such other Loan Document continues in full force and effect, (c) affirms and ratifies, its Obligations under the Credit Agreement as expanded or amended hereby and confirms the benefits of the pledges set forth in each Collateral Document to the extent it is a party thereto, (d) confirms that its Obligations under the Credit Agreement as expanded or amended hereby constitute "Secured Obligations" (as defined in the Collateral Documents) and (e) confirms that the Secured Obligations shall remain in full force and effect, and such Secured Obligations shall continue to be entitled to the benefits of the grant set forth in the Collateral Documents. Each Guarantor (a) confirms its Guaranteed Obligations under the Credit Agreement, (b) confirms that the Guaranteed Obligations under the Credit Agreement as expanded or amended hereby are entitled to the benefits of the guarantee set forth in Article 11 of the Credit Agreement and (c) confirms that the Obligations under the Credit Agreement as expanded or amended hereby constitute "Guaranteed Obligations". Each Loan Party, by its execution of this Amendment, hereby confirms that the Guaranteed Obligations shall remain in full force and effect.

10. No Novation or Mutual Departure. The Borrower expressly acknowledges and agrees that there has not been, and this Amendment does not constitute or establish, a novation with respect to the Credit Agreement or any other Loan Document, or a mutual departure from the strict terms, provisions, and conditions thereof, other than with respect to the amendments contained in Section 2, 3 or 6 hereof.

11. Release. Each Loan Party, on behalf of itself, its Subsidiaries and controlled Affiliates, and each of their successors, representatives, assignees and, whether or not claimed by right of, through or under any Loan Party, past, present and future employees, agents, representatives, officers, directors, members, managers, principals, affiliates, shareholders, trustees, consultants, experts, advisors, attorneys and other professionals (each, a "Releasing Party" and collectively, the "Releasing Parties"), does hereby fully, finally, and forever remise, release and discharge, and shall be deemed to have forever remised, released and discharged, the Administrative Agents and the Lenders, and the Administrative Agents' and each Lender's respective successors, representatives, assignees and past, present and future employees, agents, representatives, officers, directors, members, managers, principals, affiliates, shareholders, trustees, consultants, experts, advisors, attorneys and other professionals and all other persons and entities to whom any of the foregoing would be liable if such persons or entities were found to be liable to any Releasing Party, or any of them (collectively hereinafter the "Released Parties"), from any and all manner of action and actions, cause and causes of action, claims, defenses, rights of setoff, charges, demands, counterclaims, suits, debts, obligations, liabilities, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, damages, judgments, expenses, executions, liens, claims of liens, claims of costs, penalties, attorneys' fees, or any other compensation, recovery or relief on account of any liability, obligation, demand or cause of action of whatever nature, whether in law, equity or otherwise (including without limitation those arising under the Bankruptcy

Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, joint and/or several, secured or unsecured, due or not due, primary or secondary, liquidated or unliquidated, contractual or tortious, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, circumstance, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with, in respect of or relating to this Amendment or any other Loan Document and the transactions contemplated thereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing (each, a "Claim" and collectively, the "Claims").

12. Governing Law. This Amendment shall be construed in accordance with and governed by the law of the State of New York.

13. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

14. Counterparts. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Signatures delivered by facsimile or PDF shall have the same force and effect as manual signatures delivered in person.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

YRC WORLDWIDE INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

EXPRESS LANE SERVICE, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

NEW PENN MOTOR EXPRESS LLC  
(F/K/A NEW PENN MOTOR EXPRESS INC.)

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

ROADWAY EXPRESS INTERNATIONAL, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

ROADWAY LLC

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

ROADWAY NEXT DAY CORPORATION

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

HENRY LOGISTICS, INC.

By: /s/ Jason W. Bergman  
Name: Jason W. Bergman  
Title: President

USF BESTWAY INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

USF DUGAN INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

USF GLEN MOORE INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

USF HOLLAND LLC  
(F/K/A USF HOLLAND INC.)

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

USF REDSTAR LLC

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

USF REDDAWAY INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

YRC ASSOCIATION SOLUTIONS, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

YRC INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

YRC INTERNATIONAL INVESTMENTS, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

YRC LOGISTICS SERVICES, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

YRC MORTGAGES, LLC

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

YRC ENTERPRISE SERVICES, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

YRC REGIONAL TRANSPORTATION, INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

REIMER HOLDING B.V.

By: /s/ M.F. A van Schijndel

Name: M.F. A van Schijndel

Title: Managing Director A

By: /s/ Terry Gerrond

Name: Terry Gerrond

Title: Managing Director B

1105481 ONTARIO INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

YRC LOGISTICS INC.

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

USF HOLLAND INTERNATIONAL SALES  
CORPORATION

By: /s/ Thomas J. O'Connor  
Name: Thomas J. O'Connor  
Title: President

YRC FREIGHT CANADA COMPANY

By: /s/ Mark D. Boehmer  
Name: Mark D. Boehmer  
Title: Vice President

**APOLLO CREDIT STRATEGIES MASTER FUND,  
LTD., as a Lender**

By: Apollo ST Fund Management LLC, its investment manager

By: /s/ Joseph D.

Glatt

Name: Joseph D. Glatt

Title: Vice President

**APOLLO ATLAS MASTER FUND, LLC, as a Lender**

By: Apollo Atlas Management, LLC, its investment manager By: /s/ Joseph D.

Glatt

Name: Joseph D. Glatt

Title: Vice President

**AP KENT CREDIT MASTER FUND, L.P., as a Lender**

By: AP Kent Management, LLC, the investment manager By: /s/ Joseph D.

Glatt

Name: Joseph D. Glatt Title: Vice

President

**MPI (LONDON) LIMITED, as a Lender**

By: Apollo TRF MP Management, LLC, its investment manager

By: Apollo Capital Management, L.P., its sole member

By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Joseph D.

Glatt

Name: Joseph D. Glatt

Title: Vice President

**APOLLO TR ENHANCED LEVERED YIELD LLC**, as  
a Lender

By: Apollo Total Return Enhanced Management LLC, its investment manager

By: /s/ Joseph D.  
Glatt  
Name: Joseph D. Glatt  
Title: Vice President

**APOLLO TR OPPORTUNISTIC LTD.**, as a Lender

By: Apollo Total Return Enhanced Management LLC, its investment manager

By: /s/ Joseph D.  
Glatt  
Name: Joseph D. Glatt  
Title: Vice President

By: Apollo Total Return Management LLC, its investment manager

By: /s/ Joseph D.  
Glatt  
Name: Joseph D. Glatt  
Title: Vice President

**APOLLO A-N CREDIT FUND (DELAWARE), L.P.**, as a  
Lender

By: Apollo A-N Credit Management, LLC, its investment manager

By: /s/ Joseph D.  
Glatt  
Name: Joseph D. Glatt  
Title: Vice President

**APOLLO CENTRE STREET PARTNERSHIP, L.P.**, as  
a Lender

By: Apollo Centre Street Management, LLC, its investment manager

By: /s/ Joseph D.  
Glatt  
Name: Joseph D. Glatt  
Title: Vice President

**APOLLO MOULTRIE CREDIT FUND, L.P.**, as a  
Lender

By: Apollo Moultrie Credit Fund Management, LLC its investment manager

By: /s/ Joseph D.  
Glatt  
Name: Joseph D. Glatt  
Title: Vice President

**APOLLO TACTICAL VALUE SPN INVESTMENTS,**  
**L.P.**, as a Lender

By: Apollo Tactical Value SPN Management, LLC, its investment manager

By: /s/ Joseph D.  
Glatt  
Name: Joseph D. Glatt  
Title: Vice President

**APOLLO ACCORD MASTER FUND III, L.P.**, as a  
Lender

By: Apollo Accord Management III, LLC, its investment manager

By: /s/ Joseph D.  
Glatt  
Name: Joseph D. Glatt  
Title: Vice President

**CADBURY MONDELEZ PENSION TRUST LIMITED,**  
as a Lender

By: Apollo TRF CM Management, LLC, its investment manager

By: Apollo Capital Management, L.P., its member

By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Joseph D.  
Glatt  
Name: Joseph D. Glatt  
Title: Vice President

**APOLLO CREDIT FUNDS ICAV**, as a Lender

an Umbrella Irish Collective Asset Management Vehicle with Segregated Liability between its Sub-Funds, acting in respect of its Sub-Fund Apollo Helius Loan Fund

By: ACF Europe Management, LLC, its portfolio manager By: Apollo Capital Management, L.P., its sole member  
By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Joseph D.

Glatt

Name: Joseph D. Glatt

Title: Vice President

**AMISSIMA DIVERSIFIED INCOME ICAV**, as a Lender

an Umbrella Irish Collective Asset-Management Vehicle with Segregated Liability between its Sub-Funds, acting in respect of its Sub-Fund, Amissima Loan Origination Fund

By: Apollo Management International LLP, solely in its capacity as Portfolio Manager and not in its individual corporate capacity

By: AMI (Holdings), LLC, its member

By: /s/ Joseph D.

Glatt

Name: Joseph D. Glatt

Title: Vice President

**ATHORA LUX INVEST**, as a Lender

a reserved alternative investment fund in the form of a Luxembourg special limited partnership (société en commandite spéciale), acting in respect of its compartment, Athora Lux Invest – Loan Origination, acting through its managing general partner  
Athora Lux Invest Management and represented by its delegate portfolio manager,  
Apollo Management International LLP

By: Apollo Management International LLP, its portfolio manager

By: AMI (Holdings), LLC, its member

By: /s/ Joseph D.  
Glatt

Name: Joseph D. Glatt  
Title: Vice President

[Signature Page to Amendment No. 2]

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**ACE GLOBAL MULTI-CREDIT LLC**, as a

Lender By: ACE Credit Fund, LP, its sole member By: ACE Credit Advisors, LP, its general partner  
By: ACE Credit Advisors GP, LLC, its general partner

By: /s/ Joseph D.

Glatt

Name: Joseph D. Glatt  
Title: Vice President

**APOLLO CREDIT MASTER FUND LTD.**, as a Lender

By: Apollo ST Fund Management LLC, as its investment manager

By: /s/ Joseph D.

Glatt

Name: Joseph D. Glatt  
Title: Vice President

**APOLLO LINCOLN FIXED INCOME FUND, L.P.**, as a  
Lender

By: Apollo Lincoln Fixed Income Management, LLC, its investment manager

By: /s/ Joseph D.

Glatt

Name: Joseph D. Glatt  
Title: Vice President

**APOLLO PPF OPPORTUNISTIC CREDIT PARTNERS (LUX), SCS**, as a Lender

By: Apollo PPF Credit Management, LLC, its investment manager

By: /s/ Joseph D.  
Glatt

Name: Joseph D. Glatt

Title: Vice President

[Signature Page to Amendment No. 2]

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ASPEN AMERICAN INSURANCE COMPANY, as a  
Lender

By: Apollo Asset Management Europe PC LLP, its investment manger

By: /s/ Sundip Kalley

Name: Sundip Kalley Title: Authorised Signatory

[Signature Page to Amendment No. 2]

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BEAL BANK USA, as a Lender

By: /s/ Jacob Cherner  
Name: Jacob Cherner  
Title: Authorized Signatory

---

BTC HOLDINGS FUND I, LLC, as a Lender

By: Blue Torch Credit Opportunities Fund I LP, its sole member

By: Blue Torch Credit Opportunities GP LLC, its general partner

By: /s/ Kevin Genda

Name:

Kevin Genda

Title: Authorized Signer

BTC HOLDINGS SC FUND LLC, as a Lender

By: Blue Torch Credit Opportunities SC Master Fund LP, its sole member

By: Blue Torch Credit Opportunities SC GP LLC, its General Partner

By: /s/ Kevin  
Genda

Name: Kevin Genda

Title: Authorized Signer

Acknowledged by:

ALTER DOMUS PRODUCTS CORP., as  
Administrative Agent

By: /s/ Jon Kirschmeier  
Name: Jon Kirschmeier  
Title: Associate Counsel

---



**Amended Credit Agreement**

[Attached]

---

**Amended and Restated Security Agreement**

[Attached]

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of

September 11, 2019

among

YRC WORLDWIDE INC.,

THE OTHER GUARANTORS PARTY HERETO FROM TIME TO TIME  
THE LENDERS PARTY HERETO

and

~~CORTLAND~~ALTER DOMUS PRODUCTS CORP.,

as Administrative Agent and Collateral Agent

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**ARTICLE 1**  
**DEFINITIONS**

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- Exhibit B Form of Assignment and Acceptance
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AMENDED AND RESTATED CREDIT AGREEMENT, dated as of September 11, 2019 (as amended by Amendment No. 1 [and Amendment No. 2](#), this “**Agreement**”), among YRC WORLDWIDE INC., a Delaware corporation (the “**Borrower**”), the Guarantors party hereto from time to time, the Lenders (such term and each other capitalized term used but not defined in this introductory statement having the meaning given it in Article 1), and [ALTER DOMUS PRODUCTS CORP. \(formerly known as](#) CORTLAND PRODUCTS CORP.), as administrative agent (in such capacity, including any permitted successor or assign thereto, the “**Administrative Agent**”) and as collateral agent (in such capacity, including any permitted successor or assign thereto, the “**Collateral Agent**”) for the Lenders.

WHEREAS, the Borrower, the financial institutions party thereto and Credit Suisse AG, Cayman Islands Branch, as predecessor Administrative Agent and predecessor Collateral Agent, are parties to a Credit Agreement dated as of February 13, 2014 (as amendment, supplemented and modified and in effect on the Restatement Effective Date, the “**Existing Credit Agreement**”).

WHEREAS, (i) the Borrower has requested that the Tranche B-2 Term Lenders (as defined below) make, and the Tranche B-2 Term Lenders have agreed to make subject to the conditions set forth herein, the Tranche B-2 Term Loans the proceeds of which shall be used to refinance the Term Loans outstanding under the Existing Credit Agreement in full (the “**Refinancing Transaction**”), for working capital and other corporate purposes and (ii) in connection with the Refinancing Transaction, the Borrower and the other Loan Parties and the Tranche B-2 Term Lenders, have agreed to amend and restate the Existing Credit Agreement in its entirety pursuant to this Agreement (the “**Restatement**”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree that the Existing Credit Agreement shall be amended and restated in its entirety to read as follows:

## ARTICLE 2

### DEFINITIONS

#### Defined Terms

. As used in this Agreement, the following terms shall have the meanings specified below:

“**ABL Agent**” shall mean, as the context may require, Citizens Business Capital (a division of Citizens Asset Finance, Inc., a subsidiary of Citizens, N.A.), in its capacity as administrative agent under the ABL Facility Documentation, Citizens Business Capital (a division of Citizens Asset Finance, Inc., a subsidiary of Citizens, N.A.), in its capacity as collateral agent under the ABL Facility Documentation, such agents collectively or any permitted successor or assignee administrative agent or collateral agent under the ABL Facility Documentation.

“**ABL Credit Agreement**” shall mean that certain asset-based revolving credit agreement dated as of the Original Closing Date, among the Borrower, YRC Inc., a Delaware corporation, USF Reddaway Inc., an Oregon corporation, USF Holland LLC, a Delaware limited liability company (as successor to USF Holland, Inc., a Michigan corporation) and New Penn Motor Express, LLC, a Delaware limited liability company (as successor to New Penn Motor Express, Inc., a Pennsylvania corporation), the other subsidiaries of the Borrower party thereto, the lenders party thereto and the ABL Agent, as amended by that certain Amendment No. 1, dated September 23, 2015, Amendment No. 2, dated June 28, 2016, Amendment No. 3 and Limited Consent, dated January 30, 2018, Amendment No. 4, dated February 12, 2019 ~~and~~, Amendment No. 5, dated September 11, 2019 [and Amendment No. 6, dated July 7, 2020](#), and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents and resulting in a financing that constitutes (or that would

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constitute if incurred as a new financing) a Permitted Refinancing of the ABL Facility Indebtedness), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof), in each case as and to the extent permitted by this Agreement and, if applicable, the ABL Intercreditor Agreement; *provided* that any such amendment, restatement, modification supplement, extension, renewal, restructuring, refunding, replacement or refinancing shall be permitted hereunder only if not less than a majority of its aggregate commitments are provided by lenders who are third party commercial banks or other financial institutions that customarily provide asset based lending credit facilities and other financial institutions consented to by the Administrative Agent (such consent not to be unreasonably withheld or delayed).

“**ABL Facility**” shall mean the asset-based revolving credit facility made available to the Borrower and certain of its Subsidiaries pursuant to the ABL Credit Agreement.

“**ABL Facility Documentation**” shall mean the ABL Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith and including all “Loan Documents” (as defined in the ABL Credit Agreement) or similar term.

“**ABL Facility Indebtedness**” shall mean Indebtedness of the Borrower or any Restricted Subsidiary outstanding under the ABL Facility Documentation, including Bank Product Debt (as defined in the ABL Credit Agreement).

“**ABL Intercreditor Agreement**” shall mean the ~~intercreditor agreement~~Amended and Restated Intercreditor Agreement dated as of ~~the Original Closing Date~~July 7, 2020, among the Administrative Agent and/or Collateral Agent, the ABL Agent, the UST Tranche A Agent, the UST Tranche B Agent and the Loan Parties, ~~as amended by that Amendment No. 1 and Limited Waiver dated as of the Restatement Effective Date (the “ABL Intercreditor Amendment”)~~, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, waived or replaced from time to time.

~~“**ABL Intercreditor Amendment**” shall have the meaning assigned to such term in the definition of “ABL Intercreditor Agreement”.~~

“**ABL Priority Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**ABL Secured Parties**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“**ABR**”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“**Additional Lender**” shall mean, with respect to any Refinancing Amendment or in respect of any bank, financial institution or investor not theretofore a Lender that agrees to provide an Other Term Loan pursuant thereto, *provided* that the Administrative Agent shall have consented (not to be unreasonably withheld, conditioned or delayed) to such bank, financial institution or investor as would be required under Section 10.04(b) for an assignment of Loans to such bank, financial institution or investor.

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“**Adjusted LIBO Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum equal to the greater of (a) 1.00% per annum and (b) the product of (i) the LIBO Rate in effect for such Interest Period and (ii) Statutory Reserves.

“**Administrative Agent**” shall have the meaning assigned to such term in the introductory statement to this Agreement, together with its successors and any replacement designated pursuant to Article 9 of this Agreement.

“**Administrative Agent Fee Letter**” means that certain fee letter dated as of the date hereof, by and between Borrower and Administrative Agent, as amended, amended and restated, supplemented, waived, replaced or otherwise modified from time to time.

“**Administrative Agent’s Office**” means the Administrative Agent’s office or account as it may from time to time designate, in writing, to the Borrower and each Lender.

“**Administrative Questionnaire**” shall mean an Administrative Questionnaire in the form of Exhibit A, or such other form as may be supplied from time to time by the Administrative Agent and approved by the Borrower (such approval not to be unreasonably withheld, conditioned or delayed).

“**Affiliate**” shall mean, 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; provided, that, with respect to the Borrower and its Subsidiaries, in no case shall any Governmental Authority constitute an “Affiliate”. “**Control**” shall mean 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.

“**Agent Indemnitees**” shall have the meaning assigned to such term in Section 10.05(b).

“**Agents**” shall have the meaning assigned to such term in Article 9.

“**Agreement**” shall have the meaning assigned to such term in the introductory statement to this Agreement.

“**Alternate Base Rate**” shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%; *provided* that (i) for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the rate published on the applicable Bloomberg LIBOR screen page determined on such day at approximately 11 a.m. (London time) for deposits in Dollars (as set forth by any service selected by the Administrative Agent that has been nominated by the ICE Benchmark Administration as an authorized vendor for the purpose of displaying such rates) and (ii) in no event shall the Alternate Base Rate be less than 2.00% per annum. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective on the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, as the case may be.

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~~“Alternative Incremental Indebtedness” shall mean all Permitted Additional Debt incurred pursuant to Section 7.02(p); provided that (i) the aggregate principal amount at the time of the incurrence thereof (when taken together with any Alternative Incremental Indebtedness that has been incurred or will be incurred simultaneously therewith) shall not exceed the Maximum Incremental Facility Amount, (ii) the maturity date of such Alternative Incremental Indebtedness shall not be earlier than 91 days after the Latest Maturity Date (measured as of the date of incurrence of such Permitted Additional Debt), (iii) such Permitted Additional Debt shall have no amortization, (iv) such Alternative Incremental Indebtedness shall either rank junior in right of security with the Term Loans or be unsecured, (v) at the time of incurrence thereof, no Event of Default shall have occurred or be continuing or would result therefrom (provided that, to the extent the proceeds of such Alternative Incremental Indebtedness are to be used by the Borrower or any other Loan Party to finance, in whole or in part, any Permitted Acquisition, other permitted investment in third parties that become Collateral (in each case including any such transaction that is subject to a letter of intent or purchase agreement) whose consummation is not conditioned on the availability of, or on obtaining, third party financing, then the effectiveness of such incurrence shall instead be subject solely to the absence of any Event of Default under Section 9.01(a), (f) or (g) after giving effect to such incurrence), and (vi) the proceeds of such Permitted Additional Debt shall be in the form of cash and used solely (i) first, to make the mandatory prepayments required under Section 2.12(a)(iv), and (ii) second, with the remaining proceeds, to finance Permitted Acquisitions and Investments in third parties that become Collateral (and not, for the avoidance of doubt, to pay, redeem, defease, acquire or otherwise satisfy any Indebtedness or pension obligations, other than Indebtedness of the third party target of such Permitted Acquisition or Investment in connection with the consummation of such Permitted Acquisition or Investment).~~

“Alternative Interest Rate Election Event” shall have the meaning assigned to such term in Section 10.24.

“Amendment No. 1” means that certain Amendment No. 1 to Amended and Restated Credit Agreement, dated as of the Amendment No. 1 Effective Date, by and among the Borrower, the “Guarantors” referred to on the signature pages thereto, the Administrative Agent and the Lenders party thereto.

“Amendment No. 1 Effective Date” means the date on which the conditions set forth in Section 2 of the Amendment No. 1 were satisfied, which date was April 7, 2020.

~~“Anti Cash Hoarding Sweep” shall have the meaning assigned to such term in Section 2.12(a)(vi).~~

“Amendment No. 2” means that certain Amendment No. 2 to Amended and Restated Credit Agreement, dated as of the Amendment No. 2 Effective Date, by and among the Borrower, the “Guarantors” referred to on the signature pages thereto, the Administrative Agent and the Lenders party thereto.

“Amendment No. 2 Effective Date” means the date on which the conditions set forth in Section 2 of the Amendment No. 2 were satisfied, which date was July 7, 2020.

“Amendment No. 2 Transactions” shall mean, collectively, (a) the negotiation, execution and delivery by the Loan Parties of Amendment No. 2 and the Loan Documents delivered in connection therewith, (b) the negotiation, execution and delivery of the UST Tranche A Facility Documentation and incurrence of UST Tranche A Facility Indebtedness, (c) the negotiation, execution and delivery

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of the UST Tranche B Facility Documentation and incurrence of UST Tranche B Facility Indebtedness, (d) the negotiation, execution and delivery by the Borrower and the Subsidiaries party thereto of amendments to the ABL Facility Documentation in connection with the matters described in clauses (a) through (c) and effecting certain other amendments in connection therewith, (e) the Treasury Equity Issuance and the negotiation, execution and delivery of the Treasury Equity Documents and (f) the payment of fees, costs and expenses in connection with the foregoing.

“**Apollo**” means, collectively, Apollo Capital Management, L.P. and one or more funds and/or accounts managed by its affiliates.

“**Applicable ECF Percentage**” shall mean, for any Excess Cash Flow Period, (a) 75% if the Total Leverage Ratio as of the last day of such Excess Cash Flow Period is greater than 3.25:1.00, (b) 50% if the Total Leverage Ratio as of the last day of such Excess Cash Flow Period is less than or equal to 3.25:1.00 and greater than 3.00:1.00, (c) 25% if the Total Leverage Ratio as of the last day of such Excess Cash Flow Period is less than or equal to 3.00:1.00 but is greater than 2.50:1.00, and (d) 0% if the Total Leverage Ratio as of the last day of such Excess Cash Flow Period is less than or equal to 2.50:1.00.

“**Applicable Margin**” shall mean, with respect to any Loan, a percentage per annum equal to, (a) until delivery of financial statements and Compliance Certificate for the fiscal quarter ending September 30, 2019 pursuant to Sections 6.01(b) and 6.02(a), (i) 7.50% per annum for Eurodollar Term Loans and (ii) 6.50% per annum for ABR Term Loans; and (b) thereafter, the percentages per annum set forth in the table below, based upon Consolidated EBITDA for the most recent Test Period as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a).

Pricing Level	Consolidated EBITDA	ABR Term Loans	Eurodollar Term Loans
I	≤ \$400,000,000	6.50%	7.50%
II	> \$400,000,000	5.50%	6.50%

Any increase or decrease in the Applicable Margin resulting from a change in Consolidated EBITDA shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a).

In addition, at any time an Event of Default exists as a result of the Borrower failing to deliver the applicable Compliance Certificate, at the option of the Lenders having more than 50% of the sum of the outstanding Term Loans, Consolidated EBITDA shall be deemed to be in Pricing Level I solely for the purposes of determining the Applicable Margin (but only for so long as such failure continues, after which such ratio and the Pricing Level shall be determined based on Consolidated EBITDA as set forth in the most recently-delivered Compliance Certificate).

In the event that any financial statement or compliance certificate delivered pursuant to Sections 6.01 or 6.02 is inaccurate (and this Agreement remains in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “**Applicable Period**”) than the Applicable Margin applied for such Applicable Period, then (i) the Borrower shall promptly upon obtaining knowledge of such inaccuracy deliver to the Administrative Agent a corrected financial statement and a corrected compliance certificate for such Applicable Period, (ii) the Applicable Margin shall be determined based on the corrected financial statement and corrected compliance certificate for such Applicable Period and (iii) the Borrower shall promptly pay to the Administrative Agent (for the account of the Lenders during the Applicable Period or their successors and assigns) the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Period. This paragraph shall not limit the rights of the Administrative Agent or the Lenders with

respect to [Section 2.07](#) hereof. No Default or Event of Default shall arise or exist as a result of the initial non-payment of such amounts so long as the Borrower complies with this paragraph.

“**Assignment and Acceptance**” shall mean an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in the form of [Exhibit B](#) or such other form as shall be approved by the Administrative Agent and the Borrower (such approval of the Borrower shall not be unreasonably withheld, conditioned or delayed).

“**Attorney Costs**” shall mean and shall include all reasonable and documented fees, expenses and disbursements of any law firm or other external legal counsel.

“**Attributable Indebtedness**” shall mean, 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.

“**Auction Procedures**” shall mean the auction procedures with respect to non-pro rata assignments of Term Loans pursuant to [Section 10.04\(k\)](#), set forth in [Exhibit K](#) hereto.

“**Audited Financial Statements**” shall mean the audited consolidated balance sheets of the Borrower and its consolidated subsidiaries for the fiscal years ending December 31, 2018 and December 31, 2017 and the related consolidated statements of operations, changes in shareholders’ equity and cash flows of the Borrower and its consolidated subsidiaries.

~~“**Available Cash**” means, at any time, the aggregate amount of all cash and Cash Equivalents on the balance sheet of the Borrower and its Subsidiaries in excess of the Available Cash Threshold, subject to the satisfaction of the condition to prepayment of the Term Loans contained in [Section 10.2.13\(a\)\(vii\)](#) of the ABL Credit Agreement (as in effect on the effective date of the Amendment):~~

~~“**Available Cash Threshold**” means \$200,000,000.~~

“**Blocked Person**” shall mean any Person that is publicly identified on the most current list of “Specially Designated Nationals and Blocked Persons” published by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”).

“**Board**” shall mean the Board of Governors of the Federal Reserve System of the United States of America.

“**Borrower**” shall have the meaning assigned to such term in the introductory statement to this Agreement.

“**Borrower Materials**” shall have the meaning assigned to such term in [Section 10.01](#).

“**Borrowing**” shall mean Loans of the same Class and Type made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“**Business Day**” shall mean any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close; *provided, however*, that when used in connection with a Eurodollar Loan, the term “**Business Day**” shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

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“**Canadian Subsidiary**” shall mean any Subsidiary that is organized under the Laws of Canada or any state or province thereof.

“**Capital Expenditures**” shall mean, for any period, the aggregate of (a) all amounts that would be reflected as additions to property, plant or equipment on a consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries in accordance with GAAP and (b) the value of all assets under Capitalized Leases incurred by the Borrower and its Restricted Subsidiaries during such period.

“**Capitalized Leases**” shall mean all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided* that, subject to [Section 1.11](#), for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“**Cash Collateral Account**” shall mean a blocked account at a commercial bank reasonably satisfactory to the Required Lenders and the Administrative Agent, in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“**Cash Equivalents**” shall mean any of the following types of Investments, to the extent owned by the Borrower or any Restricted Subsidiary:

- (a) Dollars and, to the extent consistent with past practice, Canadian Dollars;
  - (b) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of issuance thereof;
  - (c) investments in commercial paper maturing within 270 days from the date of issuance thereof and having, at such date of acquisition, rated at least A-2 or P-2 by S&P or Moody’s;
  - (d) investments in demand deposits, certificates of deposit, banker’s acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Administrative Agent, the ABL Agent, [the UST Tranche A Agent](#), [the UST Tranche B Agent](#) or any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000 and that issues (or the parent of which issues) commercial paper rated at least “Prime 1” (or the then equivalent grade) by Moody’s or “A 1” (or the then equivalent grade) by S&P;
  - (e) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (b) above and entered into with a financial institution satisfying the criteria of clause (d) above;
  - (f) investments in “money market funds” within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (e) above; and
  - (g) other short-term investments entered into in accordance with normal investment policies and practices of any Foreign Subsidiary consistent with past practices for cash management and constituting
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investments in governmental obligations and investment funds analogous to and having a credit risk not greater than investments of the type described in clauses (a) through (f) above.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than set forth in clause (a) above; *provided* that such amounts are converted into currencies listed in clause (a) within ten Business Days following the receipt of such amounts.

**“Cash Flow Forecast” shall have the meaning assigned to such term in Amendment No. 1.**

**“Cash Interest Portion”** shall have the meaning assigned to such term in Section 2.06(d).

**“Casualty Event”** shall mean any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Property (including any improvements thereon) to replace or repair such equipment, fixed assets or Real Property or as compensation for such condemnation event.

**“CDA First Lien Obligations”** shall have the meaning assigned to such term in the definition of “Net Proceeds”.

**“Change of Control”** shall mean:

- (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof), **in each case, other than the United States federal government or any other Governmental Authority on behalf thereof (or, in each case, any agent, trustee or other Person on behalf thereof, including, for the avoidance of doubt, any voting trust and the trustee thereof created to hold the Equity Interests for the benefit of the United States federal government or any other Governmental Authority),** of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower;
- (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated or approved by the board of directors of the Borrower nor (ii) appointed by directors so nominated or approved; or
- (c) a **“change of control”** (or similar event) shall occur under (i) the ABL Facility Documentation or any Permitted Refinancing thereof or (ii) any other Indebtedness for borrowed money, with an aggregate principal amount (in the case of this clause (ii)) in excess of the Threshold Amount.

**provided, that, notwithstanding anything in this definition to the contrary, in no event shall the Amendment No. 2 Transactions constitute a Change of Control.**

**“Charges”** shall have the meaning assigned to such term in Section 10.09.

**“Class”** when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Tranche B-2 Term Loans, Other Term Loans or Extended Term Loans, (b) any Commitment, refers to whether such Commitment is a Term Loan Commitment, Other Term Loan Commitment (and, in the case of an Other Term Loan Commitment, the Class of Term Loans to which such commitment relates), or a commitment in respect of Term Loans to be made pursuant to an Extension Offer and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments. Other Term Loan Commitments, Other Term Loans and

Extended Term Loans that have different terms and conditions, and each tranche of Extended Term Loans, shall be construed to be in different Classes.

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

“Collateral” shall mean all the “Collateral” as defined in any Collateral Document and shall also include the Mortgaged Properties.

“Collateral Agent” shall have the meaning assigned to such term in the introductory statement to this Agreement.

“Collateral and Guarantee Requirement” shall mean, at any time, the requirement that:

- (a) on the Restatement Effective Date the Administrative Agent and the Collateral Agent shall have received each Collateral Document to the extent required to be delivered on the Restatement Effective Date pursuant to Section 4.02(d), subject to the limitations and exceptions of this Agreement, duly executed by each Loan Party that is a party thereto;
  - (b) in each case subject to the limitations and exceptions set forth in this Agreement and the Collateral Documents, and to any action required to be taken by the Collateral Agent or the Administrative Agent to effectuate the same, the Obligations shall have been secured by:
    - (i) a perfected second priority security interest (subject to Liens permitted by Section 7.01) in all personal property of the Borrower and each Guarantor consisting of all accounts receivable, cash and Cash Equivalents, deposit accounts (other than First Lien Term Loan Priority Accounts ~~(as defined in the ABL Intercreditor)~~ and UST Tranche B Joint Accounts) and supporting obligations and books and records related to the foregoing and, in each case, proceeds thereof;
    - (ii) a perfected first priority pledge (subject to Liens permitted by Section 7.01) of all Equity Interests directly held by the Borrower or any Guarantor;
    - (iii) with respect to each Material Real Property, (1) a first priority mortgage, deed of trust or deed to secure debt (as applicable) (subject to Liens permitted by Section 7.01) on such Material Real Property pursuant to Mortgages that satisfy the requirements of clause (c)(i) below and (2) a perfected first priority security interest (subject to Liens permitted by Section 7.01) in all personal property relating to such Material Real Property and all fixtures thereon, provided, that, to the extent the opinion delivered to Collateral Agent confirms that the filing of the applicable Mortgage itself perfects Collateral Agent’s first priority security interest in such fixtures, no separate fixture filing shall be required; and
    - (iv) within one hundred twenty (120) days following the repayment in full of the CDA First Lien Obligations (or, if the proviso to this clause (iv) applies, the date the Requisite CDA Consent is obtained, as applicable), a first priority mortgage, deed of trust or deed to secure debt (as applicable) on each Pension Real Property (such mortgage, deed of trust or deed, a “**Pension Property Mortgage**”) pursuant to Mortgages that satisfy the requirements of clause (c)(i) below (subject to Liens permitted by Section 7.01) and a perfected first priority security interest (subject to Liens permitted by Section 7.01) in all personal property relating to such Pension Real Property and all fixtures thereon; *provided* that to the extent such Pension Property Mortgage is prohibited under the terms of the Contribution Deferral Agreement (as in effect as of the date hereof), the Loan Parties shall use commercially
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reasonable efforts to obtain the necessary consents under the Contribution Deferral Agreement to permit such Pension Property Mortgage (the "Requisite CDA Consent") and if after using such commercially reasonable efforts, such consent is not obtained, the Loan Parties shall not be required to deliver such Pension Property Mortgage until all obligations under the Contribution Deferral Agreement to the extent permitted under Section 7.03(u) shall have been paid in full; ~~and~~

(v) subject to clause (vi) below, a perfected first priority security interest (subject to Liens permitted by Section 7.01) in substantially all other personal property ~~of the Borrower and each Guarantor, including Term Loan~~ (other than UST Tranche B Priority Accounts (as defined in the ABL Intercreditor Agreement) of the Borrower and each Guarantor, including First Lien Term Priority Accounts, UST Tranche B Joint Accounts, investment property, contracts, patents, copyrights, trademarks and other general intangibles (subject to a license in favor of the ABL Agent and/or the UST Tranche A Agent and/or the UST Tranche B Agent, as applicable, to use intellectual property, subject to the ABL Intercreditor Agreement), commercial tort claims, letter of credit rights, intercompany notes and proceeds of the foregoing; and

(vi) (1) a perfected first priority security interest (subject to Liens permitted by Section 7.01) in all UST Tranche B Joint Collateral and (2) a perfected second priority security interest in all UST Tranche B Priority Collateral (subject to Liens permitted by Section 7.01);

(c) subject to the limitations and exceptions set forth in this Agreement and the Collateral Documents, to the extent a security interest in and mortgage lien on any Material Real Property (or, solely with respect to clause (b)(iv) above, any Pension Real Property) is required under Section 4.02, 6.11 or 6.13 (together with any Material Real Property that is subject to a Mortgage on the Restatement Effective Date pursuant to clause (b)(iii) above, each, a "**Mortgaged Property**"), the Administrative Agent and the Collateral Agent shall have received:

(i) counterparts of a Mortgage with respect to such Real Property duly executed and delivered by the record owner of such property in form suitable for filing or recording in all filing or recording offices that the Collateral Agent may reasonably deem necessary or desirable in order to create a valid and subsisting perfected Lien on the property and/or rights described therein in favor of the Collateral Agent for the benefit of the Secured Parties, and evidence that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent and the Required Lenders (it being understood that if a mortgage tax will be owed on the entire amount of the indebtedness evidenced hereby, then the amount secured by the Mortgage shall be limited to 120% (or, in the case of Real Property located in the state of New York, 100%) of the fair market value of the property at the time the Mortgage is entered into if such limitation results in such mortgage tax being calculated based upon such fair market value);

(ii) fully paid policies of title insurance (or marked-up title insurance commitments having the effect of policies of title insurance) with respect to such Material Real Property issued by the Title Company or another nationally recognized title insurance company reasonably acceptable to the Collateral Agent in form and in an amount reasonably acceptable to the Collateral Agent (not to exceed 100% of the fair market value of such Material Real Property (or interest therein, as applicable) covered thereby), insuring the Mortgages to be valid, subsisting Liens on the property described therein, free and clear of all Liens other than Liens permitted pursuant to Section 7.01 (such policies, "**Mortgage Policies**"), each

of which shall (A) to the extent reasonably necessary, include such reinsurance arrangements (with provisions for direct access, if reasonably necessary) as shall be reasonably acceptable to the Collateral Agent, (B) contain a "tie-in" or "cluster" endorsement, if available under applicable law (i.e., policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), (C) have been supplemented by such endorsements (or where such endorsements are not available, customary opinions of special counsel, architects or other professionals reasonably acceptable to the Collateral Agent and the Required Lenders) as shall be reasonably requested by the Collateral Agent or the Required Lenders (including endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity, revolving credit (if available after the applicable Loan Party uses commercially reasonable efforts), doing business, public road access, variable rate, environmental lien, subdivision, mortgage recording tax, separate tax lot and so-called comprehensive coverage over covenants and restrictions);

- (iii) either (1) an American Land Title Association/National Society for Professional Surveyors (ALTA/NSPS) form of survey for which all charges have been paid, dated a date, containing a certification and otherwise being in form and substance reasonably satisfactory to the Collateral Agent (a "**Survey**") or (2) such documentation ("**Other Survey Documentation**") as may be required by the Title Company to omit the standard survey exception to coverage under the Mortgage Policy with respect to such Material Real Property and issue affirmative endorsements reasonably requested by the Collateral Agent, including "same as" survey and comprehensive endorsements;
  - (iv) a customary legal opinion, addressed to the Collateral Agent and the Secured Parties with respect to the Mortgage on such Material Real Property; provided, however, with respect to any Material Real Property as of the Restatement Effective Date, Borrower shall only be required to deliver a legal opinion if such Material Real Property is located in a Required Opinion State; and
  - (v) in order to comply with the Flood Laws, the following documents: (A) a completed standard "life of loan" flood hazard determination form (a "**Flood Determination Form**"); (B) if any of the material improvement(s) to the improved Material Real Property is located in a special flood hazard area, a notification thereof to the Borrower ("**Borrower Notice**") and, if applicable, notification to the Borrower that flood insurance coverage under the National Flood Insurance Program ("**NFIP**") is not available because the community in which the property is located does not participate in the NFIP; (C) documentation evidencing the Borrower's receipt of the Borrower Notice (e.g., a countersigned Borrower Notice or return receipt of certified U.S. Mail or overnight delivery); and (D) if the Borrower Notice is required to be given and flood insurance is available in the community in which such Material Real Property is located, a copy of one of the following: the flood insurance policy, the Borrower's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued or such other evidence of flood insurance reasonably satisfactory to the Required Lenders, Administrative Agent and the Collateral Agent (any of the foregoing being "**Evidence of Flood Insurance**") (the foregoing, collectively, the "**Mortgage Policy Conditions**");
- (d) after the Restatement Effective Date, each Restricted Subsidiary of the Borrower that is not an Excluded Subsidiary shall become a Guarantor and signatory to this Agreement pursuant to a joinder agreement in accordance with Section 6.11 or 6.13; provided that, notwithstanding the foregoing provisions, any Subsidiary of the Borrower that would otherwise constitute an Excluded Subsidiary that Guarantees
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any ABL Facility Indebtedness, any UST Tranche A Facility Indebtedness, any UST Tranche B Facility Indebtedness, any Junior Financing, Permitted Additional Debt, or any Permitted Refinancing of any Indebtedness thereof, or that is a borrower under the ABL Facility (or any Permitted Refinancing thereof), the UST Tranche A Facility (or any Permitted Refinancing thereof) or the UST Tranche B Facility (or any Permitted Refinancing thereof) shall be a Guarantor hereunder for so long as it Guarantees such Indebtedness (or is a borrower with respect thereto); and

- (e) after the Restatement Effective Date, YRC Freight Canada Company and Reimer Holding B.V. shall become a Guarantor and signatory to this Agreement pursuant to a joinder agreement in accordance with, and take the other actions specified in, Schedule 6.13(a).

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary:

- (A) the foregoing definition shall not require, unless otherwise stated in this clause (A), the creation or perfection of pledges of, security interests in, Mortgages on, the obtaining of title insurance with respect to or the taking of any other actions with respect to: (i) any fee owned Real Property that is not Material Real Property (other than Pension Property Mortgages solely to the extent required to be delivered pursuant to clause (b)(iv) of this definition) and any Leasehold Property (it being understood there shall be no requirement to obtain any landlord waivers, estoppels or collateral access letters), (ii) motor vehicles (other than tractors, trucks, trailers and other rolling stock) consisting of an employee or light vehicle and other assets subject to certificates of title with an individual fair market value of less than \$40,000, *provided* that the aggregate fair market value of all assets excluded from the Collateral and Guarantee Requirement pursuant to this sub-clause (ii) of this clause (A), together with the aggregate book value of all assets excluded from the Collateral and Guarantee Requirement pursuant to sub-clause (xiv) of this clause (A), shall not exceed \$5,000,000 in the aggregate at any time outstanding, (iii) letter of credit rights (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a UCC financing statement) of an amount less than \$5,000,000 and commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than \$5,000,000, (iv) any governmental licenses or state or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby (except to the extent such prohibition or restriction is rendered ineffective under the UCC or other applicable law), (v) Collateral in which pledges or security interests are prohibited or restricted by applicable law or require the consent of any governmental authority or third party, which consent has not been obtained, (vi) Margin Stock, (vii) Equity Interests in a bona fide joint venture formed after the Restatement Effective Date with any Person that is not an Affiliate of any Loan Party (but only to the extent that the organizational documents of such Subsidiaries or agreements with other equity holders prohibit or restrict the pledge thereof without the consent of the other equity holders under restrictions that are enforceable under the UCC or other applicable law and such consent has not been obtained), (viii) Equity Interests of (or held as assets by) Immaterial Subsidiaries, or captive insurance Subsidiaries, (ix) any lease, license or agreement or any property to the extent a grant of a security interest therein would violate or invalidate such lease, license or agreement or similar arrangement or create a right of termination in favor of any other party thereto after giving effect to the applicable anti-assignment provisions of the UCC or other applicable law, other than proceeds and receivables thereof, the assignment of which is deemed effective under the UCC or other applicable law, notwithstanding such prohibition, (x) any assets or rights subject to a purchase money security interest, Capitalized Lease or similar arrangement, ~~(xi) reserved~~ other than in each case, the UST Tranche B Priority Collateral and UST Tranche B Joint Collateral, (xi) Treasury Only Collateral, (xii) any assets to the extent a security interest in such assets could result in adverse Tax consequences as reasonably determined by the Borrower, in consultation with the Administrative Agent (provided that the Borrower shall give notice of such determination to the Required Lenders and, at the request of the Required Lenders, shall consult with the Required Lenders), (xiii) any intent-to-use trademark application prior to the filing

of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable Federal law, (xiv) any equipment or other collateral with a net book value in an aggregate amount not to exceed \$5,000,000 for all such equipment or other collateral (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a UCC financing statement); *provided* that the aggregate fair market value of all assets excluded from the Collateral and Guarantee Requirement pursuant to this sub-clause (xiv), together with the aggregate net book value of all assets excluded from the Collateral and Guarantee Requirement pursuant to sub-clause (ii) of this clause (A), shall not exceed \$5,000,000 in the aggregate at any time outstanding, and (xv) other assets not specifically included in the Collateral in circumstances where the cost of obtaining a security interest in such assets exceeds the practical benefit to the Lenders afforded thereby as reasonably determined by the Administrative Agent in consultation with the Borrower.

(B) (i) the foregoing definition shall not require perfection by "control" except with respect to (1) Equity Interests or Indebtedness represented or evidenced by certificates or instruments and (2) deposit accounts and security accounts (which are required to be subject to Control Agreements pursuant to Section 3.04 of the Security Agreement), other than Excluded Accounts; (ii) perfection by possession or control shall not be required with respect to (x) any intercompany notes in an aggregate principal amount not to exceed \$5,000,000 and (y) any other notes or other evidence of Indebtedness in an aggregate principal amount not to exceed \$5,000,000; (iii) except in the case of (A) Canadian Subsidiaries, (B) Dutch Subsidiaries and (C) other Foreign Subsidiaries that are not Excluded Foreign Subsidiaries, no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the United States (including the Equity Interests of any Foreign Subsidiary) or to perfect such security interests (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction); and (iv) except to the extent that perfection and priority may be achieved (w) by the filing of a financing statement under the Uniform Commercial Code with respect to the Borrower or a Guarantor, (x) with respect to Real Property and the recordation of Mortgages in respect thereof, as contemplated by clauses (b)(iii) and (c) above, (y) with respect to Equity Interests or Indebtedness, by the delivery of certificates or instruments representing or evidencing such Equity Interests or Indebtedness along with appropriate undated instruments of transfer executed in blank or (z) by notation of liens on certificate of title, the Loan Documents shall not contain any requirements as to perfection or priority with respect to any assets or property described in clause (A) above and this clause (B);

(C) the Collateral Agent in its reasonable discretion may grant extensions of time for the creation or perfection of security interests in, and Mortgages on, or obtaining of title insurance or taking of other actions with respect to, particular assets (including extensions beyond the Restatement Effective Date) or any other compliance with the requirements of this definition (or any similar requirements set forth herein or in any other Loan Documents) where it reasonably determines, in consultation with the Borrower, that such creation or perfection of security interests or Mortgages, or such obtaining of title insurance or taking of other actions, or any other compliance with the requirements of this definition cannot be accomplished without undue delay, burden or expense by the time or times at which such act would otherwise be required by this Agreement or any Collateral Documents; *provided* that the Collateral Agent shall have received on or prior to the Restatement Effective Date, (i) UCC financing statements in appropriate form for filing under the UCC in the jurisdiction of incorporation or organization of each Loan Party, (ii) any certificates or instruments representing or evidencing Equity Interests of each direct wholly owned Subsidiary of the Borrower or any Guarantor, in each case accompanied by undated instruments of transfer and stock powers endorsed in blank and (iii) Mortgages and Mortgage Policies for each Material Real Property; and

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(D) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to the exceptions and limitations set forth in this Agreement and the Collateral Documents.

“**Collateral Documents**” shall mean, collectively, the Security Agreement, each of the Mortgages, collateral assignments, security agreements, pledge agreements, intellectual property security agreements, Control Agreements or other similar agreements delivered to the Administrative Agent or the Collateral Agent pursuant to [Section 4.02](#), [Section 6.11](#) or [Section 6.13](#), each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties; [and](#) the ABL Intercreditor Agreement ~~and the Second Lien Intercreditor Agreement (if any)~~.

“**Commitment**” shall mean, with respect to any Lender, such Lender’s Term Loan Commitment (including pursuant to any Refinancing Amendment or Extension Amendment).

“**Common stock**” means the common stock, par value \$0.01 per share, of Borrower.

“**Communications**” shall have the meaning assigned to such term in [Section 10.01](#).

“**Compliance Certificate**” shall mean a certificate substantially in the form of [Exhibit F](#).

“**Consolidated EBITDA**” shall mean, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income (other than clauses (viii) or (xi)), the sum of the following amounts for such period with respect to Borrower and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, any expenses or losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations or other derivative obligations, letter of credit fees, costs of surety bonds in connection with financing activities and any bank fees and financing fees (including commitment, underwriting, funding, “rollover” and similar fees and commissions, discounts, yields and other fees, charges and amounts incurred in connection with the issuance or incurrence of Indebtedness and all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Contracts entered into for the purpose of hedging interest or commodity rate risk) and annual agency, unused line, facility or similar fees paid under definitive documentation related to Indebtedness (whether amortized or immediately expensed),

(ii) provision for taxes based on income, profits or capital gains of the Borrower and the Restricted Subsidiaries, including, without limitation, federal, state, local, franchise and similar taxes and foreign withholding taxes paid or accrued during such period,

(iii) depreciation and amortization,

(iv) extraordinary, unusual or non-recurring charges, expenses or losses, *provided* that the aggregate amount added to “Consolidated EBITDA” pursuant to this clause (a)(iv) in any period, together with the aggregate amount added to Consolidated EBITDA pursuant to clause (a)(vi) of the definition of “Consolidated EBITDA”, shall not exceed in the aggregate 10.0% of

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Consolidated EBITDA for such period (as calculated prior to giving effect to any such adjustments),

(v) non-cash expenses, charges and losses (including reserves, impairment charges or asset write-offs, write-offs of deferred financing fees, losses from investments recorded using the equity method, purchase accounting adjustments and stock-based awards compensation expense), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to accounts receivable in the normal course or inventory; *provided* that if any of the non-cash charges referred to in this clause (v) represents an accrual or reserve for potential cash items in any future period, (1) the Borrower may determine not to add back such non-cash charge in the current period and (2) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to the extent paid,

(vi) restructuring costs and charges, integration costs, retention, recruiting, relocation and signing bonuses and expenses, and severance costs (including, for the avoidance of doubt, any bonuses payable in connection with the IBT Transactions); *provided* that the aggregate amount added to "Consolidated EBITDA" pursuant to this clause (a)(vi) in any period, together with the aggregate amount added to Consolidated EBITDA pursuant to clause (a)(iv) of the definition of "Consolidated EBITDA", shall not exceed in the aggregate 10.0% of Consolidated EBITDA for such period (as calculated prior to giving effect to any such adjustments),

(vii) Transaction Expenses, and any fees, costs and expenses in connection with any amendment, negotiation, modification, restatement, waiver, forbearance or other transaction in connection with the Amendment No. 2 Transactions provided that the aggregate amount added to "Consolidated EBITDA" pursuant to this clause (a)(vii) with respect to the Amendment No. 2 Transactions shall not exceed \$20,000,000.

(viii) pro forma cost savings for acquisitions (including the commencement of activities constituting such business), material dispositions (including the termination or discontinuance of activities constituting such business) of business entities or properties or assets, constituting a division or line of business of any business entity, division or line of business that is the subject of any such acquisition or disposition and operational changes and operational initiatives (collectively, "Cost Savings"), scheduled to be executed and realized (in the good faith determination of a Senior Financial Officer of the Borrower) in connection with any such transaction permitted hereunder, net of the amount of actual Cost Savings realized from such actions during such period; *provided* that (A) such Cost Savings are factually supportable and specifically identified, (B) such Cost Savings are scheduled to be executed and realized within twelve (12) months after the consummation of such transaction, (C) the Administrative Agent and the Required Lenders shall have received a certificate of a Senior Financial Officer of the Borrower, certifying the foregoing requirements and accompanied by a reasonably detailed statement or schedule of such Cost Savings; (D) the actions responsible for any expected Cost Savings are actually taken within twelve (12) months of the consummation of the relevant transaction, (E) any projected Cost Savings in respect of actions which are not actually taken within such twelve (12)-month period or have not been realized within such (12)-month period may no longer be added back in calculating Consolidated EBITDA pursuant to this clause (viii) for the applicable periods, (F) such Cost Savings are not duplicative of any other adjustments to Consolidated EBITDA pursuant to this definition and (G) the aggregate amount added to Consolidated EBITDA pursuant to this clause (a)(viii) in any period, together with the aggregate amount of all adjustments pursuant to Section

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1.10(c), shall not exceed in the aggregate 5.0% of Consolidated EBITDA for such period (as calculated prior to giving effect to any such adjustments),

(ix) [reserved],

(x) other transaction specific accruals, costs, charges, fees and expenses (including legal, tax, structuring and other costs and expenses) related to the Transactions, acquisitions, investments, restricted payments, dispositions or issuances, amendments, waivers or modifications of debt or equity (whether or not consummated) reasonably expected to be permitted under this Agreement or the consummation of which would result in the repayment in full of the Obligations (other than unasserted contingent indemnity and reimbursement obligations) (it being understood and agreed that this clause (a)(x) shall not permit adjustments of the type specified in clauses (a)(iv), (vi) or (viii)),

(xi) to the extent not already included in Consolidated Net Income, proceeds of business interruption insurance (other than business interruption insurance relating to COVID 19 (or any related virus) or any related events) received or reasonably expected to be received within 365 days after the end of such period; *provided* that any such expected proceeds that are not actually received in such 365 day period shall be deducted from Consolidated EBITDA in the fiscal quarter immediately following such 365 day period,

(xii) charges, losses or expenses to the extent indemnified or insured or reimbursed or reasonably expected to be indemnified, insured or reimbursed by a third party within 365 days after the end of such period; *provided* that any such expected amounts that are not actually received in such 365 day period shall be deducted from Consolidated EBITDA in the fiscal quarter immediately following such 365 day period,

(xiii) the amount of any minority interest expense attributable to minority interests of third parties in the positive income of any non-wholly owned Restricted Subsidiary,

(xiv) any net loss from disposed, abandoned or discontinued operations,

(xv) the amount of loss on sale of Securitization Assets and related assets to the Securitization Subsidiary in connection with a Qualified Securitization Financing,

(xvi) net realized losses under any Swap Contract or embedded derivatives that require similar accounting treatment and the application of Accounting Standard Codification Topic 815 and related pronouncements,

(xvii) the cumulative effect of a change in accounting principles,

(xviii) realized non-cash foreign exchange losses resulting from the impact of foreign currency changes on the valuation of assets or liabilities on the balance sheet of the Borrower and its Restricted Subsidiaries,

(xix) any losses attributable to Dispositions of Real Property,

less (b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period) and all other non-cash items of income for such period, (ii) any gains and income from investments recorded using the equity method,

(iii) extraordinary, unusual or non-recurring gains, (iv) non-cash gains representing adjustments to pension assets, (v) any gains attributable to Dispositions of Real Property and (vi) any gains arising out of transactions of the types described in clauses (a)(xii), (xiii), (xiv), (xv) and (xvi) above; *provided* that, for the avoidance of doubt, any gain representing the reversal of any non-cash charge referred to in clause (a) (v)(B) above for a prior period shall be added (together with, without duplication, any amounts received in respect thereof to the extent not increasing Consolidated Net Income) to Consolidated EBITDA in any subsequent period to such extent so reversed (or received).

Notwithstanding the foregoing, Consolidated Net Income and Consolidated EBITDA shall be calculated to exclude any amounts otherwise increasing or included in Consolidated Net Income and/or Consolidated EBITDA relating to (x) business interruption insurance relating to COVID 19 (or any related virus) or any related events or (y) any assistance programs provided by Governmental Agencies (or the equivalent).

“**Consolidated Net Income**” shall mean, with reference to any period, the net income (or loss) of the Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP on a consolidated basis (without duplication) for such period (without deduction for minority interests); *provided* that in determining Consolidated Net Income, (a) the net income of any other Person which is not a Subsidiary of the Borrower or is accounted for by the Borrower by the equity method of accounting shall be included only to the extent of the payment of cash dividends or cash distributions by such other Person to the Borrower or a Guarantor that could be made during such period; *provided, however*, that for purposes of calculating the Cumulative Credit for purposes of [Section 7.06\(e\)\(y\)](#), such income shall only be included (directly or indirectly) to the extent such cash dividends or other cash distributions are actually received from such other Person by the Borrower or a Guarantor, (b) the net income of any Subsidiary of the Borrower shall be excluded to the extent that the declaration or payment of cash dividends or similar cash distributions by that Subsidiary of that net income is not at the date of determination permitted by operation of its charter or any agreement, instrument or law applicable to such Subsidiary (other than (i) restrictions that have been waived or otherwise released, (ii) restrictions pursuant to the Loan Documents ~~and or, the ABL Facility Documentation or any agreements or documentation governing Alternative Incremental Indebtedness, the UST Tranche A Facility Documentation, the UST Tranche B Facility Documentation, the Treasury Equity Documents~~ and (iii) restrictions arising pursuant to an agreement or instrument if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by the Borrower in good faith)), and (c) the income or loss of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any Subsidiary or the date that such Person's assets are acquired by the Borrower or any Subsidiary shall be excluded.

“**Consolidated Total Assets**” shall mean the total assets of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the consolidated balance sheet of the Borrower for the most recently completed fiscal quarter for which financial statements have been delivered pursuant to [Section 6.01\(a\)](#) or (b).

“**Consolidated Total Debt**” shall mean, as of any date of determination, the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries (on a consolidated basis) outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP as long as such amount is no less than the aggregate face amount of such Indebtedness on such date, consisting of Indebtedness for borrowed money, Attributable Indebtedness or purchase money Indebtedness, debt obligations evidenced by bonds, debentures, promissory notes, loan agreements or similar instruments, and all Guarantees of any of the foregoing; *provided* that (i) Consolidated Total Debt shall not include Indebtedness in respect of letters of credit, bankers' acceptances and other similar contingent obligations, except to the extent of unreimbursed

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amounts thereunder, and (ii) Consolidated Total Debt shall not include obligations under Swap Contracts permitted hereunder.

“**Consolidated Working Capital**” shall mean, with respect to the Borrower and its Restricted Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; provided, that, increases or decreases in Consolidated Working Capital shall be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent or (b) the effects of purchase accounting.

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

“**Contribution Deferral Agreement**” means that certain Second Amended and Restated Contribution Deferral Agreement, dated as of January 31, 2014, by and between YRC Inc., USF Holland LLC (f/k/a USF Holland Inc.), New Penn Motor Express LLC (f/k/a New Penn Motor Express, Inc.), USF Reddaway Inc., certain other of the Subsidiaries of the Borrower, the Trustees for the Central States, Southeast and Southwest Areas Pension Fund, the Pension Fund Entities and each other pension fund from time to time party thereto and Wilmington Trust Company, all as the same may be amended, amended and restated, restated, supplemented or otherwise modified in accordance with the terms hereof.

“**Control**” shall have the meaning specified in the definition of “Affiliate”.

“**Control Agreement**” means an agreement, in form and substance reasonably satisfactory to the Required Lenders, which provides for the Collateral Agent to have “control” (for purposes of this definition, as defined in Section 9 104 of the UCC of the State of New York or Section 8-106 of the UCC of the State of New York, as applicable) of Cash Collateral Accounts, Deposit Accounts or Securities Accounts, as applicable.

“**Credit Agreement Refinancing Indebtedness**” shall mean Permitted Additional Debt or Indebtedness incurred pursuant to a Refinancing Amendment, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, restructure or refinance, in whole or part, existing Term Loans (including any successive Credit Agreement Refinancing Indebtedness) (“**Refinanced Debt**”); *provided* that (i) such extending, renewing, replacing, restructuring or refinancing Indebtedness is in an original aggregate principal amount (or accreted value, if applicable) not greater than the aggregate principal amount (or accreted value, if applicable) of the Refinanced Debt, except by an amount equal to accrued but unpaid interest, premiums and fees payable by the terms of such Indebtedness and reasonable fees, expenses, original issue discount and upfront fees incurred in connection with such exchange, modification, refinancing, refunding, renewal, restructuring, replacement or extension, (ii) such Refinanced Debt shall be repaid, defeased or satisfied and discharged with 100% of the Net Proceeds of the applicable Credit Agreement Refinancing Indebtedness and all accrued, due and payable interest, fees and premiums (if any) in connection therewith shall be paid promptly upon receipt of the proceeds of such Credit Agreement Refinancing Indebtedness, (iii) such Indebtedness does not have an earlier maturity and has a Weighted Average Life to Maturity equal to or greater than the Refinanced Debt; and (iv) and, in the case of any high yield notes constituting Credit Agreement Refinancing Indebtedness, such Indebtedness will not have mandatory prepayment provisions (other than related to customary asset sale and change of control and similar offers and AHYDO “catch up” payments) that would result in mandatory prepayment of such Indebtedness prior to the Refinanced Debt.

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“**Credit Extension**” shall mean a Borrowing.

“**Cumulative Credit**” shall mean, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

- (a) the Cumulative Retained Excess Cash Flow Amount at such time, plus
- (b) the cumulative amount of cash and Cash Equivalent proceeds from the sale of Equity Interests of the Borrower or of any direct or indirect parent of the Borrower after the Restatement Effective Date to the extent Not Otherwise Applied, plus
- (c) the aggregate amount of Declined Proceeds at such time that have been retained by the Borrower in accordance with Section 2.13(d), plus
- (d) to the extent not already included in the Cumulative Retained Excess Cash Flow Amount, an amount equal to any returns in cash and Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Borrower or any Restricted Subsidiary after the Restatement Effective Date in respect of any Investments made pursuant to Section 7.02(p)(y), and *provided* in each case that such amount does not exceed the amount of the original Investment made pursuant to Section 7.02(p)(y); minus
- (e) any amount of the Cumulative Credit used to make Investments pursuant to Section 7.02(p)(y) after the Restatement Effective Date and prior to such time, minus
- (f) any amount of the Cumulative Credit used to pay dividends or make distributions or other Restricted Payments pursuant to Section 7.06(d)(ii) or Section 7.06(e)(y) after the Restatement Effective Date and prior to such time, minus
- (g) any amount of the Cumulative Credit used to make payments or distributions in respect of Permitted Additional Debt or Junior Financing (or any Permitted Refinancing thereof) pursuant to Section 7.13(a)(vi) after the Restatement Effective Date and prior to such time.

Notwithstanding anything to the contrary in this Agreement, during the Specified Amendment No. 1 Period, the Cumulative Credit shall be unavailable for use under this Agreement and shall be disregarded in any calculation of or reference to any other term or provision herein.

“**Cumulative Retained Excess Cash Flow Amount**” shall mean, at any date, an amount, not less than zero in any fiscal year, determined on a cumulative basis equal to the aggregate cumulative sum of the Retained Percentage of Excess Cash Flow for all Excess Cash Flow Periods ending after the Restatement Effective Date and prior to such date; *provided*, that for purposes of Section 7.06(e)(y), (a) the Cumulative Retained Excess Cash Flow Amount shall only be available if the Total Leverage Ratio at the time of the making of such Investment, Restricted Payment or prepayment, redemption, purchase, defeasance or other payment, as the case may be, calculated on a Pro Forma Basis, is less than or equal to 3.75 to 1.00 and (b) the Cumulative Retained Excess Cash Flow Amount shall be reduced by the amount of Excess Cash Flow attributable to Foreign Subsidiaries to the extent and for so long as such Excess Cash Flow is excluded from Excess Cash Flow prepayments pursuant to Section 2.13(f).

“**Current Assets**” shall mean, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all assets that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current assets at such date of determination, other than (a) cash and Cash Equivalents, (b) amounts related to current or

deferred Taxes based on income or profits, (c) assets held for sale, (d) loans (permitted) to third parties, (e) pension assets, (f) deferred bank fees, and (g) derivative financial instruments.

“**Current Liabilities**” shall mean, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current liabilities at such date of determination, other than, without duplication (and to the extent otherwise included therein) (a) the current portion of any Indebtedness, (b) accruals of interest expense (excluding interest expense that is past due and unpaid), (c) accruals for current or deferred Taxes based on income or profits, (d) accruals of any costs or expenses related to restructuring reserves, (e) the current portion of pension liabilities and (f) revolving loans, swing line loans and letter of credit obligations under the ABL Facility or any other revolving credit facility.

“**Custodial Administration Agreement**” shall mean the ~~custodial administration agreement~~ Amended and Restated Custodial Administration Agreement, dated as of the Restatement Effective Date, by and among the Borrower, the Subsidiaries from time to time parties thereto, VINtek, Inc., as custodial administrator, the Collateral Agent, as administrative and collateral agent for the benefit of the Secured Parties, the ABL Agent, as administrative and collateral agent for the benefit of the ABL Secured Parties ~~and the~~, the UST Tranche A Agent, as administrative and collateral agent for the benefit of the UST Tranche A Secured Parties, the UST Tranche B Agent, as administrative and collateral agent for the benefit of the UST Tranche B Secured Parties and the Collateral Agent, as collateral agent for the benefit of the Secured Parties, the UST Tranche A Secured Parties, the UST Tranche B Secured Parties and the ABL Secured Parties.

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

“**Declined Proceeds**” shall have the meaning assigned to such term in Section 2.13(d).

“**Default**” shall mean any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of any grace period, or both, without cure or waiver hereunder, would be an Event of Default.

“**Deposit Account**” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“**Disposition**” or “**Dispose**” shall mean the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“**Disqualified Equity Interests**” shall mean any Equity Interest that, 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 Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all

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other Obligations that are accrued and payable and the termination of the Commitments), (c) provides for 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 ninety-one (91) days after the then Latest Maturity Date; *provided* that if such Equity Interests are issued pursuant to, or in accordance with a plan for the benefit of employees of the Borrower or the Restricted Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability.

**"Disqualified Lenders"** shall mean (i) each of those banks, financial institutions and other entities identified in writing prior to the Restatement Effective Date by the Borrower to the Administrative Agent and the Required Lenders, (ii) competitors of the Borrower or the Guarantors identified in writing from time to time by the Borrower to the Administrative Agent, and (iii) any known affiliates of the Persons identified pursuant to clause (i) or (ii); *provided* that a "competitor" or an affiliate of a competitor or an entity referenced in clause (i) shall not include any bona fide debt fund or investment vehicle (other than a Person which is excluded pursuant to clause (i) above) that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business and whose managers are not involved with any equity or equity-like investments or other investments with an equity component or characteristic managed by any Person described in clause (i) or (ii) above.

**"Dollars"** or **"\$"** shall mean lawful money of the United States of America.

**"Domestic Subsidiary"** shall mean any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

**"Dutch Auction"** shall mean an auction conducted by the Borrower in order to purchase Term Loans as contemplated by [Section 10.04\(k\)](#), in accordance in all material respects with the procedures set forth in [Exhibit K](#).

**"Dutch Subsidiary"** shall mean any Subsidiary that is organized under the Laws of the Netherlands or any state or province thereof.

**"Eligible Assignee"** shall mean (i) a Lender, (ii) an Affiliate of a Lender, (iii) a Related Fund of a Lender, and (iv) any other Person (other than a natural person) approved by the Administrative Agent and, unless an Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) has occurred and is continuing and except during the primary syndication of the Commitments to those institutions disclosed in writing by the Required Lenders to the Borrower and approved by the Borrower prior to the Restatement Effective Date, the Borrower (each such approval not to be unreasonably withheld, conditioned or delayed and the Borrower's approval being deemed to have been given in the event that the Borrower does not object in writing to an assignment within three (3) Business Days after receipt of written notice of such assignment); *provided* that, notwithstanding the foregoing, (A) **"Eligible Assignee"** shall not include the Borrower or any other Controlled Affiliate of the Borrower (it being understood that assignments to the Borrower may only be made pursuant to [Section 10.04\(k\)](#)) and (B) no Borrower consent shall be required if any Lender is required to assign all or any portion of its Loans by any Governmental Authority. **"Eligible Assignee"** shall not include any Disqualified Lender without the prior written consent of the Borrower (which may be withheld in the Borrower's sole discretion). Notwithstanding the foregoing or anything else to the contrary in this Agreement, each of the parties hereto acknowledges and agrees that the Administrative Agent (in its capacity as such) (x) shall not have any responsibility or obligation to determine whether any Lender or any

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potential assignee Lender is a Disqualified Lender and (y) shall not have any liability with respect to any assignment or participation made to a Disqualified Lender.

“**Environmental Laws**” shall mean all federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), and agreements in each case, relating to protection of the environment, natural resources, human health and safety (with respect to exposure to hazardous or toxic substances or wastes) or the presence, Release of, or exposure to, hazardous or toxic substances or wastes, or the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or the arrangement for such activities with respect to, hazardous or toxic substances or wastes.

“**Environmental Liability**” shall mean all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses and costs (including administrative oversight costs, capital and operating costs, injunctive relief, costs associated with financial assurance, permitting or closure requirements, natural resource damages and investigation or remediation costs), whether contingent or otherwise, arising out of or relating to (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release 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**” shall mean, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities) but excluding in each case any debt security that is convertible into, or exchanged for, Equity Interests.

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

“**ERISA Affiliate**” shall mean any Person, any trade or business (whether or not incorporated) that, together with a Loan Party or any Restricted Subsidiary, is or, within the six year period immediately preceding the Original Closing Date, was treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“**ERISA Event**” shall mean (a) a Reportable Event; (b) the failure to satisfy the minimum funding standard with respect to a Plan within the meaning of Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA, whether or not waived (unless such failure is corrected by the final due date for the plan year for which such failure occurred), (c) a determination that a Plan is, or is expected to be, in “at risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (d) the receipt by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of notice pursuant to Section 305(b)(3)(D) of ERISA that a Multiemployer Plan is or will be in “endangered status” or “critical status” (as defined in Section 305(b) of ERISA), or is, or is expected to be, “insolvent” (within the meaning of Section 4245 of ERISA); (e) the filing pursuant to Section 431 of the Code or Section 304 of ERISA of an application for the extension of any amortization period; (f) the failure to timely make a contribution required to be made with respect to any Plan or Multiemployer Plan; (g) the filing of a notice to terminate any Plan if such termination would require material additional contributions in order to be considered a

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standard termination within the meaning of Section 4041(b) of ERISA; (h) the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Plan or the termination of any Plan under Section 4041(c) of ERISA; (i) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (j) the incurrence by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (k) the receipt by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates from the PBGC or a plan administrator of any notice of an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (l) the receipt by a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability; (m) the occurrence of any event or condition that would reasonably be expected to result in the termination of a Plan or the appointment of a trustee to administer a Plan; (n) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to any Plan which could result in liability to a Loan Party or any Restricted Subsidiary or with respect to which a Loan Party or any Restricted Subsidiary is a "disqualified person" (as defined in Section 4975 of the Code) or a "party in interest" (as defined in Section 3(14) of ERISA); (p) the incurrence of any liability with respect to any Plan or Multiemployer Plan under Title IV of ERISA (other than premiums due and not delinquent under Section 4007 of ERISA); or (q) engagement in any transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

"**Eurodollar**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate (other than the Alternate Base Rate) determined by reference to the Adjusted LIBO Rate.

"**Event of Default**" shall have the meaning assigned to such term in Article 8.

"**Excess Cash Flow**" shall mean, for any period, an amount equal to:

(a) the sum, without duplication, of:

- (i) Consolidated Net Income for such period,
- (ii) an amount equal to the amount of all non-cash charges to the extent deducted in arriving at such Consolidated Net Income,
- (iii) decreases in Consolidated Working Capital for such period (other than any such decreases arising from acquisitions or dispositions by the Borrower and its Restricted Subsidiaries completed during such period),
- (iv) cash receipts in respect of Swap Contracts during such period to the extent such receipts were not otherwise included in arriving at such Consolidated Net Income,
- (v) the amount of tax expense deducted in determining Consolidated Net Income for such period to the extent it exceeds the amount of cash taxes paid in such period,
- (vi) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income,

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(b) the sum, without duplication, of:

- (i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income,
  - (ii) the amount of Capital Expenditures made in cash during such period (or committed to be made within 90 days after the end of such period) to the extent financed with Internally Generated Cash,
  - (iii) the aggregate amount of payments made in cash during such period (or committed to be paid in cash within 90 days after the end of such period) (other than Capital Expenditures) and capitalized in accordance with GAAP to the extent financed with Internally Generated Cash,
  - (iv) the aggregate amount of all principal payments of Indebtedness of the Borrower and its Restricted Subsidiaries during such period, in each case to the extent financed with Internally Generated Cash (including (A) the principal component of payments in respect of Capitalized Leases and (B) voluntary prepayments or buybacks of Term Loans made pursuant to [Section 10.04\(k\)](#), (in an amount equal to the discounted amount actually paid in respect of the principal amount of such Term Loans), but excluding (W) all voluntary prepayments of Term Loans (other than voluntary prepayments made pursuant to [Section 10.04\(k\)](#)), (X) all prepayments of Indebtedness on the Restatement Effective Date in connection with the Refinancing Transactions, (Y) all prepayments, redemptions or repurchases in respect of (i) Permitted [Second Junior](#) Priority Additional Debt (or any Permitted Refinancing thereof), except to the extent permitted under [Section 7.13\(a\)](#) and (ii) Junior Financing, except to the extent permitted under [Section 7.13\(a\)](#) and (Z) all prepayments of loans under the ABL Facility or any other revolving credit facility made during such period unless there is a corresponding permanent commitment reduction in connection therewith (it being agreed that any amount excluded pursuant to clause (W), (X), (Y) or (Z) may not be deducted under any other clause of this definition),
  - (v) an amount equal to the aggregate net non-cash gain on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,
  - (vi) increases in Consolidated Working Capital for such period (other than any such increases arising from acquisitions or dispositions by the Borrower and its Restricted Subsidiaries during such period),
  - (vii) cash payments by the Borrower and its Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and its Restricted Subsidiaries other than Indebtedness and that were made with Internally Generated Cash and were not deducted or were excluded in calculating Consolidated Net Income,
  - (viii) the amount of Investments and acquisitions made during such period (or committed to be made within 90 days after the end of such period) in cash pursuant to [Section 7.02](#) (other than [Section 7.02\(a\)](#) or (c)) (net of the cash return on any such Investments received during such period, except to the extent such return was included in the determination of Consolidated Net Income) to the extent that such Investments and acquisitions were not expensed and were financed with Internally Generated Cash,
  - (ix) the amount of cash taxes paid in such period (or reasonably expected to be paid within 90 days of the end of such period) to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period (which amounts shall be included in the calculation of Excess Cash Flow for the period in which they are expensed),
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(x) cash expenditures in respect of Swap Contracts during such fiscal year to the extent such expenditures were not deducted or were excluded in arriving at such Consolidated Net Income, and

(xi) the aggregate amount of Restricted Payments made in cash permitted by Section 7.06(d)(i) during such period (or committed to be made or paid in cash within the next 90 days after the end of such period).

Notwithstanding anything in the definition of any term used in the definition of Excess Cash Flow to the contrary, (i) all components of Excess Cash Flow shall be computed for the Borrower and its Restricted Subsidiaries on a consolidated basis and (ii) for purposes of calculating Excess Cash Flow for any period with respect to each Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby consummated during such Excess Cash Flow Period and for the purposes of calculating Consolidated Working Capital, the (A) total assets of a target of such Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby (other than cash and Cash Equivalents), as calculated as at the date of consummation of the applicable Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby, which may properly be classified as current assets on a consolidated balance sheet of Borrower and its Restricted Subsidiaries in accordance with GAAP (assuming, for the purpose of this clause (A), that such Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby has been consummated) and (B) the total liabilities of Borrower and its Restricted Subsidiaries, as calculated as at the date of consummation of the applicable Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby, which may properly be classified as current liabilities (other than the current portion of any long term liabilities and accrued interest thereon) on a consolidated balance sheet of Borrower and its Restricted Subsidiaries in accordance with GAAP (assuming, for the purpose of this clause (B), that such Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby has been consummated), shall, in the case of both immediately preceding clauses (A) and (B), be calculated as the difference between the Consolidated Working Capital at the end of the applicable period from the date of consummation of the Permitted Acquisition or other Investment of all or substantially all of the assets of another Person or business line permitted hereby. To the extent any amounts that are committed to be made or paid or are reasonably expected to be paid are deducted as permitted by clause (b) of the definition of Excess Cash Flow in respect of any period, such amounts shall not be deducted again for purposes of calculating Excess Cash Flow for the period in which such amounts are actually paid.

“**Excess Cash Flow Period**” shall mean each fiscal year of the Borrower commencing with the fiscal year ending December 31, 2019, but in all cases for purposes of calculating the Cumulative Retained Excess Cash Flow Amount shall only include such fiscal years for which financial statements and a Compliance Certificate have been delivered in accordance with Sections 6.01(a) and 6.02(a), respectively, and for which any prepayments required by Section 2.13(a)(i) (if any) have been made (it being understood that the Retained Percentage of Excess Cash Flow for any Excess Cash Flow Period shall be included in the Cumulative Retained Excess Cash Flow Amount regardless of whether a prepayment is required by Section 2.13(a)(i), except to the extent that a prepayment is not made in reliance on Section 2.13(f), in which case the Cumulative Retained Excess Cash Flow Amount shall be reduced by the Retained Percentage of the Excess Cash Flow for which the Applicable ECF Percentage has not been applied to make a prepayment pursuant to Section 2.13(a)(i)).

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.

“**Excluded Account**” means (i) any Deposit Account specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Loan Parties’ salaried

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employees, (ii) any petty cash account to the extent the balance therein does not exceed (x) \$1,000,000 in the aggregate for more than five (5) Business Days, and/or (y) \$5,000,000 in the aggregate for more than one (1) Business Day, (iii) any zero-balance account, (iv) any account specifically and exclusively used to maintain cash collateral required pursuant to the ABL Credit Agreement, ~~and~~ (v) any escrow account, (vi) the UST Tranche A Controlled Account and (vii) the UST Tranche B Controlled Account.

“**Excluded CDA Proceeds**” shall have the meaning assigned to such term in the definition of “Net Proceeds”.

“**Excluded Foreign Subsidiary**” shall mean any Foreign Subsidiary (other than any Canadian Subsidiary or Dutch Subsidiary) of the Borrower that does not individually have total assets or revenues (for the period of four fiscal quarters most recently ended) that exceed 3.0% of the Borrower’s total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* that the aggregate amount of assets or revenues (for the period of four fiscal quarters most recently ended) of such Subsidiaries shall not at any time exceed 7.0% of the Borrower’s total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* further that if, as of the date the financial statements for any fiscal quarter of the Borrower are delivered or required to be delivered hereunder, the consolidated assets or revenues of all Excluded Foreign Subsidiaries shall have, as of the last day of such fiscal quarter, exceeded the limits set forth above, then within sixty (60) days (or such later date as agreed by the Administrative Agent and the Required Lenders in their reasonable discretion) after the date such financial statements are so delivered (or so required to be delivered), the Borrower shall cause one or more Foreign Subsidiaries to comply with Section 6.11 such that, as a result thereof, the consolidated assets and revenues of all Excluded Foreign Subsidiaries do not exceed such limits. For the avoidance of doubt, no Canadian Subsidiary or Dutch Subsidiary shall constitute an Excluded Foreign Subsidiary.

“**Excluded Property**” shall have the meaning assigned to such term in the Security Agreement.

“**Excluded Real Property**” shall mean (a) any Real Property set forth on Schedule 1.01(a) and (b) any Pension Real Property.

“**Excluded Subsidiary**” shall mean (a) any bona fide joint venture formed after the Restatement Effective Date with any Person that is not an Affiliate of any Loan Party, (b) any Immaterial Subsidiary, (c) any Subsidiary that is prohibited by applicable Law whether or not existing on the Restatement Effective Date or Contractual Obligations existing on the Restatement Effective Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from Guaranteeing the Obligations or if Guaranteeing the Obligations would require governmental (including regulatory) consent, approval, license or authorization (unless such contractual obligation is waived or otherwise removed or such consent, approval, license or authorization has been obtained), (d) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent (at the direction of the Required Lenders), in consultation with the Borrower, the burden or cost or other consequences (other than adverse tax consequences) of providing a Guarantee of the Obligations shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (e) any other Subsidiary with respect to which, in the reasonable judgment of the Borrower, the tax consequences of providing a Guarantee could be adverse in consultation the Administrative Agent (provided that the Borrower shall give notice of such determination to the Required Lenders and, at the request of the Required Lenders, shall consult with the Required Lenders), (f) any Excluded Foreign Subsidiary of the Borrower, and (g) any Securitization Subsidiary, captive insurance company or non-profit Subsidiary; provided that no Person shall be an Excluded Subsidiary to the extent it guarantees or pledges any of its assets to secure, directly or indirectly, any other Indebtedness of any Loan Party in excess of the Threshold Amount; provided, further, that in the event that any Excluded Subsidiary guarantees or otherwise becomes an obligor under any

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Indebtedness, the aggregate principal amount of which exceeds the Threshold Amount, then such Excluded Subsidiary shall, notwithstanding the foregoing, no longer constitute an Excluded Subsidiary, and shall become a Loan Party hereunder. If any Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall only be permitted to be released from its Guarantee so long as the fair market value of any and all Investments then held by the Loan Parties in such Person are permitted as an Investment under [Section 7.02\(c\)\(iii\)](#) and [Section 7.02\(p\)](#), at the time such Person becomes an Excluded Subsidiary pursuant to clause (a) of the definition of "Excluded Subsidiary".

"**Existing Credit Agreement**" shall have the meaning assigned to such term in the recitals.

"**Existing Loan Documents**" shall have the meaning assigned to such term in [Section 1.14](#).

"**Extended Term Loans**" shall have the meaning assigned to such term in [Section 2.19\(a\)](#).

"**Extension**" shall have the meaning assigned to such term in [Section 2.19\(a\)](#).

"**Extension Amendment**" shall have the meaning assigned to such term in [Section 2.19\(c\)](#).

"**Extension Offer**" shall have the meaning assigned to such term in [Section 2.19\(a\)](#).

"**Facility**" shall mean the Tranche B-2 Term Loans, the Extended Term Loans or the Other Term Loans, as the context may require.

"**FATCA**" shall mean Sections 1471 through 1474 of the Code, as in effect on the Restatement Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"**Federal Funds Effective Rate**" shall mean, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"**Fee Letter**" shall mean the Fee Letter dated as of the Restatement Effective Date by and between the Borrower and Apollo.

"**Fees**" shall have the meaning assigned to such term in [Section 2.05](#).

["First Lien Term Priority Accounts" shall have the meaning assigned to the term "Non-UST Tranche B Priority Accounts" in the ABL Intercreditor Agreement.](#)

["First Lien Term Priority Collateral" shall have the meaning assigned to the term "Non-UST Tranche B Term Priority Collateral" in the ABL Intercreditor Agreement.](#)

"**Flood Laws**" shall mean the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board).

["Forecast Date" shall have the meaning assigned to such term in Amendment No. 1.](#)

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“**Foreign Disposition**” shall have the meaning set forth in [Section 2.13\(f\)](#).

“**Foreign Subsidiary**” shall mean any direct or indirect Subsidiary of the Borrower which is not a Domestic Subsidiary.

“**GAAP**” shall mean generally accepted accounting principles in the United States of America, as in effect from time to time, subject to [Section 1.11](#); *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Restatement Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“**Governmental Authority**” shall mean any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government [\(including, without limitation, the U.S. Treasury\)](#).

“**Granting Lender**” shall have the meaning assigned to such term in [Section 10.04\(j\)](#).

“**Guarantee**” shall mean, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness of the payment or performance of such Indebtedness, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of any other Person, whether or not such Indebtedness is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include (i) endorsements for collection or deposit, in either case in the ordinary course of business, (ii) customary and reasonable indemnity obligations in effect on the Restatement Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness) or (iii) product warranties. 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.

“**Guaranteed Obligations**” shall have the meaning specified in [Section 11.01](#).

“**Guarantors**” shall mean (i) each Domestic Subsidiary of the Borrower as of the Restatement Effective Date (other than an Excluded Subsidiary), (ii) each Canadian Subsidiary and Dutch Subsidiary of the Borrower that issues a Guarantee of the Obligations after the Restatement Effective Date pursuant to

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Schedule 6.13(a) and (iii) each Subsidiary that issues a Guarantee of the Obligations after the Restatement Effective Date pursuant to Section 6.11 (which Section 6.11, for the avoidance of doubt, does not require that any Excluded Subsidiary provide such a Guarantee) or otherwise. For avoidance of doubt, the Borrower may cause any Restricted Subsidiary that is not (and is not required to be) a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent, and any such Restricted Subsidiary shall be treated as a Guarantor hereunder for all purposes (each such Subsidiary, an "Electing Guarantor") and may also cause the Guaranty of any such Electing Guarantor, and any Liens securing such Guaranty, to be released upon providing written notice to the Administrative Agent and the Collateral Agent that such Electing Guarantor shall be treated as an Excluded Subsidiary to the extent consistent with the definition of Excluded Subsidiary. The Guarantors as of the Restatement Effective Date are (A) set forth on Schedule 1.01(b) and (B) not Electing Guarantors.

"**Guaranty**" shall mean, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

"**Hazardous Materials**" shall mean (a) any petroleum products, distillates or byproducts and all other hydrocarbons, coal ash, radon gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, chlorofluorocarbons and all other ozone-depleting substances and (b) any chemical, material, substance or waste that is prohibited, limited or regulated by or pursuant to any Environmental Law.

"**IBT**" shall mean the International Brotherhood of Teamsters.

"**IBT Agreement**" shall mean that certain National Master Freight Agreement, effective April 1, 2019, among the IBT, YRC Inc. (formerly, Yellow Transportation, Inc. and Roadway Express, Inc.), USF Holland LLC and New Penn Motor Express LLC, as amended, restated, modified, supplemented, extended, renewed or replaced from time to time.

"**IBT Extension Agreement**" shall mean that certain Extension of the Agreement for the Restructuring of the YRC Worldwide Inc. Operating Companies, by and among YRC Inc., USF Holland, Inc., New Penn Motor Express, Inc., USF Reddaway and the Teamsters National Freight Industry Negotiating Committee of the IBT.

"**IBT Transactions**" shall mean the modification and extension through March 31, 2024 or any date thereafter, including pursuant to a subsequent modification, extension, approval and ratification, of the IBT Agreement, and the approval and ratification of the IBT Extension Agreement by the members of the IBT in accordance in all material respects with all applicable laws, rules, regulations and other requirements relating thereto.

"**Immaterial Subsidiary**" shall mean any Subsidiary of the Borrower that does not individually have total assets or revenues (for the period of four fiscal quarters most recently ended) that exceed 1.0% of the Borrower's total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided* that the aggregate amount of assets or revenues (for the period of four fiscal quarters most recently ended) of such Subsidiaries shall not at any time exceed 2.5% of the Borrower's total assets or revenues as of the end of each fiscal quarter (in the case of revenues, for the period of four fiscal quarters ending on such date); *provided further* that if, as of the date the financial statements for any fiscal quarter of the Borrower are delivered or required to be delivered hereunder, the consolidated assets or revenues of all Restricted Subsidiaries so designated by the Borrower as "**Immaterial Subsidiaries**" shall have, as of the last day of such fiscal quarter, exceeded the limits set forth above, then within 10 Business Days (or such later date as agreed by the Administrative Agent and the Required Lenders in their reasonable discretion) after the date such financial statements are so delivered

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(or so required to be delivered), the Borrower shall redesignate one or more Immaterial Subsidiaries, in each case in a written notice to the Required Lenders and Administrative Agent, such that, as a result thereof, the consolidated assets and revenues of all Restricted Subsidiaries that are still designated as "Immaterial Subsidiaries" do not exceed such limits. Upon any such Restricted Subsidiary ceasing to be an Immaterial Subsidiary pursuant to the preceding sentence, such Restricted Subsidiary, to the extent not otherwise qualifying as an Excluded Subsidiary, shall comply with Section 6.11, to the extent applicable.

"**Indebtedness**" shall mean, as to any Person at a particular time, without duplication and without reference to what constitutes indebtedness or a liability in accordance with GAAP, all of the following:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;
- (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;
- (e) indebtedness (excluding prepaid interest thereon) described in clauses (a) through (d) and (f) through (h) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness;
- (g) all obligations of such Person to purchase, redeem, retire or otherwise acquire for value any Disqualified Equity Interests (but solely to the extent required to occur on or prior to the Latest Maturity Date (other than as a result of a change of control, asset sale or similar event)); and
- (h) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person (i) 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 joint venturer, except to the extent such Person's liability for such Indebtedness is otherwise expressly contractually limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Debt and (ii) shall exclude (A) trade accounts payable in the ordinary course of business, (B) any earn-out obligation until such earn-out obligation has become due and payable, (C) any current and undeferred pension contributions or health and welfare contributions due from such Person and/or its applicable Subsidiaries to any Pension Fund Entity, (D) liabilities accrued in the ordinary course, (E) deferred revenues, liabilities associated with customer prepayments and deposits and any such obligations incurred under ERISA, and other accrued obligations (including transfer pricing), in each case incurred in the ordinary course of business, (F) operating leases, (G) customary obligations under employment agreements and deferred compensation and (H) deferred tax liabilities. 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. The amount of Indebtedness of any Person for

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purposes of clause (e) that is limited in recourse to the property encumbered thereby shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

“**Indemnified Taxes**” shall have the meaning assigned to such term in [Section 3.01\(a\)](#).

“**Indemnitee**” shall have the meaning assigned to such term in [Section 10.05\(b\)](#).

“**Information**” shall have the meaning assigned to such term in [Section 10.16](#).

“**Intellectual Property Security Agreement**” shall have the meaning assigned to such term “Grant of Security Interest” in the Security Agreement.

“**Intercompany Note**” shall mean (i) for existing promissory notes as of the Restatement Effective Date, each promissory note (or amended and restated promissory note) with subordination language reasonably acceptable to the Required Lenders and (ii) for promissory notes issued after the Restatement Effective Date, a promissory note substantially in the form of [Exhibit E](#).

“**Intercreditor Agreement**” shall include all permitted intercreditor agreements [\(including the ABL Intercreditor Agreement and any Junior Lien Intercreditor Agreement\)](#).

“**Interest Payment Date**” shall mean (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months’ duration been applicable to such Borrowing.

“**Interest Period**” shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last Business Day) in the calendar month that is 1, 2, 3 or 6 (or, if agreed by all applicable Lenders, 12) months thereafter (or any shorter period agreed by all applicable Lenders), as the Borrower may elect; *provided, however*, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period and (c) no Interest Period for any Loan shall extend beyond the maturity date of such Loan. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“**Internally Generated Cash**” shall mean cash resulting from operations of the Borrower and the Restricted Subsidiaries and not constituting (x) proceeds of the issuance of (or contributions in respect of) Equity Interests, (y) proceeds of Dispositions (other than in the ordinary course of business) and Casualty Events or (z) proceeds of the incurrence of Indebtedness.

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

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securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of related transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, (i) the amount of any Investment shall equal (A) the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment minus, except for purposes of calculating the Cumulative Credit, (B) the aggregate amount of dividends, distributions or other payments received in cash in respect of such Investment (including by way of a sale or other disposition of such Investment) but not in excess of the original amount invested and (ii) the fair market value of any and all Investments (which for the avoidance of doubt shall include all debt, equity and other items described in the foregoing provisions of this definition) held by any Loan Party in any Guarantor that becomes an Excluded Subsidiary pursuant to clause (a) of the definition of "Excluded Subsidiary" shall be deemed to be an Investment incurred on the date such Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of "Excluded Subsidiary".

"**Junior Financing**" shall mean any unsecured Indebtedness incurred by the Borrower or a Guarantor in the form of one or more series of unsecured notes or loans having an outstanding aggregate principal amount of not less than the Threshold Amount and any Subordinated Indebtedness (for greater certainty, not including the ABL Facility Indebtedness, [the UST Tranche A Facility Indebtedness or the UST Tranche B Facility Indebtedness](#)).

"**Junior Financing Documentation**" shall mean any documentation governing any Junior Financing.

"**Junior Lien Intercreditor Agreement**" shall mean a "junior lien" intercreditor agreement among the Collateral Agent and one or more [Junior Lien Representatives for holders of Permitted Junior Priority Additional Debt, in form and substance reasonably satisfactory to the Required Lenders and the Borrower](#).

"**Junior Lien Representative**" shall mean, with respect to any series of Permitted [Junior Priority Additional Debt](#), the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

"**Latest Maturity Date**" shall mean, at any date of determination, the latest maturity or expiration date applicable to any Loan hereunder at such time, including the latest maturity or expiration date of any Tranche B-2 Term Loan, any Other Term Loan or any Extended Term Loan, in each case as extended in accordance with this Agreement from time to time.

"**Laws**" shall mean, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, requirements, and agreements with, any Governmental Authority.

"**Leasehold Property**" shall mean any leasehold interest of any Loan Party as lessee under any lease of Real Property.

"**Lender**" shall mean each lender from time to time party hereto. For avoidance of doubt, each Additional Lender is a Lender to the extent any such Person has executed and delivered a Refinancing

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Amendment, as the case may be, and to the extent such Refinancing Amendment shall have become effective in accordance with the terms hereof and thereof. As of the Restatement Effective Date, Schedule 2.01 sets forth the name of each Lender.

“**Lender Indemnitees**” shall have the meaning assigned to such term in Section 10.05(b).

“**LIBO Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate per annum determined by the Administrative Agent by reference to the applicable Bloomberg LIBOR screen page at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the commencement of such Interest Period for deposits in Dollars (as set forth by any service selected by the Administrative Agent that has been nominated by the ICE Benchmark Administration as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; *provided that*, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, and except as set forth in Section 10.24, the “**LIBO Rate**” shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period.

“**Lien**” shall mean any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease or financing lease having substantially the same economic effect as any of the foregoing).

“**Liquidity**” means, as of any date of determination, the sum of (A) unrestricted cash and Cash Equivalents of the Loan Parties as of such date and (B) the aggregate amount of “**Availability**” under the ABL Credit Agreement (as such term is defined in the ABL Credit Agreement as in effect as of the date hereof and without giving effect to proviso in such definition) so long the conditions for utilizing have been satisfied other than with respect to the delivery of a borrowing request or similar funding notice, which the Borrower is permitted to deliver. Liquidity shall not include cash and Cash Equivalents held in the UST Tranche A Controlled Account or the UST Tranche B Controlled Account.

“**Liquidity Test Period**” shall mean the period commencing on the Amendment No. 2 Effective Date and ending on the first date after for which Consolidated EBITDA for a Test Period ending on the last day of a fiscal quarter ending on or after September 30, 2020 is greater than \$200,000,000 and the Borrower shall have delivered a Compliance Certificate to the Administrative Agent showing such calculation in reasonable detail.

“**Loan**” shall mean any Term Loan.

“**Loan Documents**” shall mean this Agreement (including, without limitation, any amendments to this Agreement), the Collateral Documents, the Custodial Administration Agreement, the Fee Letter, the Administrative Fee Letter, each Refinancing Amendment, each Extension Offer and each amendment of any Loan Document in connection therewith, and the Term Notes, if any, executed and delivered pursuant to Section 2.04(e).

“**Loan Parties**” shall mean, collectively, the Borrower and each Guarantor.

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“**Margin Stock**” shall have the meaning assigned to such term in Regulation U.

“**Master Agreement**” shall have the meaning specified in the definition of “**Swap Contract**”.

“**Material Adverse Effect**” shall mean a (a) material adverse effect on the business, operations, assets, liabilities (actual or contingent), operating results or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform their payment obligations under the Loan Documents to which the Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the rights and remedies available to the Lenders, the Administrative Agent or the Collateral Agent under any Loan Document (other than due to the action or inaction of any Agent or any Lender); provided, that with respect to the foregoing clause (a), the impacts of COVID 19 on the business, operations, assets, liabilities (actual or contingent), operating results or financial condition of Borrower and its Restricted Subsidiaries, taken as a whole, will be disregarded.

“**Material Real Property**” shall mean each Real Property that is (i) owned in fee by a Loan Party, (ii) located in the United States and (iii) not an Excluded Real Property.

“**Maturity Date**” shall mean, (i) with respect to the Tranche B-2 Term Loans, June 30, 2024 (the “**Original Term Loan Maturity Date**”), (ii) with respect to any tranche of Extended Term Loans, the final maturity date as specified in the applicable Extension Offer accepted by the respective Lender or Lenders and (iii) with respect to any Other Term Loans, the final maturity date as specified in the applicable Refinancing Amendment; *provided* that if any such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

~~“**Maximum Incremental Facility Amount**” shall mean an amount not to exceed \$200,000,000.~~

“**Maximum Rate**” shall have the meaning assigned to such term in Section 10.09.

“**Minimum Extension Condition**” shall have the meaning assigned to such term in Section 2.19(b).

“**MNPI**” shall mean material information concerning the Borrower, Subsidiary or Controlled Affiliate of any of the foregoing or their securities that has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD under the Securities Act and the Exchange Act. For purposes of this definition, “material information” means information concerning the Borrower, the Subsidiaries or any Controlled Affiliate of any of the foregoing or any of their securities that could reasonably be expected to be material for purposes of the United States Federal and State securities laws and, where applicable, foreign securities laws.

“**Moody’s**” shall mean Moody’s Investors Service, Inc., or any successor thereto.

“**Mortgage Policies**” shall have the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“**Mortgaged Property**” shall have the meaning specified in the definition of “Collateral and Guarantee Requirement.” The Mortgaged Properties as of the Restatement Effective Date are set forth on Schedule 1.01(c).

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“**Mortgages**” shall mean, collectively, the mortgages, deeds of trust, trust deeds, hypothecs deeds to secure debt and similar instruments by the Loan Parties in favor or for the benefit of the Collateral Agent on behalf of the Secured Parties creating and evidencing a Lien on a Mortgaged Property in form and substance reasonably satisfactory to the Required Lenders, Collateral Agent and the Borrower, and any other mortgages executed and delivered pursuant to [Section 4.02](#), [6.11](#) or [6.13](#).

“**Multiemployer Plan**” shall mean any multiemployer plan as defined in Section 4001(a)(3) of ERISA subject to the provisions of Title IV of ERISA to which a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates is an “employer” as defined in Section 3(5) of ERISA.

“**Net Equity Proceeds**” shall mean 50% of the cash proceeds from the issuance or sale by the Borrower (or contributions in respect) of any Equity Interests issued after the Restatement Effective Date, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale, provided, that, if the amount of any estimated taxes exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid.

“**Net Proceeds**” shall mean:

- (a) 100% of the cash proceeds actually received by the Borrower or any Restricted Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation and similar awards, but in each case only as and when received) from any Disposition or Casualty Event, net of the following:
- (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes,
  - (ii) other than with respect to a Pension Real Property Event, required debt payments and required payments (including principal amount, premium or penalty, if any, interest, fees and expenses and other amounts) of other obligations that are secured by the applicable asset or property (other than pursuant to the Loan Documents, the ABL Facility Documentation (other than in respect of ABL Priority Collateral), [the UST Tranche A Facility Documentation, \(other than in respect of the UST Tranche A Only Collateral\)](#), [the UST Tranche B Facility Documentation, \(other than in respect of the UST Tranche B Priority Collateral and the UST Tranche B Only Collateral\)](#) or any Permitted [Second Junior](#) Priority Additional Debt),
  - (iii) in the case of a Disposition or a Casualty Event with respect to any Pension Real Property (a “**Pension Real Property Event**”), to the extent the Contribution Deferral Agreement (as in effect as of the date hereof) requires the repayment or prepayment with the Net Proceeds of such Pension Real Property Event of any Specified Pension Fund Obligations which are secured on a first lien basis by such Pension Real Property (such obligations, “**CDA First Lien Obligations**”), the Net Proceeds of such Pension Real Property Event shall be reduced by an amount equal to the amount of such Specified Pension Fund Obligations that are so repaid or prepaid with such proceeds and have not been declined by the holders thereof,
  - (iv) in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause
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(iv) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof,

(v) taxes paid or reasonably estimated to be payable as a result thereof (provided, that if the amount of any such estimated taxes exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition or Casualty Event, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid),

(vi) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) or (v) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Restricted Subsidiaries with respect to the assets subject to the Disposition or Casualty Event including, without limitation, liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction), and

(vii) any funded escrow established pursuant to the documents evidencing any such sale or disposition to secure any indemnification obligations or adjustments to the purchase price associated with any such sale or disposition;

*provided*, that if no Event of Default exists such proceeds, other than Real Property Disposition Proceeds, may be applied by the Borrower or any Restricted Subsidiary to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions or any acquisition permitted hereunder of all or substantially all the assets of, or all the Equity Interests (other than directors' qualifying shares) in, a Person or division or line of business of a Person (or any subsequent investment made in a Person, division or line of business previously acquired) that in each case become Collateral (or, in the case of the acquisition of the Equity Interests of a Person, such Person becomes a Loan Party under the Loan Documents), in each case within 270 days of such receipt, and such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 270 days of such receipt, so used or contractually committed with a third party to be so used (it being understood that if any portion of such proceeds are not so used within such 270 day period but within such 270 day period are contractually committed with a third party to be used, then upon the termination of such contract or if such Net Proceeds are not so used within the later of such 270 day period and 180 days from the entry into such contractual commitment, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso; it being understood that such proceeds shall constitute Net Proceeds if there is a Specified Default at the time of a proposed reinvestment unless such proposed reinvestment is made pursuant to a binding commitment with a third party entered into at a time when no Specified Default was continuing); *provided, further* that, (i) except with respect to (I) Real Property Disposition Proceeds and (II) at any time during the Amendment No. 1 Specified Period, any other Net Proceeds, no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless the aggregate net proceeds exceeds \$7,500,000 in any fiscal year, commencing upon the expiration of the Amendment No. 1 Specified Period (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (a)), and (ii) during the Specified Rolling Stock Prepayment Period, all Net Proceeds from any Disposition of Specified Rolling Stock in excess of the Specified Rolling Stock Reinvestment Threshold in any fiscal year shall be applied to prepay the Term Loans in accordance with Section 2.13(a)(ii) without giving effect to any thresholds (other than such Specified Rolling Stock Reinvestment Threshold) or reinvestment rights, and (iii) pending reinvestment in accordance with this proviso, (A) proceeds from the Disposition of Rolling Stock constituting First Lien Term Priority Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such

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Disposition is made, be deposited and maintained in a First Lien Term Priority Account and (B) proceeds from the Disposition of UST Tranche B Joint Collateral shall, not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition is made, be deposited in and maintained in a UST Tranche B Joint Account, and

- (b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale, *provided*, that if the amount of any estimated taxes exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Borrower or the Restricted Subsidiaries shall be disregarded.

“**Non-Consenting Lender**” has the meaning set forth in Section 3.06(b).

“**Not Otherwise Applied**” shall mean, with reference to any amount of net proceeds of any transaction or event, that such amount (a) was not required to be applied to prepay the Loans pursuant to Section 2.13(a), and (b) was not previously applied in determining the permissibility of a transaction under the Loan Documents where such permissibility was (or may have been) pursuant to Section 7.02(p)(y), Section 7.03(ee), Section 7.06(e)(y) or 7.13(a)(vi).

“**Obligations**” shall mean 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, 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 (or would accrue but for the operation of applicable Debtor Relief Laws), regardless of whether such interest and fees are allowed or allowable claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents include (a) the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Agent or Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

“**OFAC**” shall have the meaning assigned to such term in the definition of “Blocked Person”.

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

“**Original Closing Date**” shall mean February 13, 2014.

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“**Original Term Loan Maturity Date**” shall have the meaning assigned to such term in the definition of “Maturity Date”.

~~“**Other Applicable Indebtedness**” shall have the meaning assigned to such term in [Section 2.12\(a\)\(i\)](#).~~

“**Other Survey Documentation**” shall have the meaning specified in the definition of “Collateral and Guarantee Requirement”.

“**Other Taxes**” shall have the meaning assigned to such term in [Section 3.01\(b\)](#).

“**Other Term Loan Commitments**” shall mean one or more Classes of term loan commitments hereunder that result from a Refinancing Amendment entered into after the Restatement Effective Date.

“**Other Term Loans**” shall mean one or more Classes of Term Loans that result from a Refinancing Amendment entered into after the Restatement Effective Date.

“**Participant Register**” shall have the meaning assigned to such term in [Section 10.04\(f\)](#).

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**Pension Fund Entities**” shall mean those entities identified on [Schedule 1.01\(d\)](#) hereto.

“**Pension Contribution Cap**” means, as of any date of determination, (i) for any such date of determination occurring from and after the Restatement Effective Date and on or prior to the first anniversary of the Restatement Effective Date, \$150,000,000, (ii) for any such date of determination occurring after the first anniversary of the Restatement Effective Date but on or prior to the second anniversary of the Restatement Effective Date, \$153,000,000, (iii) for any such date of determination occurring after the second anniversary of the Restatement Effective Date but on or prior to the third anniversary of the Restatement Effective Date, \$156,060,000, (iv) for any such date of determination occurring after the third anniversary of the Restatement Effective Date but on or prior to the fourth anniversary of the Restatement Effective Date, \$159,181,200 and (v) for any such date of determination occurring thereafter, \$162,364,824.

“**Pension Real Property**” shall mean any Real Property for so long as such Real Property secures the obligations of the Borrower under the Contribution Deferral Agreement on a first lien basis on the Restatement Effective Date, as set forth on [Schedule 1.01\(a\)](#).

“**Pension Real Property Event**” shall have the meaning assigned to such term in the definition of “Net Proceeds”.

“**Perfection Certificate**” shall mean a certificate substantially in the form of Exhibit II to the Security Agreement or any other form reasonably approved by the Collateral Agent and the Borrower, as the same shall be supplemented from time to time.

“**Permits**” shall mean all necessary certificates, licenses, permits, franchises, trade names, certificates of occupancy, consents and other approvals required under applicable Laws for the operation of any Real Property.

“**Permitted Acquisition**” shall have the meaning assigned to such term in [Section 7.02\(b\)](#).

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“Permitted Acquisition Provisions” shall have the meaning assigned to such term in [Section 2.17\(c\)](#).

“Permitted Additional Debt” shall mean Indebtedness incurred by the Borrower or any Guarantor, which Indebtedness may be (x) in the form of one or more series of notes or in the form of bank loans and, in either case, secured by the Collateral on a junior basis to the Obligations (“Permitted ~~Second Junior~~ Priority Additional Debt”) or (y) in the form of one or more series of notes or in the form of bank loans and unsecured; *provided* that (i) such Indebtedness is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, (ii) the other terms and conditions of such Indebtedness (excluding pricing, fees, rate floors and optional prepayment or redemption terms), if different from the Term Loans, are customary market terms for Indebtedness of such type but in no event shall such terms and conditions (taken as a whole) be materially more restrictive to the Borrower and its Subsidiaries than the terms and conditions hereof (*provided*, that the financial maintenance covenant on the then outstanding Term Loans shall be amended to provide the Lenders the benefit of any financial maintenance covenant of such Permitted Additional Debt that is in addition to or more restrictive in any material manner than the financial maintenance covenant on the then outstanding Term Loans) (*provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness (or such shorter period as the Administrative Agent with the consent of the Required Lenders may agree in their sole discretion), 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 of this clause (ii) shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent or the Required Lenders notify the Borrower within such five Business Day period (or such shorter period as the Administrative Agent with the consent of the Required Lenders may agree in its sole discretion) that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees)), (iii) [reserved], (iv) no Default shall exist immediately prior to or after giving effect to such incurrence subject; ~~in the case of any such Indebtedness which is Alternative Incremental Indebtedness~~, to the Permitted Acquisition Provisions (if applicable) and (v) if such Indebtedness is Permitted Additional Debt that is secured, a ~~Senior Junior~~ Representative acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of the ~~Second Junior~~ Lien Intercreditor Agreement. Permitted Additional Debt will include any Registered Equivalent Notes issued in exchange therefor.

~~“Permitted Junior Priority Additional Debt” shall have the meaning assigned to such term in the definition of “Permitted Additional Debt”.~~

“Permitted Refinancing” shall mean, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *provided* that (a) the original aggregate principal amount (or accreted value, if applicable) does not exceed the aggregate principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except (i) by an amount equal to accrued but unpaid interest, premiums and fees payable by the terms of such Indebtedness and reasonable fees, expenses, original issue discount and upfront fees incurred in connection with such modification, refinancing, refunding, renewal, replacement or extension and (ii) by an amount equal to any existing available commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to [Section 7.03\(e\)](#), the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement 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 greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to [Section 7.03\(e\)](#), at the

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time thereof, no Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is Indebtedness permitted pursuant to [Section 2.03\(b\)](#), [2.03\(p\)](#) or [2.03\(g\)](#), or is otherwise a Junior Financing, (i) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment or in lien priority to the Obligations, the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment or in lien priority, as applicable, to the Obligations on terms (taken as a whole) (x) at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended (provided that a certificate of a Responsible Officer delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness (or such shorter period as the Administrative Agent with the consent of the Required Lenders may agree in its sole discretion), 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 foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent or the Required Lenders notify the Borrower within such five Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees)) or (y) otherwise reasonably acceptable to the Required Lenders), and (ii) the obligors (including any guarantors) in respect of the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement or extension shall not include any Person other than the obligors (including any guarantors) of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended unless otherwise permitted hereby, (e) in the case of any Permitted Refinancing in respect of the ABL Facility, such Permitted Refinancing is a revolving working capital facility and is secured only by all or any portion of the collateral securing the ABL Facility (but not by any other assets) pursuant to one or more security agreements subject, in the case of assets constituting (or required to constitute) Collateral, to the ABL Intercreditor Agreement, (f) in the case of any Credit Agreement Refinancing Indebtedness, the Permitted Refinancing shall constitute Credit Agreement Refinancing Indebtedness ~~and~~ (g) in the case of any Permitted Refinancing in respect of UST Tranche A Facility Indebtedness, such Permitted Refinancing is secured only by all or any portion of the collateral securing the UST Tranche A Facility Indebtedness (but not by any other assets) and is subject to the ABL Intercreditor Agreement as "UST Tranche A Obligations", (h) in the case of any Permitted Refinancing in respect of the UST Tranche B Facility Indebtedness, such Permitted Refinancing is secured only by all or any portion of the collateral securing the UST Tranche B Facility Indebtedness (but not by any other assets) and is subject to the ABL Intercreditor Agreement as "UST Tranche B Obligations" and (i) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is unsecured, the Indebtedness resulting from such modification, refinancing, refunding, renewal, replacement or extension must be unsecured. When used with respect to any specified Indebtedness, "Permitted Refinancing" shall mean the Indebtedness incurred to effectuate a Permitted Refinancing of such specified Indebtedness.

"Permitted Repricing Amendment" shall have the meaning set forth in [Section 10.08\(b\)](#).

~~"Permitted Second Priority Additional Debt" shall have the meaning assigned to such term in the definition of "Permitted Additional Debt".~~

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

~~"PIK Amount" shall have the meaning assigned to such term in [Section 2.06\(d\)](#).~~

"PIK Interest" shall have the meaning assigned to such term in [Section 2.06\(d\)](#).

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“**PIK Period**” shall have the meaning assigned to such term in [Section 2.06\(d\)](#).

“**Plan**” shall mean any employee pension benefit plan within the meaning of Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Sections 412 and 430 of the Code or Sections 302 and 303 of ERISA and in respect of which a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates is, or if such plan were terminated would under Section 4069 of ERISA be deemed to be, or within the six year period immediately preceding the date hereof was, a “contributing sponsor” as defined in Section 4001(a)(13) of ERISA or an “employer” as defined in Section 3(5) of ERISA.

“**Platform**” shall have the meaning assigned to such term in [Section 10.01](#).

“**Prepayment Premium**” shall have the meaning assigned to such term in [Section 2.12\(d\)](#).

“**Prime Rate**” shall mean, as of any day, the rate last quoted by The Wall Street Journal as the “Prime Rate” in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as reasonably determined by the Administrative Agent).

“**Pro Forma Basis**” shall mean, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with [Section 1.10](#).

“**Pro Rata Share**” shall mean, with respect to each Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments (or, if Commitments have been terminated, the principal amount of the Loans) under the applicable Facility or Facilities of such Lender at such time and the denominator of which is the amount of the aggregate Commitments (or, if the Commitments have been terminated, the principal amount of the Loans) under the applicable Facility or Facilities at such time.

“**Projections**” shall have the meaning set forth in [Section 6.01\(c\)](#).

“**Public Lender**” shall have the meaning assigned to such term in [Section 10.01](#).

“**Qualified Equity Interests**” shall mean any Equity Interests that are not Disqualified Equity Interests.

“**Qualified Securitization Financing**” means any Securitization Facility of a Securitization Subsidiary that meets the following conditions: (i) the Borrower shall have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and its Restricted Subsidiaries party to the Securitization Facility; (ii) all sales of Securitization Assets and related assets by the Borrower or any Restricted Subsidiary to the Securitization Subsidiary or any other Person are made at fair market value (as determined in good faith by the Borrower); (iii) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings; and (iv) the obligations under such Securitization Facility are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Borrower or any of its Restricted Subsidiaries (other than a Securitization Subsidiary).

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“**Real Property**” shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“**Real Property Disposition Proceeds**” shall mean any Net Proceeds realized from a Disposition of, or Sale and Leaseback Transaction with respect to, any Real Property, including, for the avoidance of doubt, any Pension ~~Real Property~~ in each case, consummated on or after the Restatement Effective Date (other than, in each case, leases of Real Property entered into in the ordinary course of business (excluding Sale and Leaseback Transactions)).

“**Receivables Assets**” shall mean (a) any accounts receivable owed to the Borrower or a Restricted Subsidiary subject to a Receivables Facility and the proceeds thereof and (b) all collateral securing such accounts receivable, all contracts and contract rights, in each case, of the type which would constitute ABL Priority Collateral (as defined in the ABL Intercreditor Agreement), guarantees or other obligations in respect of such accounts receivable, all records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in connection with a non-recourse accounts receivable factoring arrangement, except for Standard Securitization Undertakings, assigned or otherwise transferred or pledged by the Borrower in connection with a Receivables Facility.

“**Receivables Facility**” shall mean an arrangement between the Borrower or a Restricted Subsidiary and another Person pursuant to which (a) the Borrower or such Restricted Subsidiary, as applicable, sells (directly or indirectly) in the ordinary course of business to such Person accounts receivable owing by customers, together with Receivables Assets related thereto, (b) the obligations of the Borrower or such Restricted Subsidiary, as applicable, thereunder are non-recourse (except for Securitization Purchase Obligations) to the Borrower and such Restricted Subsidiary and (c) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings.

“**Refinanced Debt**” shall have the meaning specified in the definition of “Credit Agreement Refinancing Indebtedness”.

“**Refinancing Amendment**” shall mean an amendment to this Agreement executed by each of (a) the Borrower, (b) the Administrative Agent, (c) each Additional Lender that will make an Other Term Loan pursuant to such Refinancing Amendment and (d) each existing Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.18.

“**Refinancing Transaction**” shall have the meaning assigned to such term in the recitals

“**Register**” shall have the meaning assigned to such term in Section 10.04(d).

“**Registered Equivalent Notes**” shall mean, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Regulation T**” shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

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“**Regulation U**” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Rejection Notice**” shall have the meaning assigned to such term in [Section 2.13\(d\)](#).

“**Related Fund**” shall mean, with respect to any Lender that is a fund or commingled investment vehicle that invests in loans, any other fund that invests in loans and is managed or advised by the same investment advisor/manager as such Lender or by an Affiliate of such investment advisor/manager.

“**Related Parties**” shall mean, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“**Release**” shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment or from, within or upon any vessel, vehicle, building, structure, facility or fixture.

“**Reportable Event**” shall mean any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived with respect to a Plan.

“**Request for Credit Extension**” shall mean a request by the Borrower in accordance with the terms of [Section 2.03](#) and substantially in the form of [Exhibit C](#), or such other form as shall be approved by the Administrative Agent.

“**Required Class Lenders**” shall mean, as of any date of determination, Lenders of a Class having more than 50% of the sum of the outstanding Loans and unused Commitments of the applicable Class.

“**Required Lenders**” shall mean, at any time, Lenders having Loans and unused Term Loan Commitments representing more than 50% of the sum of all Loans outstanding and unused Term Loan Commitments at such time.

“**Required Opinion State**” shall mean each of the following states: Pennsylvania, California, Ohio, New York, Illinois, New Jersey, Texas, Michigan, Tennessee, North Carolina, Oregon, Georgia, Maryland, Indiana, Missouri, Wisconsin, South Carolina, Nevada, Minnesota and Utah.

“**Responsible Officer**” shall mean the chief executive officer, president, vice president, chief financial officer, treasurer, assistant treasurer, director of treasury or other similar officer of a Loan Party and, as to any document delivered on the Restatement Effective Date, any secretary or assistant secretary of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed by the recipient of such document 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 by the recipient of such document to have acted on behalf of such Loan Party.

“**Restatement Effective Date**” means the date on which the conditions specified in [Section 4.02](#) are satisfied (or waived in accordance with Article 9), which date is September 11, 2019.

“**Restricted Payment**” shall mean any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on

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account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest of the Borrower or any Restricted Subsidiary, or on account of any return of capital to the Borrower's or a Restricted Subsidiary's stockholders, partners or members (or the equivalent Persons thereof).

"**Restricted Subsidiary**" shall mean each Subsidiary of the Borrower.

"**Retained Percentage**" shall mean, with respect to any Excess Cash Flow Period (a) 100% minus (b) the Applicable ECF Percentage with respect to such Excess Cash Flow Period.

"**Rolling Stock**" shall mean any vehicles, tractors, trucks, trailers, tank trailer and other trailers, or similar vehicles and trailers, railroad cars, locomotives, stacktrains and other rolling stock and accessories used on such railroad cars, locomotives or other rolling stock (including superstructures and racks).

"**S&P**" shall mean Standard & Poor's Ratings Service, or any successor thereto.

"**Sale and Leaseback Transaction**" shall mean any arrangement, directly or indirectly, whereby a seller or transferor shall sell or otherwise transfer any real or personal property and then or thereafter lease, or repurchase under an extended purchase contract, conditional sales or other title retention agreement, the same property.

"**Scheduled Property**" shall have the meaning assigned to such term in Section 7.05(l).

"**SEC**" shall mean the Securities and Exchange Commission or any Governmental Authority that is the successor thereto.

~~"**Second Lien Intercreditor Agreement**" shall mean a "junior lien" intercreditor agreement among the Collateral Agent and one or more Second Lien Representatives for holders of Permitted Second Priority Additional Debt, in form and substance reasonably satisfactory to the Required Lenders and the Borrower.~~

~~"**Second Lien Representative**" shall mean, with respect to any series of Permitted Second Priority Additional Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.~~

"**Secured Parties**" shall have the meaning assigned to such term in the Security Agreement.

"**Securities Account**" as defined in the UCC.

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

"**Securitization Asset**" shall mean (a) any accounts receivable or related assets and the collections and proceeds thereof, in each case subject to a Securitization Facility and (b) all collateral securing such receivable or asset, all contracts and contract rights in each case, of the type which would constitute ABL Priority Collateral (as defined in the ABL Intercreditor Agreement), guaranties or other obligations in respect of such receivable or asset, lockbox accounts, books and records with respect to such account or asset and any other assets customarily transferred (or in respect of which security interests are customarily granted) together with accounts or assets in a securitization financing and which in the case of clause (a)

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and (b) above are sold, conveyed, assigned or otherwise transferred or pledged by any Loan Party in connection with a Qualified Securitization Financing.

“**Securitization Facility**” shall mean any transaction or series of securitization financings that may be entered into by the Borrower or any of its Restricted Subsidiaries pursuant to which the Borrower or any of its Restricted Subsidiaries may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) any Person that is not a Restricted Subsidiary or (b) any other Subsidiary of the Borrower (that in turn sells such Securitization Assets to a Securitization Subsidiary) or a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries; *provided* that, it is understood and agreed that the ABL Facility is deemed a Securitization Facility.

“**Securitization Fees**” shall mean distributions or payments made directly or by means of discounts with respect to any Securitization Asset or participation interest therein issued or sold in connection with, and other fees and expenses (including fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Financing or a Receivables Facility.

“**Securitization Purchase Obligation**” shall mean any obligation of the Borrower or a Restricted Subsidiary in respect of Securitization Assets or Receivables Assets in a Qualified Securitization Financing or a Receivables Facility to purchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including, without limitation, as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to such party.

“**Securitization Subsidiary**” shall mean any Subsidiary of the Borrower in each case formed for the purpose of and that solely engages in one or more Qualified Securitization Financings and other activities reasonably related thereto or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers Securitization Assets and related assets.

“**Security Agreement**” shall mean, except as the context may otherwise require, both (a) the Amended and Restated Security Agreement dated as of the Restatement Effective Date among the Borrower, the Guarantors party thereto and the Collateral Agent and (b) the Amended and Restated Security and Collateral Agency Agreement, dated as of the date hereof, among the Collateral Agent, as collateral agent and term loan representative, the ABL Agent, as ABL representative, the UST Tranche A Agent, as collateral agent and treasury tranche A representative and the UST Tranche B Agent, as collateral agent and treasury tranche B representative and the Borrower and the other Loan Parties party thereto, as each of the same may be further amended, restated, modified, supplemented, extended, renewed, restructured or replaced.

“**Security Agreement Supplement**” shall have the meaning specified in the Security Agreement.

“**Senior Financial Officer**” of any Person shall mean the chief financial officer, principal accounting officer, treasurer, controller or other similar officer of such Person.

“**Single-Employer Plans**” shall mean the Roadway LLC Pension Plan, the Yellow Corporation Pension Plan and the YRC Retiree Pension Plan or any other Plans sponsored or maintained by the Borrower or any Restricted Subsidiary.

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“Specified Amendment No. 1 Period” shall mean the ~~“Specified Period” as such term is defined in Amendment No. 1~~ period commencing on the Amendment No. 1 Effective Date and ending on the first date after for which Consolidated EBITDA for a Test Period ending on the last day of a fiscal quarter ending on or after June 30, 2022 is greater than \$200,000,000 and the Borrower shall have delivered a Compliance Certificate to the Administrative Agent showing such calculation in reasonable detail.

“Specified Default” shall mean an Event of Default under Section 8.01(a), (f) or (g).

~~“Specified Fiscal Quarter” shall have the meaning assigned to such term in Section 2.06(d).~~

“Specified Pension Fund Obligations” shall mean the payment obligations due from the Borrower and/or its applicable Subsidiaries to the Pension Fund Entities under the terms and conditions of the Contribution Deferral Agreement.

“Specified Rolling Stock” shall mean all Rolling Stock that does not constitute UST Tranche B Priority Collateral. For the avoidance of doubt, UST Tranche B Joint Collateral shall be Specified Rolling Stock.

“Specified Rolling Stock Prepayment Period” means the period commencing on the Amendment No. 2 Effective Date and ending on the first date after for which Consolidated EBITDA for a Test Period ending on the last day of a fiscal quarter ending on or after September 30, 2020 is greater than \$200,000,000 and the Borrower shall have delivered a Compliance Certificate to the Administrative Agent showing such calculation in reasonable detail.

“Specified Rolling Stock Reinvestment Threshold” means, with respect to Dispositions of Specified Rolling Stock in any fiscal year, the first \$500,000 of Net Proceeds received by the Borrower and its Subsidiaries with respect to such Dispositions in such fiscal year to the extent such Net Proceeds are reinvested in accordance with the proviso to clause (a) of the definition of “Net Proceeds”.

“Specified Transaction” shall mean any Investment that results in a Person becoming a Restricted Subsidiary, any Permitted Acquisition, any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower, any Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person or any Disposition of a business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case consummated after the Restatement Effective Date and whether by merger, consolidation, amalgamation or otherwise, and any incurrence or repayment of Indebtedness or Restricted Payment, in each case, that by the terms of this Agreement requires a financial ratio or test to be calculated on a “Pro Forma Basis”.

“SPV” shall have the meaning assigned to such term in Section 10.04(i).

“Standard Securitization Undertakings” shall mean representations, warranties, covenants, guarantees and indemnities entered into by the Borrower or any Subsidiary of the Borrower which the Borrower has determined in good faith to be customary in a Securitization Facility, it being understood that any Securitization Purchase Obligation shall be deemed to be a Standard Securitization Undertaking or, in the case of a Receivables Facility, a non-credit related recourse accounts receivable factoring arrangement.

“Statutory Reserves” shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum

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reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate or other fronting office making or holding a Loan) is subject for Eurocurrency Liabilities (as defined in Regulation D of the Board). Eurodollar Loans shall be deemed to constitute Eurocurrency Liabilities (as defined in Regulation D of the Board) and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“**Subordinated Indebtedness**” shall mean any Indebtedness that is, or is required to be, subordinated in right of payment to the Obligations (for greater certainty, not including the ABL Facility Indebtedness, the UST Tranche A Facility Indebtedness and the UST Tranche B Facility Indebtedness).

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

“**Succession Agreement**” means that certain Successor Agent Agreement dated as of the Restatement Effective Date, among Cortland Products Corp., as successor agent, Credit Suisse AG, as retiring agent, the Borrower and the Tranche B-2 Term Lenders.

“**Successor Borrower**” shall have the meaning specified in Section 7.04(d).

“**Survey**” shall have the meaning assigned to such term in the definition of “Collateral and Guarantee Requirement”.

“**Swap Contract**” shall mean (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 Termination Value**” shall mean, 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

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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**” shall have the meaning assigned to such term in Section 3.01(a).

“**Term Borrowing**” shall mean a Borrowing comprised of Term Loans.

“**Term Lender**” shall mean a Lender with a Term Loan Commitment or an outstanding Term Loan.

“**Term Loan Commitment**” shall mean the Tranche B-2 Term Loan Commitment.

“**Term Loans**” shall mean the Tranche B-2 Term Loans, Extended Term Loans and Other Term Loans.

“**Term Note**” shall mean a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit J hereto, evidencing the aggregate Indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

~~“**Term Priority Collateral**” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.~~

“**Test Period**” shall mean, for any date of determination under this Agreement, the most recent period as of such date of four consecutive fiscal quarters of the Borrower for which financial statements have been delivered (or were required to have been delivered) pursuant to Section 6.01(a) or 6.01(b), as applicable, or, prior to the first such requirement, the four fiscal quarter period ended June 30, 2019.

“**Threshold Amount**” shall mean \$30,000,000.

“**Title Company**” shall mean Chicago Title Insurance Company.

“**Total Leverage Ratio**” shall mean, as of any date, the ratio of (a) Consolidated Total Debt as of such date to (b) Consolidated EBITDA for the Test Period applicable as of such date.

“**tranche**” shall have the meaning assigned to such term in Section 2.19(a).

“**Tranche B-2 Term Lender**” shall mean a Lender with a Tranche B-2 Term Loan Commitment or an outstanding Tranche B-2 Term Loan.

“**Tranche B-2 Term Loan Commitment**” shall mean, with respect to each Lender, the commitment, if any, of such Lender to make a Tranche B-2 Term Loan hereunder, expressed as an amount representing the maximum principal amount of the Tranche B-2 Term Loan to be made by such Lender hereunder. The initial aggregate amount of the Tranche B-2 Term Loan Commitments as of the Restatement Effective Date is \$600,000,000.

“**Tranche B-2 Term Loans**” shall mean the term loans made by the Lenders on the Restatement Effective Date to the Borrower pursuant to Section 2.01(b). For the avoidance of doubt, a Term Loan shall no longer be a “Tranche B-2 Term Loan” when it shall have become an “Extended Term Loan”.

“**Transaction Expenses**” shall mean any costs, fees or expenses incurred or paid by the Borrower or any of its Subsidiaries in connection with the Transactions, this Agreement and the other Loan

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Documents; *provided* that the amount of Transaction Expenses attributable to clause (b) of the definition of Transactions shall not exceed \$250,000.

“**Transactions**” shall mean, collectively, (a) the execution and delivery by the Loan Parties of the Loan Documents to which they are a party and the making of the Borrowings hereunder on the Restatement Effective Date, (b) the execution and delivery by the Borrower and the Subsidiaries party thereto of an amendment to the ABL Facility Documentation in connection with the matters described in clause (a), (c) the Refinancing Transactions and (d) the payment of the Transaction Expenses.

“**Transferred Guarantor**” shall have the meaning specified in the [Section 11.10](#).

“**Treasury**” means the [United States Department of the Treasury](#).

“**Treasury Equity**” means the [15,943,753 shares of Common Stock of the Borrower issued and delivered pursuant to the UST Tranche A Credit Agreement and the UST Tranche B Credit Agreement, directly or indirectly, to the United States federal government or any Governmental Authority on behalf thereof \(including, in each case, any agent, trust or Person on behalf thereof, including, for the avoidance of doubt, any voting trust and the trustee thereof created to hold the Treasury Equity for the benefit of the United States federal government or any other Governmental Authority\)](#).

“**Treasury Equity Documents**” means [\(i\) the Share Issuance Agreement, dated as of June 30, 2020, between the Borrower and the Treasury, \(ii\) the Voting Trust Agreement, by and among the Borrower, Treasury and the trustee thereunder to be entered into on or before the Treasury Equity Issuance and \(iii\) the Registration Rights Agreement, by and between the Borrower and Treasury to be entered into on or before the Treasury Equity Issuance](#).

“**Treasury Equity Issuance**” shall mean the [issuance of Treasury Equity in connection with the Amendment No. 2 Transactions](#).

“**Treasury Only Collateral**” shall mean, collectively, the [UST Tranche A Only Collateral and the UST Tranche B Only Collateral](#).

“**Type**”, when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term “**Rate**” shall mean the Adjusted LIBO Rate and the Alternate Base Rate.

“**Unaudited Financial Statements**” shall mean the unaudited consolidated balance sheets and related statements of operations and cash flows of the Borrower and its consolidated Subsidiaries as at the end of and for the fiscal quarter ended June 30, 2019.

“**Uniform Commercial Code**” or “**UCC**” shall mean the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

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

“**United States Tax Compliance Certificate**” shall have the meaning assigned to such term in [Section 3.01\(d\)](#).

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"USA PATRIOT Act" shall mean The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

"UST Tranche A Agent" shall mean, as the context may require, The Bank of New York Mellon, in its capacity as administrative agent and as collateral agent under the UST Tranche A Facility Documentation, such agents collectively or any permitted successor or assignee administrative agent or collateral agent under the UST Tranche A Facility Documentation.

"UST Tranche A Controlled Account" shall have the meaning assigned to such term in the UST Tranche A Credit Agreement (as in effect as of the date hereof).

"UST Tranche A Credit Agreement" shall mean that certain UST Tranche A Term Loan Credit Agreement dated as of the Amendment No. 2 Effective Date, among the Borrower, the other subsidiaries of the Borrower party thereto, the lenders party thereto and the Tranche A Treasury Agent, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents and resulting in a financing that constitutes (or that would constitute if incurred as a new financing) a Permitted Refinancing of the UST Tranche A Facility Indebtedness), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case as and to the extent permitted by this Agreement and, as applicable, the ABL Intercreditor Agreement and the Junior Lien Intercreditor Agreement.

"UST Tranche A Facility" shall mean the credit facility made available to the Borrower pursuant to the UST Tranche A Credit Agreement.

"UST Tranche A Facility Documentation" shall mean the UST Tranche A Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith and including all "Loan Documents" (as defined in the UST Tranche A Credit Agreement) or similar term.

"UST Tranche A Facility Indebtedness" shall mean Indebtedness of the Borrower or any Restricted Subsidiary outstanding under or secured by the UST Tranche A Facility Documentation, and in each case, all Permitted Refinancings thereof.

"UST Tranche A Only Collateral" shall mean the UST Tranche A Controlled Account and all Money (as defined in the UCC) and all cash, checks, other negotiable instruments, funds and other evidences of loan proceeds properly held therein.

"UST Tranche A Secured Parties" shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

"UST Tranche B Agent" shall mean, as the context may require, The Bank of New York Mellon, in its capacity as administrative agent and as collateral agent under the UST Tranche B Facility Documentation, such agents collectively or any permitted successor or assignee administrative agent or collateral agent under the UST Tranche B Facility Documentation.

"UST Tranche B Controlled Account" shall have the meaning assigned to such term in the UST Tranche B Credit Agreement (as in effect as of the date hereof).

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“UST Tranche B Credit Agreement” shall mean that certain UST Tranche B Term Loan Credit Agreement dated as of the Amendment No. 2 Effective Date, among the Borrower, the other subsidiaries of the Borrower party thereto, the lenders party thereto and the Tranche B Treasury Agent, and as the same may be further amended, restated, modified, supplemented, extended, renewed, restructured, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents and resulting in a financing that constitutes (or that would constitute if incurred as a new financing) a Permitted Refinancing of the UST Tranche B Facility Indebtedness), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case as and to the extent permitted by this Agreement and, as applicable, the ABL Intercreditor Agreement and the Junior Lien Intercreditor Agreement.

“UST Tranche B Facility” shall mean the credit facility made available to the Borrower pursuant to the UST Tranche B Credit Agreement.

“UST Tranche B Facility Documentation” shall mean the UST Tranche B Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith and including all “Loan Documents” (as defined in the UST Tranche B Credit Agreement) or similar term.

“UST Tranche B Facility Indebtedness” shall mean Indebtedness of the Borrower or any Restricted Subsidiary outstanding under or secured by the UST Tranche B Facility Documentation, and in each case, all Permitted Refinancings thereof.

“UST Tranche B Joint Collateral” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“UST Tranche B Joint Account” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“UST Tranche B Only Collateral” shall mean the UST Tranche B Controlled Account and all Money (as defined in the UCC) and all cash, checks, other negotiable instruments, funds and other evidences of loan proceeds properly held therein.

“UST Tranche B Priority Collateral” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“UST Tranche B Secured Parties” shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

“Weighted Average Life to Maturity” shall mean, 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 scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled 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 for purposes of determining the Weighted Average Life to Maturity of any Refinanced Debt or any Indebtedness that is being modified, refinanced, refunded, renewed, replaced, restructured or extended (the “Applicable Indebtedness”), the effects of any amortization of or prepayments made on such Applicable

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Indebtedness prior to the date of the applicable modification, refinancing, restructuring, refunding, renewal, replacement or extension shall be disregarded.

“**wholly owned**” shall mean, 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) 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.

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

#### 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 meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
  - (b) (i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.
  - (i) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.
  - (ii) The term “including” is by way of example and not limitation.
    - (c) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
    - (d) 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.”
    - (e) The words “asset” and “property,” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.
    - (f) All references to “knowledge” or “awareness” of any Loan Party or a Restricted Subsidiary thereof means the actual knowledge of a Responsible Officer of a Loan Party or such Restricted Subsidiary.
    - (g) 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.
    - (h) The word “or” is not exclusive.
    - (i) For purposes of determining compliance with any one of Sections 7.01, 7.02, 7.03, 7.05, 7.06, 7.08, 7.09 and 7.13, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of more than one of the categories of transactions permitted pursuant to any clause of such Section, such
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transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower (and the Borrower shall be entitled to redesignate use of any such clauses from time to time) in its sole discretion at such time; *provided* that the Borrower shall not be permitted to subsequently reclassify any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Indebtedness as having been incurred under a Non-Fixed Basket if such Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction, Contractual Obligation or prepayment of Indebtedness was originally incurred under a Fixed Basket or any other Basket that is not a Non-Fixed Basket. For all purposes hereunder, (x) "**Fixed Basket**" shall mean any Basket that is subject to a fixed-dollar limit and (y) "**Non-Fixed Basket**" shall mean any Basket that is subject to compliance with a financial ratio or test (including Total Net Leverage Ratio) or based on a percentage of Consolidated EBITDA or total assets.

(j) The usage of the term "written" includes electronic messages, including e-mail.

(k) Any reference herein or in any other Loan Document to (i) a transfer, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company, as if it were a transfer, assignment, sale or transfer, or similar term, as applicable, to a separate Person, and (ii) a merger, consolidation, amalgamation or consolidation, or similar term, shall be deemed to apply to the unwinding of such a division or allocation, as if it were a merger, consolidation, amalgamation or consolidation or similar term, as applicable, with a separate Person.

#### Certifications

. All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such a Person in his or her capacity solely as an officer or representative of such Loan Party, on such Loan Party's behalf and not in such Person's individual capacity.

#### Accounting Terms

. 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, except as otherwise specifically prescribed herein or therein.

#### Rounding

. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under 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).

#### References to Agreements, Laws, Etc

. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements, replacements, extensions, renewals, refinancings, restructurings and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements, replacements, extensions, renewals, refinancings, restructurings and other modifications are not prohibited by hereby; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

#### Times of Day

. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

#### Timing of Payment or Performance

. Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty or obligation is stated

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to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

#### Cumulative Credit Transactions

. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Credit immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

#### Pro Forma Calculations

(a) Notwithstanding anything to the contrary herein, the Total Leverage Ratio shall be calculated in the manner prescribed by this Section 1.10; *provided* that, notwithstanding anything to the contrary in clauses (b), (c) or (d) of this Section 1.10, when calculating the Total Leverage Ratio for purposes of the Applicable ECF Percentage of Excess Cash Flow, the events described in this Section 1.10 that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect (provided, further, that the foregoing limitation will not be constituted to limit the deductibility of any amounts that are committed to be made or paid or are reasonably expected to be paid in the calculation of Excess Cash Flow for any period as provided for in the definition of Excess Cash Flow).

(b) For purposes of calculating the Total Leverage Ratio, Specified Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (i) during the applicable Test Period or (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made 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 therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.10, then the Total Leverage Ratio shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.10.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Senior Financial Officer of the Borrower and may include, for the avoidance of doubt, Cost Savings to the extent permitted by, and subject to the requirements of, clause (a)(viii) of the definition of "Consolidated EBITDA". Notwithstanding the foregoing, all *pro forma* adjustments under this clause (c) shall not, taken together with those added pursuant to clause (a)(viii) of the definition of "Consolidated EBITDA", increase *pro forma* Consolidated EBITDA by more than 5% for any Test Period (calculated prior to giving effect to any addback pursuant to this clause (c) or clause (a)(viii) of the definition of "Consolidated EBITDA").

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of the Total Leverage Ratio (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes and not incurred in reliance on Section 7.03(t)), (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Total Leverage Ratio shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period of the Total Leverage Ratio. Interest on a Capitalized Lease shall be deemed

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to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Borrower to be the rate of interest implicit in such Capitalized Lease in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or Restricted Subsidiary may designate.

(e) Whenever any provision of this Agreement requires the Borrower to have a Total Leverage Ratio on a Pro Forma Basis in connection with any action to be taken by the Borrower hereunder, the Borrower shall deliver to the Administrative Agent a certificate of a Responsible Officer setting forth in reasonable detail the calculations demonstrating such compliance or such Total Leverage Ratio.

#### Certain Accounting Matters

Notwithstanding any other provision contained herein or in any other Loan Document, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, (a) without giving effect to any election under Statement of Financial Accounting Standards 159 or Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any of its Restricted Subsidiaries at "fair value", as defined therein; and (b) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 and/or Statement of Financial Accounting Standards 150 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. Furthermore, unless the Borrower elects otherwise, notwithstanding any other provision contained herein or in any other Loan Document, for all purposes under this Agreement and the other Loan Documents, including negative covenants, financials covenants and component definitions, operating leases and Capitalized Leases will be deemed to be treated in a manner consistent with their current treatment under GAAP as in effect on December 31, 2018, notwithstanding any modifications or interpretive changes thereto that may occur thereafter. For the avoidance of doubt, the principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP, except as expressly set forth in clauses (a) and (b) of this [Section 1.11](#).

#### Classification of Loans and Borrowings

For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "Tranche B-2 Term Loan") or by Type (e.g., a "Eurodollar Loan") or by Class and Type (e.g., a "Eurodollar Term Loan"). Borrowings also may be classified and referred to by Class (e.g., a "Term Borrowing") or by Type (e.g., a "Eurodollar Borrowing") or by Class and Type (e.g., a "Eurodollar Term Borrowing").

#### Currency Equivalents Generally

(a) For purposes of determining compliance with [Sections 7.01, 7.02, 7.03, 7.05, 7.06, 7.08, 7.09](#) and [7.13](#) with respect to any amount of Indebtedness, Lien, Asset Sale, Restricted Payment, Capital Expenditure, affiliate transaction, Contractual Obligation, prepayment of Indebtedness or Investment in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder) and once incurred or made, the amount of such Indebtedness, Lien, Asset Sale, Restricted Payment, Capital Expenditure, affiliate transaction, Contractual Obligation, prepayment of Indebtedness or

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Investment, shall be always deemed to be at the Dollar amount on such date, regardless of later changes in currency exchange rates.

(b) For purposes of determining the Total Leverage Ratio, amounts denominated in a currency other than Dollars will be converted to Dollars at the currency exchange rates used in preparing the Borrower's financial statements corresponding to the Test Period with respect to the applicable date of determination and will, in the case of Indebtedness, reflect the currency translation effects, determined in accordance with GAAP, of Swap Contracts permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

#### Effect of Amendment and Restatement

On the Restatement Effective Date, the Existing Credit Agreement shall be amended and restated in its entirety in the form hereof. The parties hereto acknowledge and agree that except as modified in this Agreement and the other Loan Documents delivered on the Restatement Effective Date, the Existing Credit Agreement and all Loan Documents thereunder (collectively, together with the Existing Credit Agreement, the "Existing Loan Documents") are hereby reaffirmed, ratified and confirmed on behalf of the parties hereto and thereto on the date hereof, and the Obligations thereunder shall be amended and completely restated hereby, but this Agreement shall not constitute a novation, extinguishment or substitution of such Obligations or in any way impair the Liens created pursuant to the Existing Loan Documents or affect the priority thereof, all of which are hereby reaffirmed, ratified and confirmed.

### ARTICLE 3 THE CREDITS

#### Tranche B-2 Term Loan Commitments

(a) [Reserved].

(b) Subject to the terms and conditions and relying upon the representations and warranties set forth herein, each Tranche B-2 Term Lender agrees, severally and not jointly, to make a Tranche B-2 Term Loan to the Borrower on the Restatement Effective Date in a principal amount not to exceed its Tranche B-2 Term Loan Commitment. Amounts repaid or prepaid in respect of Tranche B-2 Term Loan may not be reborrowed.

#### Loans

(a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments; *provided, however*, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). The Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$1,000,000 and not less than \$5,000,000 (except, with respect to any Other Term Loans, to the extent otherwise provided in the applicable Refinancing Amendment) or (ii) equal to the remaining available balance of the applicable Commitments.

(b) Subject to [Sections 2.08](#) and [3.02](#) each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request pursuant to [Section 2.03](#). Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to

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make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan to such Lender in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; *provided, however*, that the Borrower shall not be entitled to request any Borrowing that, if made, would result in more than five Eurodollar Borrowings outstanding hereunder at any time plus up to an additional 3 Interest Periods in respect of each (i) [reserved], (ii) Extended Term Loans and (iii) Other Term Loans, *provided* that the total number of such additional Interest Periods does not exceed 15 at any one time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Each Lender shall make each Tranche B-2 Term Loan to be made by it hereunder on the Restatement Effective Date by wire transfer of immediately available funds to the Administrative Agent's Office not later than 1:00 p.m., New York City time, and upon receipt of all requested funds the Administrative Agent shall promptly credit the amounts so received to an account designated by the Borrower in the applicable Request for Credit Extension.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (c) above and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower to but excluding the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, a rate per annum equal to the interest rate applicable at the time to the Loans comprising such Borrowing, and (ii) in the case of such Lender, a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds (which determination shall be conclusive absent manifest error). If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

#### Borrowing Procedure

. In order to request a Borrowing, the Borrower shall notify the Administrative Agent of such request in writing (a) in the case of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three Business Days before a proposed Borrowing (or, in the case of the extension of credit on the Restatement Effective Date, prior to the proposed Borrowing), and (b) in the case of an ABR Borrowing, not later than 1:00 p.m., New York City time, one Business Day before a proposed Borrowing. Each such Request for Credit Extension shall be irrevocable (but may be conditioned upon the prepayment of indebtedness or the consummation of a specified transaction) and shall specify the following information: (i) the Class of Loans to be borrowed and whether such Borrowing is to be a Eurodollar Borrowing or an ABR Borrowing; (ii) the date of such Borrowing (which shall be a Business Day); (iii) the number and location of the account to which funds are to be disbursed; (iv) the amount of such Borrowing; and (v) if such Borrowing is to be a Eurodollar Borrowing, the Interest Period with respect thereto; *provided, however*, that, notwithstanding any contrary specification in any Request for Credit Extension, each requested Borrowing shall comply with the requirements set forth in [Section 2.02](#). If no election as to the Type of Borrowing is specified in any such notice, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period with respect to any Eurodollar Borrowing is specified in any such notice, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall promptly advise the applicable Lenders of any notice given pursuant to this [Section 2.03](#) (and the contents thereof), and of each Lender's portion of the requested Borrowing.

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(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the principal amount of each Term Loan of such Lender as provided in Section 2.11 (or, in the case of Extended Term Loans or Other Term Loans, as provided for in the applicable Extension Offer, Refinancing Amendment or other governing documentation).

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Class and Type thereof and, if applicable, the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower or any Guarantor and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be prima facie evidence of the existence and amounts of the obligations therein recorded; *provided, however*, that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms and (ii) in the event of any conflict between the accounts set forth in paragraphs (b) and (c) above, the amounts set forth in the accounts maintained pursuant to paragraph (c) shall prevail.

(e) Any Lender may request that Loans made by it hereunder be evidenced by a Term Note. In such event, the Borrower shall promptly execute and deliver to such Lender a Term Note payable to such Lender and its registered assigns in accordance with Section 10.04. Notwithstanding any other provision of this Agreement, in the event any Lender shall request and receive a Term Note, the interests represented by such Term Note shall at all times (including after any assignment of all or part of such interests pursuant to Section 10.04) be represented by one or more promissory notes payable to the payee named therein or its registered assigns, unless such Term Note is duly cancelled.

(f) This Section 2.04 shall at all times be interpreted and administered in such a way that the Term Notes will be issued in "registered form" within the meaning of Treasury Regulation Section 5f.163-1(a).

#### Fees

(a) The Borrower agrees to pay to the Administrative Agent, for its own account, the administrative agent fees applicable to the Facilities payable in the amounts and at the times agreed upon between the Borrower and the Administrative Agent as set forth in the Administrative Agent Fee Letter (the "Fees").

(b) All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent. Once paid, none of the Fees shall be refundable under any circumstances.

#### Interest on Loans

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(a) Subject to the provisions of Section 2.07, the Loans comprising each ABR Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, and calculated from and including the date of such Borrowing to but excluding the date of repayment thereof) at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin.

(b) Subject to the provisions of Section 2.07, the Loans comprising each Eurodollar Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan except as otherwise provided in this Agreement. The applicable Alternate Base Rate or Adjusted LIBO Rate for each Interest Period or day within an Interest Period, as the case may be, shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(d) Notwithstanding anything to the contrary in this Section 2.06,

(i) on the Amendment No. 1 Effective Date and each Interest Payment Date during the PIK Period, the Borrower shall pay a portion of the interest due on each such date in cash in an amount equal to interest at a rate per annum equal to one percent (1%) (the "**Cash Interest Portion**"); and

(ii) all accrued but unpaid interest as of the Amendment No. 1 Effective Date (including all accrued and unpaid interest during the Interest Period that commenced on December 31, 2019 and ending on March 31, 2020) and all interest payable on each Interest Payment Date during the PIK Period (other than the Cash Interest Portion which is due and payable on each such Interest Payment Date) accruing during the period commencing on the Amendment No. 1 Effective Date and ending on June 30, 2020 (such period, the "**PIK Period**"), with respect to any ABR Term Loan or Eurodollar Term Loan, shall be payable in kind, with such interest amount being automatically added to, and made part of, the outstanding principal amount of Loans in the case of (x) accrued but unpaid interest as of the Amendment No. 1 Effective Date, on the Amendment No. 1 Effective Date, and (y) interest payable on each Interest Payment Date during the PIK Period, on such date (all interest payable in kind pursuant to this Agreement, "**PIK Interest**"; ~~the aggregate amount of all interest payable in kind pursuant to this Agreement, the "**PIK Amount**";~~); provided that with respect to any such payment of PIK Interest pursuant to this clause (d), the then Applicable Margin in respect of such accrued and unpaid interest shall be increased by an additional amount of basis points such that the all-in interest rate for each such Borrowing, inclusive of the Adjusted LIBO Rate for such Interest Period then in effect or the Alternate Base Rate, as applicable, is equal to thirteen percent (13.00%) per annum, which increase shall also be paid in the form of PIK Interest.

Unless the context otherwise requires, for all purposes under this Agreement, references to the "principal" and the "principal amount" of any Term Loans include any increase in the principal amount thereof due to the addition of PIK Interest thereto pursuant to this clause (d). All interest payable after ~~the PIK Period June 30, 2020~~ shall be payable in cash ~~after the end of the PIK Period. After the second consecutive fiscal quarter following the PIK Period for which Consolidated EBITDA for the Test Period ending as of the last day of such fiscal quarter is greater than \$200,000,000 (the "**Specified Fiscal Quarter**"), an aggregate principal amount of Term Loans in an amount equal to the PIK Amount shall be due and payable in cash in four equal consecutive fiscal quarter installments each in the amount of 25% of the PIK Amount, commencing with the last Business Day of the fiscal quarter immediately following the Specified Fiscal Quarter. The Borrower shall provide written notice to the Administrative Agent once it has actual knowledge that the Specified Fiscal Quarter has occurred.~~

. Automatically from and after the occurrence and during the continuance of an Event of Default under Section 8.01(a), (f) or (g) or at the election of the Required Lenders during the continuance of any other Event of Default, the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder, shall thereafter, after as well as before judgment, bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on written demand at a rate that is 2.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2.0% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans); *provided* that in the case of Eurodollar Term Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, if such Eurodollar Rate Loans shall become ABR Loans in accordance with Section 2.10(e), such Loans shall thereafter bear interest payable upon written demand at a rate which is 2.0% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans.

#### Alternate Rate of Interest

. In the event, and on each occasion, that on the day two Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing the Administrative Agent shall have determined that Dollar deposits in the principal amounts of the Loans comprising such Borrowing are not generally available in the London interbank market, or that the rates at which such Dollar deposits are being offered will not adequately and fairly reflect the cost to the majority of Lenders of making or maintaining Eurodollar Loans during such Interest Period, or that reasonable means do not exist for ascertaining the Adjusted LIBO Rate, the Administrative Agent shall, as soon as practicable thereafter, give written or fax notice of such determination to the Borrower and the Lenders. In the event of any such determination, until the Administrative Agent shall have revoked such notice, any request by the Borrower for a Eurodollar Borrowing pursuant to Section 2.03 or Section 2.10 shall be deemed to be a request for an ABR Borrowing. Each determination by the Administrative Agent under this Section 2.08 shall be conclusive absent manifest error.

#### Termination and Reduction of Commitments

(a) The Term Loan Commitment for the Tranche B-2 Term Loan in effect on the Restatement Effective Date shall automatically terminate upon the making of the Tranche B-2 Term Loans on the Restatement Effective Date.

(b) Upon at least one Business Days' prior irrevocable written or fax notice to the Administrative Agent, the Borrower may at any time in whole permanently terminate, or from time to time in part permanently reduce, any Class of unfunded Term Loan Commitments; *provided, however*, that each partial reduction of any Class of Term Loan Commitments shall be in an integral multiple of \$1,000,000 and in a minimum amount of \$1,000,000; provided further that, a notice of termination of the Commitments of any Class delivered by the Borrower may state that such notice is conditioned upon the consummation of an acquisition or sale transaction or upon the effectiveness of other credit facilities or the receipt of proceeds from the issuance of other Indebtedness or any other specified event, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(c) Each reduction in the Term Loan Commitments hereunder shall be made ratably among the Lenders in accordance with their respective applicable Commitments.

#### Conversion and Continuation of Borrowings

. The Borrower shall have the right at any time upon prior irrevocable written notice to the Administrative Agent (a) not later than 1:00 p.m., New York City time, one Business Day prior to the day of any conversion, to convert any Eurodollar Borrowing into an ABR Borrowing, (b) not later than 1:00 p.m., New York City time, three Business Days prior to

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conversion or continuation, to convert any ABR Borrowing into a Eurodollar Borrowing or to continue any Eurodollar Borrowing as a Eurodollar Borrowing for an additional Interest Period, and (c) not later than 1:00 p.m., New York City time, three Business Days prior to conversion, to convert the Interest Period with respect to any Eurodollar Borrowing to another permissible Interest Period, subject in each case to the following:

(i) [reserved];

(ii) each conversion or continuation shall be made pro rata among the Lenders in accordance with the respective principal amounts of the Loans comprising the converted or continued Borrowing;

(iii) if less than all the outstanding principal amount of any Borrowing shall be converted or continued, then each resulting Borrowing shall satisfy the limitations specified in Sections 2.02(a) and 2.02(b) regarding the principal amount and maximum number of Borrowings of the relevant Type;

(b) each conversion shall be effected by each Lender and the Administrative Agent by recording for the account of such Lender the new Loan of such Lender resulting from such conversion and reducing the Loan (or portion thereof) of such Lender being converted by an equivalent principal amount; accrued interest on any Eurodollar Loan (or portion thereof) being converted shall be paid by the Borrower at the time of conversion;

(i) if any Eurodollar Borrowing is converted on a day prior to the last day of the Interest Period applicable thereto, the Borrower shall pay, upon demand, any amounts due to the Lenders pursuant to Section 3.04;

(c) any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a Eurodollar Borrowing, unless agreed by all applicable Lenders;

(d) any portion of a Eurodollar Borrowing that cannot be converted into or continued as a Eurodollar Borrowing by reason of the immediately preceding clause shall be automatically converted at the end of the Interest Period in effect for such Borrowing into an ABR Borrowing; and

(e) upon notice to the Borrower from the Administrative Agent given at the request of the Required Lenders, after the occurrence and during the continuance of an Event of Default, no outstanding Loan may be converted into, or continued as, a Eurodollar Loan.

Each such Request for Credit Extension shall (except as set forth herein) be irrevocable and shall refer to this Agreement and specify (i) the identity and amount of the Borrowing that the Borrower requests be converted or continued, (ii) whether such Borrowing is to be converted to or continued as a Eurodollar Borrowing or an ABR Borrowing, (iii) if such Request for Credit Extension requests a conversion, the date of such conversion (which shall be a Business Day) and (iv) if such Borrowing is to be converted to or continued as a Eurodollar Borrowing, the Interest Period with respect thereto. If no Interest Period is specified in any such Request for Credit Extension with respect to any conversion to or continuation as a Eurodollar Borrowing, the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall promptly advise the Lenders of any Request for Credit Extension and of each Lender's portion of any converted or continued Borrowing. If the Borrower shall not have given a Request for Credit Extension in accordance with this Section 2.10 to continue any Borrowing into a subsequent Interest Period (and shall not otherwise have given notice in accordance with this Section 2.10

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to convert such Borrowing), such Borrowing shall, at the end of the Interest Period applicable thereto (unless repaid pursuant to the terms hereof), automatically be converted into an ABR Borrowing.

#### Repayment of Term Borrowings

(a) The Borrower shall repay to the Administrative Agent for the ratable account of the applicable Term Lenders on the Maturity Date for such Tranche B-2 Term Loans, the aggregate principal amount of such Tranche B-2 Term Loans outstanding on such date, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment. Upon the conversion of Tranche B-2 Term Loans to Extended Term Loans or the refinancing of Tranche B-2 Term Loans with Credit Agreement Refinancing Indebtedness, all scheduled amortization payments, if any, shall be reduced ratably by the aggregate principal amount of the Tranche B-2 Term Loans so converted, refinanced or replaced. The Borrower shall repay Extended Term Loans and Other Term Loans in such amounts and on such date or dates as shall be specified therefor in the applicable Extension Offer, Refinancing Amendment or other governing documentation.

(b) To the extent not previously paid, all Term Loans (including, for avoidance of doubt, Term Loans that are not Tranche B-2 Term Loans) shall be due and payable on the applicable Maturity Date, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

(c) All repayments pursuant to this Section 2.11 shall be subject to Section 3.04, but shall otherwise be without premium or penalty.

#### Voluntary Prepayment

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, upon at least three Business Days' prior written (email) notice in the case of Eurodollar Loans, or written (email) notice at least one Business Day prior to the date of prepayment in the case of ABR Loans, to the Administrative Agent before 1:00 p.m., New York City time; *provided, however*, that each partial prepayment shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$2,500,000.

(b) Except as may otherwise be set forth in any Extension Offer or any Refinancing Amendment, voluntary prepayments of Term Loans pursuant to this Section 2.12 shall be applied ratably to each Class of Term Loans then outstanding.

(c) Each notice of prepayment shall specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid shall be irrevocable and shall commit the Borrower to prepay such Borrowing by the amount stated therein on the date stated therein; *provided, however*, that a notice of prepayment delivered by the Borrower may state that such notice is conditioned upon the consummation of an acquisition or sale transaction or upon the effectiveness of other credit facilities or the receipt of proceeds from the issuance of other Indebtedness or any other specified event, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied (*provided*, that the provisions of Section 3.04 shall apply to any prepayment that is not made as a result of the failure of such condition). All prepayments under this Section 2.12 shall be subject to Section 2.12(d) (to the extent applicable) and Section 3.04 but otherwise without premium or penalty. All prepayments under this Section 2.12 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment.

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(d) In the event that, (i) the Borrower voluntarily prepays any Tranche B-2 Term Loans, (ii) the Borrower makes any mandatory prepayment of the Tranche B-2 Term Loans pursuant to [Sections 2.13\(a\)\(i\)](#), [2.13\(a\)\(ii\)](#), [2.13\(a\)\(iii\)](#), [2.13\(a\)\(iv\)](#) or [2.13\(a\)\(v\)](#), (iii) a Term Lender is deemed a Non-Consenting Lender and must assign its Tranche B-2 Term Loans pursuant to [Section 3.06\(a\)](#) or (iv) the Tranche B-2 Term Loans are accelerated, then in each case, the Borrower shall pay to the Administrative Agent on the date of such prepayment, assignment or acceleration, for the ratable account of each applicable Term Lender, a prepayment premium equal to (x) 3% of the aggregate amount of the applicable Tranche B-2 Term Loans being prepaid, accelerated or assigned if such prepayment, acceleration or assignment occurs after the Restatement Effective Date but prior to the first anniversary of the Restatement Effective Date, (y) 2% of the aggregate amount of the applicable Tranche B-2 Term Loans being prepaid, accelerated or assigned if such prepayment or assignment occurs on or after the first but prior to the second anniversary of the Restatement Effective Date and (z) 1% of the aggregate amount of the applicable Tranche B-2 Term Loans being prepaid, accelerated or assigned if such prepayment, acceleration or assignment occurs on or after the second but prior to the third anniversary of the Restatement Effective Date (the foregoing premiums, the "**Prepayment Premium**"); *provided that (A) for the avoidance of doubt, no Prepayment Premium shall be payable on or following the third anniversary of the Restatement Effective Date; and (B) the Prepayment Premium shall not apply to mandatory prepayments of the Tranche B-2 Term Loans pursuant to [Section 2.13\(a\)\(i\)](#) that do not exceed \$100,000,000 in the aggregate during the term of this Agreement and (C) for the avoidance of doubt, the Prepayment Premium shall not apply to mandatory prepayments of the Tranche B-2 Term Loans pursuant to the Anti-Cash Hoarding Sweep in [Section 2.13\(a\)\(vi\)](#).* Without limiting the generality of the foregoing, it is understood and agreed that if the Tranche B-2 Term Loans are accelerated or otherwise become due prior to their maturity date, in each case, in respect of any Event of Default (including upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), the Prepayment Premium applicable with respect to a voluntary prepayment of the Tranche B-2 Term Loans will also be due and payable on the date of such acceleration or such other prior due date as though the Tranche B-2 Term Loans were voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Term Lender's loss as a result thereof. Any premium payable above shall be presumed to be the liquidated damages sustained by each Term Lender and the Borrower agrees that it is reasonable under the circumstances currently existing. THE BORROWER EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. The Borrower expressly agrees (to the fullest extent it may lawfully do so) that: (A) the Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Term Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Premium; and (D) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph.

#### Mandatory Prepayments

(a) (i) Within five (5) Business Days after the earlier of (x) 90 days after the end of each Excess Cash Flow Period and (y) the date on which financial statements have been delivered pursuant to [Section 6.01\(a\)](#) (commencing with the Excess Cash Flow Period ended December 31, 2019) and the related Compliance Certificate has been delivered pursuant to [Section 6.02\(a\)](#), the Borrower shall cause to be prepaid an aggregate amount of Term Loans in an amount equal to (A) the Applicable ECF Percentage of Excess Cash Flow, if any, for the Excess Cash Flow Period covered or required to have been covered by

such financial statements minus (B) the sum of (1) all voluntary prepayments of principal of Term Loans (including the amount of cash used to make all debt buybacks and repurchases pursuant to Section 10.04(k)), and ~~(2) all prepayments of principal of Term Loans made pursuant to the terms of the Anti-Cash Hoarding Sweep, and (3)~~ all voluntary prepayments of loans under the ABL Facility during such fiscal year to the extent accompanied by a corresponding permanent reduction in the commitments under the ABL Facility and, in the case of each of the immediately preceding clauses (1); and ~~(2) and (3)~~, to the extent such prepayments are funded with Internally Generated Cash; *provided* that, the amount of prepayment required under this Section 2.13(a)(i) shall be reduced to the extent (but only to the extent) that (x) after giving effect to such prepayment, the sum of (a) the maximum aggregate amount available to be drawn under the ABL Credit Agreement that would not result in a Financial Covenant Trigger Period under the ABL Facility (or any similar term under any replacement ABL Facility) plus (b) the aggregate amount of cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries (other than any cash or Cash Equivalents appearing on the consolidated balance sheet of the Borrower as “restricted” (or with a like designation)) would be less than \$200,000,000 and (y) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer certifying as to the foregoing. Notwithstanding anything to the contrary contained herein, the Borrower shall not be obligated to make any such prepayments described in this Section 2.13(a)(i) (and no Default or Event of Default shall arise as a result of such nonpayment) to the extent such payment would otherwise constitute a violation or breach of the ABL Credit Agreement in respect of minimum liquidity requirements (as in effect on the date hereof in respect of such restriction, or as otherwise modified, supplemented or amended in a manner not adverse to the Lenders).

(ii) If (1) the Borrower or any Restricted Subsidiary Disposes of any Real Property, Rolling Stock or Disposes of any other property or assets pursuant to Section 7.05 (j), (l) or (t) or under any transaction that would be prohibited by Section 7.05 (other than ~~(xw)~~) so long as the ABL Credit Agreement is in effect, any Disposition of ABL Priority Collateral ~~and (y)~~, (x) so long as the UST Tranche B Credit Agreement is in effect, any Disposition of UST Tranche B Priority Collateral or UST Tranche B Only Collateral, (v) so long as the UST Tranche A Credit Agreement is in effect, any Disposition of UST Tranche A Only Collateral, and (z) leases of Real Property entered into in the ordinary course of business (excluding Sale and Leaseback Transactions), or (2) any Casualty Event occurs, which results in the realization or receipt by the Borrower or a Restricted Subsidiary of Net Proceeds, the Borrower shall cause to be prepaid on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or any Restricted Subsidiary of such Net Proceeds an aggregate principal amount of Term Loans in an amount equal to 100% of the Net Proceeds (or, in the case of any Disposition of, or Sale and Leaseback Transaction, with respect to Real Property, 100% of the Real Property Disposition Proceeds) realized or received. Notwithstanding the foregoing, (i) solely with respect to Dispositions of UST Tranche B Joint Collateral, Net Proceeds of Dispositions of UST Tranche B Joint Collateral shall be applied as follows: (A) an amount equal to 33% of such Net Proceeds shall be applied to the prepayment of the Term Loans (and applied ratably to each Class of Term Loans then outstanding) in accordance with this Section 2.13(a)(ii) and (B) an amount equal to 67% of such Net Proceeds shall be applied to the prepayment of the UST Tranche B Facility Indebtedness, in each case, during the Specified Rolling Stock Prepayment Period without giving effect to any thresholds (except for the Specified Rolling Stock Reinvestment Threshold referred to in clause (ii) of the proviso to clause (a) of the definition of Net Proceeds) or reinvestment rights, and (ii) solely with respect to Dispositions of Specified Rolling Stock, prepayments of the Term Loans required pursuant to this Section 2.13(a)(ii) from the Net Proceeds of such Disposition of Specified Rolling Stock shall be made not later than the date that is five (5) Business Days after the end of the calendar month in which such Disposition of Specified Rolling Stock is made; provided that, in each case, the Borrower shall comply with the requirements set forth in the definition of “Net Proceeds”.

including the requirements regarding application of such proceeds and, as required, deposit and maintenance of such proceeds in the specified accounts.

(iii) If the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness after the Restatement Effective Date (other than Indebtedness permitted under Section 7.03 (other than any Credit Agreement Refinancing Indebtedness)), the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after (or, in the case of Credit Agreement Refinancing Indebtedness, one Business Day after) the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(iv) If the Borrower issues any ~~Alternative Incremental Indebtedness or any~~ Subordinated Indebtedness after the Restatement Effective Date, the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 33% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower of such Net Proceeds.

(v) If the Borrower issues any Equity Interests ~~after the Restatement~~ **after the Restatement (excluding, for the avoidance of doubt, any Treasury Equity) after the Amendment No. 2** Effective Date, the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 50% of all Net Equity Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower of such Net Equity Proceeds; *provided*, that the Borrower shall only be required to apply up to \$30,000,000 in the aggregate of Net Equity Proceeds pursuant to this Section 2.13(a)(v).

~~(vi) If, on any day, the Borrower and its Subsidiaries have Available Cash then, not later than two Business Days after such day, the Borrower shall prepay the outstanding Term Loans under this Agreement in an aggregate amount equal to the amount of such Available Cash (the "Anti-Cash Hoarding Sweep").~~

(b) Except as may otherwise be set forth in any Extension Offer, any Refinancing Amendment, any Permitted Repricing Amendment or any other governing documentation, each prepayment of Term Loans pursuant to Section 2.13(a) shall be applied ratably to each Class of Term Loans then outstanding; *provided*, that any prepayment of Term Loans pursuant to the parenthetical in Section 2.13(a)(iii) shall be applied solely to each applicable Class of Refinanced Debt.

(c) With respect to each Class of Term Loans, each prepayment pursuant to Section 2.13(a) shall be paid to the Lenders in accordance with their respective Pro Rata Shares, subject to Section 2.13(d). For the avoidance of doubt, this Section 2.13(c) is applicable to any prepayment made with the Net Proceeds of Credit Agreement Refinancing Indebtedness.

(d) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to Section 2.13(a) ~~(other than pursuant to clause (vi) of Section 2.13(a))~~ by 1:00 p.m., New York City time, least three (3) Business Days prior to the date of such prepayment ~~(or, in the case of any mandatory prepayment of Term Loans required to be made pursuant to clause (vi) of Section 2.13(a), by 1:00 p.m., New York City time, on the date of such prepayment)~~. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such estimated prepayment. The Administrative Agent will promptly notify each applicable Lender of the contents of the Borrower's prepayment notice and of such Lender's Pro Rata Share or other applicable share of the prepayment. Each Term Lender may reject all of its Pro Rata Share or other applicable share of any mandatory prepayment (such declined amounts, the "**Declined**").

Proceeds”) of Term Loans required to be made pursuant to Section 2.13(a) by providing written notice (each, a “**Rejection Notice**”) to the Administrative Agent and the Borrower no later than 5:00 p.m., New York City time, one Business Day prior to after the date of such prepayment; *provided* that, for the avoidance of doubt, no Lender may reject any prepayment made with proceeds of Credit Agreement Refinancing Indebtedness. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans unless the Borrower and the Administrative Agent, with the consent of the Required Lenders, agree to an extension of time for such failure to be corrected. Any Declined Proceeds shall be retained by the Borrower.

(e) *Funding Losses, Etc.* All prepayments under this Section 2.13 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment and shall be made together with, in the case of any such prepayment of a Eurodollar Loan on a day prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurodollar Loan pursuant to Section 3.04. All prepayments under Section 2.13(a)(iii) shall be subject to Section 2.12(d) (to the extent applicable). Notwithstanding any of the other provisions of Section 2.13(a), so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurodollar Loans is required to be made under Section 2.13(a) prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit the amount of any such prepayment otherwise required to be made thereunder (including accrued interest to the last day of such Interest Period) into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.13. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with Section 2.13(a).

(f) *Foreign Dispositions; Foreign Excess Cash Flow.* Notwithstanding any other provisions of this Section 2.13, (A) to the extent that any or all of the Net Proceeds of any Disposition by a Foreign Subsidiary (“**Foreign Disposition**”) or Excess Cash Flow attributable to Foreign Subsidiaries are (x) prohibited or delayed by applicable local law or (y) restricted by applicable organizational or constitutive documents or any agreement, from being repatriated to the United States, in each case the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.13 but may be retained by the applicable Foreign Subsidiary (the Borrower hereby agreeing to use reasonable efforts (as determined in the Borrower’s reasonable business judgment) to otherwise cause the applicable Foreign Subsidiary to within one year following the date on which the respective payment would otherwise have been required, promptly take all actions reasonably required by the applicable local law, applicable organizational or constitutive document impediment to permit such repatriation), and if within one year following the date on which the respective payment would otherwise have been required, such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law, applicable organizational or constitutive document impediment, such repatriation will be promptly effected and such repatriated Net Proceeds or Excess Cash Flow will be promptly (and in any event not later than 5 Business Days after such repatriation could be made) applied (net of additional taxes, costs and expenses payable or reserved against as a result thereof) (whether or not repatriation actually occurs) to the repayment of the Term Loans pursuant to this Section 2.13 and (B) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Disposition or Foreign Subsidiary Excess Cash Flow could cause adverse tax consequences to the Borrower, such Net Proceeds or Excess Cash Flow so affected may be retained by the applicable Foreign Subsidiary. The non-application of any prepayment amounts as a consequence of the foregoing provisions will not, for the avoidance of doubt, constitute a Default or an Event of Default.

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. Except as required under Section 3.02, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each reduction of the Term Loan Commitments and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Lenders of the applicable Class in accordance with their respective applicable Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans); *provided* that the provisions of this Section 2.14 shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole Dollar amount.

#### Sharing of Setoffs

. Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Borrower or any other Loan Party, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any Loan or Loans as a result of which the unpaid principal portion of its Loans shall be proportionately less than the unpaid principal portion of the Loans of any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Loans of such other Lender, so that the aggregate unpaid principal amount of the Loans and participations in Loans held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Loans then outstanding as the principal amount of its Loans prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Loans outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; *provided, however*, that (i) if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.15 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest, and (ii) the provisions of this Section 2.15 shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower as to which the provisions of this Section 2.15 shall apply (*provided*, that if the applicable payment, assignment, sale or participation to the Borrower is expressly permitted under Section 10.04, the provisions of this Section 2.15 shall not be construed to apply). The Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in a Loan deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by the Borrower to such Lender by reason thereof as fully as if such Lender had made a Loan directly to the Borrower in the amount of such participation. For the avoidance of doubt, neither this Section nor Section 2.14 shall limit the ability of the Borrower to (i) purchase and retire Term Loans pursuant to an open market purchase or a Dutch Auction or (ii) pay principal, fees, premiums and interest with respect to Other Term Loans following the effectiveness of any Refinancing Amendment or any Extension Offer, as applicable, on a basis different from the Loans of such Class that will continue to be held by Lenders that were not Extending Lenders or Lenders pursuant to such Refinancing Amendment, as applicable.

#### Payments

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(a) The Borrower shall make each payment (including principal of or interest on any Borrowing or any Fees or other amounts due and payable) hereunder and under any other Loan Document not later than 2:00 p.m., New York City time, on the date when due in immediately

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available Dollars, without setoff, defense or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. Each such payment shall be made to the Administrative Agent at the Administrative Agent's Office. The Administrative Agent shall promptly distribute to each Lender any payments received by the Administrative Agent on behalf of such Lender.

(b) Except as otherwise expressly provided herein, whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder or under any other Loan Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or Fees, if applicable.

[Reserved]

#### Refinancing Amendments

(a) At any time after the Restatement Effective Date, the Borrower may obtain, from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness (other than Permitted Additional Debt) in respect of all or any portion of the Term Loans then outstanding under this Agreement, in the form of Other Term Loans or Other Term Loan Commitments pursuant to a Refinancing Amendment; *provided* that (A) such Credit Agreement Refinancing Indebtedness will rank *pari passu* in right of payment and of security with the other Loans and Commitments hereunder, (B) such Credit Agreement Refinancing Indebtedness will have such pricing, fees, interest, premiums and optional prepayment terms as may be agreed by the Borrower and the Lenders thereof (*provided*, that such Credit Agreement Refinancing Indebtedness may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory prepayments hereunder, as specified in the applicable Refinancing Amendment), (C) such Credit Agreement Refinancing Indebtedness will have a maturity date later than the maturity date of, and will have a Weighted Average Life to Maturity that is not shorter than, the Refinanced Debt, (D) the covenants, events of default and guarantees of such Credit Agreement Refinancing Indebtedness, if not consistent with the terms of the Tranche B-2 Term Loans, shall be on customary market terms for Indebtedness of such type (as determined by the Borrower in good faith) (*provided*, that the financial maintenance covenant on the then outstanding Term Loans shall be amended to provide the Lenders the benefit of any financial maintenance covenant of such Credit Agreement Refinancing Indebtedness that is in addition to or more restrictive in any material manner than the financial maintenance covenant on the then outstanding Term Loans)), (E) the proceeds of such Credit Agreement Refinancing Indebtedness shall be applied, substantially concurrently with the incurrence thereof, to the prepayment of outstanding Term Loans being so refinanced and (F) other than in the case of Credit Agreement Refinancing Indebtedness the proceeds of which are applied to pay all outstanding Term Loans and other Obligations in full in cash, the Borrower shall have obtained the consent of the Required Lenders. The effectiveness of any Refinancing Amendment shall be subject to the satisfaction (or waiver) on the date thereof of each of the conditions set forth in Section 4.01 (and for purposes thereof the incurrence of the Credit Agreement Refinancing Indebtedness shall be deemed to be a Request for Credit Extension) and, to the extent reasonably requested by the Administrative Agent and the Required Lenders, receipt by the Administrative Agent of customary legal opinions, board resolutions, officers' certificates and a solvency certification or representation, in each case materially consistent with those delivered on the Restatement Effective Date under Section 4.02 (other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent), and customary reaffirmation agreements. Each Class of

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Credit Agreement Refinancing Indebtedness incurred under this Section 2.18(a) shall be in an aggregate principal amount that is (x) not less than \$40,000,000 and (y) an integral multiple of \$1,000,000 in excess thereof. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment.

(b) Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to a Refinancing 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 Credit Agreement Refinancing Indebtedness incurred pursuant thereto and (ii) 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 2.18, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Refinancing Amendment. Without limiting the foregoing, in connection with any Refinancing Amendment, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the Latest Maturity Date after giving effect to such Refinancing Amendment so that such maturity date is extended to the then Latest Maturity Date (or such later date as may be advised by local counsel to the Collateral Agent).

(c) This Section 2.18 shall supersede any provisions in Section 2.14, 2.15 or 10.08 to the contrary.

#### Extensions of Term Loans

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an “**Extension Offer**”) made from time to time by the Borrower to all Lenders of a Class of Term Loans with a like Maturity Date on a pro rata basis (based on the aggregate outstanding principal amount of the respective Term Loans of such Class with the same Maturity Date) and on the same terms to each such Lender, the Borrower may from time to time with the consent of any Lender that shall have accepted such offer extend the maturity date of any Term Loans and otherwise modify the terms of such Term Loans of such Lender pursuant to the terms of the relevant Extension Offer (including, without limitation, by increasing the interest rate or fees payable in respect of such Term Loans and/or modifying the amortization schedule in respect of such Term Loans) (each, an “**Extension**”, and each group of Term Loans as so extended, as well as the group of original Term Loans not so extended, being a “**tranche**”; any Extended Term Loans shall constitute a separate tranche of Term Loans from the tranche of Term Loans from which they were converted and a separate Class of Term Loans), so long as the following terms are satisfied (or waived): (i) no Event of Default shall exist at the time the notice in respect of an Extension Offer is delivered to the Lenders, and no Event of Default shall exist immediately prior to or after giving effect to the effectiveness of any Extended Term Loans, (ii) except as to interest rates, fees, amortization, final maturity date, premium, AHYDO “catch up” payments, required prepayment dates and participation in prepayments (which shall, subject to immediately succeeding clauses (iii), (iv) and (v), be determined by the Borrower and set forth in the relevant Extension Offer), the Term Loans of any Term Lender extended pursuant to any Extension (“**Extended Term Loans**”) shall have the same terms and conditions that are substantially identical to, or less favorable to the lenders or investors providing such Extended Term Loans as the tranche of Term Loans subject to such Extension Offer, (iii) the final maturity date of any Extended Term Loans shall be no earlier than the then Latest Maturity Date and the amortization schedule, if any, applicable to Term Loans for periods prior to the then applicable Latest Maturity Date may not be increased, (iv) the Weighted Average Life to Maturity of any Extended Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans extended thereby, (v) any Extended Term Loans may participate

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on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory prepayments hereunder, as specified in the applicable Extension Offer, (vi) if the aggregate principal amount of Term Loans (calculated on the face amount thereof) in respect of which Term Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans of such Term Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Term Lenders have accepted such Extension Offer, (vii) all documentation in respect of such Extension shall be consistent with the foregoing, and (viii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower.

(b) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.19, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.12, 2.13 or 2.15 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment, *provided* that the Borrower may at its election specify as a condition (a "**Minimum Extension Condition**") to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower's sole discretion and may be waived by the Borrower) of Term Loans of any or all applicable Classes be tendered. The Administrative Agent and the Lenders hereby consent to the Extensions and the other transactions contemplated by this Section 2.19 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.12, 2.13, 2.14 and 2.15) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.19.

(c) Each of the parties hereto hereby (A) agrees that this Agreement and the other Loan Documents may be amended to give effect to each Extension (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 Term Loans incurred pursuant thereto, (ii) modify the scheduled repayments set forth in Section 2.11 with respect to any Class of Term Loans subject to an Extension to reflect a reduction in the principal amount of the Term Loans thereunder in an amount equal to the aggregate principal amount of the Extended Term Loans amended pursuant to the applicable Extension (with such amount to be applied ratably to reduce scheduled repayments of such Term Loans required pursuant to Section 2.11), (iii) modify the prepayments set forth in Sections 2.12 and 2.13 to reflect the existence of the Extended Term Loans and the application of prepayments with respect thereto, and (iv) 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 2.19, and the Required Lenders hereby expressly and irrevocably, for the benefit of all parties hereto, authorize the Administrative Agent to enter into any such Extension Amendment and (B) consent to the transactions contemplated by this Section 2.19 (including, for the avoidance of doubt, payment of interest, fees or premiums in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Amendment). Without limiting the foregoing, in connection with any Extension, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the then Latest Maturity Date so that such maturity date is extended to the Latest Maturity Date after giving effect to such Extension (or such later date as may be advised by local counsel to the Collateral Agent).

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five (5) Business Days' (or such shorter period as may reasonably be agreed by the

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Administrative Agent at the direction of the Required Lenders) prior written notice thereof, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.19.

- (e) This Section 2.19 shall supersede any provisions in Section 2.14, 2.15 or 10.08 to the contrary.

#### ARTICLE 4

##### TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

###### Taxes

(a) Except as provided in this Section 3.01, any and all payments made by or on account of the Borrower or any Guarantor under any Loan Document to any Lender or Agent shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, assessments, withholdings (including backup withholding), fees or similar charges imposed by any Governmental Authority including interest, penalties and additions to tax (collectively "Taxes"), excluding (i) Taxes imposed on or measured by net income, however denominated, and franchise (and similar) Taxes imposed on it in lieu of net income Taxes, (ii) Taxes attributable to the failure by the relevant Lender or Agent to deliver the documentation required to be delivered pursuant to clause (d) of this Section 3.01, (iii) Taxes imposed by a jurisdiction as a result of any connection between such Lender or Agent and such jurisdiction other than any connection arising from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, or enforcing any Loan Document, (iv) any branch profits Taxes imposed by the United States or any similar Tax imposed by any other jurisdiction in which the Borrower or any Guarantor (as appropriate) is located, (v) any U.S. federal withholding tax imposed on amounts payable hereunder pursuant to a law in effect at such time the Lender or Agent becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower under Section 3.06), or designates a new lending office, except in each case to the extent such Lender (or its assignor, if any) was entitled at the time of designation of a new lending office (or assignment) to receive additional amounts with respect to such withholding tax pursuant to this Section 3.01 and (vi) any Tax imposed under FATCA (all such non-excluded Taxes imposed on such payments, being hereinafter referred to as "Indemnified Taxes"). If the Borrower, any Guarantor or other applicable withholding agent shall be required by any Laws to deduct any Indemnified Taxes or Other Taxes (as defined below) from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) the sum payable by the Borrower or Guarantor shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), such Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions, (iii) the applicable withholding agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), if the Borrower or any Guarantor is the applicable withholding agent, the applicable withholding agent shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise, property, intangible or mortgage recording taxes, or charges or levies of the same character, imposed by any Governmental Authority, which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (including additions to tax, penalties and interest related thereto) excluding, in each case, such amounts that result from an Agent or Lender's Assignment and

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Acceptance, grant of a Participation, transfer or assignment to or designation of a new applicable lending office or other office for receiving payments under any Loan Document (collectively, "**Assignment Taxes**") except for Assignment Taxes resulting from assignment or participation that is requested or required in writing by the Borrower (all such non-excluded taxes described in this Section 3.01(b) being hereinafter referred to as "**Other Taxes**").

(c) Without duplication of Section 3.01(a) or (b), the Borrower and each Guarantor agree to indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes and Other Taxes paid by such Agent or Lender (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and (ii) any expenses arising therefrom or with respect thereto, *provided* such Agent or Lender, as the case may be, provides Borrower or Guarantor with a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts.

(d) Each Lender and Agent shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law certifying as to any entitlement of such Lender or Agent to an exemption from, or reduction in, withholding tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender and Agent shall, whenever a lapse in time or change in circumstances renders such documentation obsolete or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent of its inability to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrower, the Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Notwithstanding the foregoing, a Lender shall not be required to deliver any form pursuant to this clause (d) that such Lender is not legally able to deliver. In addition, each Lender and Agent shall deliver to the Borrower and the Administrative Agent such other tax forms or other documents as shall be 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 or Agent is subject to backup withholding or information reporting requirements. Without limiting the foregoing:

(i) Each Lender and Agent that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed executed copies of Internal Revenue Service Form W-9 certifying that such Lender or Agent (as the case may be) is exempt from federal backup withholding.

(ii) Each Lender and Agent that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement whichever of the following is applicable:

(A) two properly completed and duly signed executed copies of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(B) two properly completed and duly signed executed copies of Internal Revenue Service Form W-8ECI (or any successor forms) and, in the case of an Agent, a withholding certificate that satisfies the

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requirements of Treasury Regulation Sections 1.1441-1(b)(2)(iv) and 1.1441-1(e)(3)(v) as applicable to a U.S. branch that has agreed to be treated as a U.S. person for withholding tax purposes,

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (A) a certificate substantially in the form of Exhibit G-1, G-2, G-3 or G-4, as applicable (any such certificate a “**United States Tax Compliance Certificate**”) and (B) two properly completed and duly signed executed copies of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E, or

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a participant holding a participation granted by a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information from each beneficial owner, as applicable (*provided* that, if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owner). Each Lender and Agent shall deliver to the Borrower and the Administrative Agent two further executed copies of any previously delivered form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete or inaccurate and promptly after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower or the Administrative Agent, or promptly notify the Borrower and the Administrative Agent that it is unable to do so. Each Lender and Agent shall promptly notify the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered form or certification to the Borrower or the Administrative Agent.

(e) Any Lender or Agent claiming any additional amounts payable pursuant to this Section 3.01 shall use its reasonable efforts to change the jurisdiction of its lending office (or take any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the reasonable, good faith determination of such Lender, result in any unreimbursed cost or expense or be otherwise materially disadvantageous to such Lender.

(f) If any Lender or Agent determines, in its reasonable, good faith discretion, that it has received a refund in respect of any Taxes as to which indemnification or additional amounts have been paid to it by the Borrower pursuant to this Section 3.01 (including by payment of additional amounts pursuant to this Section) it shall promptly remit such refund to the Borrower or Guarantor, net of all out-of-pocket expenses of the Lender or Agent, as the case may be and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund net of any Taxes payable by any Agent or Lender on such interest); *provided* that the Borrower and Guarantors, upon the request of the Lender or Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such party in the event such party is required to repay such refund to the relevant Governmental Authority. This section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Borrower or any other person.

(g) If a payment made to a Lender or Agent under any Loan Document would be subject to withholding Tax imposed by FATCA if such Lender or Agent 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 or Agent 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

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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 or Agent has complied with such Lender's or Agent's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 3.01(h), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(h) Each party's obligations under this Section 3.01 shall survive any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Each Lender shall indemnify each Agent, within 10 days following written demand therefor, for (i) the full amount of any Indemnified Taxes and Other Taxes attributable to such Lender (but only to the extent that such Agent has not already been indemnified by the Borrower and each Guarantor for such Indemnified Taxes and Other Taxes and without limiting the obligation of the Borrower and each Guarantor to do so), and (ii) any Taxes attributable to such Lender's failure to comply with the provision of Section 10.04(f) relating to the maintenance of a Participant Register, in each case, that are payable or paid by such Agent in connection with any Loan Documents, and any expenses arising therefrom or with respect thereto; *provided* that such Agent provides such lender with a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts.

#### Illegality

. If any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the LIBO Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended 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, the Borrower shall promptly following written demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all applicable Eurodollar Loans of such Lender to ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.04. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

#### Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Loans

(a) If any Lender reasonably determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the Restatement Effective Date, or such Lender's compliance therewith, there shall be any material increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Eurodollar Loans, or a material reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.03(a) any such increased costs or reduction in amount resulting from (i) Indemnified Taxes or Other Taxes for which additional amounts are payable pursuant to Section 3.01, or any Taxes excluded from the definition of Indemnified Taxes under exception (iii) thereof to the extent such Taxes are imposed on or measured by net income or profits or are franchise taxes (imposed in lieu of the foregoing taxes) and any Taxes excluded from the definition of Indemnified Taxes under exceptions (i), (ii), (iv), (v) and (vi) thereof or (ii) reserve requirements contemplated by Section 3.03(c) or reflected in the Adjusted LIBO

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Rate) and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligations to make any Loan), or to reduce the amount of any sum received or receivable by such Lender, then from time to time within fifteen (15) days after written demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such written demand to the Administrative Agent given in accordance with [Section 3.05](#)), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or liquidity or any change therein or in the interpretation thereof, in each case after the Restatement Effective Date, or compliance by such Lender (or its lending office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any entity controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and liquidity and such Lender's desired return on capital), then from time to time upon written demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such written demand to the Administrative Agent given in accordance with [Section 3.05](#)), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender or controlling entity for such reduction within fifteen (15) days after receipt of such written demand.

(c) Except to the extent already reflected in the Adjusted LIBO Rate, the Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurodollar funds or deposits, additional interest on the unpaid principal amount of each applicable Eurodollar Loan of the Borrower 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 in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurodollar Loans of the Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least fifteen (15) days' prior written notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give written notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such written notice.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this [Section 3.03](#) shall not constitute a waiver of such Lender's right to demand such compensation.

(e) If any Lender requests compensation under this [Section 3.03](#), then such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another lending office for any Loan affected by such event; *provided* that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its lending office(s) to suffer no material economic, legal or regulatory disadvantage, and *provided further* that nothing in this [Section 3.03\(e\)](#) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to [Section 3.03\(a\)](#), (b), (c) or (d).

#### Funding Losses

. Promptly following written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

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(i) any continuation or conversion of any Eurodollar Loan of the Borrower on a day prior to the last day of the Interest Period for such Loan, or any payment or prepayment of any Eurodollar Loan of the Borrower on a day prior to the last day of the Interest Period for such Loan; or

(ii) 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 Eurodollar Loan of the Borrower on the date or in the amount notified by the Borrower;

including an amount equal to the excess, as reasonably determined by such Lender, of (1) its cost of obtaining funds for the Eurodollar Loan that is the subject of such event for the period from the date of such event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (2) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such event for such period, but excluding (a) loss of anticipated profits, and (b) any loss, cost or expense resulting from Indemnified Taxes or Other Taxes for which additional amounts are payable pursuant to Section 3.01, or any Taxes excluded from the definition of Indemnified Taxes under Section 3.01.

#### Matters Applicable to all Requests for Compensation

(a) Any Agent or any Lender claiming compensation under this Article 3 shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable and customary averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.02 or 3.03, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; *provided* that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation by the Borrower under Section 3.03, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another any applicable Eurodollar Loan, or, if applicable, to convert ABR Loans into Eurodollar Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.05(c) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue any Eurodollar Loan, or to convert ABR Loans into Eurodollar Loans shall be suspended pursuant to Section 3.05(b) hereof, such Lender's applicable Eurodollar Loans shall be automatically converted into ABR Loans (or, if such conversion is not possible, repaid) on the last day(s) of the then current Interest Period(s) for such Eurodollar Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02 or 3.03 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurodollar Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurodollar Loans shall be applied instead to its ABR Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurodollar Loans shall be made or continued instead as ABR Loans (if

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possible), and all ABR Loans of such Lender that would otherwise be converted into Eurodollar Loans shall remain as ABR Loans.

(d) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02 or 3.03 hereof that gave rise to the conversion of any of such Lender's Eurodollar Loans pursuant to this Section 3.05 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Loans made by other Lenders under the applicable Facility are outstanding, if applicable, such Lender's ABR Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurodollar Loans under such Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

(e) 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 or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to have been adopted or made after the Restatement Effective Date, regardless of the date enacted or adopted.

#### Replacement of Lenders under Certain Circumstances

(a) If at any time (i) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01 or 3.03 as a result of any condition described in such Sections or any Lender ceases to make any Eurodollar Loans as a result of any condition described in Section 3.02 or Section 3.03 or (ii) any Lender becomes a Non-Consenting Lender, then the Borrower may, on prior written notice to the Administrative Agent and such Lender, (x) replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.04(b) (unless otherwise agreed, with the assignment fee to be paid by the Borrower in such instance) (it being understood that any such assignment shall become effective only in accordance with Section 10.04(e)), all of its rights and obligations under this Agreement (in respect of any applicable Facility only in the case of clause (i) or, with respect to a Class vote, clause (ii)) to one or more Eligible Assignees; *provided* that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; and *provided further* that (A) in the case of any such assignment resulting from a claim for compensation under Section 3.03 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments and (B) in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to, and shall be sufficient (together with all other consenting Lenders) to cause the adoption of, the applicable departure, waiver or amendment of the Loan Documents; or (y) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date; *provided* that in the case of any such termination of a Non-Consenting Lender, such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable departure, waiver or amendment of the Loan Documents and such termination shall be in respect of any applicable Facility only in the case of clause (i) or, with respect to a Class vote, clause (ii).

(b) In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each

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Lender, each directly and adversely affected Lender, each Lender with respect to a certain Class of Loans or each directly and adversely affected Lender with respect to a certain Class of Loans, in each case in accordance with Section 10.08, and (iii) the Required Lenders (or, in the case of a consent, waiver or amendment involving all Lenders or all directly and adversely affected Lenders of a certain Class, the Required Class Lenders) have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “**Non-Consenting Lender.**”

(c) Any Lender being replaced pursuant to Section 3.06(a) above shall (i) execute and deliver an Assignment and Acceptance with respect to such Lender’s applicable Commitment and outstanding Loans, and (ii) deliver any Term Notes evidencing such Loans to the Borrower or Administrative Agent. Pursuant to such Assignment and Acceptance, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender’s outstanding Loans, (B) all obligations of the Borrower owing to the assigning Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Acceptance and (C) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate Term Note executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender. In connection with any such replacement, if any such Non-Consenting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Acceptance reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Acceptance to such Non-Consenting Lender, then such Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Acceptance without any action on the part of the Non-Consenting Lender.

(d) Notwithstanding anything to the contrary contained above, the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with Article 9.

#### Survival

- . All of the Borrower’s obligations under this Article 3 shall survive termination of the Commitments and repayment of all other Obligations hereunder.

### ARTICLE 5

#### CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

#### All Credit Extensions

- . The obligation of each Lender to honor any Request for Credit Extension (other than a Request for Credit Extension requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Loans) is subject to satisfaction (or waiver) of the following conditions precedent:

(a) The representations and warranties set forth in Article 5 and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; *provided*, that any such representation and warranty that is qualified by “materiality”, “material adverse effect” or similar language shall be true and correct in all respects (after giving effect to such qualification therein) on and as of the date of such Credit Extension with the same effect as though made on and as of such date or such earlier date, as applicable.

- (b) No Default shall exist or would result from such proposed Credit Extension or from the application of the proceeds therefrom.
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(c) The Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) The Collateral and Guarantee Requirement shall have been satisfied in all material respects with respect to each Material Real Property and, solely to the extent required under clause (b)(iv) of the definition of "Collateral and Guarantee Requirement", each Pension Real Property.

Each Request for Credit Extension (other than a Request for Credit Extension requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Loans) submitted by the Borrower shall be deemed to be a representation and warranty by the Borrower that the conditions specified in Sections 4.01(a) and (b) have been satisfied or waived on and as of the date of the applicable Credit Extension.

#### First Credit Extension

The amendment and restatement of the Existing Credit Agreement provided for hereby and the obligation of each Tranche B-2 Term Lender to make Tranche B-2 Term Loans, shall be subject to satisfaction (or waiver) of the following conditions precedent:

(a) The Administrative Agent and the Required Lenders shall have received the following, each properly executed by a Responsible Officer of the signing Loan Party, each dated as of the Restatement Effective Date:

- (i) executed counterparts of this Agreement duly executed by the Borrower and each Guarantor;
- (ii) a Term Note executed by the Borrower in favor of each Lender that has requested a Term Note at least two Business Days in advance of the Restatement Effective Date;
- (iii) the Security Agreement duly executed by the parties thereto; and
- (iv) the Fee Letter and the Administrative Fee Letter duly executed by the respective parties thereto.

(b) The Administrative Agent and the Required Lenders shall have received, on behalf of themselves, the Collateral Agent and the Lenders, an opinion of (i) Kirkland & Ellis LLP, counsel for the Loan Parties, and (ii) from each local counsel for the Loan Parties listed on Schedule 4.02(b), in each case, dated the Restatement Effective Date and addressed to the Administrative Agent, the Collateral Agent and the Lenders and in customary form and substance, and the Borrower hereby requests such counsel to deliver such opinions.

(c) The Administrative Agent and the Required Lenders shall have received (i) a copy of the certificate or articles of incorporation or organization or certificate of formation, including all amendments thereto, of each Loan Party, certified, if applicable, as of a recent date by the Secretary of State of the state of its organization, and a certificate as to the good standing (to the extent applicable) of each Loan Party as of a recent date, from such Secretary of State or similar Governmental Authority; (ii) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Restatement Effective Date and certifying (A) that attached thereto is a true and complete copy of the by-laws or operating (or limited liability company) agreement of such Loan Party as in effect on the Restatement Effective Date and at all times since a date prior to the date of the resolutions described in clause (B) below, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or equivalent governing body) of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Loan Party is a party and, in the case of the Borrower, the borrowings hereunder, and that such

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resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation or organization or certificate of formation of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to clause (i) above, (D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party on the Restatement Effective Date, and (E) as to the absence of any proceeding for the dissolution or liquidation of such Loan Party; and (iii) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to clause (ii) above.

(d) (i) The Administrative Agent and the Required Lenders shall have received the results of (x) searches of the Uniform Commercial Code filings (or equivalent filings) and (y) judgment and tax lien searches, made with respect to each Loan Party in the states or other jurisdictions of formation of such Loan Party and with respect to such other locations and names listed on the Perfection Certificate, together with copies of the financing statements (or similar documents) disclosed by such search and (ii) each of the Security Agreement, the Custodial Administration Agreement and the Intellectual Property Security Agreement shall have been duly executed and delivered by each Loan Party that is to be a party thereto, together with (x) certificates, if any, representing the Equity Interests pledged by the Borrower and the Guarantors accompanied by undated stock powers executed in blank and (y) documents and instruments to be recorded or filed that the Administrative Agent may deem, subject to Section 6.13 reasonably necessary to satisfy the Collateral and Guarantee Requirement.

(e) The Collateral and Guarantee Requirement shall have been satisfied in all material respects with respect to each Material Real Property.

(f) ~~Prior to or substantially concurrently with the funding of the Loans on the Restatement Effective Date, the Administrative Agent, the ABL Agent and the Borrower shall have executed and delivered the ABL Intercreditor Amendment.~~ [Reserved].

(g) The Succession Agreement shall have been duly executed and delivered by the parties thereto and actions required to assign the Collateral to the Collateral Agent shall have been consummated.

(h) Prior to or substantially concurrently with the funding of the Loans on the Restatement Effective Date, (i) the IBT Agreement shall be in full force and effect, and (ii) the Refinancing Transaction shall have been consummated and the Administrative Agent shall have received evidence thereof reasonably satisfactory to the Administrative Agent. Immediately after giving effect to the Refinancing Transaction and the other transactions contemplated hereby, the Borrower and the Subsidiaries shall have outstanding no Indebtedness for borrowed money other than (i) Indebtedness outstanding under this Agreement, (ii) the ABL Facility Indebtedness, and (iii) Indebtedness permitted pursuant to Section 7.03.

(i) The Administrative Agent and the Required Lenders shall have received a solvency certificate, substantially in the form set forth in Exhibit H, from the chief financial officer or chief accounting officer or other officer with equivalent duties of the Borrower, or in lieu thereof at the option of the Borrower, an opinion of a nationally recognized valuation firm as to the solvency (on a consolidated basis) of the Borrower and its Subsidiaries as of the Restatement Effective Date.

(j) The ABL Credit Agreement shall have been amended pursuant to an amendment agreement, in form and substance reasonably satisfactory to the Required Lenders, to permit the Transactions.

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(k) The Administrative Agent and the Required Lenders shall have received all documentation and other information about the Borrower and the Guarantors required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, including without limitation, a duly executed W-9 tax form (or such other applicable IRS tax form) of the Borrower, that has been reasonably requested in writing at least five Business Days prior to the Restatement Effective Date.

(l) The Administrative Agent and the Required Lenders shall have received a certificate from an officer of the Borrower certifying that since December 31, 2018, there has not occurred any Material Adverse Effect.

(m) The Administrative Agent and the Required Lenders shall have received all applicable fees and other amounts due and payable on or prior to the Restatement Effective Date, including, to the extent invoiced at least three Business Days prior to the Restatement Effective Date (except as otherwise reasonably agreed by the Borrower), reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document on or prior to the Restatement Effective Date.

(n) To the extent required by Section 6.07, the Administrative Agent shall have received evidence that the insurance required by Section 6.07 is in effect, together with endorsements naming the Administrative Agent, for the benefit of the Secured Parties, as additional insured and loss payee thereunder.

Solely for purposes of determining whether the conditions set forth in Section 4.01 or 4.02 have been satisfied in respect of any Credit Extension, the Agents and each Lender party hereto shall be deemed to have consented to, approved, accepted or be reasonably satisfied with any document delivered prior to such Credit Extension or other matter (in each case, for which such consent, approval, acceptance or satisfaction is expressly required by Section 4.01 or 4.02, as applicable) by releasing its signature page to this Agreement or to an Assignment and Acceptance, as the case may be.

## ARTICLE 6

### REPRESENTATIONS AND WARRANTIES

Each of the Borrower and each of the Guarantors party hereto represents and warrants to the Administrative Agent, the Collateral Agent and each of the Lenders that:

#### Existence, Qualification and Power; Compliance with Laws

. Each Loan Party and each Restricted Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing (where relevant) under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite organizational power and authority to execute, deliver and perform its obligations under the Loan Documents to which it is a party and, in the case of the Borrower, to borrow hereunder, (c) is duly qualified and in good standing (where relevant) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs and injunctions, and (e) has all requisite franchises, licenses, authorizations, qualifications, consents and approvals to operate its business as currently conducted; except in each case, referred to in clause (a) (other than with respect to any Loan Party), (c), (d) or (e), to the extent that failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

#### Authorization; No Contravention

. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the

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Transactions, (a) are within such Loan Party's organizational powers, (b) have been duly authorized by all necessary corporate or other organizational action, and (c) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any Lien under (other than as permitted by [Section 7.01](#)), or require any payment to be made under (x) any Indebtedness of such Person in excess of the Threshold Amount or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any material Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (c)(ii)(x), to the extent that such violation, conflict, breach, contravention or payment, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### Governmental Authorization; Other Consents

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority 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, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) to the extent required thereunder or (d) the exercise by the Administrative Agent, the Collateral Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) approvals, consents, exemptions, authorizations or other actions by, or notices to, or filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties (or release existing Liens), (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or to be in full force and effect pursuant to the Collateral and Guarantee Requirement) and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### Binding Effect

This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of each such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity.

#### Financial Statements; No Material Adverse Effect

(a) (i) The Audited Financial Statements fairly present in all material respects the financial condition of the Borrower and its consolidated Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(i) The Unaudited Financial Statements fairly present in all material respects the financial condition of the Borrower and its consolidated Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein and the absence of footnotes.

(b) The forecasts of income statements of the Borrower and its Subsidiaries which have been furnished to the Administrative Agent and the Required Lenders prior to the Restatement Effective Date have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such forecasts it being understood by the Agents and

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the Lenders that such projections as to future events (i) are not to be viewed as facts, (ii)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower and its Restricted Subsidiaries, (B) no assurance is given by the Borrower and its Restricted Subsidiaries that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

(c) Since December 31, 2018, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

#### Compliance With Laws

Neither the Borrower nor any of the Restricted Subsidiaries or any of their respective properties or assets is in violation of, nor will the continued operation of their properties and assets as currently conducted violate, any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting the Mortgaged Property, or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where in each case such violation or default, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

#### Ownership of Property; Liens

(a) Schedule 1.01(c) sets forth a true, complete and correct list of all Real Property owned (whether in fee or through a leasehold estate under any ground lease) by Borrower and the Restricted Subsidiaries as of the Restatement Effective Date.

(b) Each of the Borrower and the Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all its properties and assets (including all Mortgaged Property material to its business), free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and except where the failure to have such title or interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) As of the Restatement Effective Date, Schedule 9 to the Perfection Certificate dated the Restatement Effective Date contains a true and complete list of each Material Real Property owned by the Borrower each other Loan Party and its Restricted Subsidiaries.

(d) As of the Restatement Effective Date, except as otherwise disclosed in writing to the Collateral Agent and the Required Lenders, no Mortgage encumbers improved Mortgaged Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards within the meaning of the Flood Laws unless Evidence of Flood Insurance has been delivered to the Collateral Agent.

#### Environmental Matters

Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) Each Loan Party and each Restricted Subsidiary is and has been in compliance with all Environmental Laws, which includes obtaining and maintaining all Environmental Permits required under such Environmental Laws to carry on the business of the Loan Parties and the Restricted Subsidiaries;

(b) the Loan Parties and the Restricted Subsidiaries have not received notice alleging any Environmental Liability or proposing or seeking to revoke, modify or deny the renewal of any

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Environmental Permit required to be held by the Loan Parties or the Restricted Subsidiaries, and neither the Loan Parties nor the Restricted Subsidiaries have become subject to any Environmental Liability;

(c) there has been no Release, discharge or disposal of Hazardous Materials (i) on, to, at, under or from any Real Property or any vehicles or facilities owned or leased by any of the Loan Parties or the Restricted Subsidiaries, or, to the knowledge of the Borrower, formerly owned, operated or leased by any Loan Party or any Restricted Subsidiary, or (ii) arising out of the conduct of the Loan Parties or the Restricted Subsidiaries that, in the case of (i) or (ii), could reasonably be expected to require investigation, remedial activity or corrective action or cleanup by or on behalf of any Loan Party or any Restricted Subsidiary or for which any Loan Party or Restricted Subsidiary reasonably could be expected to otherwise incur any Environmental Liability; and

(d) there are no facts, circumstances or conditions arising out of or relating to, and there are no pending or reasonably anticipated requirements under Environmental Law associated with, the operations of the Loan Parties or the Restricted Subsidiaries or any Real Property, vehicles or facilities currently or, to the knowledge of the Borrower, previously owned or leased by the Loan Parties or any Restricted Subsidiary that, in such case, are known to or would reasonably be likely to require investigation, remedial activity or corrective action or cleanup by or on behalf of any Loan Party or any Restricted Subsidiary or that are known to or would reasonably be likely to result in the Borrower or any other Loan Party or Restricted Subsidiary incurring any Environmental Liability or capital expenditures to achieve or maintain compliance with Environmental Laws.

#### Taxes

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: each of the Loan Parties and their Restricted Subsidiaries have timely filed all tax returns required to be filed (taking into account any extensions), and have paid all Taxes levied or imposed upon them or their properties, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted if such contest shall have the effect of suspending enforcement or collection of such Taxes and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax deficiency or assessment known to any Loan Party against any Loan Party or any Restricted Subsidiary that would, if made, individually or in the aggregate, have a Material Adverse Effect.

#### ERISA Compliance

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect:

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws (and the regulations and published interpretations thereunder).

(b) The Loan Parties, their Restricted Subsidiaries and their respective ERISA Affiliates may incur liability for ordinary course contributions to (and make payments in satisfaction of such liabilities) plans listed on Schedule 5.10(b), which are Multiemployer Plans.

(c) No ERISA Event has occurred.

#### Subsidiaries

As of the Restatement Effective Date (after giving effect to the Transactions), no Loan Party has any direct or indirect Restricted Subsidiaries other than those specifically disclosed in Schedule 5.11, and all of the outstanding Equity Interests owned by the Loan Parties (or a Restricted Subsidiary of any Loan Party) in such Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable and all Equity Interests owned by a Loan Party (or a Restricted Subsidiary

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of any Loan Party) in such Subsidiaries are owned free and clear of all Liens except (a) those created under the Collateral Documents or under the ABL Facility Documentation, [the UST Tranche A Facility Documentation and the UST Tranche B Facility Documentation](#) (which Liens shall be subject to the ABL Intercreditor Agreement) and (b) any other Lien that is permitted under [Section 7.01](#). As of the Restatement Effective Date, (i) [Section 2\(c\)](#) of the Perfection Certificate sets forth the name and jurisdiction of each Loan Party and (ii) Schedule 5 to the Perfection Certificate sets forth the direct ownership interest of the Borrower and any Loan Party thereof in each such Subsidiary, including the percentage of such ownership.

#### Margin Regulations; Investment Company Act

(a) No Loan Party or Restricted Subsidiary is engaged nor will it engage, principally, or as one of its important activities in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of the provisions of the Regulations of the Board, including Regulation T, U or X.

(b) Neither the Borrower, nor any of the Restricted Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

#### Disclosure

No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, pro forma financial information, budgets, estimates and information of a general economic or industry nature) to any Agent or any Lender about the Borrower and its Subsidiaries in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains or will contain any material misstatement of fact or omits or will omit to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were or will be made, not materially misleading. With respect to projected financial information and pro forma financial information, the Borrower represents that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood and agreed by the Agents and the Lenders that such projections as to future events (i) are not to be viewed as facts, (ii) are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower and its Restricted Subsidiaries and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

#### Labor Matters

(a) Except as, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect: (i) there are no strikes or other labor disputes against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing; (ii) hours worked by and payment made to employees of the Borrower or any of its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters; and (iii) all payments due from the Borrower or any of its Restricted Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party. Except as disclosed on [Schedule 5.14](#), as of the Restatement Effective Date no Loan Party is a party to or bound by any collective bargaining agreement or, with respect to any Foreign Subsidiary, any similar agreement. To the knowledge of any Loan Party, the consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union

under any collective bargaining agreement to which any Loan Party is bound to the extent that such would be reasonably expected to result in a Material Adverse Effect.

- (b) (i) The IBT Agreement is in full force and effect and (ii) other than as contemplated by the IBT Transactions, the IBT Agreement has not been amended, waived or otherwise modified in any respect materially adverse to the Borrower and its Subsidiaries (taken as a whole). For purposes of this Section 5.14(b), it is understood that the resolution in the ordinary course of business of an employee grievance seeking to enforce the IBT Agreement terms will not be deemed to constitute an amendment, waiver or other modification to the IBT Agreement.

#### Insurance

. Each of the Borrower and its Subsidiaries maintains, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations; *provided*, that each of the Borrower and its Subsidiaries may self-insure to the same extent as other companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or each such Subsidiary, as applicable, operates.

#### Solvency

. Immediately after giving effect to the consummation of the Transactions to occur on the Restatement Effective Date, including the making of the Loans under this Agreement, and immediately after giving effect to the application of the proceeds of such Loans, on the Restatement Effective Date (a) the fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis (on a going concern basis), exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the ordinary course of business; (c) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured; and (d) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital. For purposes of this Section 5.16, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability in the ordinary course of business.

#### No Other Borrowed Money Indebtedness

. Immediately after giving effect to the consummation of the Transactions to occur on the Restatement Effective Date the Borrower and its Subsidiaries shall have outstanding no Indebtedness for borrowed money other than (a) Indebtedness outstanding under this Agreement, (b) the ABL Facility Indebtedness, (c) Indebtedness set forth on Schedule 7.03(b) and (d) Indebtedness permitted pursuant to Section 7.03.

#### Collateral Documents

(a) *Valid Liens*. The Collateral Documents are, on execution and delivery thereof by the parties thereto will be, effective to create in favor of the Collateral Agent for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, the Collateral described therein to the extent intended to be created thereby, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity and (i) when financing statements and other filings in appropriate form are filed in the offices specified in Section 2 of the Perfection Certificate (and payments of all fees) and (ii) upon the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent possession or control by the Collateral Agent is required by the Security Agreement), and (iii) upon

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the notating of the Lien of the Collateral Agent on all certificates of title in respect of any Collateral, the Liens created by the Collateral Documents (other than the Mortgages) shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors in such Collateral, in each case prior and superior in right to any other Person, other than Liens permitted by [Section 7.01](#) (other than Liens securing Permitted ~~Second~~ [Junior Priority Additional Debt](#) or any Permitted Refinancing thereof and Liens securing ABL Facility Indebtedness ~~or, UST Tranche A Facility Indebtedness and UST Tranche B Facility Indebtedness or, in each case, a~~ Permitted Refinancing thereof, that are intended to be junior to the Liens of the Collateral Documents).

(b) *PTO Filing; Copyright Office Filing.* When the Security Agreement or a short form thereof is properly filed (and payments of all fees) in the United States Patent and Trademark Office and the United States Copyright Office, to the extent such filings may perfect such interests, the Liens created by such Security Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors thereunder in Patents and Trademarks (each as defined in the Security Agreement) registered or applied for with the United States Patent and Trademark Office or Copyrights (as defined in such Security Agreement) registered or applied for with the United States Copyright Office, as the case may be, in each case prior and superior in right to any other Person, other than Liens permitted by [Section 7.01](#) (other than Liens securing Permitted ~~Second~~ [Junior Priority Additional Debt](#) or any Permitted Refinancing thereof and Liens securing ABL Facility Indebtedness ~~or, UST Tranche A Facility Indebtedness and UST Tranche B Facility Indebtedness or, in each case, a~~ Permitted Refinancing thereof, that are intended to be junior to the Liens of the Collateral Documents) (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to establish a Lien on registered Patents, Trademarks and Copyrights acquired by the grantors thereof after the Restatement Effective Date).

(c) *Mortgages.* Upon recording thereof in the appropriate recording office (and payments of all applicable fees), each Mortgage is effective to create, in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, legal, valid and enforceable (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity) perfected Liens on, and a security interest in, all of the Loan Parties' right, title and interest in and to the Mortgaged Property thereunder and the proceeds thereof, subject only to Liens permitted hereunder, and when such Mortgage is filed in the offices specified in the local counsel opinion delivered with respect thereto in accordance with the provisions of [Sections 6.11](#) and [6.13](#), such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Party to such Mortgage in the Mortgaged Property described therein and the proceeds thereof, in each case prior and superior in right to any other Person, other than Liens permitted by [Section 7.01](#).

(d) *Rolling Stock.* Upon the recording thereof on the applicable certificate of title (and filing of financing statements and payment of applicable fees, which shall be for the account of the Borrower), the notation of the Administrative Agent's lien on any rolling stock or other goods subject to a certificate of title is effective to create, in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, legal, valid and enforceable (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity) perfected Liens on, and a security interest in, all of the Loan Parties' right, title and interest in and to such Collateral and the proceeds thereof, subject only to Liens permitted hereunder, in each case prior and superior in right to any other Person, other than Liens permitted by [Section 7.01](#).

Notwithstanding anything herein (including this [Section 5.18](#) or [Section 5.04](#)) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to (A) [reserved] (B) the pledge or creation of any security interest, or the effects of perfection

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or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) on the Restatement Effective Date and until required pursuant to [Section 4.02\(d\)](#) or [Section 6.13](#), the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Restatement Effective Date pursuant to [Section 4.02\(d\)](#).

#### Compliance with Anti-Terrorism and Corruption Laws

(a) To the extent applicable, the Borrower and the Restricted Subsidiaries are in compliance, in all material respects, with (i) the Trading with the Enemy Act and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, and (ii) the USA PATRIOT Act.

(b) None of the Borrower or any Restricted Subsidiary nor, to the knowledge of the Borrower, any director, officer, agent, employee or controlled Affiliate of the Borrower or any Restricted Subsidiary, (i) is a Blocked Person or (ii) is currently subject to any U.S. sanctions administered by OFAC that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and none of the Borrower or any Restricted Subsidiary will use the proceeds of the Loans for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

No part of the proceeds of the Loans will be used by the Borrower or any of the Restricted Subsidiaries, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

*Section 5.20. Real Property Permits.* Borrower has all Permits, all of which are in full force and effect as of the date hereof required by the applicable Governmental Authorities in connection with the ownership and operation of any Material Real Property, except to the extent that the failure to have any such Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### ARTICLE 7

#### AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation (other than contingent indemnification or reimbursement obligations) hereunder which is accrued or payable shall remain unpaid or unsatisfied, then from and after the Restatement Effective Date, the Borrower shall and shall (except in the case of the covenants set forth in [Sections 6.01](#), [6.02](#), [6.03](#) and [6.15](#)) cause each of the Restricted Subsidiaries to:

#### Financial Statements, Reports, Etc

In the case of the Borrower, deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) within 90 days after the end of each fiscal year of the Borrower (beginning with the fiscal year ending December 31, 2019), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of 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

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accompanied by a report and opinion of KPMG LLP, any other independent registered public accounting firm of nationally recognized standing or any other independent registered public accounting firm approved by the Administrative Agent and the Required Lenders (such approval not to be unreasonably withheld, conditioned or delayed), which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards, (ii) shall not be subject to qualifications or exceptions as to the scope of such audit, (iii) shall be without a “going concern” disclosure or like qualification or exception (other than with respect to, or disclosure or an exception or qualification solely resulting from, (x) the impending maturity of any Indebtedness ~~or~~ (y) any prospective or actual default under any financial covenant or (z) the impact of COVID 19 on the business of the Borrower and its Subsidiaries) and (iv) shall be accompanied with customary management discussion and analysis;

(b) within 45 days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended September 30, 2019), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (x) consolidated statements of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (y) consolidated statements of cash flows for such fiscal quarter and the portion of the 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 and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and accompanied by customary management discussion and analysis; and

(c) within 90 days after the end of each fiscal year (commencing with the fiscal year ending December 31, 2019) of the Borrower, a reasonably detailed consolidated budget for the following fiscal year on a quarterly basis (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flows and projected income and a summary of the material underlying assumptions applicable thereto) (collectively, the “Projections”), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood by the Agents and the Lenders that such projections as to future events (i) are not to be viewed as facts, (ii)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower and its Restricted Subsidiaries, (B) no assurance is given by the Borrower and its Restricted Subsidiaries that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (iii) are not a guarantee of performance and that actual results during the period or periods covered by any such projections may vary significantly from the projected results and such differences may be material.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 or Section 6.02(b) may be satisfied with respect to information of the Borrower and the Subsidiaries by furnishing within the time period specified in the applicable paragraph (A) the applicable financial statements of the Borrower or (B) the Borrower’s Form ~~10~~10-K or 10-Q, as applicable, filed with the SEC; *provided that*, with respect to clauses (A) and (B), to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are accompanied by a report and opinion of KPMG LLP, any other independent registered public accounting firm of nationally recognized standing or any other independent registered public accounting firm approved by the Administrative Agent and the Required Lenders (such approval not to be unreasonably withheld, conditioned or delayed), which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards, (ii) shall not be subject to qualifications or exceptions as to the scope of such audit and (iii) shall be without a “going

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concern” disclosure or like qualification or exception (other than with respect to, or disclosure or an exception or qualification solely resulting from, (A) the impending maturity of any Indebtedness ~~or~~ (B) any prospective or actual default under any financial covenant or (C) the impact of COVID 19 on the business of the Borrower and its Subsidiaries).

Documents required to be delivered pursuant to Section 6.01(a), (b), (c) and (d) or Section 6.02(b) or (c) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the earliest date on which (i) Borrower posts such documents, or provides a link thereto on Borrower’s website on the Internet and provides notice thereof to the Administrative Agent; (ii) such documents are posted on Borrower’s behalf on IntraLinks/IntraAgency or another website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent), or (iii) such financial statements and/or other documents are posted on the SEC’s website on the internet at [www.sec.gov](http://www.sec.gov); *provided* that: (i) promptly following written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent; *provided*, however, that if such Compliance Certificate is first delivered by electronic means, the date of such delivery by electronic means shall constitute the date of delivery for purposes of compliance with Section 6.02(a).

#### Certificates; Other Information

. Deliver to the Administrative Agent for prompt further distribution to each Lender (or, with respect to clauses (k) and (l), deliver directly to the Lenders):

(a) no later than five (5) Business Days after the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(b) (or the date on which such delivery is required), commencing with the first full fiscal quarter completed after the Restatement Effective Date, a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower; it being understood that , if applicable for such period of delivery, such Compliance Certificate shall include (i) information about Net Proceeds received in the period for individual amounts greater than \$5,000,000 and set forth statements of the Borrower’s intention regarding the use of any portion of such Net Proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions or any acquisition permitted hereunder of all or substantially all the assets of, or all the Equity Interests (other than directors qualifying shares) in a Person, division or line of business previously acquired) and (ii) calculations setting forth in reasonable detail the amount of any Cumulative Credit available at the beginning of the applicable period and at the end of such period and the amount and application of any Cumulative Credit during such period (it being understood that the Borrower has the right to reallocate usage of the Cumulative Credit in accordance with Section 1.02(i) from time to time);

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(c) (i) promptly after the furnishing thereof, copies of any material notices of default received by any Loan Party or Restricted Subsidiary (other than in the ordinary course of business) or furnished to any holder of Indebtedness or debt securities of any Loan Party or of any of its Restricted Subsidiaries pursuant to the terms of the ABL Facility Documentation, ~~any~~the UST Tranche A Facility Documentation, UST Tranche B Facility Documentation, any Junior Financing Documentation, any Permitted Additional Debt or any Permitted Refinancing of any thereof, in each case in a principal amount in excess of the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to any clause of this Section 6.02; (ii) promptly after the execution thereof, copies of any amendments, modifications or waivers to the ABL Facility Documentation, the UST Tranche A Facility Documentation or UST Tranche B Facility Documentation, (iii) promptly after delivery thereof, copies of each "Approved CapEx Plan" and "CapEx Plan" under (and as defined in) the UST Tranche B Credit Agreement, and (iv) promptly after the execution thereof, copies of the Treasury Equity Documents;

(d) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), (i) in the case of annual Compliance Certificates only, a report setting forth the information required by sections of the Perfection Certificate describing the legal name and the jurisdiction of organization or formation of each Loan Party and the location of the chief executive office of each Loan Party or confirming that there has been no change in such information since the Restatement Effective Date or the date of the last such report, (ii) a description of each (x) event, condition or circumstance during the last fiscal quarter covered by such Compliance Certificate requiring a mandatory prepayment under Section 2.13(a) and (y) Disposition of owned Real Property on which sits a trucking terminal and adjacent/vacant land located nearby and (iii) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Loan Party or a non-Loan Party as of the date of delivery of such Compliance Certificate;

(e) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Restricted Subsidiaries, including the business performance and tax and collateral due diligence of the Borrower and its Restricted Subsidiaries, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request;

(f) promptly after the written request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act;

(g) promptly after the receipt thereof by the Borrower or any of the Restricted Subsidiaries, a copy of any final "management letter" received by any such Person from its certified public accountants and the management's response thereto;

(h) promptly following any request therefor by the Administrative Agent or any Lender, copies of (i) any material documents described in Section 101(k) of ERISA that any Loan Party may request with respect to any Multiemployer Plan and (ii) any material notices described in Section 101(l) of ERISA that any Loan Party may request with respect to any Plan or Multiemployer Plan, *provided* that if any Loan Party has not requested such material documents or material notices from the administrator or sponsor of the applicable Plan or Multiemployer Plan, such Loan Party shall make a request for such material documents or material notices from the such administrator or sponsor at the earliest date on which such Loan Party determines that it is commercially reasonable to so request in order to avoid the occurrence of an event that could reasonably be expected to result in a material liability, and shall provide copies of such material documents and material notices promptly after receipt thereof; ~~and~~

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(i) promptly after the furnishing thereof (and in no event later than three Business Days after the delivery thereof), a copy of each borrowing base certificate delivered under the ABL Credit Agreement;

(j) commencing as of the Amendment No. 2 Effective Date and promptly after the written request by the Administrative Agent or any Lender, (i) such reasonably available information with respect to purchases of Rolling Stock exceeding \$5,000,000 after the Amendment No. 2 Effective Date as the Administrative Agent or such Lender shall request, (ii) all invoices, receipts, agreements or other information detailing or otherwise relating to any Disposition by any Loan Party of Rolling Stock of such Loan Party, which Disposition or series of Dispositions, in each case, results in at least \$250,000 of aggregate Net Proceeds during any 12-month period, and (iii) any "Request for Disbursement" or similar notice as defined in and delivered in connection with the UST Tranche A Facility and/or the UST Tranche B Facility;

(k) during the Specified Amendment No. 1 Period, by 5:00 p.m. New York time on the third Business Day of (x) the final week of each month after the Amendment No. 2 Effective Date (i.e. commencing on Wednesday July 29, 2020 and then following on August 26, 2020), an updated Cash Flow Forecast, substantially in the form delivered to the Lenders prior to the Amendment No. 2 Effective Date and (y) each week of each month during the Specified Amendment No. 1 Period (other than the final week of such month), a report, in form reasonably satisfactory to the Lenders (it being agreed that the form delivered to the Lenders prior to the Amendment No. 2 Effective Date is reasonably satisfactory), setting forth for the second immediately preceding week ending on the second Friday immediately preceding the applicable third Business Day reporting deadline (i.e., commencing with the reporting deadline occurring on Wednesday August 5, 2020, the week ending Friday July 24, 2020) and for the cumulative period running from the first week ending Friday of such month (such date, a "Forecast Date") through the second Friday immediately preceding the applicable third Business Day reporting deadline (i.e. with respect to the reporting deadline occurring on Wednesday August 5, 2020, the cumulative period commencing on July 3, 2020 and ending Friday July 24, 2020), the actual and forecasted results for such week and cumulative post-Forecast Date time period by line item in the Cash Flow Forecast, together with a written explanation of all material variances (clause (v) collectively, the "Variance Report");

(l) during the Specified Amendment No. 1 Period, prior to 5:00 p.m. New York time, commencing as of the date the last Liquidity Report was delivered to the Lenders pursuant to Amendment No. 1, on the third Business Day of every second week thereafter (i.e., to the extent a Liquidity Report was delivered on Wednesday, July 1, 2020, the next delivery date hereunder will be Wednesday July, 15, 2020), deliver to the Lenders a liquidity report (each, a "Liquidity Report") setting forth the aggregate amount of Liquidity (as defined below) of the Loan Parties as of the end of the immediately preceding week (ending on the Sunday immediately preceding the applicable third Business Day reporting deadline; i.e. with respect to the reporting deadline occurring on Wednesday July 15, 2020, the week ending Sunday July 12, 2020) and a comparison of the amount set forth on the prior delivered Liquidity Report; and

(m) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), the Borrower shall promptly deliver to the Administrative Agent or such Lender a list of its Rolling Stock specifying whether such Rolling Stock is (A) First Lien Term Priority Collateral, (B) UST Tranche B Joint Collateral or (C) UST Tranche B Priority Collateral and shall provide such information as the Administrative Agent or any Lender may request to verify such designation of Rolling Stock.

Notwithstanding anything to the contrary, neither 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)

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that constitutes trade secrets or proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their 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.

#### Notices

. Promptly after the Borrower or any Guarantor has obtained knowledge thereof, notify the Administrative Agent (which shall provide notice to the Lenders):

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) of the filing or commencement of, or any written threat or written notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority, against the Borrower or any of its Restricted Subsidiaries that has a reasonable likelihood of adverse determination and such determination could reasonably be expected to result in a Material Adverse Effect; and
- (d) of the occurrence of any ERISA Event following the Restatement Effective Date that, alone or together with any other ERISA Events that have occurred following the Restatement Effective Date, could reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a), (b), (c), or (d) (as applicable) and (y) setting forth details of the occurrence referred to in Section 6.03(a), (b), (c), or (d), as applicable, and stating what action the Borrower has taken and proposes to take with respect thereto.

#### Payment of Taxes

. Promptly pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, to the extent any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP if such contest shall have the effect of suspending enforcement or collection of such Taxes or, where the failure to pay, discharge or otherwise satisfy the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

#### Preservation of Existence, Etc

. (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or Section 7.05 and (b) obtain, maintain, renew, extend and keep in full force and effect all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except, in the case of clause (a) (other than with respect to the Borrower) or (b), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

#### Maintenance of Properties

. Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in satisfactory working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted, and (b) make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with prudent industry practice and in the normal conduct of its business.

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(a) *Generally.* Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business consistent in all material respects with the insurance maintained by Borrower and/or such Restricted Subsidiaries (as applicable) as of the Restatement Effective Date, which insurance shall insure against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, and which insurance shall be of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons in such similar or same locations.

(b) *Requirements of Insurance.* (A) Use commercially reasonable efforts to cause, not later than 30 days after the Restatement Effective Date (or such longer period as the Required Lenders may agree in writing in their reasonable discretion), all insurance required pursuant to [Section 6.07\(a\)](#) and (d) (x) to provide (and to continue to provide at all times thereafter) that it shall not be canceled, materially modified or not renewed (i) by reason of nonpayment of premium upon not less than 10 days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent or (ii) for any other reason upon not less than 20 days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent and (y) subject to the terms, conditions and provisions of the ABL Intercreditor Agreement to name the Collateral Agent as additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable (and to continue to so name the Collateral Agent at all times thereafter), (B) use commercially reasonable efforts to deliver, not later than 30 days after the Restatement Effective Date (or such longer period as the Administrative Agent, with the consent of the Required Lenders, may agree in writing in its reasonable discretion), a copy of the policy (and to the extent any such policy is cancelled or not renewed, a renewal or replacement policy) or other evidence thereof to the Administrative Agent and the Collateral Agent, or insurance certificate with respect thereto, and (C) in the case of all property insurance policies located in the United States, not later than 30 days after the Restatement Effective Date (or such longer period as the Administrative Agent may agree in writing in its reasonable discretion) cause such policies to be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement, in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent, which endorsement shall provide that, from and after such date, if the insurance carrier shall have received written notice from the Administrative Agent or the Collateral Agent of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower or the Loan Parties under such policies directly to the Collateral Agent during the continuance of such Event of Default.

(c) *Flood Insurance.* Following the Restatement Effective Date, the Borrower shall deliver to the Collateral Agent and the Required Lenders annual renewals of the flood insurance policy under the property policy or annual renewals of a force-placed flood insurance policy.

(d) *Environmental Insurance.* Maintain with financially sound and reputable insurance companies, a premises pollution liability portfolio insurance and storage tank third-party liability, corrective and clean-up insurance policy with respect to its properties and business for an initial three year policy period commencing on the date hereof and with limits not less than, and with terms and conditions comparable to, the limits, terms and conditions in such policies that are in effect as of the date hereof, and subject to annual renewals after such initial three year policy period, which insurance shall be reasonably satisfactory to the Required Lenders. The Borrower shall purchase such insurance required under this [Section 6.07\(d\)](#) within 30 days following the Restatement Effective Date and provide evidence thereof to the Administrative Agent.

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(e) Notify the Administrative Agent and the Collateral Agent (for distribution to the Lenders) promptly whenever any separate insurance concurrent in form or contributing in the event of material loss with that required to be maintained under this [Section 6.07](#) is taken out by the Borrower or another Loan Party; and promptly deliver to the Administrative Agent and the Collateral Agent a duplicate original copy of such policy or policies, or an insurance certificate with respect thereto once available.

#### Compliance with Laws

. Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

#### Books and Records

. Maintain proper books of record and account, in which entries are made that are full, true and correct in all material respects and are in conformity with GAAP (except as noted therein) and which reflect all material financial transactions and matters involving the assets and business of the Borrower or a Restricted Subsidiary, as the case may be.

#### Inspection Rights

. Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and subject to *bona fide* confidentiality obligations, limitations imposed by law and attorney-client privilege and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that, excluding any such visits and inspections during the continuation of an Event of Default, (x) only the Administrative Agent may exercise rights of the Administrative Agent and the Lenders under this [Section 6.10](#) and (y) the Administrative Agent shall not exercise such rights more often than one time during any calendar year; *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 upon reasonable advance notice. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants.

#### Additional Collateral; Additional Guarantors

. Subject to the terms, conditions and provisions of [the each](#) Intercreditor Agreement, at the Borrower's expense, take all reasonable actions which are necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) Upon (x) the formation or acquisition of any new direct or indirect Subsidiary (in each case, other than an Excluded Subsidiary) by the Borrower or (y) any Subsidiary that is an Excluded Subsidiary ceasing to be an Excluded Subsidiary:

(i) within 60 days after such formation, acquisition, designation or other event, or such longer period as the Administrative Agent, with the consent of the Required Lenders (not to be unreasonably withheld, delayed, conditioned or denied), may agree in writing in its reasonable discretion:

(A) causing each such Subsidiary to duly execute and deliver to the Administrative Agent or the Collateral Agent (as appropriate) joinders to this Agreement as Guarantors, Security Agreement Supplements, Intellectual Property Security Agreements, a counterpart of the Intercompany

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Note and other security agreements and documents (including, (I) with respect to any Foreign Subsidiary, local law security agreements and documents in each case consistent with market practice, and (II) with respect to such Mortgages, the documents listed in [Section 6.13\(b\)](#)), as reasonably requested by the Required Lenders and in form and substance reasonably satisfactory to the Required Lenders, Administrative Agent and the Borrower (consistent with the Mortgages (if any), Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Restatement Effective Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

- (B) causing each such Subsidiary (and the parent of each such Subsidiary that is a Loan Party) to deliver to the Collateral Agent any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;
- (C) taking and causing each such Restricted Subsidiary and each direct or indirect parent of such Restricted Subsidiary to take whatever action (including the recording of Mortgages, the filing of UCC financing statements and the delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected Liens to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;
- (ii) if reasonably requested by the Required Lenders, Administrative Agent or the Collateral Agent, within 45 days after such request (or such longer period as the Administrative Agent may agree in writing in its reasonable discretion), delivering to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties as to such matters set forth in this [Section 6.11\(a\)](#) as the Administrative Agent and the Required Lenders may reasonably request; and
- (iii) promptly after the reasonable request therefor by the Administrative Agent or Collateral Agent, delivering to the Collateral Agent with respect to each Material Real Property, any existing surveys, title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; *provided, however*, that there shall be no obligation to deliver to the Collateral Agent any existing environmental assessment report whose disclosure to the Collateral Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, and where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained.
- (b) if reasonably requested by the Required Lenders, Administrative Agent or the Collateral Agent, within 60 days after such request (or such longer period as the Administrative Agent may agree in writing in its reasonable discretion), delivering to the Collateral Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to the validity, perfection, existence and priority of security interests with respect to property of any Guarantor acquired after the Restatement Effective Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii) or (iii) or clause (c) below.
- (c) not later than 120 days after (i) the acquisition by any Loan Party of Material Real Property or (ii) the release of any first lien security interest on any Real Property securing the obligations under the Contribution Deferral Agreement, in each case, that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement (or such longer period as the Administrative Agent, with the consent of the Required Lenders, may agree in writing in its reasonable discretion), which Material Real Property
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would not be automatically subject to another Lien pursuant to pre-existing Collateral Documents, causing such property to be subject to a Lien in favor of the Collateral Agent for the benefit of the Secured Parties and taking, or causing the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Required Lenders, Administrative Agent or the Collateral Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of, the Collateral and Guarantee Requirement and to otherwise comply with the requirements of the Collateral and Guarantee Requirement.

#### Compliance with Environmental Laws

. Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all Environmental Permits necessary for its operations and properties; and, (c) in each case to the extent the Loan Parties or the Restricted Subsidiaries are required to do so by Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

#### Further Assurances and Post-Closing Conditions

(a) Within the time periods after the Restatement Effective Date set forth in Schedule 6.13(a), deliver each Collateral Document set forth on Schedule 6.13(a), duly executed by each Loan Party party thereto, together with all documents and instruments required to perfect the security interest of the Collateral Agent in the Collateral free of any other pledges, security interests or mortgages, except Liens expressly permitted hereunder, to the extent required pursuant to the Collateral and Guarantee Requirement.

(b) Promptly upon reasonable request by the Required Lenders, Administrative Agent or the Collateral Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral (including, without limitation, any defect or error related to certificates of title for vehicles and other rolling stock) as to which the Borrower reasonably agrees is a defect or error, and (ii) subject to the terms of the Collateral Documents, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Required Lenders, the Administrative Agent or the Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Loan Documents and to cause the Collateral and Guarantee Requirement to be and remain satisfied. If the Required Lenders, Administrative Agent or the Collateral Agent reasonably determines that it is required by applicable Law to have appraisals prepared in respect of any Material Real Property of any Loan Party subject to a Mortgage, the Borrower shall cooperate with the Required Lenders, Administrative Agent and/or Collateral Agent, as applicable, in obtaining such appraisals and shall pay all reasonable out-of-pocket costs and expenses relating thereto.

~~Section 6.14. [Reserved]~~

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#### Lender Calls

. The Borrower shall provide for an update call (i) during the Specified Amendment No. 1 Period, on every second week occurring after the Amendment No. 2 Effective Date (i.e. commencing with July 15, 2020), and (ii) after the Specified Amendment No. 1 Period, each month, with the Lenders and senior management of the Borrower with appropriate expertise to discuss the then current Cash Flow Forecast, the Variance Report, union matters and any other matters (including business, operational and due diligence matters) reasonably requested by the Lenders. Notwithstanding anything to the contrary, neither the Borrower nor any Subsidiary will be required to disclose or discuss any matter (i) that constitutes trade secrets or proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their

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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.

#### Maintenance of Ratings

. In the case of the Borrower, use commercially reasonable efforts to maintain a public corporate rating from S&P and a public corporate family rating from Moody's, in each case in respect of the Borrower.

#### Use of Proceeds

. The Borrower shall use the proceeds of the Term Loans borrowed on the Restatement Effective Date to fund the Transactions on the Restatement Effective Date, to pay Transaction Expenses and for general corporate purposes.

#### 2020 Financial Plan

. From and after the Amendment No. 1 Effective Date, the Borrower shall use its commercially reasonable efforts to achieve the aggregate amount of cost savings and other operational initiatives set forth in the updated consolidated budget for the fiscal year ending December 31, 2020 delivered to the Required Lenders on March 28, 2020.

### ARTICLE 8

#### NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation (other than contingent indemnification or reimbursement obligations) hereunder which is accrued or payable shall remain unpaid or unsatisfied, then from and after the Restatement Effective Date:

#### Liens

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens created pursuant to any Loan Document;

(b) Liens existing or contemplated on the Restatement Effective Date and listed on Schedule 7.01(b); *provided* that, (i) the Lien does not extend to any additional property other than ~~(A)~~ any replacements of such property or assets and additions and accessions thereto, after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property (it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition, or asset of the Borrower or any Restricted Subsidiary and the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment provided by any lender, other equipment financed by such lender), and (ii) such Lien does not secure any obligation (including unused commitments) other than those it secured on the Restatement Effective Date or, to the extent constituting Indebtedness, any Permitted Refinancing of the Indebtedness secured thereby on the Restatement Effective Date and any extensions, renewals, restructurings, refinancings and replacements thereof;

(c) Liens for unpaid utilities, taxes, assessments or governmental charges that are (i) not overdue for a period of more than thirty (30) days and are not otherwise delinquent, securing obligations in an amount not to exceed \$500,000, or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or (ii) otherwise not required to be paid pursuant to Section 6.04;

(d) Statutory, lease or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, or other customary Liens (other than in respect of Indebtedness) in favor of landlords, in each case arising in the ordinary course of business that secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, that either secure obligations in an amount not to exceed \$1,000,000 or are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) (i) Liens in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation (other than any Lien imposed pursuant to Section 430(k) of the Code or Section 303(k) of ERISA or a violation of Section 436 of the Code) and (ii) Liens in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any of its Restricted Subsidiaries; *provided* that this [Section 7.01\(e\)](#) shall not permit liens securing letters of credit;

(f) Liens to secure the performance of bids, trade contracts, governmental contracts and leases (in the case of each of the foregoing, other than for Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations), in each case incurred in the ordinary course of business; *provided* that this [Section 7.01\(f\)](#) shall not permit liens securing letters of credit;

(g) (i) easements, rights-of-way, restrictions (including zoning restrictions and other land use regulations), encroachments, protrusions, reservations and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower and the Restricted Subsidiaries, taken as a whole and (ii) ground leases in respect of Real Property on which facilities owned or leased by the Borrower or any of the Restricted Subsidiaries are located; *provided* in the case of this clause (ii) that such ground leases do not confer rights on the counter-party(ies) thereto superior to those of the Collateral Agent in the relevant property;

(h) Liens securing judgments not constituting an Event of Default under [Section 8.01\(h\)](#);

(i) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole, or (ii) secure any Indebtedness;

(j) Liens (i) in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or (ii) on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such person to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) arising in the ordinary course of business in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to the general terms and conditions of such banking institutions;

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(l) Liens (i) on cash earned money deposits or other cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Sections 7.02(e), (h), (l), (p), (t) or (v), in each case to be applied against the purchase price for such Investment, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens (i) in favor of the Borrower or a Restricted Subsidiary on assets of a Restricted Subsidiary that is not a Loan Party securing Indebtedness permitted under Section 7.03 and (ii) in favor of the Borrower or any Guarantor;

(n) any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor, sublessor, licensor or sublicensor under leases, subleases, licenses or sublicenses entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business; *provided*, that no such lease or sublease shall constitute a Capitalized Lease;

(o) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 7.02(a);

(p) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(q) Liens (including any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor or sublessor under Capitalized Leases) securing Indebtedness constituting Capital Leases and purchase money security interests permitted under Section 7.03(e) or Section 7.03(ff); *provided* that (i) such Liens are created within 270 days of the acquisition, construction, repair, lease or improvement, as applicable, of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits, and (iii) such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to Capitalized Leases and the proceeds and products thereof and customary security deposits; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(r) Liens on property (i) of any Foreign Subsidiary that is not a Loan Party and (ii) that does not constitute Collateral, which Liens secure Indebtedness of the applicable Foreign Subsidiary that is not a Loan Party permitted under Section 7.03;

(s) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary, in each case after the Restatement Effective Date; *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (iii) the Indebtedness secured thereby is permitted under Section 7.03;

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- (t) Liens arising from precautionary Uniform Commercial Code financing statements or similar filings;
- (u) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto in the ordinary course of business;
- (v) Liens on the Collateral and, with respect to clauses (B) and (C) below, Treasury Only Collateral, securing Indebtedness permitted under Section 7.03(o) or other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness; provided, that such Liens shall (A) in the case of Indebtedness permitted pursuant to Section 7.03(o)(x) and all other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness, the representative in respect thereof shall have entered into the ABL Intercreditor Agreement as the ABL Agent, on behalf of the holders of such Indebtedness, and such Indebtedness and other obligations shall at all times be subject to the ABL Intercreditor Agreement; provided, further, that as "ABL Obligations"; (B) in the case of any Lien (as defined in the ABL Intercreditor Agreement) in respect of all or any portion of the Term Priority Collateral (as defined in Indebtedness and all other obligations permitted pursuant to Section 7.03(o)(y) or other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness, the representative in respect thereof shall have entered into the ABL Intercreditor Agreement as the UST Tranche A Term Agent, on behalf of the holders of such Indebtedness, and such Indebtedness and other obligations shall at all times be subject to the ABL Intercreditor Agreement as "UST Tranche A Obligations"; and (C) in the case of Indebtedness or other obligations permitted pursuant to Section 7.03(o)(z) and all other obligations otherwise secured pursuant to or in connection with the documents governing such Indebtedness, the representative in respect thereof shall have entered into the ABL Intercreditor Agreement) now or hereafter held by or as the UST Tranche B Term Agent, on behalf of the ABL Agent (as defined in holders of such Indebtedness, and such Indebtedness and other obligations shall at all times be subject to the ABL Intercreditor Agreement) or any ABL Secured Party (as defined in the ABL Intercreditor Agreement) that secures all or any portion of the ABL Obligations (as defined in the ABL Intercreditor Agreement) shall in all respects be junior and subordinate to all Liens granted to the Term Agent (as defined in the ABL Intercreditor Agreement) and the Term Secured Parties (as defined in the ABL Intercreditor Agreement) in such Term Priority Collateral to secure all or any portion of the Term Obligations (as defined in the ABL Intercreditor Agreement); as "UST Tranche B Obligations";
- (w) Liens on the Collateral securing Credit Agreement Refinancing Indebtedness that is Permitted ~~Second~~ Junior Priority Additional Debt and any Permitted Refinancing of the foregoing; provided, that any such Liens are secured on a junior lien basis to the Liens securing the Obligations pursuant to, and subject at all times to, the ~~Second~~ Junior Lien Intercreditor Agreement;
- (x) Liens on the Equity Interests of any joint venture entity of the Borrower consisting of a transfer restriction, purchase option, call or similar right of a third party joint venture partner;
- (y) [reserved];
- (z) ~~Liens on the Collateral securing Alternative Incremental Indebtedness that is Permitted Second Priority Additional Debt and any Permitted Refinancing of the foregoing; provided, that any such Liens are secured on a junior lien basis to the Liens securing the Obligations pursuant to the Second Lien Intercreditor Agreement;~~ [reserved];
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(aa) Liens on (i) the Securitization Assets arising in connection with a Qualified Securitization Financing or (ii) the Receivables Assets arising in connection with a Receivables Facility;

(bb) Liens (i) arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods or (ii) encumbering deposits made to secure obligations arising from contractual or warranty requirements;

(cc) Utility and similar deposits in the ordinary course of business;

(dd) [reserved];

(ee) Liens related to Sale and Leaseback Transactions in an aggregate amount of ~~\$50,000,000~~ \$25,000,000; *provided that*, during the Specified Amendment No. 1 Period (and during the continuance of an Event of Default at any time after the end of the Specified Amendment No. 1 Period), this clause (ee) shall be unavailable for use under this Agreement and the dollar amount specified in this clause (ee) shall be \$0;

(ff) other Liens with respect to property or assets securing obligations of the Borrower or any Restricted Subsidiary in an aggregate principal amount outstanding at any time not to exceed \$5,000,000; *provided that* such Liens do not secure Indebtedness for borrowed money and are not incurred in respect of any pension obligations of the Borrower or any of its Restricted Subsidiaries; and

(gg) Liens on Pension Real Property related to or arising on account of Indebtedness in respect of Specified Pension Fund Obligations permitted pursuant to Section 7.03(u); *provided that* the aggregate amount of Indebtedness in respect of Specified Pension Fund Obligations permitted to be secured by such Liens on Pension Real Property under this Section 7.01(gg) shall not at any time exceed (x) the aggregate amount of Specified Pension Fund Obligations that are secured by such Liens on Pension Real Property on the Restatement Effective Date less (y) payments of Specified Pension Fund Obligations after the Restatement Effective Date.

#### Investments

The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make or hold any Investments, except:

(a) Investments by the Borrower or any of the Restricted Subsidiaries in cash or Cash Equivalents;

(b) loans or advances to officers, directors and employees of any Loan Party or any of its Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, in each case, consistent with past practice (including pursuant to use of any credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services), (ii) in connection with such Person's purchase of Equity Interests of the Borrower and (iii) for any other corporate purposes not described in the foregoing clauses (i) and (ii); *provided that* the aggregate principal amount of loans and advances outstanding at any time under this Section 7.02(b)(ii) and (iii) shall not exceed \$2,000,000;

(c) Investments (i) by the Borrower or any Restricted Subsidiary in any Loan Party (or any newly formed wholly owned Restricted Subsidiary that is not an Excluded Subsidiary and is to become a Loan Party in accordance with Section 6.11), (ii) by any Restricted Subsidiary that is not a Loan Party in any other Restricted Subsidiary that is not a Loan Party and (iii) by any Loan Party in a Restricted

Subsidiary that is not a Loan Party; *provided*, that the aggregate amount of Investments at any time outstanding under this clause (iii) shall not exceed (x) during the Specified Amendment No. 1 Period, \$5,000,000, and (y) after the Specified Amendment No. 1 Period shall have ended, \$15,000,000, *provided* that, if after the end of the Specified Amendment No. 1 Period an Event or Default shall occur and be continuing, such dollar amount in this clause (y) shall be reduced to \$5,000,000;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit or other credits to suppliers in the ordinary course of business;

(e) Investments (i) existing or contemplated on the Restatement Effective Date and set forth on Schedule 7.02(e) (including unused commitments) and any modification, replacement, renewal or extension thereof and (ii) existing on the Restatement Effective Date by the Borrower or any other Restricted Subsidiary in any Restricted Subsidiary and any modification, replacement, renewal or extension thereof; *provided*, that in the case of clause (i) and clause (ii) the amount of the original Investment is not increased except by the terms of such original Investment as set forth on Schedule 7.02(e) or as otherwise permitted by this Section 7.02 (and in such case made in reliance on the other paragraph of this Section 7.02 so permitting such modification, replacement, renewal or extension thereof);

(f) Investments in Swap Contracts permitted under Section 7.03;

(g) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.05;

(h) any acquisition by the Borrower or any Restricted Subsidiary of all or substantially all the assets of, or all the Equity Interests (other than directors' qualifying shares, shares issued to foreign nationals as required by applicable law or any options for Equity Interests that cannot, as a matter of law, be cancelled, redeemed or otherwise extinguished without the express agreement of the holder thereof at or prior to acquisition) in, a Person or division, business unit or line of business of a Person (or any subsequent investment made in a Person, division, business unit or line of business previously acquired in a Permitted Acquisition), in each case in a single transaction or series of related transactions, if (i) no Event of Default shall have occurred and be continuing or would result therefrom at the time of entering in the agreement to consummate such acquisition; (ii) all transactions related thereto shall be consummated in all material respects in accordance with applicable Laws; (iii) as of the most recently ended fiscal quarter for which financial statements of the Borrower and the target are available, (A) the Borrower and the Restricted Subsidiaries shall be in compliance, on a Pro Forma Basis, with the covenant set forth in Section 7.10 and (B) the Total Leverage Ratio, on a Pro Forma Basis, for the Test Period most recently ended shall not be greater than 3.00:1.00, in each case, after giving effect to such acquisition or investment and any related transactions; (iv) any acquired or newly formed Restricted Subsidiary shall not be liable for any Indebtedness except for Indebtedness otherwise permitted by Section 7.03; (v) to the extent required by the Collateral and Guarantee Requirement, (A) the property, assets and businesses acquired in such purchase or other acquisition shall constitute Collateral and (B) any such newly created or acquired Subsidiary (other than an Excluded Subsidiary) shall become a Guarantor, in each case, to the extent required by and in accordance with Section 6.11; (vi) the businesses acquired in such purchase or other acquisition shall be in compliance with Section 7.07; and (vii) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower certifying that the conditions set forth in the preceding clauses (i) through (v) have been satisfied (any such acquisition, a "**Permitted Acquisition**"); *provided* that the aggregate amount of Investments made by Loan Parties pursuant to this Section 7.02(h) in assets that are not (or do not become) owned by a Loan Party or in Equity Interests in Persons that do not become Loan Parties upon consummation of such Permitted Acquisition shall not exceed \$15,000,000 at any time outstanding; *provided, further*, that notwithstanding anything to the contrary, during the Specified

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Amendment No. 1 Period, this clause (h) shall be unavailable under this Agreement and no Permitted Acquisitions may be made (and Permitted Acquisitions shall be disregarded in any reference in any other term or provision herein);

(i) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(j) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers;

(k) advances of payroll payments to employees in the ordinary course of business;

(l) Investments to the extent that payment for such Investments is made with Equity Interests (other than Disqualified Equity Interests) of the Borrower or the Net Proceeds received from the issuance thereof;

(m) Investments of a Restricted Subsidiary acquired after the Restatement Effective Date pursuant to a Permitted Acquisition or of a corporation merged or amalgamated or consolidated into the Borrower or merged, amalgamated or consolidated with a Restricted Subsidiary, in each case in accordance with this Section 7.02 and Section 7.04 after the Restatement Effective Date, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(n) Investments made by any Restricted Subsidiary that is not a Loan Party to the extent such Investments are financed with the proceeds received by such Restricted Subsidiary from an Investment in such Restricted Subsidiary made pursuant to Section 7.02(c)(iii) or Section 7.02(p);

(o) Guarantees by the Borrower or any Restricted Subsidiary of operating leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness, in each case, which leases or other obligations are entered into by the Borrower or any Guarantor in the ordinary course of business;

(p) other Investments (including after the Specified Amendment No. 1 Period for Permitted Acquisitions) in an aggregate amount outstanding pursuant to this clause (p) at any time not to exceed (x) together with (I) the aggregate amount of Restricted Payments made under sub-clause (x) of Section 7.06(e) and (II) the aggregate amount of prepayments, redemptions, purchases, defeasances and other payments made pursuant to sub-clause (x) of Section 7.13(a)(vi), (A) during the Amendment No. 1 Specified Period, \$20,000,000, and (B) after the Specified Amendment No. 1 Period shall have ended, \$30,000,000 plus, (y) the portion, if any, of the Cumulative Credit on the date of such election that the Borrower elects to apply to this subclause (y); *provided*, that with respect to any Investment made pursuant to this Section 7.02(p), (A) no Event of Default shall have occurred and be continuing or would result from the making of any such Investment and (B) with respect to Investments made in reliance on this subclause (y) (i) other than Investments made in Restricted Subsidiaries organized under the laws of Canada or Mexico or, in each case, any political subdivision thereof, on a Pro Forma Basis after giving effect thereto the Total Leverage Ratio is equal to or less than 2.00:1.00 or (ii) with respect to Investments in Restricted Subsidiaries organized under the laws of Canada or Mexico or, in each case, any political subdivision thereof, on a Pro Forma Basis after giving effect thereto the Total Leverage Ratio is equal to or less than 4.00:1.00;

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- (q) (i) make lease, utility and other similar deposits or any other advance or deposit permitted by this Agreement in the ordinary course of business or (ii) make prepayments and deposits to suppliers in the ordinary course of business;
- (r) to the extent constituting Investments, capital expenditures otherwise permitted under this Agreement;
- (s) Investments in deposit accounts or securities accounts opened in the ordinary course of business;
- (t) repurchase, retirement or repayment of any Indebtedness to the extent not otherwise prohibited by this Agreement, including, without limitation, acquisitions of Term Loans pursuant to Section 10.04;
- (u) (a) Investments (including by consideration in the form of cash, Cash Equivalents, contributing receivables and through subordinated notes) in any Receivables Facility or any Securitization Subsidiary or other Subsidiary that in turn then transfers Securitization Assets to a Securitization Subsidiary in order to effectuate a Qualified Securitization Financing, including the ownership of Equity Interests in such Securitization Subsidiary and (b) distributions or payments of Securitization Fees and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Purchase Obligation in connection with a Qualified Securitization Financing or a Receivables Facility;
- (v) Investments consisting of or resulting from (i) Indebtedness permitted under Section 7.03, (ii) Liens permitted under Section 7.01, (iii) Restricted Payments permitted under Section 7.06, (iv) Dispositions permitted by Section 7.05 and (v) fundamental changes permitted by Section 7.04;
- (w) Investments solely to the extent such Investments reflect an increase in the value of Investments otherwise permitted under this Section 7.02;
- (x) loans and advances to Borrower in lieu of, and not in excess of the amount of (after giving effect to any other such loans or advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made in accordance with Section 7.06 (other than Section 7.06(i)); and
- (y) Guarantee obligations of the Borrower or any Restricted Subsidiary in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of any Restricted Subsidiary of the Borrower to the extent required by law or in connection with any statutory filing or the delivery of audit opinions performed in jurisdictions other than within the United States.

#### Indebtedness

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness of any Loan Party under the Loan Documents;
  - (b) (i) Indebtedness outstanding on the Restatement Effective Date and listed on Schedule 7.03(b) and any Permitted Refinancing thereof and (ii) intercompany Indebtedness outstanding on the Restatement Effective Date and any Permitted Refinancing thereof; *provided*, that (x) any intercompany Indebtedness shall be evidenced by an Intercompany Note and (y) any intercompany Indebtedness of any Loan Party owed to any Person that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to the subordination provisions reasonably acceptable to the Required Lenders;
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(c) Guarantees by the Borrower and any Restricted Subsidiary in respect of Indebtedness of the Borrower or any Restricted Subsidiary of the Borrower otherwise permitted hereunder; *provided* that (i) no Guarantee by any Restricted Subsidiary of any ABL Facility Indebtedness, any UST Tranche A Facility Indebtedness, any UST Tranche B Facility Indebtedness, any Junior Financing, any Permitted Additional Debt or any Permitted Refinancing of any of the foregoing shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein (*provided further* that, clause (i) shall not apply in the case of a Guarantee by any Foreign Subsidiary that is not a Loan Party of any Indebtedness of another Foreign Subsidiary that is not a Loan Party), and (ii) if the Indebtedness being Guaranteed is Junior Financing that is, or is required by this Agreement to be, Subordinated Indebtedness, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms (taken as a whole) at least as favorable to the Lenders as those contained in the subordination of such Junior Financing;

(d) Indebtedness (other than Indebtedness permitted under Section 7.03(b)) of the Borrower or any Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or consisting of a Guaranty on behalf of any Loan Party or any other Restricted Subsidiary) to the extent constituting an Investment permitted by Section 7.02 (other than clause (v) thereof); *provided* that (x) all such Indebtedness shall be evidenced by an Intercompany Note and (y) all such Indebtedness of any Loan Party owed to any Person that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to the subordination provisions reasonably acceptable to the Required Lenders;

(e) Attributable Indebtedness and other Indebtedness of the Borrower or any Restricted Subsidiary (including Capitalized Leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred prior to or within 270 days after the acquisition, lease or improvement of the applicable asset in an aggregate amount (together with any Permitted Refinancings thereof) not to exceed ~~\$50,000,000~~ 25,000,000 at any time outstanding;

(f) Indebtedness in respect of Swap Contracts designed to hedge against the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities (including fuel) pricing risks incurred not for speculative purposes;

(g) Indebtedness of the Borrower or any Restricted Subsidiary assumed in connection with any Permitted Acquisition or other Investment permitted hereunder, *provided*, that (w) such Indebtedness is not incurred in contemplation of such Permitted Acquisition or Investment, and any Permitted Refinancing thereof, (x) such Indebtedness and all Indebtedness resulting from a Permitted Refinancing thereof is unsecured (except for Liens permitted by Section 7.01(s)), and (y) both immediately prior and after giving effect thereto, (1) no Event of Default shall exist or result therefrom, and (2) immediately after giving effect to the related Permitted Acquisition or Investment and the assumption of Indebtedness, the Total Leverage Ratio, on a Pro Forma Basis, for the Test Period most recently ended shall not be greater than 3.00:1.00;

(h) Indebtedness representing deferred compensation to employees of the Borrower or any of its Restricted Subsidiaries incurred in the ordinary course of business and other obligations and liabilities arising under employee benefit plans in the ordinary course of business;

(i) Indebtedness consisting of unsecured promissory notes issued by the Borrower or any of its Restricted Subsidiaries to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower permitted by Section 7.06;

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(j) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition expressly permitted hereunder, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earnouts and holdbacks) or other similar adjustments;

(k) Indebtedness in respect of treasury, depository, credit card, debit card and cash management services or automated clearinghouse transfer of funds, overdraft or any similar services incurred in the ordinary course of business or any similar cash management services relating or secured pursuant to the ABL Facility and any hedges related to the ABL Facility;

(l) Indebtedness consisting of the financing of insurance premiums or take-or-pay obligations contained in supply arrangements that do not constitute Guarantees, in each case, in the ordinary course of business;

(m) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business and not in connection with the borrowing of money, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness incurred in the ordinary course of business with respect to reimbursement-type obligations regarding workers compensation claims;

(n) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice and not in connection with the borrowing of money or Swap Contracts;

(o) ~~(x) (i) ABL Facility Indebtedness and (ii) any Permitted Refinancing thereof, in each case, of the Loan Parties; provided that the aggregate principal amount outstanding at any time of all such Indebtedness under clauses (i) and (ii) of this Section 7.03(o)(x) and Section 7.03(z), shall not exceed \$500,000,000;~~ (v) (i) UST Tranche A Facility Indebtedness and (ii) any Permitted Refinancing thereof, in each case, of the Loan Parties; and (z) (i) UST Tranche B Facility Indebtedness and (ii) any Permitted Refinancing thereof, in each case, of the Loan Parties, provided that the aggregate principal amount outstanding (excluding interest paid-in-kind or otherwise capitalized to principal) at any time of all such Indebtedness under clauses (i) and (ii) of this Section 7.03(o)(z) shall not exceed \$400,000,000; provided that the aggregate principal amount outstanding (excluding interest paid-in-kind or otherwise capitalized to principal) at any time of all such Indebtedness under Section 7.03(o)(v) and Section 7.03(o)(z), on a combined basis, shall not exceed \$700,000,000;

(p) ~~(t) Alternative Incremental Indebtedness and (ii) any Permitted Refinancing thereof;~~ [reserved]

(q) (i) Credit Agreement Refinancing Indebtedness (other than any Credit Agreement Refinancing Indebtedness incurred pursuant to a Refinancing Amendment) and (ii) any Permitted Refinancing thereof;

(r) [reserved];

(s) [reserved];

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(t) all premiums (if any), interest (including post-petition interest and interest paid in kind), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (q) above and (u) through (ff) below;

(u) (i) Indebtedness in respect of the Specified Pension Fund Obligations and Guarantees thereof, to the extent existing on the Restatement Effective Date, in an aggregate principal amount at any time outstanding not to exceed the amount outstanding as of the Restatement Effective Date (and as adjusted from time to time pursuant to any audits), plus any interest paid in kind thereon and any accrued but unpaid interest thereon, and (ii) any Permitted Refinancing (disregarding clauses (b) and (c) of the definition of such term) thereof;

(v) [reserved];

(w) [reserved];

(x) Indebtedness in respect of taxes, assessments or governmental charges to the extent that payment thereof shall not at the time be required to be made hereunder;

(y) [reserved];

(z) Indebtedness of (i) any Securitization Subsidiary arising under any Securitization Facility or (ii) the Borrower or any Restricted Subsidiary arising under any Receivables Facility or Qualified Securitization Financing; *provided* that the aggregate principal amount of Indebtedness permitted under this Section 7.03(z), together with the aggregate principal amount of Indebtedness permitted under Section 7.03(o), shall not exceed \$500,000,000 at any one time outstanding;

(aa) Indebtedness in respect of Sale and Leaseback Transactions in an amount not to exceed ~~\$50,000,000~~25,000,000 at any time outstanding; *provided* that, during the Specified Amendment No. 1 Period, this clause (aa) shall be unavailable for use under this Agreement and the dollar amount specified in this clause (aa) shall be \$0;

(bb) Indebtedness in respect of Investments not prohibited by Section 7.02 (other than clause (v) thereof);

(cc) [reserved];

(dd) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services, in each case, incurred in the ordinary course of business consistent with past practice;

(ee) [reserved]; ~~and~~

(ff) other Indebtedness of the Borrower or any of its Restricted Subsidiaries, in an aggregate principal amount at any time outstanding not to exceed \$30,000,000; *provided* that the aggregate principal amount of Indebtedness of Restricted Subsidiaries that are not Guarantors permitted under this Section 7.03(ff) at any time outstanding shall not exceed \$5,000,000; and

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(gg) obligations, charges or liabilities incurred in the ordinary course of business (and not representing Indebtedness for borrowed money) outstanding as of the Amendment No. 2 Effective Date and identified to the Lenders in the schedule delivered to the Lenders on July 5, 2020.

#### Fundamental Changes

The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of related 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, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that (w) no Event of Default exists or would result therefrom, (x) the Borrower shall be the continuing or surviving Person, (y) such transaction does not result in the Borrower ceasing to be organized under the laws of the United States, any State thereof or the District of Columbia and (z) such transaction does not have an adverse effect in any material respect on the perfection or priority of the Liens granted under the Collateral Documents or (ii) one or more other Restricted Subsidiaries; *provided*, in the case of this clause (ii), that when such transaction involves a Loan Party, a Loan Party shall be the continuing or surviving Person except to the extent otherwise constituting an Investment permitted by Section 7.02;

(b) (i) any Restricted Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Restricted Subsidiary that is not a Loan Party and (ii) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interest of the Borrower and the Restricted Subsidiaries and is not disadvantageous to the Lenders in any material respect (it being understood that (other than a transaction constituting a permitted Investment under Section 7.02 or involving an Excluded Subsidiary) in the case of any liquidation or dissolution of a Guarantor, such Guarantor shall transfer its assets to a Loan Party, and in the case of any change in legal form, a Restricted Subsidiary that is a Guarantor will remain a Guarantor and such transaction shall not have an adverse effect on the perfection or priority of the Liens granted under the Collateral Documents);

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Guarantor, then (i) the transferee must be a Guarantor or the Borrower or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in or Indebtedness of a Restricted Subsidiary which is not a Loan Party in accordance with Sections 7.02 and 7.03, respectively;

(d) so long as no Event of Default exists or would result therefrom, the Borrower may merge with any other Person; *provided* that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the "**Successor Borrower**"), (A) the Successor Borrower shall be an entity organized or existing under the Laws of the United States, any state thereof or the District of Columbia and such transaction shall not have an adverse effect in any material respect on the perfection or priority of the Liens granted under the Collateral Documents, (B) the Successor Borrower shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor Borrower's obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that the collateral granted by it to secure its obligations thereunder shall apply to secure its and the Successor

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Borrower's obligations under the Loan Documents, (E) if reasonably requested by the Collateral Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Collateral Agent) confirmed that the collateral granted by it to secure its obligations thereunder shall apply to secure its and the Successor Borrower's obligations under the Loan Documents, and (F) the Borrower shall have delivered to the Administrative Agent an officer's certificate and an opinion, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; *provided further*, that if the foregoing are satisfied (or waived), the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement; *provided further* that the Borrower agrees to provide any documentation and other information about the Successor Borrower as shall have been reasonably requested in writing by any Lender through the Administrative Agent that is required by regulatory authorities or under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA Patriot Act;

(e) any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person (other than the Borrower) in order to effect an Investment permitted pursuant to [Section 7.02](#); *provided* that either (x) the continuing or surviving Person shall be a Restricted Subsidiary, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of [Section 6.11](#) to the extent required pursuant to the Collateral and Guarantee Requirement or (y) the transaction shall otherwise constitute a permitted Investment;

(f) any Restricted Subsidiary may effect a merger, dissolution, liquidation or consolidation, the purpose of which is to effect a Disposition permitted pursuant to [Section 7.05](#); and

(g) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the extent that such Disposition (or series of related Dispositions) is not prohibited under [Section 7.05](#).

#### Dispositions

The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make any Disposition, except:

(a) (i) Dispositions (including abandonment) of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business, (ii) Dispositions (including abandonment) in the ordinary course of business of surplus property or property no longer used or useful in the conduct of the business of the Borrower or any of the Restricted Subsidiaries, (iii) Dispositions of immaterial assets (considered in the aggregate) in the ordinary course of business and (iv) Dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business;

(b) Dispositions of property to the extent that (i) such property [or an interest therein](#) is exchanged for credit against the purchase price of similar replacement property, (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property, or (iii) such property is swapped in exchange for services or other assets of comparable or greater value or usefulness to the business of the Borrower and the Subsidiaries as a whole, as determined in good faith by the management of the Borrower;

(c) Dispositions of property to the Borrower or any Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party and if such property constitutes Collateral, it shall continue to constitute Collateral after such Disposition or (ii) if such transaction constitutes an Investment, such transaction is permitted under [Section 7.02](#);

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- (d) Dispositions of cash and Cash Equivalents;
  - (e) leases, subleases, licenses, sublicenses (including the provision of software under an open source license) or any abandonment thereof, in each case (i) in the ordinary course of business and (ii) without interfering in any material respect with the business of the Borrower or any of its Restricted Subsidiaries;
  - (f) transfers of property subject to Casualty Events upon the receipt (where practical) of the Net Proceeds of such Casualty Event;
  - (g) Dispositions (including write-offs, discounts, and compromises in clause (b) above) or discounts without recourse of accounts receivable and related assets in connection with the compromise or collection thereof in the ordinary course of business;
  - (h) [reserved];
  - (i) [reserved];
  - (j) Dispositions of Investments in joint ventures or other non-wholly owned Subsidiaries to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;
  - (k) the unwinding of any Swap Contract or cash management agreement;
  - (l) Dispositions of property not otherwise permitted under this Section 7.05; *provided* that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default exists), no Event of Default shall exist or would result from such Disposition, (ii) any prepayment required to be made in connection with the receipt of Net Proceeds in respect of such Disposition pursuant to Section 2.13 shall be made in accordance therewith, (iii) the Borrower or any of the Restricted Subsidiaries shall receive not less than 75% of the consideration for such Disposition in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(a), (c), (d), (f), (i), (j), (k), (l), (o), (p), (v), (w), (z), (aa), (bb), (cc) and (ee)), (iv) any portion of the consideration for such Disposition that is not in the form of cash or Cash Equivalents shall become Collateral, (v) this Section 7.05(l) shall not permit the Disposition of all or substantially all of the assets of the Borrower and its Subsidiaries (taken as a whole), and (vi) during the Specified Amendment No. 1 Period, (A) no Dispositions shall be permitted under this Section 7.05(l) except for (1) Dispositions of Real Property specified in Schedule A to Amendment No. 1 (such Real Property, "Scheduled Property") to the extent (x) such Real Property is subject to a bona fide sale agreement with a third party purchaser entered into prior to March 23, 2020 and (y) the Disposition of such Real Property shall be made for gross consideration not less than the amount specified for such Scheduled Property identified to the Lenders as of the Amendment No. 1 Effective Date (subject to customary purchase price adjustments and working capital adjustments), (2) Dispositions of property (other than Real Property), *provided* that the aggregate fair market value of property Disposed of pursuant to this clause (vi)(A)(2) shall not exceed \$10,000,000 in the aggregate during the Specified Amendment No. 1 Period, and (3) Dispositions of Pension Real Property set forth on Schedule B to Amendment No. 1 and (B) the Net Proceeds of each Disposition permitted under the foregoing clause (vi)(A) shall be applied to the prepayment of the Term Loans in accordance with Section 2.13(a)(ii) without giving effect to any thresholds or reinvestment rights;
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(m) (i) any Disposition of Securitization Assets or Receivables Assets, or participations therein, in connection with any Qualified Securitization Financing or Receivables Facility, in the case of this clause (i) to the extent permitted under Section 7.03(z), or (ii) the Disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with past practice;

(n) [reserved];

(o) dispositions from and after the Restatement Effective Date of non-core or obsolete assets acquired in connection with any Permitted Acquisition or other permitted Investments; *provided* that, during the Specified Amendment No. 1 Period, no Dispositions shall be permitted under this clause (o);

(p) the incurrence of Liens permitted hereunder;

(q) sales or dispositions of Equity Interests of any Subsidiary (other than the Borrower) in order to qualify members of the governing body of such Subsidiary if required by applicable law;

(r) [reserved];

(s) Restricted Payments made pursuant to Section 7.06; ~~and~~

(t) Sale and Leaseback Transactions in an aggregate principal amount not to exceed ~~\$50,000,000~~ 25,000,000 during the term of this Agreement; *provided* that, during the Specified Amendment No. 1 Period, this clause (t) shall be unavailable for use under this Agreement and the ~~dollar amount~~ dollar-amount specified in the clause (t) shall be \$0; and

(u) other Dispositions consented to by the Required Lenders in their sole discretion.

*provided* that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(a)-(c)-(e)-(f)-(g)-(i)-(j)-(k)-(m)-(n)-(o)-(p)-(q), (t) and (s) and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than a Loan Party, such Collateral shall be automatically sold free and clear of the Liens created by the Loan Documents, and, if requested by the Borrower, upon the certification delivered to the Administrative Agent by the Borrower that such Disposition is permitted by this Agreement, the Administrative Agent or the Collateral Agent, as applicable, shall be authorized to take, and shall take, any actions reasonably requested by the Borrower in order to effect the foregoing (at the Borrower's expense) and/or to expressly subordinate any Lien in favor of the Collateral Agent on such Collateral that is disposed of.

Notwithstanding anything herein to the contrary in this Agreement, (i) during the Specified Amendment No. 1 Period, the Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make any Disposition of Real Property (other than (a) Dispositions of Scheduled Property pursuant to Section 7.05(l), (b) leases of Real Property entered into in the ordinary course of business (excluding Sale and Leaseback Transactions), (c) transfers of property subject to condemnation and Casualty Events) and (d) Dispositions of Pension Real Property set forth on Schedule B to Amendment No. 1 so long as the proceeds thereof are applied to repay CDA First Lien Obligations (or, if the CDA First Lien Obligations shall have been paid in full, to prepay the Term Loans in accordance with Section 2.13(a)(ii) without giving effect to any thresholds or reinvestment rights); (ii) after the Amendment No. 2 Effective Date, the Borrower shall not, nor shall it permit any Restricted Subsidiary to, Dispose of Specified Rolling

Stock with an aggregate fair market value in excess of \$5,000,000 in any fiscal year without the prior consent of the Required Lenders, (iii) any Disposition of Rolling Stock shall be for no less than the fair market value of such property at the time of such Disposition, and (iv) during the Specified Rolling Stock Prepayment Period, all Net Proceeds from any Disposition of Specified Rolling Stock in excess of the Specified Rolling Stock Reinvestment Threshold in any fiscal year shall be applied to prepay the Term Loans in accordance with Section 2.13(a)(i).

## Restricted Payments

. The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower or any other Restricted Subsidiary (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in the Equity Interests (other than Disqualified Equity Interests unless such Disqualified Equity Interests would be permitted by [Section 7.03](#)) of such Person;

(c) (i) repurchases of Equity Interests in the Borrower deemed to occur upon the exercise of stock options or warrants or the settlement or vesting of other equity awards if such Equity Interests represent a portion of the exercise price of such options or warrants, (ii) cash payments in lieu of the issuance of fractional shares in connection with the exercise of stock options, warrants or other securities convertible into or exchangeable for Equity Interests of the Borrower or (iii) Restricted Payments made in respect of any other transaction involving fractional shares; *provided, however*, that any such cash payment shall not be for the purpose of evading the limitations of this Agreement;

(d) the Borrower may pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of the Borrower held by any present or former employee, officer, director or consultant of the Borrower or any Restricted Subsidiary or equity based awards held by such Persons, in each case, upon the death, disability, retirement or termination of employment of any such Person or pursuant to any employee or director equity plan, employee or director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, officer or consultant of the Borrower or any Restricted Subsidiary; *provided*, that the aggregate amount of Restricted Payments made pursuant to this clause (d) shall not exceed (i) \$7,500,000 in any fiscal year plus (ii) the then applicable Cumulative Credit plus (iii) the proceeds of any key man insurance policies; *provided, further*, that to the extent that the aggregate amount of Restricted Payments made by the Borrower and the Restricted Subsidiaries pursuant to this clause (d) in any fiscal year is less than the amount set forth above, 100% of the amount of such difference may be carried forward and used to make such Restricted Payments pursuant to this clause (d) in the next two succeeding fiscal years (*provided*, that any such amount carried forward shall be deemed to be used to make such Restricted Payments in any fiscal year after the amount set forth above for such fiscal year shall be deemed to be used to make such Restricted Payments for such fiscal year);

(e) the Borrower may make Restricted Payments in an aggregate amount not to exceed (x) together with (I) the aggregate amount of Investments made under sub-clause (x) of [Section 7.02\(p\)](#) and (II) the aggregate amount of prepayments, redemptions, purchases, defeasances and other payments made pursuant to sub-clause (x) of [Section 7.13\(a\)\(vi\)](#), \$30,000,000, plus (y) the portion, if any, of the Cumulative Credit on such date that the Borrower elects to apply to this subclause (y); *provided* that (A) with respect to any Restricted Payment made pursuant to this [Section 7.06\(e\)](#), (1) no Event of Default has occurred and

is continuing or would result therefrom and (2) on a Pro Forma Basis after giving effect thereto the Total Leverage Ratio is equal to or less than 2.00:1.00, and (B) no Restricted Payments shall be permitted under this clause (e) until ~~(1)~~ the Specified Amendment No. 1 Period shall have ended ~~and (2) the Borrower shall have repaid an aggregate principal amount of the Term Loans equal to the PIK Amount pursuant to the last sentence of Section 2.06(d);~~

(f) distributions or payments of Securitization Fees, sales, contributions and other transfers of Securitization Assets or Receivables Assets and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Purchase Obligations, in each case in connection with a Qualified Securitization Financing or a Receivables Facility;

(g) [reserved];

(h) the Restricted Subsidiaries may make a Restricted Payment in connection with the acquisition of additional Equity Interests in any Restricted Subsidiary from minority shareholders (in accordance with Section 7.08, if applicable);

(i) Restricted Payments made (i) in respect of working capital adjustments or purchase price adjustments pursuant to any Permitted Acquisition or other permitted Investments (other than pursuant to Section 7.02(x)) and (ii) to satisfy indemnity and other similar obligations under the Permitted Acquisitions or other permitted Investments; *provided* that no Restricted Payments shall be permitted under this clause (i) during (x) the Specified Amendment No. 1 Period and (y) during the continuance of an Event of Default at any time after the end of the Specified Amendment No. 1 Period;

(j) [reserved]; and

(k) Restricted Payments in respect of transactions related to (i) fundamental changes permitted under Section 7.04 and (ii) Investments permitted under Section 7.02 (other than clause (v) thereof).

#### Change in Nature of Business; Organization Documents

(a) The Borrower shall not, nor shall the Borrower permit any of the Restricted Subsidiaries to, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Restatement Effective Date or any business reasonably related, complementary, synergistic or ancillary thereto or reasonable extensions thereof.

(b) The Borrower shall not, nor shall the Borrower permit any of the Restricted Subsidiaries to, amend, restate, supplement or otherwise modify to, or waive of any of its rights under, its Organization Documents to the extent any of the foregoing could reasonably be expected to be material and adverse to the Lenders (in their capacities as such).

#### Transactions with Affiliates

The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into any transaction of any kind with any of its Affiliates, whether or not in the ordinary course of business, other than (a) transactions between or among Loan Parties or any entity that becomes a Loan Party as a result of such transaction and transactions between or among Restricted Subsidiaries that are not Loan Parties, (b) on terms (taken as a whole) substantially not less favorable to the Borrower in any material respect or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (c) the Transactions and the payment of fees and expenses (including

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Transaction Expenses) as part of or in connection with the Transactions, (d) the issuance of Equity Interests or equity based awards to any officer, director, employee or consultant of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business, (e) Investments made pursuant to [Section 7.02](#), Indebtedness incurred pursuant to [Section 7.03](#) and Restricted Payments permitted under [Section 7.06](#), (f) customary employment, consulting and severance arrangements between the Borrower and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and similar arrangements in the ordinary course of business, (h) the payment of customary fees and reasonable out of pocket costs to, and customary indemnities provided on behalf of, directors, officers, employees and consultants of the Borrower and the Restricted Subsidiaries in the ordinary course of business, (i) any customary transaction with a Receivables Facility or a Securitization Subsidiary effected as part of a Qualified Securitization Financing, (j) transactions pursuant to registration rights agreements and similar arrangements, (k) transactions in which the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent and the Required Lenders a letter from an independent financial advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) of this [Section 7.08](#) and (l) transactions pursuant to agreements in existence on the Restatement Effective Date and set forth on [Schedule 7.08](#) or any amendment thereto to the extent such an amendment (taken as a whole) is not adverse to the Lenders in any material respect.

#### Burdensome Agreements

The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into or permit to exist any Contractual Obligation (other than (i) this Agreement or any other Loan Document, (ii) any ABL Facility Documentation ~~or~~, (iii) [any UST Tranche A Facility Documentation](#), (iv) [any UST Tranche B Facility Documentation](#), (v) any documents governing Credit Agreement Refinancing Indebtedness, ~~Alternative Incremental Indebtedness~~, or a Permitted Refinancing of (ii) ~~(iii)~~ [\(v\) or \(vi\) any Treasury Equity Documents or documents governing Treasury Equity](#)) that limits the ability of (a) any Restricted Subsidiary that is not a Guarantor to make Restricted Payments to the Borrower or any Guarantor or to make or repay loans or advances to or otherwise transfer assets to or make Investments in the Borrower or any Restricted Subsidiary that is a Guarantor or (b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person to secure the Obligations; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which (i) (x) exist on the Restatement Effective Date and (to the extent not otherwise permitted by this [Section 7.09](#)) are listed on [Schedule 7.09](#) hereto and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation in any material respect (as determined in good faith by the Borrower), (ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such Contractual Obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary, (iii) represent Indebtedness of a Restricted Subsidiary which is not a Loan Party which is permitted by [Section 7.03](#), (iv) arise in connection with any Disposition permitted by [Section 7.04](#) or [7.05](#) and relate solely to the assets or Person subject to such Disposition, (v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures or other non-wholly owned Subsidiaries permitted under [Section 7.02](#) and applicable solely to such joint venture or other non-wholly owned Subsidiaries and are entered into in the ordinary course of business, (vi) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness (other than any Junior Financing) permitted under [Section 7.03\(e\)](#) or (g) but solely to the extent any negative pledge relates to the property financed by such Indebtedness, (vii) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto, (viii) comprise restrictions imposed by any agreement governing secured Indebtedness permitted pursuant to [Section 7.03](#) to the extent that such

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restrictions apply only to the property or assets securing such Indebtedness, (ix) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary entered into in the ordinary course of business, (x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (xi) are customary restrictions contained in the ABL Facility Documentation and any Qualified Securitization Financing, (xii) arise in connection with cash or other deposits permitted under Sections 7.01 and 7.02 and limited to such cash or deposit, or (xiii) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Restatement Effective Date and permitted under Section 7.03 if the restrictions contained in any such agreement taken as a whole (a) are not materially less favorable to the Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by the Borrower) or (b) either (I) the Borrower determines at the time of entry into such agreement or instrument that such encumbrances or restrictions will not adversely affect, in any material respect, the Borrower's ability to make principal or interest payments required hereunder or (II) such encumbrance or restriction applies only during the continuance of a default relating to such agreement or instrument.

#### Financial Covenant

The Borrower shall not permit Consolidated EBITDA ~~as of the last day of~~ any Test Period, commencing with the Test Period ending as of the end of ~~each of its fiscal quarters; commencing with~~ the fiscal quarter ending ~~September 30, 2019~~December 31, 2021, to be less than ~~\$200,000,000; provided that this Section 7.10 shall not apply with respect to the fiscal quarters ending on March 31, 2020, June 30, 2020, September 30, 2020 and December 31, 2020;~~the amount set forth for such Test Period, below:

#### Section 7.11. Anti-Cash Hoarding

~~The Borrower shall not, nor shall it permit any Restricted Subsidiary to, request a borrowing under the ABL Credit Agreement that would have the effect of causing the Availability (as defined in the ABL Facility as in effect on the date of the Amendment) under the ABL Facility on the date of such proposed borrowing to be less than \$67,500,000, to the extent that (i) the Borrower and its Subsidiaries have cash and Cash Equivalents to make, apply to, or satisfy, the payments, expenses, obligations or other working capital requirements for which such borrowing is being requested and the application of such cash and Cash Equivalents to satisfy such payments, expenses, obligations or other working capital requirements is permitted under the ABL Credit Agreement (as in effect on the Amendment No. 1 Effective Date), (ii) such proposed borrowing under the ABL Facility (after applying the proceeds therefrom within two (2) Business Days of the date thereof) shall trigger a prepayment under the Anti-Cash Hoarding Sweep or (iii) the Borrower and its Subsidiaries have cash and Cash Equivalents greater than the Available Cash Threshold, provided that, solely in the case of any letters of credit requested under the ABL Credit Agreement, if the issuance of the letter of credit would have the effect of causing the Availability (as defined in the ABL Facility as in effect on the date of the Amendment) under the ABL Facility on the date of such proposed borrowing to be less than \$67,500,000 and the Borrower, and its Restricted Subsidiaries have cash and Cash Equivalents to cash collateralize such letter of credit obligations, the Borrower shall apply such Cash and Cash Equivalents to cash collateralize such letter of credit to the extent permitted under the ABL Credit Agreement (as in effect on the Amendment No. 1 Effective Date).~~

<u>Test Period Ending</u>	<u>Minimum EBITDA</u>
<u>December 31, 2021</u>	<u>\$100,000,000</u>

<u>March 31, 2022</u>	<u>\$150,000,000</u>
<u>June 30, 2022 and the last day of each Fiscal Quarter thereafter</u>	<u>\$200,000,000</u>

Section 8.11. Minimum Liquidity. During the Liquidity Test Period, the Borrower shall not permit Liquidity to be less than \$125,000,000 on Tuesday and Friday of each week (or if any such day is not a Business Day, then the next succeeding Business Day) during the Liquidity Test Period.

Fiscal Year

The Borrower shall not make any change in its fiscal year or fiscal quarters (it being understood that the Borrower's fiscal year ends on December 31 of each year, and that each of the first three fiscal quarters of each fiscal year of the Borrower ends on the March 31, June 30 and September 30, respectively); *provided, however*, that the Borrower may, upon written notice to the Administrative Agent and the Required Lenders, change its fiscal year and fiscal quarters to any other fiscal year (and any other fiscal quarters) reasonably acceptable to the Administrative Agent and the Required Lenders, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such changes.

Prepayments, Etc. of Indebtedness

(a) The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that neither payments of regularly scheduled interest in cash, nor any payments of regularly scheduled principal amounts shall be permitted ~~unless such payments violate any subordination terms of any Junior Financing Documentation prior to the scheduled maturity date thereof~~ (x) any Permitted Additional Debt (or any Permitted Refinancing thereof) ~~or, the UST Tranche A Facility Indebtedness (or any Permitted Refinancing thereof) or the UST Tranche B Facility Indebtedness (or any Permitted Refinancing thereof) or~~ (y) any Junior Financing that constitutes Subordinated Indebtedness (or any Permitted Refinancing thereof), or make any payment in violation of any subordination terms of any Junior Financing Documentation, if any, except (i) any Permitted Refinancing permitted in respect thereof (including any Permitted Refinancing set forth in Section 7.03(u) hereof), (ii) the conversion of any Permitted Additional Debt (or any Permitted Refinancing thereof), the UST Tranche A Facility Indebtedness or the UST Tranche B Facility Indebtedness or Junior Financing that constitutes Subordinated Indebtedness (or any Permitted Refinancing thereof) to Equity Interests (other than Disqualified Equity Interests) of the Borrower, (iii) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary to the Borrower or any Restricted Subsidiary to the extent not prohibited by applicable subordination provisions, (iv) prepayments, redemptions, purchases, defeasances and other payments or satisfaction from the proceeds of equity issuances by the Borrower, (v) AHYDO "catch up" payments, ~~and~~ (vi) prepayments, redemptions, purchases, defeasances and other payments in respect of Permitted Additional Debt (or any Permitted Refinancing thereof), and Junior Financings that constitutes Subordinated Indebtedness (or any Permitted Refinancing thereof) prior to their scheduled maturity in an aggregate amount not to exceed (x) together with (I) the aggregate amount of Investments made under sub-clause (x) of Section 7.02(p) and (II) the aggregate amount of Restricted Payments made pursuant to sub-clause (x) of Section 7.06(e), \$30,000,000, *plus* (y) the portion, if any, of the Cumulative Credit on such date that the Borrower elects to apply to this subclause (y); *provided* that (A) no prepayment, redemption, purchase, defeasance or other payment shall be made pursuant to this clause (vi) if an Event of Default has occurred and is continuing or would result therefrom, and (B) no prepayments, redemptions, purchases, defeasances and other payments in respect of Permitted Additional

Debt shall be permitted under this clause (vi) until ~~(4)~~ the Specified Amendment No. 1 Period shall have ended ~~and (2) the Borrower shall have repaid an aggregate principal amount of the Term Loans equal to the PIK Amount pursuant to~~, (vii) with respect to the UST Tranche A Facility Indebtedness and the UST Tranche B Facility Indebtedness, payments of regularly scheduled interest in cash and in-kind shall be permitted, (viii) with respect to the UST Tranche A Facility Indebtedness and to the extent required under the UST Tranche A Credit Agreement (as in effect on the Amendment No. 2 Effective Date), payments from proceeds of the Disposition of UST Tranche A Only Collateral shall be permitted, and (ix) with respect to the UST Tranche B Facility Indebtedness and to the extent required under the UST Tranche B Credit Agreement (as in effect on the Amendment No. 2 Effective Date), payments from proceeds of the Disposition of UST Tranche B Priority Collateral, UST Tranche B Joint Collateral (in the case of UST Tranche B Joint Collateral, in accordance with clause (i) of the last sentence of Section 2.062.13(ea)(ii) and UST Tranche B Only Collateral shall be permitted. For greater certainty, nothing in this Section 7.13(a) or elsewhere in this Agreement shall limit or restrict the ability of the Borrower or any Restricted Subsidiary to prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any ABL Facility Indebtedness or other obligations also secured pursuant to the ABL Credit Agreement.

(b) (i) The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, amend, modify, change, terminate or release in any manner materially adverse to the interests of the Lenders any term or condition of any Junior Financing Documentation or the documentation governing any Permitted Additional Debt (or any Permitted Refinancing thereof) if the effect thereof would be to cause such Junior Financing or Permitted Additional Debt to no longer constitute Junior Financing or Permitted Additional Debt, as the case may be, without the consent of the Required Lenders (which consent shall not be unreasonably withheld, conditioned or delayed); *provided*, that none of the ABL Facility Indebtedness, UST Tranche A Facility Indebtedness or UST Tranche B Facility Indebtedness shall ~~not~~ be subject to this clause (b) unless expressly designated as Permitted ~~Second Junior~~ Priority Additional Debt.

(ii) The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, amend, modify, change, terminate or release in any manner materially adverse to the interests of the Lenders any term or condition of the UST Tranche A Facility Indebtedness or the UST Tranche B Facility Indebtedness (it being understood and agreed that any amendment to reduce the commitments for the UST Tranche A Facility under the UST Tranche A Facility Credit Agreement to an amount less than \$300,000,000 and any amendment to increase the commitments for the UST Tranche B Facility under the UST Tranche B Credit Agreement to an amount in excess of \$400,000,000 shall be deemed to be materially adverse to the interests of the Lenders).

~~Section 7.14. Prepayments, Etc. of Single-Employer Plans~~

. The Borrower shall not, except to the extent required by ERISA or other applicable Law, make any early lump sum payment to satisfy any liability under any Single-Employer Plan, in each case, directly from the cash or Cash Equivalents of the Borrower or the Restricted Subsidiaries (including, for the avoidance of doubt, the proceeds of any borrowing under the ABL Facility).

ARTICLE 9  
EVENTS OF DEFAULT AND REMEDIES

Events of Default

. Any of the following from and after the Restatement Effective Date shall constitute an event of default (an "Event of Default"):

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(a) *Non-Payment.* Any Loan Party fails to pay (i) when and as required to be paid herein or in any other Loan Document, any amount of principal of any Loan, (ii) within five (5) Business Days after the same becomes due, any interest on any Loan, or (iii) within ten (10) days after the same becomes due, any other amount payable hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants.* The Borrower fails to perform or observe ~~(+) any term, covenant or agreement contained in any of Sections 6.03(a) (provided that the delivery of a notice of Default or Event of Default at any time will cure an Event of Default under Section 6.03(a) arising from the failure of the Borrower to timely deliver such notice of Default or Event of Default), 6.05(a) (solely with respect to the Borrower) or Article 7-08 Section 4(c) of Amendment No. 1 or (ii) within three (3) Business Days after performance was required thereunder, any term, covenant or agreement contained in any of Section 4(a) or 4(b) of Amendment No. 1,~~ or

(c) *Other Defaults.* Any Loan Party fails to perform or observe any other term, 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 thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent or the Required Lenders; or

(d) *Representations and Warranties.* Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any Compliance Certificate or other document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default.

~~*Cross-Default.* (A) Any Loan Party or any Restricted Subsidiary (i) fails to make any payment after the applicable grace period with respect thereto, if any, (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any other Indebtedness (other than Indebtedness hereunder ) having an outstanding aggregate principal amount of not less than the Threshold Amount or (ii) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts and not as a result of any other default thereunder by any Loan Party), after all grace periods having expired and all required notices having been given, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, after all grace periods having expired and all required notices having been given, such Indebtedness 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; provided that any such failure or the occurrence of any such other event referred to in subclause (ii) relating to Indebtedness under the ABL Credit Agreement or any Permitted Refinancing thereof shall not constitute an Event of Default under this Section 8.01(e) until the earlier of (x) thirty days after the expiration of all grace periods relating to such failure or occurrence under the ABL Credit Agreement and (y) any acceleration of the ABL Obligations (as defined in the ABL Intercreditor Agreement) outstanding under the ABL Credit Agreement, whether automatic or otherwise; provided further that this clause (e)(ii) shall not apply to (I) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (II) Indebtedness which is convertible into Equity Interest and converts to Equity Interests in accordance with its terms or (III) any breach or default that (X) is remedied~~

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by the Borrower or the applicable Restricted Subsidiary or (Y) waived (including in the form of amendment) by the requisite holders of the applicable item of Indebtedness, in either case, prior to the acceleration of all the Loans pursuant to this [Section 8.01](#); or

(B) the UST Tranche A Term Agent or the Lenders under (and as defined in) under UST Tranche A Facility Documentation shall fail to honor request for borrowing or release of proceeds from UST Tranche A Controlled Account in each case in excess of \$25,000,000 and such failure continues for ten (10) Business Days; or

(C) the UST Tranche B Term Agent or the Lenders under (and as defined in) under UST Tranche B Facility Documentation shall fail to honor request for borrowing or release of proceeds from UST Tranche B Controlled Account in each case in excess of \$25,000,000 and such failure continues for ten (10) Business Days; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any Restricted Subsidiary institutes or consents to the institution of any voluntary or involuntary proceeding under any Debtor Relief Law, or makes a general assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or substantially all of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) consecutive calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or substantially all of its property is instituted without the consent of such Person and continues undischarged or unstayed for sixty (60) consecutive calendar days, or an order for relief is entered in any such proceeding; or

(g) *Inability to Pay Debts; Attachment.* Any Loan Party or any Restricted Subsidiary becomes generally unable or admits in writing its general inability or fails generally to pay its debts as they become due, or any writ or warrant of attachment or execution or similar process is issued or levied against all or substantially all of the property of the Borrower and the Restricted Subsidiaries, taken as a whole, and is not released, vacated or fully bonded within sixty (60) consecutive days after its issue or levy; or

(h) *Judgments.* There is entered against any Loan Party or any Restricted Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance or indemnity as to which the insurer or third party indemnitor has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) *Invalidity of Loan Documents.* Any material provision of the Loan Documents, at any time after their execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under [Section 7.04](#) or [7.05](#)) or as a result of acts or omissions by the Administrative Agent or Collateral Agent or any Lender or the satisfaction in full of all the Obligations (other than other than contingent obligations), ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations), or purports in writing to revoke or rescind any Loan Document; or

(j) *Change of Control.* There occurs any Change of Control; or

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(k) *Collateral Documents.* The Collateral Documents after delivery thereof pursuant to Sections 4.02, 6.11 or 6.13 shall for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction permitted under Section 7.04 or 7.05) cease to create, or shall be asserted by any Loan Party not to create, a valid and perfected Lien, with the priority required by the Collateral Documents on and security interest in Collateral purported to be covered thereby with an aggregate value equal to or greater than \$25,000,000, subject to Liens permitted under Section 7.01, (i) except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Administrative Agent or the Collateral Agent to maintain possession or control of certificates representing securities, other collateral requiring possession or control, or motor vehicle certificates of title (or notation thereon) pledged under the Collateral Documents, in each case actually delivered to it, or to file Uniform Commercial Code financing statements or continuation statements or any Collateral Documents and (ii) except as to Collateral consisting of Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

(l) *ERISA.* (i) An ERISA Event that occurs after the Restatement Effective Date and that, alone or together with any other ERISA Events that have occurred after the Restatement Effective Date, has resulted or could reasonably be expected to result in liability of a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates in an aggregate amount at any particular time that would reasonably be expected to have a Material Adverse Effect, or (ii) a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount, that, alone or together with any other such failures to pay, has resulted or would reasonably be expected to result in a Material Adverse Effect; or (iii) as of any date, a Loan Party, any Restricted Subsidiary or any of their respective ERISA Affiliates (x) shall have made contributions to any Multiemployer Plan during the immediately preceding twelve month period ending on such date that exceed in value in the aggregate among all such Persons the Pension Contribution Cap for such period or (y) is projected or reasonably expected (in each case by the Borrower in good faith) to make contributions to any Multiemployer Plan in the next twelve month period that exceed in the aggregate among all such Persons the Pension Contribution Cap for such period (provided that such Pension Contribution Cap may be exceeded solely to facilitate a compromise, settlement, rearrangement or other restructuring of liabilities under such Multiemployer Plan with the consent of the Required Lenders (such consent not to be unreasonably withheld, delayed or conditioned or denied)); provided that this clause (iii) shall not apply if on the applicable date of determination Consolidated EBITDA for the most recent Test Period ending prior to such date of determination as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a) on or prior to such date of determination exceeds \$400,000,000; or

(m) *Junior Financing Documentation.* (i) Any of the Obligations of the Loan Parties under the Loan Documents for any reason shall cease to be, or shall be asserted by any Loan Party not to be, "Senior Indebtedness" (or any comparable term) or "Senior Secured Financing" (or any comparable term) under, and as defined in, any Junior Financing Documentation in respect of any Junior Financing that is, or is required by this Agreement to be, Subordinated Indebtedness or (ii) the subordination provisions set forth in any Junior Financing Documentation in respect of any Junior Financing that is, or is required by this Agreement to be, Subordinated Indebtedness shall, in whole or in part, cease to be, or shall be asserted by any Loan Party not to be, effective or legally valid, binding and enforceable against the holders of any such Junior Financing, if applicable (other than as a result of acts or omissions by the Administrative Agent or Collateral Agent or the satisfaction in full of all the Obligations (other than contingent obligations)); or

(n) *IBT Agreement.* The IBT Agreement shall be declared invalid or illegal, shall be terminated, or shall no longer be in full force and effect.

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## Remedies Upon Event of Default

. If any Event of Default occurs and is continuing the Administrative Agent may, and at the request of the Required Lenders shall, take any or all of the following actions:

- (i) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments shall be terminated;
- (ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, premium (including the Prepayment Premium) and all other amounts owing or payable or accrued 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 (to the extent permitted by applicable law) by the Borrower and each other Loan Party; and
- (iii) subject to the terms, conditions and provisions of any Intercreditor Agreement, exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

*provided* 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, premium (including the Prepayment Premium) and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender, and without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived (to the extent permitted by applicable law) by the Borrower and each other Loan Party.

## Exclusion of Immaterial Subsidiaries

. Solely for the purpose of determining whether a Default or an Event of Default has occurred under clause (f) or (g) of Section 8.01, any reference in any such clause to any Restricted Subsidiary or Loan Party shall be deemed not to include any Restricted Subsidiary affected by any event or circumstances referred to in any such clause that was, as of the last day of the most recent completed fiscal quarter of the Borrower, an Immaterial Subsidiary.

## Application of Funds

. Subject to the terms, conditions and provisions of each Intercreditor Agreement, 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 be applied by the Administrative Agent in the following order (to the fullest extent permitted by mandatory provisions of applicable Law):

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.05 and amounts payable under Article 3) payable to the Administrative Agent or the Collateral Agent in its capacity as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities, premium (including the Prepayment Premium) and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.05 and amounts payable under Article 3), ratably among them in proportion to the 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, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Third* payable to them;

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*Fourth*, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Fourth* held by them;

*Fifth*, to the payment of all other Obligations of the Borrower that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

*Last*, the balance, if any, after all of the Obligations (other than contingent obligations) have been paid in full, to the Borrower or as otherwise required by Law.

#### ARTICLE 10

##### THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Each Lender hereby irrevocably appoints the Administrative Agent and the Collateral Agent (for purposes of this Article 9, the Administrative Agent and the Collateral Agent are referred to collectively as the "**Agents**") its agent and authorizes the Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental or related thereto. Without limiting the generality of the foregoing, the Agents are hereby expressly authorized to (i) execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents (including, for the avoidance of doubt, (x) the ABL Intercreditor Agreement, including any amendment or supplement expressly contemplated thereby and (y) upon the incurrence of any Permitted **Second Junior** Priority Additional Debt, the **Second Junior** Lien Intercreditor Agreement) and (ii) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the direction of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Lender.

The institution serving as the Administrative Agent and/or the Collateral 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 an Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not an Agent hereunder. The Agents 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 Loan Party that is communicated or obtained by the Person serving as Administrative Agent or Collateral Agent, as applicable, or any of their Affiliates in any capacity.

Neither Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) neither Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) neither Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that such Agent is instructed in writing to exercise by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in [Section 10.08](#)), and (c) except as expressly set forth in the Loan Documents, neither Agent shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to the Borrower or any of the Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent and/or Collateral Agent or any of its Affiliates in any capacity. Neither Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in [Section 10.08](#)) or in the absence of its own gross negligence or willful

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misconduct as determined by the final non-appealable judgment of a court of competent jurisdiction. Notwithstanding the foregoing, no action nor any omission to act, taken by either Agent at the direction of the Required Lenders (or such other number of percentage of Lenders as shall be expressly provided for herein or in the other Loan Documents) shall constitute gross negligence or willful misconduct. Neither Agent shall be deemed to have knowledge of any Default unless and until written notice thereof, conspicuously labeled as a "notice of default" and specifically describing such Default, is given to such Agent by the Borrower or a Lender, and neither Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent.

Each 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 believed by it in good faith to be genuine and to have been signed or sent by the proper Person. Each Agent may also rely upon any statement made to it orally or by telephone and believed by it in good faith to have been made by the proper Person, and shall not incur any liability for relying thereon. Each 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.

Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related Parties (other than Disqualified Lenders). The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties (other than Disqualified Lenders) of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the arrangement of the Facilities as well as activities as Agent.

Either Agent may resign at any time by notifying the Lenders and the Borrower in writing, and either Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to the Borrower and such Agent and signed by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right, with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g)), to appoint a successor. If no successor shall have been so appointed by the Required Lenders (with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g))) and shall have accepted such appointment within 30 days after (i) the retiring Agent gives notice of its resignation or (ii) the Required Lenders delivers removal instructions, then the retiring or removed Agent may, on behalf of the Lenders (with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g)), appoint a successor Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. If no successor Agent has been appointed pursuant to the immediately preceding, such Agent's resignation or removal shall become effective and the Required Lenders shall thereafter perform all the duties of such Agent hereunder and/or under any other Loan Document until such time, if any, as the Required Lenders (with the consent of the Borrower (which consent shall not be required during the continuance of an Event of Default under Sections 8.01(a), (f) or (g))) appoint a successor Administrative Agent and/or Collateral Agent, as the case may be. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested

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with all the rights, powers, privileges and duties of its predecessor Agent, and its predecessor Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article and Section 10.05 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties (other than Disqualified Lenders) in respect of any actions taken or omitted to be taken by any of them while acting as Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

Each Lender acknowledges and agrees that CortlandAlter Domus Products Corp. or one or more of its Affiliates may (but is not obligated to) act as collateral agent or representative for the holders of ABL Facility Indebtedness, UST Tranche A Facility Indebtedness, UST Tranche B Facility Indebtedness, Permitted Second Junior Priority Additional Debt, any Extended Term Loan or any Permitted Refinancing thereof under the collateral agreements with respect thereto and/or under the ABL Intercreditor Agreement or the Second Junior Lien Intercreditor Agreement. Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against CortlandAlter Domus Products Corp. or any of its Affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

In case of the pendency of any case or proceeding under any insolvency or other similar 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 (but not obligated) 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, the Agents under Section 2.05, Section 3.01, and Section 10.05) 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, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agents 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 to the Agents under Section 2.05 and Section 10.05. 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 or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Lenders 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

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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 amounts owed to the Agents 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 stock 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 stock thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination 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 stock 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 the Administrative Agent 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 each Lenders pro rata and the stock 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 the Administrative Agent or any acquisition vehicle to take any further action.

## ARTICLE 11

### MISCELLANEOUS

#### Notices; Electronic Communications

as follows: . 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 email or fax,

(a) if to the Borrower or any other Loan Party, to it at:

YRC Worldwide Inc.  
Attention of Chief Financial Officer and General Counsel  
10990 Roe Avenue  
Overland Park, Kansas 66211  
Fax No. 913-696-6116  
Tel. No. 913-696-6529 or 913-696-6132  
Email: stephanie.fisher@yrcw.com and jim.fry@yrcw.com

With copy to:

Kirkland & Ellis LLP  
Attention of Michelle Kilkenney, Esq.  
300 North LaSalle

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Chicago, Illinois 60654  
Fax No. 312-862-2200  
Tel. No. 312-862-2487  
Email: michelle.kilkenney@kirkland.com

(b) if to the Administrative Agent, to:

**Cortland****Alter Domus** Products Corp.  
225 W. Washington Street, 9<sup>th</sup> Floor  
Chicago, Illinois 60606  
Attention: Legal Department and Lisa Schutz  
Fax No.: 312-376-0751  
Tel. No.: 312-564-5100  
Email: legal@**cortlandglobal****alterdomus**.com and lisa.schutz@**cortlandglobal****alterdomus**.com

With a copy to:

Holland & Knight LLP  
150 N. Riverside Plaza, Suite 2700  
Chicago, Illinois 60606  
Fax No.: 312-578-6666  
Tel. No.: 312-263-3600  
Attention: Joshua M. Spencer  
Email: joshua.spencer@hkllaw.com

(c) if to a Lender, to it at its address (email address or fax number) set forth on Schedule 2.01 or in the Assignment and Acceptance or Refinancing Amendment pursuant to which such Lender shall have become a party hereto.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or on the date three Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this [Section 10.01](#) or in accordance with the latest unrevoked direction from such party given in accordance with this [Section 10.01](#). As agreed to among the Borrower, the Administrative Agent and the applicable Lenders from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable Person provided from time to time by such Person.

The Borrower hereby agrees, unless directed otherwise by the Required Lenders or Administrative Agent or unless the electronic mail address referred to below has not been provided by the Administrative Agent to the Borrower, that it will, or will cause its Restricted Subsidiaries to, provide to the Administrative Agent and/or the Required Lenders all information, documents and other materials that it is obligated to furnish to the Administrative Agent and/or the Required Lenders pursuant to the Loan Documents or to the Lenders under Article 6, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) is or relates to a Request for Credit Extension or a notice pursuant to [Section 2.10](#), (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, or (iii) provides notice of any Default or Event of Default under this Agreement or any other Loan Document, (all such non-excluded communications being referred to herein collectively as "**Communications**"), by transmitting the Communications in an electronic/soft medium that is properly identified in a format reasonably acceptable

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to the Administrative Agent and/or the Required Lenders to an electronic mail address as directed by the Administrative Agent and/or the Required Lenders. In addition, the Borrower agrees, and agrees to cause its Restricted Subsidiaries, to continue to provide the Communications to the Administrative Agent, the Required Lenders or the Lenders, as the case may be, in the manner specified in the Loan Documents but only to the extent requested by the Administrative Agent.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, the "**Borrower Materials**") by posting the Borrower Materials on Intralinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower, its Restricted Subsidiaries or any of their respective securities) (each, a "**Public Lender**"). The Borrower hereby agrees (w) to use commercially reasonable effort to make all Borrower Materials that are to be made available to Public Lenders clearly and conspicuously "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or any of its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.16); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor;" and (z) the Administrative Agent 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 marked as "Public Investor." Notwithstanding the foregoing, the following Borrower Materials shall be marked "PUBLIC", unless the Borrower notifies the Administrative Agent promptly that any such document contains material non-public information: (1) the Loan Documents, (2) financial statements and related documentation, in each case, provided pursuant to Section 6.01(a) or 6.01(b), and (3) notification of changes in the terms of the Facilities.

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 Communications 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, its Restricted Subsidiaries or any of their respective securities for purposes of United States Federal or state securities laws.

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE)

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ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL NON-APPEALABLE RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON'S OR ITS RELATED PARTIES' GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BAD FAITH, IN EACH CASE, AS DETERMINED BY THE FINAL NON-APPEALABLE JUDGMENT OF A COURT OF COMPETENT JURISDICTION.

The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such e-mail address.

Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

#### Survival of Agreement

All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans, regardless of any investigation made by the Lenders or on their behalf or that any Agent or Lender may have had notice of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Commitments have not been terminated. The provisions of Sections 3.01, 3.03, 3.04 and 10.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent or any Lender.

#### Binding Effect

This Agreement shall become effective when it shall have been executed and delivered by the Borrower, each other Loan Party party hereto on the Restatement Effective Date and the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto.

#### Successors and Assigns

(a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower, the Administrative Agent, the Collateral Agent or the Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns.

(b) Each Lender may assign to one or more Eligible Assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it),

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with the prior written consent of the Administrative Agent (not to be unreasonably withheld, conditioned or delayed); *provided, however*, that (i) if the approval of the Borrower is required for any such assignment pursuant to the definition of “Eligible Assignee”, then the Borrower must also give its prior written consent to such assignment (which consent shall not be unreasonably withheld, conditioned or delayed), and the Borrower shall be deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the Administrative Agent within three (3) Business Days after the Borrower having received written notice thereof, (ii) the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall be in an integral multiple of, and not less than, \$1,000,000 (or, if less, the entire remaining amount of such Lender’s Commitment or Loans of the relevant Class) unless the Administrative Agent otherwise agrees; *provided* that simultaneous assignments by two or more Related Funds shall be combined for purposes of determining whether the minimum assignment requirement is met, (iii) the parties to each assignment shall (A) execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent or (B) if previously agreed with the Administrative Agent, manually execute and deliver to the Administrative Agent an Assignment and Acceptance, and, in each case, shall pay to the Administrative Agent a processing and recordation fee of \$3,500; *provided* that (x) simultaneous assignments by two or more Related Funds shall require the payment of a single processing and recordation fee of \$3,500 and (y) such processing and recordation fee may be waived or reduced in the sole discretion of the Administrative Agent and (iv) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire (in which the assignee shall designate one or more credit contacts to whom all Lender-level information (which may contain material non-public information about the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee’s compliance procedures and applicable Laws, including Federal and state securities laws), all documentation and other information reasonably determined by the Administrative Agent to be required by applicable regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, and all applicable tax forms (including such documentation required under Section 3.01(d)). Upon acceptance and recording pursuant to paragraph (e) of this [Section 10.04](#), from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of [Sections 3.01](#), [3.03](#), [3.04](#) and [10.05](#)). Upon request and the surrender by the assigning Lender of its Term Note (if any), the Borrower (at its expense) shall execute and deliver a Term Note to the assignee Lender.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and the outstanding balances of its Term Loans without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance; (ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant

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hereto; (iii) such assignee represents and warrants that it is an Eligible Assignee legally authorized to enter into such Assignment and Acceptance; (iv) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with copies of the most recent financial statements referred to in Section 5.05 or delivered pursuant to Section 6.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon the Administrative Agent, the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vi) such assignee appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent and the Collateral Agent, respectively, by the terms hereof or thereof, together with such powers as are reasonably incidental or related thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of and the 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, the Collateral 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, the Collateral Agent and, as to entries pertaining to it, any Lender, at any reasonable time and from time to time upon reasonable prior written notice. Upon reasonable request by a Lender, the Administrative Agent shall make available to such Lender a schedule of Disqualified Lenders, to the extent the Borrower has provided such a schedule to the Administrative Agent. This Section 10.04(d) shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

(e) Upon its receipt of, and consent to, a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) above, if applicable, and the written consent of the Administrative Agent and, if required, the Borrower, to such assignment, and "know your customer" information requested by the Administrative Agent, and any applicable tax forms (including such documentation required under Section 3.01(d)), the Administrative Agent shall promptly (i) accept such Assignment and Acceptance and (ii) record the information contained therein in the Register. No assignment shall be effective unless it has been recorded in the Register as provided in this paragraph (e).

(f) Each Lender may without the consent of the Borrower or the Administrative Agent sell participations to one or more banks or other Persons (other than Disqualified Lenders) in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided, however*, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participating banks or other Persons shall be entitled to the benefit of the cost protection provisions contained in Sections 3.01, 3.03 and 3.04 (subject to the requirements and limitations therein, including the requirements under Section 3.01(d) (it being understood that the documentation required under Section 3.01(d) shall be delivered to the participating Lender)) to the same extent as if they

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were Lenders (but with respect to any particular participant, to no greater extent than the Lender that sold the participation to such participant and only if such participant has complied with the requirements of such provisions as if it were a Lender) and (iv) 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, and such Lender shall retain the sole right to enforce the obligations of the Borrower relating to the Loans and to approve any amendment, modification or waiver of (or consent under) any provision of this Agreement or any other Loan Document (*provided* that the agreement or instrument pursuant to which such Lender has sold a participation may provide that such Lender shall not agree to the following amendments without the consent of such participating bank or Person hereunder: amendments, modifications or waivers decreasing any fees payable to such participating bank or Person hereunder or the amount of principal of or the rate at which interest is payable on the Loans in which such participating bank has an interest; extending any scheduled principal payment date or scheduled date fixed for the payment of interest on the Loans in which such participating bank or Person has an interest; increasing or extending the Commitments in which such participating bank or Person has an interest; releasing all or substantially all of the Guarantors (other than in connection with the sale of any such Guarantor in a transaction permitted by [Section 7.05](#)) releasing all or substantially all of the Collateral or the [First Lien](#) Term Priority Collateral or reductions in the voting thresholds; or modifying the pro rata requirements of [Section 2.13\(b\)](#), [Section 2.13\(c\)](#) or [Section 2.14](#), in each case, which directly and adversely affects such participants; *provided, further*, that, notwithstanding the foregoing, only the consent of the Required Lenders shall be required in respect of any amendment, modification or waiver of (i) the payment of default interest, (ii) the occurrence of a default or an Event of Default, (iii) the mandatory prepayment requirements of [Section 2.13](#) or (iv) the payment or receipt of the fee or premium pursuant to [Section 2.12\(d\)](#)). To the extent permitted by law, each participating bank or other Person also shall be entitled to the benefits of [Section 10.06](#) as though it were a Lender, *provided* such participating bank or other Person agrees to be subject to [Section 2.15](#) as though it were a Lender. Each Lender that sells a participation or exercises its option under section 10.04(i) with respect to an SPV 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 SPV (other than any SPV that is treated as a disregarded entity of the Granting Lender for U.S. federal income tax purposes) and the principal amounts (and interest thereon) of each participant's interest in the Loans or other Obligations under this Agreement (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 SPV or any information relating to a Participant's or a SPV'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 in connection with a Tax audit or other proceeding to establish that such commitment, loan, letter of credit or other obligation is in registered form under United States Treasury Regulations Section 5f.103-1(c) and proposed United States Treasury Regulations Section 1.163-5(b) (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and the Borrower, the Lenders and each Agent 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 notice to the contrary.

(g) Any Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this [Section 10.04](#), disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; *provided* that (except during the arrangement by the Required Lenders when customary confidentiality arrangements shall apply), prior to any such disclosure of Information, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree to preserve the confidentiality of such confidential information on terms no less restrictive in any material respect than those applicable to the Lenders pursuant to [Section 10.16](#) for the benefit of (and enforceable by) the Borrower.

(h) Any Lender may at any time assign all or any portion of its rights under this Agreement to secure extensions of credit to such Lender or in support of obligations owed by such Lender; *provided* that no such assignment shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(i) Notwithstanding anything to the contrary contained herein, any Lender (a “**Granting Lender**”) may grant to a special purpose funding vehicle (an “**SPV**”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPV to make any Loan, (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof, and (iii) the Granting Lender shall for all purposes remain the Lender hereunder. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, it will not institute against, or join any other Person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 10.04, any SPV may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPV to support the funding or maintenance of Loans, and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV.

(j) The Borrower (except as expressly permitted by clause (ii) of Section 7.04(d)) shall not assign or delegate any of its rights or duties hereunder without the prior written consent of the Administrative Agent and each Lender, and any attempted assignment without such consent shall be null and void.

(k) So long as no Event of Default has occurred or is continuing or would result therefrom, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement in respect of its Term Loans to the Borrower or any of its Subsidiaries, subject to the following limitations and other provisions:

(i) such assignment shall be made pursuant to (A) an open-market transaction on a non-pro rata basis or (B) a Dutch Auction open to all Lenders of the applicable Class of Term Loans on a pro rata basis in accordance with the Auction Procedures (it being agreed that none of the Borrower or any other Restricted Subsidiary shall have any obligation to make any representation as to the absence of MNPI in connection therewith and such assignment shall be made pursuant to the form of Assignment and Acceptance, which shall contain customary “big boy” assurance by the assignor Lender to the effect that it is a sophisticated investor and is willing to proceed with the assignment);

(ii) the Borrower will not be entitled to receive, and will not receive, information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to

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attend or participate in, and will not attend or participate in, meetings or conference calls attended solely by the Lenders and the Administrative Agent;

- (iii) [reserved];
- (iv) the aggregate principal amount of Term Loans purchased by the Borrower may not exceed 20% of the aggregate principal amount of all Tranche B-2 Term Loans as of the Restatement Effective Date plus the aggregate amount of all Credit Agreement Refinancing Indebtedness incurred after the Restatement Effective Date;
- (v) any Term Loans purchased by the Borrower shall be automatically and permanently cancelled immediately upon acquisition by the Borrower;
- (vi) notwithstanding anything to the contrary contained herein (including in the definitions of "Consolidated Net Income" and "Consolidated EBITDA") any non-cash gains in respect of "cancellation of indebtedness" resulting from the cancellation of any Term Loans purchased by the Borrower shall be excluded from the determination of Consolidated Net Income and Consolidated EBITDA; and
- (vii) the purchase and cancellation of Term Loans pursuant to this Section 10.04(k) shall not constitute a voluntary or mandatory prepayment for purposes of Section 2.12 or 2.13.

Expenses; Indemnity

(a) The Borrower agrees (i) promptly following (and in any event within thirty (30) days of) written demand (including documentation reasonably supporting such request) therefor, to pay or reimburse the Administrative Agent, the Collateral Agent and Apollo for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby (including Attorney Costs which shall be limited to Attorney Costs of one counsel to the Agents, and one counsel to the Lenders (and one local counsel in each applicable jurisdiction for each group and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel of each type to similarly situated parties)) and (ii) from and after the Restatement Effective Date, promptly following (and in any event within thirty (30) days of) written demand (including documentation reasonably supporting such request) therefor, to pay or reimburse the Administrative Agent, the Collateral Agent, Apollo and each Lender promptly following written demand for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of any rights or remedies under this Agreement or the other Loan Documents (including all such out-of-pocket costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective Attorney Costs which shall be limited to Attorney Costs of one counsel to the Agents and one counsel to the Lenders (and one local counsel in each applicable jurisdiction for each group and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel of each type to similarly situated parties)). To the extent otherwise reimbursable by the foregoing sentence of this section, the foregoing costs and expenses shall include all reasonable search, filing, recording, title insurance, survey, environmental, property condition report and zoning report charges and fees related thereto, and other reasonable and documented out of pocket expenses incurred by any Agent. The foregoing costs and expenses shall also include all mortgage recording, recording and filing fees charged by governmental authorities to record and/or file Collateral Documents.

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(b) Whether or not the transactions contemplated hereby are consummated, the Loan Parties shall, jointly and severally, indemnify and hold harmless the Administrative Agent, the Collateral Agent and their respective Affiliates, successors and permitted assigns (or the directors, officers, employees, agents, advisors and members of each of the foregoing) (each an “Agent Indemnitee” and collectively, the “Agent Indemnitees”) and each Lender and their respective Affiliates, successors and permitted assigns (or the directors, officers, employees, agents, advisors and members of each of the foregoing) (each a “Lender Indemnitee” and collectively, the “Lender Indemnitees”); together with, the Agent Indemnitees, collectively the “Indemnitees”) from and against any and all actual losses, damages, claims, liabilities and reasonable documented out-of-pocket costs and expenses (including Attorney Costs which shall be limited to Attorney Costs of one outside counsel for the Agent Indemnitees and Attorney Costs of one outside counsel for the Lender Indemnitees (and, if necessary, one local counsel in each applicable jurisdiction and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel for each type of similarly situated affected Indemnitees)) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any Agent Indemnitee or Lender Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the Transactions or the other transactions contemplated thereby, (ii) any Commitment or 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 from any property, vehicle or facility currently or formerly owned, leased or operated by the Loan Parties or any Subsidiary, or any other Environmental Liability related in any way to any Loan Parties or any Subsidiary, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Agent Indemnitee or Lender Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of its Affiliates or equityholders in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of any such Agent Indemnitee or Lender Indemnitee; *provided that*, notwithstanding the foregoing, such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, damages, claims, liabilities and expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee, as determined by the final non-appealable judgment of a court of competent jurisdiction, (y) any dispute solely among the Indemnitees other than (1) any claim against an Indemnitee in its capacity or in fulfilling its role as Administrative Agent, Collateral Agent or similar role and (2) any claim arising out of any act or omission of the Borrower or any of its Affiliates or (z) the material breach by such Indemnitee of its obligations under the Loan Documents (or any related party), as determined by the final non-appealable judgment of a court of competent jurisdiction. No Indemnitee or any other party hereto shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement except to the extent that such damages resulted from the (A) gross negligence, bad faith or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee, as determined by the final non-appealable judgment of a court of competent jurisdiction or (B) the material breach by such Indemnitee of its or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee’s obligations under the Loan Documents, as determined by the final non-appealable judgment of a court of competent jurisdiction. In the case of a claim, investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such claim, investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, any Loan Party’s directors, stockholders or creditors or other Affiliates or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. For the avoidance of doubt, this paragraph shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. To the extent that any Loan Party fails to pay any amount required to be paid by them to the Administrative Agent or the Collateral Agent under paragraph (a) or (b) of this Section within the timeframe specified therein, each Lender severally agrees to indemnify and reimburse, and pay to the Administrative Agent or the Collateral Agent such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; *provided that* the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or the Collateral Agent in its capacity as such. For purposes hereof, if the Term Loans have been paid in full prior to such determination pursuant to the immediately preceding sentence, then each such Lender’s “pro rata share” shall be determined as of the last date the Term Loans were in effect immediately prior to such payment in full.

(c) To the extent permitted by applicable Law, (i) no Loan Party shall assert, and each hereby waives, any claim against any Indemnitee and (ii) no Indemnitee shall assert, and each hereby waives, any claim against any Loan Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions or any Loan or the use of the proceeds thereof (whether before or after the Restatement Effective Date); *provided that* the foregoing shall in no event limit the Borrower’s indemnification obligations under clause (b) above.

(d) The provisions of this Section 10.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent or any Lender. All amounts due under this Section 10.05 shall be payable within 30 days after written demand therefor (including documentation reasonably supporting such request).

#### Right of Setoff

. In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Agents, in respect of any unpaid fees, costs and expenses payable hereunder) is authorized at any time and from time to time (with the prior consent of the Administrative Agent), without prior notice to any Loan Party, any such notice being waived by each Loan Party (on its own behalf and on behalf of each of its Subsidiaries), 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) (other than payroll accounts, trust accounts, escrow accounts, employee benefits accounts or petty cash accounts) at any time held by, and other indebtedness at any time owing by, such Lender and its Affiliates or the Collateral Agent to or for the credit or the account of the respective Loan Parties against any and all matured Obligations owing to such Lender and its Affiliates or the Collateral Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided that* the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent, the Collateral Agent and each Lender under this Section 10.06 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent, the Collateral Agent and such Lender may have at Law.

#### Applicable Law

. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS)

## Waivers; Amendment

(a) No failure or delay of the Administrative Agent, the Collateral Agent or any Lender in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Except as provided in [Section 2.18](#), with respect to any Refinancing Amendment, in [Section 2.19](#) with respect to an Extension Offer or as otherwise provided herein or in a Loan Document, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders and (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto with the consent of the Required Lenders (*provided*, that amendments to the ABL Intercreditor Agreement ~~or the Second Lien Intercreditor Agreement~~ shall require the agreement of the Loan Parties (or any of them) only to the extent required pursuant to the terms thereof); *provided, however*, that no such agreement shall (i) decrease the principal amount of, or extend the maturity of or any scheduled principal payment date or date for the payment of any fee or any interest on any Loan, or waive or excuse any such payment or any part thereof (other than with respect to any default interest), or decrease the amount of any fee or the rate of interest on any Loan (other than with respect to any default interest), without the prior written consent of each Lender directly and adversely affected thereby (it being understood that (x) the waiver 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, (y) any change to the definition of "Consolidated EBITDA" or in the component definitions thereof shall not constitute a reduction or forgiveness in any rate of interest pursuant to this clause (i), (ii) increase or extend the Commitment of any Lender without the prior written consent of such Lender (it being understood that a waiver of any condition precedent or of any Default or Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender), (iii) amend or modify the pro rata requirements of [Section 2.13\(b\)](#), [Section 2.13\(c\)](#) or [Section 2.14](#), the provisions of [Section 10.04\(j\)](#) or the provisions of this Section or release all or substantially all of the Guarantors (other than in connection with the sale of such Guarantors in a transaction permitted by [Sections 7.04](#) or [7.05](#)) or all or substantially all of the Collateral (other than as permitted hereby), without the prior written consent of each Lender directly and adversely affected thereby (or, in the case of [Section 10.04\(j\)](#), each Lender), (iv) change the provisions of any Loan Document in a manner that by its terms materially and adversely affects the rights of Lenders holding Loans of one Class differently from the rights of Lenders holding Loans of any other Class without the prior written consent of the Required Class Lenders with respect to each materially and adversely affected Class, (v) modify the protections afforded to an SPV pursuant to the provisions of [Section 10.04\(i\)](#) without the written consent of such SPV (vi) reduce the percentage contained in the definition of the term "Required Lenders" without the prior written consent of each Lender (it being

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understood that, with the consent of the Required Lenders (if such consent is otherwise required), additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loan Commitments on the Restatement Effective Date) or (vii) modify the definition of "Required Class Lenders" without the consent of the Required Class Lenders with respect to each Class of Loans or Commitments; *provided further* that (w) no Lender consent is required to effect a Refinancing Amendment or an Extension (except as expressly provided in [2.18](#) or [2.19](#), as applicable) or to effect any amendment expressly contemplated by [Section 7.12](#), (x) [reserved], (y) modifications to [Section 2.14](#), [2.15](#) or any other provision requiring pro rata payments or sharing of payments in connection with (I) any buy back of Term Loans by the Borrower pursuant to [Section 10.04\(k\)](#) or pursuant to any similar program that may in the future be permitted hereunder, (II) [reserved] or (III) any Extension, shall only require approval (to the extent any such approval is otherwise required) of the Lenders participating and (z) no Lender consent other than the consent of the Required Lenders is required to effect any amendment or supplement to the ABL Intercreditor Agreement or the [Second Junior](#) Lien Intercreditor Agreement (I) that the Administrative Agent is otherwise authorized to enter into with only the consent of the Required Lenders by [Section 10.23](#), (II) that is for the purpose of adding the holders of Permitted [Second Junior](#) Priority Additional Debt, (or a [Senior Junior](#) Representative with respect thereto) as parties thereto, as expressly contemplated by the [Second Junior](#) Lien Intercreditor Agreement (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided*, that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (III) that is expressly contemplated by [Section 5.2\(c\)](#) or the second paragraph of [Section 7.4](#) of the ABL Intercreditor Agreement (or the comparable provisions, if any, of the [Second Junior](#) Lien Intercreditor Agreement); *provided further* that no such agreement shall amend, modify or otherwise adversely affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Required Lenders, Administrative Agent or the Collateral Agent, as applicable.

Notwithstanding any other language to the contrary contained herein, with respect to any amendment, waiver or modification to which the Administrative Agent's consent is not required, the parties agree to deliver to the Administrative Agent a copy of each such amendment, waiver or modification; provided that, (i) no party shall be liable for its failure to comply with this sentence and (ii) the Administrative Agent shall not be bound by any such amendment unless and until it has received a copy thereof.

(c) Notwithstanding the foregoing, this Agreement and any other Loan Document may be amended solely with the consent of the Administrative Agent, the Required Lenders and the Borrower without the need to obtain the consent of any other Lender if such amendment is delivered in order to if such amendment is delivered in order to correct or cure (x) ambiguities, errors, omissions, defects, (y) to effect administrative changes of a technical or immaterial nature or (z) incorrect cross references or similar inaccuracies in this Agreement or the applicable Loan Document. This Agreement, guarantees, collateral documents, security documents, intercreditor agreements, and related documents executed in connection with this Agreement may be in a form reasonably determined by the Administrative Agent or Collateral Agent, as applicable, and may be amended, modified, terminated or waived, and consent to any departure therefrom may be given, without the consent of any Lender if such amendment, modification, waiver or consent is given in order to (x) comply with local law or advice of counsel or (y) cause such guarantee, collateral document, security document or related document to be consistent with this Agreement and the other Loan Documents. The Borrower, the Required Lenders and the Administrative Agent may, without the consent of any other Lender, effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Borrower, the Required Lenders and the Administrative Agent to effect the provisions of [Section 2.05](#), [Section 2.17](#), [Section 2.18](#) and [Section 2.19](#).

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Notwithstanding anything to the contrary contained herein, such amendment shall become effective without any further consent of any other party to such Loan Document.

#### Interest Rate Limitation

. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable Law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or participation in accordance with applicable Law, the rate of interest payable in respect of such Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or participation but were not payable as a result of the operation of this Section 10.09 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

#### Entire Agreement

. This Agreement, the Fee Letter and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder and, to the extent expressly contemplated hereby, the Related Parties of each of the Required Lenders, Administrative Agent, the Collateral Agent and the Lenders) any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

#### WAIVER OF JURY TRIAL

. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

#### Severability

. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

#### Counterparts

. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 10.03.

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Delivery of an executed signature page to this Agreement by facsimile or other electronic imaging transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

#### Headings

. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

#### Jurisdiction; Consent to Service of Process

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in the Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

#### Confidentiality

. Each of the Administrative Agent, the Collateral Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' officers, directors, employees and agents, including accountants, financing sources, legal counsel and other advisors involved in the Transaction on a "need to know" basis (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 requested by any regulatory authority or quasi-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 (and in such case, such Person shall promptly notify the Borrower of such disclosure), (d) in connection with the exercise of any remedies hereunder or under the other Loan Documents or any suit, action or proceeding relating to the enforcement of its rights hereunder or thereunder, (e) subject to an agreement containing provisions substantially the same as those of this Section 10.16, to (i) any actual or prospective assignee of or participant in any of its rights or obligations under this Agreement and the other Loan Documents or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any Subsidiary or any of their respective obligations, (f) with the prior written consent of the Borrower, (g) on a confidential basis to (x) any rating agency in connection with rating the Borrower or its Subsidiaries or the Facility or (y) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facility, or (h) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.16 or other confidentiality obligation owed to the Borrower or any of its Subsidiaries. For the purposes of this Article, "Information" shall mean

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all information received from the Borrower and related to the Borrower, its business, other than any such information that was available to the Administrative Agent, the Collateral Agent or any Lender on a nonconfidential basis prior to its disclosure by the Borrower not in violation of any confidentiality or obligation owed to the Borrower and the Subsidiaries. In addition, each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents. Any Person required to maintain the confidentiality of Information as provided in this Section 10.16 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 its own confidential information.

#### Lender Action

. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, unless expressly provided for herein or in any other Loan Document, without the prior written consent of the Administrative Agent (which shall be given at the direction of the Required Lender).

#### USA PATRIOT Act Notice

. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the USA PATRIOT Act.

#### Collateral And Guaranty Matters

. The Lenders irrevocably agree:

(a) that any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document shall be automatically released (i) upon termination of all Commitments hereunder and payment in full of all Obligations (other than contingent obligations not yet accrued or payable), (ii) at the time the property subject to such Lien is disposed as part of or in connection with any disposition permitted hereunder or under any other Loan Document to any Person other than a Person required to grant a Lien to the Administrative Agent or the Collateral Agent under the Loan Documents (or, if such transferee is a Person required to grant a Lien to the Administrative Agent or the Collateral Agent on such asset, at the option of the applicable Loan Party, such Lien on such asset may still be released in connection with the transfer so long as (x) the transferee grants a new Lien to the Administrative Agent or Collateral Agent on such asset substantially concurrently with the transfer of such asset, (y) the transfer is between parties organized under the laws of different jurisdictions and at least one of such parties is a Foreign Subsidiary and (z) the priority of the new Lien is the same as that of the original Lien), (iii) subject to Section 10.08, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to Section 11.10, (v) any such property constitutes Excluded Property or (vi) in accordance with any Intercreditor Agreement;

(b) to release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.01(b), 7.01(g), 7.01(q) or 7.01(s) (in the case of Section 7.01(s)), to the extent required by the terms of the obligations secured by such Liens); and

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(c) that any Guarantor shall be automatically released from its obligations under the Guaranty as provided in Section 11.10.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's or the Collateral 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 10.19. In each case as specified in this Section 10.19, the Administrative Agent or the Collateral Agent will (and each Lender irrevocably authorizes the Administrative Agent and the Collateral Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as the Borrower may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 10.19.

#### Limitation on Liability.

. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS: (A) NO INDEMNITEE SHALL BE LIABLE TO ANY PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THEIR RESPECTIVE ACTIVITIES RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, THE TRANSACTIONS CONTEMPLATED THEREBY, THE TERM LOANS, OR OTHERWISE IN CONNECTION WITH THE FOREGOING; (B) WITHOUT LIMITING THE FOREGOING, NO INDEMNITEE SHALL BE SUBJECT TO ANY EQUITABLE REMEDY OR RELIEF, INCLUDING SPECIFIC PERFORMANCE OR INJUNCTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY; (C) NO INDEMNITEE SHALL HAVE ANY LIABILITY TO THE LOAN PARTIES, FOR DAMAGES OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY UNTIL THE AMENDMENT NO. 1 EFFECTIVE DATE HAS OCCURRED; AND (D) IN NO EVENT SHALL ANY INDEMNITEE'S LIABILITY TO THE LOAN PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY EXCEED ACTUAL DIRECT DAMAGES INCURRED BY THE LOAN PARTIES OF UP TO \$10,000,000 IN THE AGGREGATE; ~~PROVIDED THAT THE FOREGOING SHALL IN NO EVENT LIMIT THE LENDERS' INDEMNIFICATION OBLIGATIONS~~PROVIDED THAT THE FOREGOING SHALL IN NO EVENT LIMIT THE LENDERS' INDEMNIFICATION OBLIGATIONS TO THE AGENT INDEMNITEES UNDER SECTION 10.05 OF THIS AGREEMENT; PROVIDED FURTHER THAT SUCH LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY RESULTING FROM FRAUD BY THE INDEMNITEES-

#### Section 10.21. *Payments Set Aside*

. To the extent that any payment by or on behalf of the Borrower or any other Loan Party is made to any Agent or any Lender, or any 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 such 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, to the fullest extent possible under provisions of applicable Law, 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 of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date

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such payment is made at a rate per annum equal to the applicable Federal Funds Effective Rate from time to time in effect.

#### No Advisory or Fiduciary Responsibility

(a) In connection with all aspects of each transaction contemplated hereby, each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower and its Subsidiaries, on the one hand, and the Agents and the Lenders, on the other hand, and the Borrower and its Subsidiaries are capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof), (ii) the Agents, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Borrower and its Affiliates, and none of the Agents or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship, and (iii) the Agents and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

(b) Each Loan Party acknowledges and agrees that each Lender and any of its affiliates may lend money to, invest in, and generally engage in any kind of business with, the Borrower, any of its Affiliates or any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lender or Affiliate thereof were not a Lender (or an agent or any other person with any similar role under the Facilities) and without any duty to account therefor to any other Lender, the Borrower or any Affiliate of the foregoing. Each Lender and any of its Affiliates may accept fees and other consideration from the Borrower or any of its Affiliates for services in connection with this Agreement, the Facilities, the commitment letter or otherwise without having to account for the same to any other Lender, the Borrower or any Affiliate of the foregoing.

#### Intercreditor Agreements

(a) The Administrative Agent is authorized to become a party to the ABL Intercreditor Agreement ~~pursuant to the ABL Intercreditor Amendment~~ (and enter into the ABL Intercreditor Agreement in respect of any Permitted Refinancing of ABL Facility Indebtedness), and each of the parties hereto acknowledges that it has received a copy of the ABL Intercreditor Agreement and that the ABL Intercreditor Agreement is binding upon it. Each Lender (a) hereby consents to the subordination of the Liens on the ABL Priority Collateral securing the Obligations on the terms set forth in the ABL Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the ABL Intercreditor Agreement and (c) hereby authorizes and instructs the Administrative Agent to enter into the ABL Intercreditor Agreement and any amendments or supplements expressly contemplated thereby, and to subject the Liens on the ABL Priority Collateral securing the Obligations to the provisions of the ABL Intercreditor Agreement. The foregoing provisions are intended as an inducement to the ABL Secured Parties to extend credit to the borrowers under the ABL Credit Agreement and such ABL Secured Parties are intended third-party beneficiaries of such provisions and the provisions of the ABL Intercreditor Agreement.

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(b) The Administrative Agent is authorized to enter into the [Second Junior](#) Lien Intercreditor Agreement, and each of the parties hereto acknowledges that each such agreement shall be binding upon it. Each Lender (a) hereby consents to the intercreditor agreements in respect of the Collateral securing the Obligations on the terms set forth in the [Second Junior](#) Lien Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the [Second Junior](#) Lien Intercreditor Agreement and (c) hereby authorizes and instructs the Administrative Agent to enter into the [Second Junior](#) Lien Intercreditor Agreement and, without the further consent, direction or other action of any Lender, to enter into any amendments or supplements thereto, in each case solely if the form of the agreement as so amended or supplemented would constitute the [Second Junior](#) Lien Intercreditor Agreement, as applicable, if being entered into as an original agreement. The foregoing provisions are intended as an inducement to the parties providing any Permitted [Second Junior](#) Priority Additional Debt to extend credit to the borrowers thereof and such parties are intended third-party beneficiaries of such provisions and the provisions of the [Second Junior](#) Lien Intercreditor Agreement.

(c) The extent of any conflict between the Loan Documents, on the one hand, and the ABL Intercreditor Agreement or other intercreditor agreement contemplated by this [Section 10.23](#), on the other hand, such intercreditor agreement shall control.

#### Alternative Interest Rates

(a) If at least two (2) Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing, the Required Lenders reasonably determine that for any reason, adequate and reasonable means do not exist for determining the Adjusted LIBO Rate for any requested Interest Period with respect to a proposed Eurodollar Loan, or that the Adjusted LIBO Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, or that deposits are not being offered to banks in the relevant interbank market for the applicable amount and the Interest Period of such Eurodollar Loan, the Required Lenders shall notify the Administrative Agent in writing, and thereafter the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Adjusted LIBO Rate component of the Alternate Base Rate, the utilization of the Adjusted LIBO Rate component in determining the Alternate Base Rate shall be suspended, in each case until the Administrative Agent (upon the written 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 Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans (determined without reference to the Adjusted LIBO Rate component thereof) in the amount specified therein.

(b) If the Administrative Agent and the Borrower shall reasonably agree that either (i) the circumstances set forth in clause (a) of this [Section 10.24](#) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a) of this [Section 10.24](#) have not arisen but the supervisor for the administrator of the LIBO Rate (or any component thereof) or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate (or any component thereof) shall no longer be published for use in determining interest rates for loans (in the case of either such clause (i) or (ii), an “**Alternative Interest Rate Election Event**”), then the LIBO Rate, for any day, shall mean the rate per annum equal to the Federal Funds Rate in effect on such day plus one half of one percent (0.50%) (subject at all times to the requirement that such rate per annum shall not be less than one percent (1.00%) per annum).

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ARTICLE 12  
GUARANTEE

## The Guarantee

. Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not as a surety to each Secured Party and their respective permitted successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of (i) Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws, whether or not such items are allowed or allowable as a claim in any applicable proceeding) on the Loans made by the Lenders to, and the Term Notes (if any) issued hereunder and held by each Lender of, the Borrower, and all other Obligations from time to time owing to the Secured Parties by any other Loan Party under any Loan Document strictly in accordance with the terms thereof (such obligations being herein collectively called the “**Guaranteed Obligations**”). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

## Obligations Unconditional

. The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower or any other Guarantor under this Agreement, any Term Notes issued under this Agreement, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

- (a) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
  - (b) any of the acts mentioned in any of the provisions of this Agreement or the Term Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;
  - (c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;
  - (d) any Lien or security interest granted to, or in favor of, any Secured Party or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or
  - (e) the release of any other Guarantor pursuant to Section 11.10.
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. Etc. The Guarantors hereby expressly waive (to the extent permitted by applicable Law) diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Term Notes issued hereunder, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against the Borrower or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and permitted assigns thereof, and shall inure to the benefit of the Secured Parties, and their respective successors and permitted assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding. Each Guarantor waives (to the extent permitted by Law) any rights and defenses that are or may become available to it by reason of §§ 2787 to 2855, inclusive, and §§ 2899 and 3433 of the California Civil Code. As provided in Section 10.07, the provisions of this Article 11 shall be governed by, and construed in accordance with, the laws of the State of New York. The foregoing waivers and the provisions hereinafter set forth in this Article 11 which pertain to California law are included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Article 11, to any other provision of this Agreement or to the Obligations.

#### Reinstatement

. The obligations of the Guarantors under this Article 11 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

#### Subrogation; Subordination

. Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations (other than contingent obligations) and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party to any Person that is not a Loan Party permitted pursuant to Section 7.03(b) or 7.03(d), shall be subordinated to such Loan Party's Obligations in a manner reasonably acceptable to the Required Lenders.

#### Remedies

. The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Term Notes issued hereunder, if any, may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section

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8.02) for purposes of [Section 11.01](#), notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of [Section 11.01](#).

#### Instrument for the Payment of Money

. Each Guarantor hereby acknowledges that the guarantee in this [Article 11](#) constitutes an instrument for the payment of money, and consents and agrees that any Secured Party or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

#### Continuing Guarantee

. The guarantee in this [Article 11](#) is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

#### General Limitation on Guarantee Obligations

. In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Guarantor under [Section 11.01](#) would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under [Section 11.01](#), then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other Person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in [Section 11.11](#)) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

#### Release of Guarantors

. If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests or property of any Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party or (ii) any Guarantor becomes an Excluded Subsidiary (any such Guarantor, and any Guarantor referred to in clause (i), a "**Transferred Guarantor**"), such Transferred Guarantor shall, upon (x) the consummation of such sale or transfer or other transaction or (y) becoming an Excluded Subsidiary pursuant to clause (e) of the definition thereof, be automatically released from its obligations under this Agreement (including under [Section 10.05](#) hereof) and its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Collateral Agent pursuant to the Collateral Documents shall be automatically released, and, the Collateral Agent shall take such actions as are necessary to effect each release described in this [Section 11.10](#) in accordance with the relevant provisions of the Collateral Documents; *provided*, that no Guarantor shall be released as provided in this paragraph if such Guarantor continues to be a guarantor in respect of any Indebtedness incurred pursuant to [Section 7.03\(q\)](#), any Permitted Additional Debt, any Junior Financing, [any UST Tranche A Facility Indebtedness, UST Tranche B Facility Indebtedness](#) or any Permitted Refinancing of any of the foregoing. Notwithstanding anything herein to the contrary, if any Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall only be permitted to be released from its Guarantee so long as the fair market value of any and all Investments then held by the Loan Parties in such Person are permitted as an Investment under [Section 7.02\(c\)\(iii\)](#) and [Section 7.02\(p\)](#) at the time such Person becomes an Excluded Subsidiary pursuant to clause (a) of the definition of "Excluded Subsidiary".

When all Commitments hereunder have terminated, and all Loans or other Obligations hereunder which are accrued and payable have been paid or satisfied, this Agreement and the Guarantees made herein

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shall automatically terminate with respect to all Obligations, except with respect to Obligations that expressly survive such repayment pursuant to the terms of this Agreement.

#### Right of Contribution

. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.05. The provisions of this Section 11.11 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent and the Secured Parties, and each Guarantor shall remain liable to the Administrative Agent and the Secured Parties for the full amount guaranteed by such Guarantor hereunder.

#### Additional Guarantor Waivers and Agreements

(a) Each Guarantor understands and acknowledges that if the Collateral Agent or any other Secured Party forecloses judicially or nonjudicially against any real property security for the Obligations, that foreclosure could impair or destroy any ability that such Guarantor may have to seek reimbursement, contribution, or indemnification from the Borrower or others based on any right such Guarantor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by such Guarantor under the Guaranty. Each Guarantor further understands and acknowledges that in the absence of this paragraph, such potential impairment or destruction of such Guarantor's rights, if any, may entitle such Guarantor to assert a defense to this Guaranty based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968). By executing this Guaranty, each Guarantor freely, irrevocably, and unconditionally: (i) waives (to the extent permitted by Law) and relinquishes that defense and agrees that such Guarantor will be fully liable under this Guaranty even though the Collateral Agent or any other Secured Party may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations; (ii) agrees that such Guarantor will not assert that defense in any action or proceeding which the Administrative Agent, the Collateral Agent or any other Secured Party may commence to enforce this Guaranty; (iii) acknowledges and agrees that the rights and defenses waived by such Guarantor in this Guaranty include any right or defense that such Guarantor may have or be entitled to assert based upon or arising out of any one or more of §§ 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or § 2848 of the California Civil Code; and (iv) acknowledges and agrees that the Secured Parties are relying on this waiver in creating the Obligations, and that this waiver is a material part of the consideration which the Secured Parties are receiving for creating the Obligations.

(b) Each Guarantor waives (to the extent permitted by Law) all rights and defenses that such Guarantor may have because any of the Obligations is secured by real property. This means, among other things: (i) the Administrative Agent, the Collateral Agent and the other Secured Parties may collect from such Guarantor without first foreclosing on any real or personal property Collateral pledged by the other Loan Parties; and (ii) if the Collateral Agent or any other Secured Party forecloses on any real property Collateral pledged by the other Loan Parties: (A) the amount of the Obligations may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Administrative Agent, the Collateral Agent and the other Secured Parties may collect from such Guarantor even if the Secured Parties, by foreclosing on the real property Collateral, have destroyed any right such Guarantor may have to collect from the Borrower. This is an unconditional and irrevocable waiver of any rights and defenses such Guarantor may have because any of the Obligations is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon § 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

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(c) Each Guarantor waives (to the extent permitted by Law) any right or defense it may have at law or equity, including California Code of Civil Procedure § 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

**ARTICLE 13**  
CARES ACT REQUIREMENTS

CARES Act Compliance

The Borrower and its controlled Affiliates are in material compliance, and will at all times comply in all material respects, with all applicable material requirements under Title IV of the CARES Act, including any applicable material requirements pertaining to the Borrower's eligibility to receive the loans under the UST Tranche A Credit Agreement and the UST Tranche B Credit Agreement, respectively (such loans, for purposes of this Article 12, the "UST Loans"). The Borrower will provide any information requested by the Lenders to assess the compliance by the Borrower and its controlled Affiliates with the applicable material requirements under Title IV of the CARES Act or the Borrower's eligibility to receive the Loan under the CARES Act.

Dividends and Buybacks

;

(a) Until the date that is 12 months after the date on which the UST Loans are no longer outstanding, neither the Borrower nor any of its Affiliates (other than an Affiliate that is a natural person) shall, in any transaction, purchase an equity security of the Borrower or of any direct or indirect parent company of the Borrower, in either case, is listed on a national securities exchange, except to the extent required under a contractual obligation in effect as of the date of enactment of the CARES Act.

(b) Until the date that is 12 months after the date on which the UST Loans are no longer outstanding, the Borrower shall not pay dividends, or make any other capital distributions, with respect to the common stock of the Borrower.

Maintenance of Employment Levels

Until September 30, 2020, the Borrower shall maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case shall not reduce its employment levels by more than ten (10) percent from the levels on March 24, 2020.

United States Business

The Borrower is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States.

Limitations on Certain Compensation

;

(a) Beginning on the Effective Date and ending on the date that is one year after the date on which the UST Loans are no longer outstanding, the Borrower shall not pay any of the Borrower's Corporate Officers or Employees whose Total Compensation exceeded \$425,000 in calendar year 2019 or the Subsequent Reference Period (other than an Employee whose compensation is determined through an existing collective bargaining agreement entered into before March 1, 2020):

(i) Total Compensation which exceeds, during any 12 consecutive months of the period beginning on the Effective Date, and ending on the date that is one year after the

date on which the UST Loans are no longer outstanding, the Total Compensation the Corporate Officer or Employee received in calendar year 2019 or the Subsequent Reference Period; or

(ii) Severance Pay or Other Benefits in connection with a termination of employment with the Borrower which exceed twice the maximum Total Compensation received by such Corporate Officer or Employee in calendar year 2019 or the Subsequent Reference Period.

(b) Beginning on the Effective Date, and ending on the date that is one year after the date on which the UST Loans are no longer outstanding, the Borrower shall not pay any of the Borrower's Corporate Officers or Employees whose Total Compensation exceeded \$3,000,000 in calendar year 2019 or the Subsequent Reference Period Total Compensation in excess of the sum of:

(i) \$3,000,000; and

(ii) 50 percent of the excess over \$3,000,000 of the Total Compensation received by such Corporate Officer or Employee in calendar year 2019 or the Subsequent Reference Period.

(c) For purposes of determining applicable amounts under this clause (5) with respect to any Corporate Officer or Employee who was employed by the Borrower for less than all of calendar year 2019, the amount of Total Compensation in calendar year 2019 shall mean such Corporate Officer's or Employee's Total Compensation on an annualized basis.

Additional Defined Terms

. As used in this Article 12, the following terms have the meanings specified below:

"Benefits" means, without duplication of any amounts counted as Salary or Wages, pension expenses (including company retirement or 401(k) plan contributions and direct annuity payments) in respect of Employees, all expenses for accident, sickness, hospital, and death benefits to Employees, and the cost of insurance (or self-insured costs) to provide such benefits; any Severance Pay or Other Benefits payable to Employees pursuant to a bona fide voluntary early retirement program or voluntary furlough; and any other similar expenses paid by the Borrower for the benefit of Employees, including other fringe benefit expenses (such as those relating to travel, meals, lodging, trade memberships, dues and registrations, tools or uniforms, moving and relocation costs, education, medical and recreational programs, and company contributions for group accident, health or life insurance) but excluding any Federal, state, or local payroll taxes paid by the Borrower.

"Cares Act" means the Coronavirus Aid, Relief, and Economic Security Act of 2020.

"Corporate Officer" means, with respect to the Borrower, its president; any vice president in charge of a principal business unit, division, or function (such as sales, administration or finance); any other officer who performs a policy-making function; or any other person who performs similar policy making functions for the Borrower. Executive officers of subsidiaries or parents of the Borrower may be deemed Corporate Officers of the Borrower if they perform such policy-making functions for the Borrower.

"Employee" has the meaning given to the term in section 2 of the National Labor Relations Act (29 U.S.C. 152 and includes any individual employed by an employer subject to the

Railway

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Labor Act (45 U.S.C. 151 et seq.) and for the avoidance of doubt includes all individuals who are employed by the Borrower who are not Corporate Officers.

“Salary” means, without duplication of any amounts counted as Benefits, a predetermined regular payment, typically paid on a weekly or less frequent basis but which may be expressed as an hourly, weekly, annual or other rate, as well as cost-of-living differentials, vacation time, paid time off, sick leave, and overtime pay, paid by the Borrower to its Employees, but excluding any Federal, state, or local payroll taxes paid by the Borrower.

“Severance Pay or Other Benefits” means any severance payment or other similar benefits, including cash payments, health care benefits, perquisites, the enhancement or acceleration of the payment or vesting of any payment or benefit or any other in-kind benefit payable (whether in lump sum or over time, including after March 24, 2022) by the Borrower to a Corporate Officer or Employee in connection with any termination of such Corporate Officer’s or Employee’s employment (including, without limitation, resignation, severance, retirement, or constructive termination), which shall be determined and calculated in respect of any Employee or Corporate Officer of the Borrower in the manner prescribed in 17 CFR 229.402(j) (without regard to its limitation to the five most highly compensated executives and using the actual date of termination of employment rather than the last business day of the Borrower’s last completed fiscal year as the trigger event).

“Subsequent Reference Period” means (i) for a Corporate Officer or Employee whose employment with the Borrower or an Affiliate started during 2019 or later, the 12-month period starting from the end of the month in which the officer or employee commenced employment, if such officer’s or employee’s total compensation exceeds \$425,000 (or \$3,000,000) during such period and (ii) for a Corporate Officer or Employee whose Total Compensation first exceeds \$425,000 during a 12-month period ending after 2019, the 12-month period starting from the end of the month in which the Corporate Officer’s or Employee’s Total Compensation first exceeded \$425,000 (or \$3,000,000).

“Total Compensation” means Salary, bonuses, awards of stock and other financial benefits provided by the Borrower to a Corporate Officer or Employee of the Borrower.

“Wage” means, without duplication of any amounts counted as Benefits, a payment, typically paid on an hourly, daily, or piecework basis, including cost-of-living differentials, vacation, paid time off, sick leave, and overtime pay, paid by the Borrower to its Employees, but excluding any Federal, state, or local payroll taxes paid by the Borrower.

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AMENDED AND RESTATED SECURITY AGREEMENT

dated as of

July 7, 2020

among

YRC WORLDWIDE INC.,

THE OTHER GUARANTORS PARTY HERETO

and

ALTER DOMUS PRODUCTS CORP.,  
as Collateral Agent

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AMENDED AND RESTATED SECURITY AGREEMENT, dated as of September July 7, 2020, among YRC Worldwide Inc., a Delaware corporation (the "Borrower"), the other Grantors party hereto from time to time and Alter Domus Products Corp. (formerly known as Cortland Products Corp.), as Collateral Agent for the Secured Parties (as defined below).

WHEREAS, the Borrower, the Guarantors party thereto, the Lenders party thereto and Credit Suisse AG, Cayman Islands Branch, as predecessor Administrative Agent and predecessor Collateral Agent, are parties to that certain Credit Agreement dated as of February 13, 2014 (as amended, supplemented and modified and in effect on the date hereof, the "Original Credit Agreement") pursuant to which the Lenders thereunder made certain financial accommodations to the Borrower;

WHEREAS, in connection with the Original Credit Agreement, the Grantors and the Collateral Agent entered into that certain Security Agreement, dated as of February 13, 2014 (as amended, supplemented and modified and in effect on the date hereof, the "Original Security Agreement") pursuant to which the Grantors granted security interests in assets constituting Collateral to the Collateral Agent for the benefit of the Secured Parties in order to induce the Lenders to extend such credit;

WHEREAS, the Original Credit Agreement was amended and restated on September 11, 2019 (the "Credit Agreement Restatement"; the Original Credit Agreement, after giving effect to the Credit Agreement Restatement, the "Restated Credit Agreement") to reflect that Alter Domus Products Corp. (formerly known as Cortland Products Corp.) replaced Credit Suisse AG, Cayman Islands Branch as Administrative Agent and Collateral Agent under the Loan Documents pursuant to the Successor Agent Agreement, dated as of September 11, 2019 and such amendments more particularly set forth therein and in connection therewith, the Original Security Agreement was amended and restated on September 11, 2019 (the "Security Agreement Restatement"; the Original Security Agreement, after giving effect to the Security Agreement Restatement, the "Restated Security Agreement");

WHEREAS, the parties to the Restated Credit Agreement, as heretofore amended, modified and supplemented, including by Amendment No. 1 dated as of April 7, 2020, have agreed to enter Amendment No. 2 dated as of July 7, 2020 (the Restated Credit Agreement as heretofore amended and as further amended thereby, the "Credit Agreement") and in connection with the amendment to the Restated Credit Agreement, the Grantors and the Collateral Agent, have agreed to amend and restate the Restated Security Agreement (the Restated Security Agreement, as amended hereby, the "Security Agreement");

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree that the Restated Security Agreement shall be amended and restated in its entirety to read as follows:

#### ARTICLE 14

##### Definitions

- (a) Credit Agreement and UCC. Capitalized terms used in this Agreement,

(ii)

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including the preamble and the introductory paragraphs hereto, and not otherwise defined herein have the meanings specified in the Credit Agreement.

(b) As used herein, each of the following terms has the meaning specified in the UCC (as defined herein):

<u>Term</u>	<u>UCC Section</u>
Certificated Security	8-102
Chattel Paper	9-102
Commercial Tort Claim	9-102
Control	8-106 & 9-106
Commodity Contract	9-102
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(c) The rules of construction specified in Article 1 of the Credit Agreement also apply to this Agreement.

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

“ABL Priority Collateral” has the meaning assigned to such term in the ABL Intercreditor Agreement.

“Accommodation Payment” has the meaning assigned to such term in Article VI.

“Account(s)” means “accounts” as defined in Section 9-102 of the UCC, and also means a right to payment of a monetary obligation, whether or not earned by

performance, (a) for

property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, or (c) arising out of the use of a credit or charge card.

“Account Debtor” means any Person who is or who may become obligated to any Grantor under, with respect to or on account of an Account.

“After-Acquired Intellectual Property” has the meaning assigned to such term in Section 4.02(d).

“Agreement” means this Security Agreement.

“Allocable Amount” has the meaning assigned to such term in Article VI.

“Article 9 Collateral” has the meaning assigned to such term in Section 3.01(a).

“Bankruptcy Event of Default” means any Event of Default under Sections 8.01(f) or (g) of the Credit Agreement; provided that for purposes of this Agreement only and notwithstanding Section 8.03 of the Credit Agreement, in determining whether such an Event of Default has occurred, any reference in any such clause to any Restricted Subsidiary or Loan Party shall be deemed not to include any Immaterial Subsidiary affected by any event or circumstances referred to in any such clause.

“Blue Sky Laws” has the meaning assigned to such term in Section 5.01.

“Collateral” means the Article 9 Collateral and the Pledged Collateral; provided that all references to “Collateral” in Section 5.02 shall, unless the context requires otherwise, also refer to Mortgaged Properties; provided further, that in no event will “Collateral” refer to any Excluded Property.

“Collateral Account” means any Cash Collateral Account, if any, established by a Grantor pursuant to, or in connection with, any Loan Document, which Cash Collateral Account shall be maintained with, and under the sole dominion and control of, the Collateral Agent for the benefit of the relevant Secured Parties. For the avoidance of doubt, it is undisputed that there is no Collateral Account on the Restatement Effective Date.

“Commercial Software License” means any non-exclusive license of commercially available (on non-discriminatory pricing terms) computer software to a Grantor from a commercial software provider (e.g., “shrink-wrap”, “browse-wrap” or “click-wrap” software licenses) or a license of freely available computer software from a licensor of free or open source software.

“Copyright License” means any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now or hereafter owned by any Grantor material to the operation of the business of the Grantors or otherwise of significant value or that such Grantor otherwise has the right to license material to the operation of the business of the Grantors or otherwise of significant value, or granting any right to any Grantor under any Copyright now or hereafter owned by any third party, and all rights of such Grantor under any such agreement.

“Copyrights” means all of the following now owned or hereafter acquired by or assigned to any Grantor: (a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise, whether registered or unregistered and whether published or unpublished, (b) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, recordings, supplemental registrations and pending applications for registration in the United States Copyright Office, including those listed on Schedule III, (c) all rights and privileges arising under applicable Law with respect to such Grantor’s use of such copyrights, (d) all derivatives, reissues, renewals, continuations and extensions thereof and amendments thereto, (e) all income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect to the foregoing, including damages and payments for past, present or future infringements thereof, (f) all rights corresponding thereto throughout the world and (g) all rights to sue for past, present or future infringements thereof.

“Credit Agreement” has the meaning assigned to such term in the preliminary statement of this Agreement.

“Discharge of ABL Obligations” has the meaning assigned to such term in the ABL Intercreditor Agreement.

“Discharge of UST Tranche B Obligations” has the meaning assigned to such term in the ABL Intercreditor Agreement.

“Domain Names” means all Internet domain names and associated URL addresses in or to which any Grantor now or hereafter has any right, title or interest.

“Equipment” means (x) any “equipment” as such term is defined in Article 9 of the UCC and shall also include, but shall not be limited to, all machinery, equipment, furnishings, appliances, furniture, fixtures, tools, vehicles, Tractor Trailers and Rolling Stock now or hereafter owned by any Grantor in each case, regardless of whether characterized as equipment under the UCC and (y) any and all additions, substitutions and replacements of any of the foregoing and all accessions thereto, wherever located, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefore, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

“Excluded Property” has the meaning set forth in Section 3.01.

“General Intangibles” has the meaning provided in Article 9 of the UCC and shall in any event include all choses in action and causes of action and all other intangible personal property of every kind and nature (other than Accounts) now owned or hereafter acquired by any Grantor, as the case may be, including corporate or other business records, indemnification claims, contract rights (including rights under leases, whether entered into as lessor or lessee, Swap Contracts and other agreements), goodwill, registrations, franchises, tax refund claims and any letter of credit, guarantee, claim, security interest or other security held by or granted to any Grantor.

“Grant of Security Interest” means a Grant of Security Interest in certain Intellectual Property Collateral in the form of Exhibit III, IV or V attached hereto.

“Grantor” means each of the Borrower and each Guarantor.

“Intellectual Property” means all registered intellectual property of every kind and nature now owned or hereafter acquired by any Grantor, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, trade secrets, confidential or proprietary technical and business information, know how, show how or other data or information, software (including all data and source code and related documentation), databases, all other proprietary information, including but not limited to Domain Names, social media identifications and tags including Twitter usernames and Facebook usernames and all embodiments or fixations thereof and related documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing.

“Intellectual Property Collateral” means Collateral consisting of Intellectual Property.

“License” means any Patent License, Trademark License, Copyright License, Commercial Software License or other license or sublicense agreement granting rights under Intellectual Property to which any Grantor is a party, including those listed on Schedule III.

“Patent License” means any written agreement, now or hereafter in effect, granting to any third party any right to develop, commercialize, import, make, have made, offer for sale, use or sell any invention on which a Patent, now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, is in existence, or granting to any Grantor any such right with respect to any invention on which a Patent, now or hereafter owned by any third party, is in existence, and all rights of any Grantor under any such agreement.

“Patents” means all of the following now owned or hereafter acquired by any Grantor: (a) all letters patent of the United States or the equivalent thereof in any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or the equivalent thereof in any other country, including registrations, recordings and pending applications in the United States Patent and Trademark Office or any similar offices in any other country, including those listed on Schedule III, (b) all rights and privileges arising under applicable Law with respect to such Grantor’s use of any patents, (c) all inventions and improvements described and claimed therein, (d) all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and amendments thereto, (e) all income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect to any of the foregoing including damages and payments for past, present or future infringements thereof, (f) all rights corresponding thereto throughout the world and (g) rights to sue for past, present or future infringements thereof.

“Perfection Certificate” means a certificate substantially in the form of Exhibit II, completed and supplemented from time to time with the schedules and attachments contemplated thereby and in accordance with Section 3.03(c), and duly executed by any officer of the Borrower.

“Pledged Collateral” has the meaning assigned to such term in Section 2.01.

“Pledged Debt” has the meaning assigned to such term in Section 2.01.

“Pledged Equity” has the meaning assigned to such term in Section 2.01.

“Pledged Securities” means any Promissory Notes, stock certificates or other Securities, certificates or Instruments now or hereafter included in the Pledged Collateral, including all Pledged Equity, Pledged Debt and all other certificates, instruments or other documents representing or evidencing any Pledged Collateral.

“Restatement Date Grantor” has the meaning assigned to such term in Section 2.02 of this Agreement.

“Rolling Stock” means any railroad car, locomotive, stacktrain or other rolling stock, or accessories used on such railroad cars, locomotives or other rolling stock (including superstructures and racks); provided that, Rolling Stock shall exclude Tractor Trailers.

“Secured Credit Document” means each Loan Document.

“Secured Obligations” means the “Obligations” as defined in the Credit Agreement.

“Secured Parties” means the holders from time to time of the Secured Obligations.

“Securities Act” has the meaning assigned to such term in Section 5.01

“Security” means a “security” as such term is defined in Article 8 of the UCC.

“Security Agreement Supplement” means an instrument substantially in the form of Exhibit I hereto.

“Security and Collateral Agency Agreement” means that certain amended and restated security and collateral agency agreement, dated on or about the date hereof, among Alter Domus Products Corp., as collateral agent, Alter Domus Products Corp., as tranche B-2 term loan representative, The Bank of New York Mellon, as UST tranche A term loan representative, The Bank of New York Mellon, as UST tranche B term loan representative, the ABL Agent, as ABL representative, and the Borrower and the other Loan Parties party thereto.

“Security Interest” has the meaning assigned to such term in Section 3.01(a).

“Tractor Trailers” means any vehicle, truck, tractor, trailer, tank trailer or other trailer, or similar vehicle or trailer.

“Trademark License” means any written agreement, now or hereafter in effect, granting to any third party any right to use any Trademark now or hereafter owned by any Grantor material to the operation of the business of the Grantors or otherwise of significant value or that any Grantor otherwise has the right to license material to the operation of the business of the Grantors or otherwise of significant value, or granting to any Grantor any right to use any Trademark now or hereafter owned by any third party, and all rights of any Grantor under any such agreement.

“Trademarks” means all of the following now owned or hereafter acquired by any Grantor: (a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, the goodwill of the business symbolized thereby or associated therewith, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof, and all extensions or renewals thereof, including those listed on Schedule III, (b) all rights and privileges arising under applicable Law with respect to such Grantor’s use of any trademarks, (c) all reissues, continuations, extensions and renewals thereof and amendments thereto, (d) all income, fees, royalties, damages and payments now and hereafter due and/or payable with respect to any of the foregoing, including damages, claims and payments for past, present or future infringements thereof, (e) all rights corresponding thereto throughout the world and (f) rights to sue for past, present and future infringements or dilutions thereof or other injuries thereto.

“UCC” means the Uniform Commercial Code as the same may from time to time be in effect on the Restatement Effective Date in the State of New York; provided that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

“UFCA” has the meaning assigned to such term in Article VI.

“UFTA” has the meaning assigned to such term in Article VI.

“UST Tranche A Only Collateral” has the meaning assigned to such term in the ABL Intercreditor Agreement.

“UST Tranche B Only Collateral” has the meaning assigned to such term in the ABL Intercreditor Agreement.

“UST Tranche B Priority Collateral” has the meaning assigned to such term in the ABL Intercreditor Agreement.

## ARTICLE 15

### Pledge of Securities

Pledge. As security for the payment or performance, as the case may be, in full of the Secured Obligations, each Grantor hereby collaterally assigns and pledges to the Collateral Agent, its permitted successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its permitted successors and assigns, for the benefit of the Secured Parties, a continuing security interest in, all of such Grantor’s right, title and interest in, to and under (i) all Equity Interests held by it (including those Equity Interests listed on Schedule I) and

any other Equity Interests obtained in the future by such Grantor and the certificates representing all such Equity Interests (the “Pledged Equity”); provided that the Pledged Equity shall not include (A) Margin Stock, (B) Equity Interests in a bona fide joint venture formed after the Restatement Effective Date with any Person that is not an Affiliate of any Loan Party, other than Proceeds thereof, and only to the extent that the creation of a security interest in such Equity Interests is prohibited or restricted by the Organization Documents of such entity or Subsidiary or by any contractual restriction contained in any agreement with third party holders (which holders are not Affiliates of the Borrower) of other Equity Interests in such entity or Subsidiary (except to the extent any such prohibition or restriction is unenforceable under the UCC or other applicable Law and the consent of such third party holders (which holders are not Affiliates of the Borrower) has not been obtained) or (C) Equity Interests of (or held as assets by) Immaterial Subsidiaries or captive insurance Subsidiaries; (ii)(A) the Promissory Notes and any Instruments evidencing indebtedness owned by it listed opposite the name of such Grantor on Schedule I and (B) any Promissory Notes and Instruments evidencing indebtedness obtained in the future by such Grantor (the “Pledged Debt”); (iii) all other property that may be delivered to and held by the Collateral Agent pursuant to the terms of this Section 2.01; (iv) subject to Section 2.06, 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 securities referred to in clauses (i) and (ii) above; (v) subject to Section 2.06, all rights and privileges of such Grantor with respect to the securities and other property referred to in clauses (i), (ii), (iii) and (iv) above; and (vi) all Proceeds of, and Security Entitlements in respect of, any of the foregoing (the items referred to in clauses (i) through (vi) above being collectively referred to as the “Pledged Collateral”). Notwithstanding the foregoing, if after the date hereof any Grantor shall acquire any Equity Interest or Promissory Note (1) in which a pledge (or other security interest) is prohibited or restricted by applicable law or requires the consent of any governmental authority or third party that is not an Affiliate of the Borrower and whose consent has not been obtained, (2) to the extent a pledge of such Equity Interests or Promissory Note could result in adverse tax consequences as reasonably determined by the Borrower and the Required Lenders and as to which the Borrower shall have confirmed such determination by written notice to the Collateral Agent or is otherwise listed on Schedule I on the Restatement Effective Date; provided such asset is not specifically included in the Collateral or (3) in circumstances where the cost of obtaining a pledge of such Equity Interests or Promissory Note exceeds the practical benefit to the Lenders afforded thereby as reasonably determined between the Borrower, the Required Lenders and the Collateral Agent and as to which the Collateral Agent, with the consent of the Required Lenders, shall have confirmed such determination by written notice to the Borrower or is otherwise listed on Schedule I on the Restatement Effective Date then such Equity Interest or Promissory Note shall not be included in the Pledged Collateral. In addition, notwithstanding the foregoing or anything else to the contrary in this Agreement or in any Loan Document, in no event shall any Excluded Property constitute Pledged Collateral.

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its permitted successors and assigns, for the benefit of the applicable Secured Parties, forever; subject, however, to the terms, covenants and conditions hereinafter set forth.

(a) Delivery of the Pledged Collateral. On the Restatement Effective Date (in the

case of any Grantor that grants a Lien on any of its assets hereunder on the Restatement Effective Date (each a “Restatement Date Grantor”) or on the date on which it signs and delivers its first Security Agreement Supplement (in the case of any other Grantor), each Grantor shall deliver or cause to be delivered to the Collateral Agent, for the benefit of the applicable Secured Parties, any and all Pledged Securities (other than any Uncertificated Securities, but only for so long as such Securities remain uncertificated) to the extent such Pledged Securities, in the case of Promissory Notes and Instruments evidencing Indebtedness, are required to be delivered pursuant to paragraph (b) of this Section 2.02. Thereafter, whenever such Grantor acquires any other Pledged Security (other than any Uncertificated Securities, but only for so long as such Uncertificated Securities remain uncertificated), such Grantor shall concurrently with the first Compliance Certificate required to be delivered thereafter pursuant to Section 6.02(a) of the Credit Agreement deliver or cause to be delivered to the Collateral Agent such Pledged Security as Collateral hereunder to the extent such Pledged Securities, in the case of Promissory Notes and Instruments evidencing Indebtedness, are required to be delivered pursuant to paragraph (b) of Section 2.02.

(b) Each Grantor will cause (i) all indebtedness of the Borrower and each other Guarantor that, in each case, is owing to such Grantor to be evidenced by the Intercompany Note or other Promissory Note, (ii) the Intercompany Note or such other Promissory Note to be pledged and delivered to the Collateral Agent pursuant to the terms hereof and (iii) any Indebtedness for borrowed money having an aggregate principal amount equal to or in excess of \$5,000,000 for all such Indebtedness owed to such Grantor by any Person (other than the Borrower or a Restricted Subsidiary) to be evidenced by a duly executed Promissory Note that is pledged and promptly delivered to the Collateral Agent within 30 days (or such longer period as the Collateral Agent may agree in its reasonable discretion) after creation or acquisition thereof, for the benefit of the applicable Secured Parties, pursuant to the terms hereof.

(c) Upon delivery to the Collateral Agent, (i) any Pledged Securities shall be accompanied by undated stock powers duly executed in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and by such other instruments and documents as the Collateral Agent may reasonably request and (ii) all other property comprising part of the Pledged Collateral shall be accompanied by instruments of assignment duly executed by the applicable Grantor and such other instruments or documents as the Collateral Agent may reasonably request. For any period in which Pledged Securities are delivered to the Collateral Agent, the Borrower shall provide with the first Compliance Certificate required to be delivered thereafter pursuant to Section 6.02(a) of the Credit Agreement a schedule describing the securities, which schedule shall be deemed to supplement Schedule I and be made a part hereof; provided that failure to attach any such schedule hereto shall not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered shall supplement any prior schedules so delivered.

(d) Notwithstanding the foregoing, to the extent that any Restatement Date Grantor does not or cannot deliver any Pledged Collateral (other than Pledged Collateral consisting of the Equity Interests of the Borrower or any Subsidiary of the Borrower) on the Restatement Effective Date, such Restatement Date Grantor shall not be required to deliver such Pledged Collateral until the date that is 60 days following the Restatement Effective Date (or such longer period as the Collateral Agent, in consultation with the Required Lenders, may agree

in its or their reasonable discretion).

(e) The assignment, pledge and security interest granted in Section 2.01 are granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Pledged Collateral.

Representations, Warranties and Covenants. Each Grantor represents, warrants and covenants, as to itself and the other Grantors, to and with the Collateral Agent, for the benefit of the Secured Parties, that:

(f) Schedule I correctly sets forth, as of the Amendment No. 2 Effective Date and as of each date on which a supplement to Schedule I is delivered pursuant to Section 2.02(c), the percentage of the issued and outstanding units of each class of the Equity Interests of the issuer thereof represented by the Pledged Equity and includes all Equity Interests, Promissory Notes and Instruments required to be pledged hereunder in order to satisfy the Collateral and Guarantee Requirement;

(g) the Pledged Equity issued by a Restricted Subsidiary of the Borrower and the Pledged Debt (solely with respect to Pledged Debt issued by a Person other than the Borrower or a Restricted Subsidiary of the Borrower, to the best of the Borrower's knowledge) have been duly and validly authorized and issued by the issuers thereof and (i) in the case of Pledged Equity (other than Pledged Equity consisting of limited liability company interests or partnership interests which, pursuant to the relevant organizational or formation documents, cannot be fully paid and non-assessable), are fully paid and nonassessable and (ii) in the case of Pledged Debt (solely with respect to Pledged Debt issued by a Person other than the Borrower or a Restricted Subsidiary of the Borrower, to the best of the Borrower's knowledge), are legal, valid and binding obligations of the issuers thereof, subject to applicable Debtor Relief Laws and general principles of equity;

(h) (i) each Grantor holds the Pledged Securities indicated on Schedule I as owned by such Grantor free and clear of all Liens, other than (A) Liens created by the Collateral Documents and (B) Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement, and (ii) will defend its title or interest thereto or therein against any and all Liens (other than the liens permitted pursuant to this Section 2.03(c)), however arising, of all Persons whomsoever;

(i) (i) except for (x) restrictions and limitations imposed by the Loan Documents, UST Tranche A Term Loan Facility

Documentation, UST Tranche B Term Loan Facility Documentation, the Treasury Equity Documentation, the ABL Facility Documentation or securities laws generally or Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement and (y) in the case of Pledged Equity of Persons that are not Subsidiaries, transfer restrictions that exist at the time of acquisition of Equity Interests in such Persons, and (ii) except as described in the Perfection Certificate or any other Loan Document, including, without limitation, Section 7.01 of the Credit Agreement, the Pledged Collateral is and will continue to be freely transferable and assignable, and none of the Pledged Collateral is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that would prohibit, impair, delay or otherwise affect in any manner material and adverse to the Secured Parties the pledge of such Pledged Collateral hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;

(j) each of the Grantors has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;

(k) no consent or approval of any Governmental Authority in the United States, any securities exchange or any other Person was or is necessary to the validity and perfection of the pledge effected hereby (other than such as have been obtained and are in full force and effect);

(l) by virtue of the execution and delivery by the Grantors of this Agreement, when any Pledged Securities are delivered to the Collateral Agent in accordance with this Agreement together with such stock powers or similar instruments of transfer executed in blank, the Collateral Agent will obtain a legal, valid and, to the extent governed by the UCC, first-priority (subject to any Liens permitted pursuant by Section 7.01 of the Credit Agreement) perfected lien upon and security interest in such Pledged Securities as security for the payment and performance of the Secured Obligations; and

(m) the pledge effected hereby is effective to vest in the Collateral Agent, for the benefit of the Secured Parties, the rights of the Collateral Agent in the Pledged Collateral as set forth herein.

Notwithstanding anything herein to the contrary, none of the Grantors shall be required to perfect Collateral by any means or manner or take any action not otherwise required by the Collateral and Guarantee Requirement (as defined in the Credit Agreement) or this Agreement.

Section 15.02. Certification of Limited Liability Company and Limited Partnership Interests. Each Grantor acknowledges and agrees that, to the extent any interest in any limited liability company or limited partnership controlled by any Grantor and pledged under Section 2.01 is a “security” within the meaning of Article 8 of the UCC and is governed by Article 8 of the UCC, such interest shall be represented by a certificate. Each Grantor further acknowledges and agrees that with respect to any interest in any limited liability company or limited partnership controlled on or after the Restatement Effective Date by such Grantor and pledged hereunder that is not a “security” within the meaning of Article 8 of the UCC, such Grantor shall at no time elect to treat any such interest as a “security” within the meaning of Article 8 of the UCC, nor shall such interest be represented by a certificate, unless such election and such interest is thereafter represented by a certificate that is delivered to the Collateral Agent pursuant to the terms hereof.

Section 15.03. Registration in Nominee Name; Denominations. If an Event of Default shall occur and be continuing and the Collateral Agent shall give the Borrower 5 Business Days prior written notice of its intent to exercise such rights, (a) the Collateral Agent, on behalf of the Secured Parties, shall have the right (in its sole and absolute discretion) to cause each of the Pledged Securities to be transferred of record into the name of the Collateral Agent and (b) the Collateral Agent shall have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement; provided that, notwithstanding the foregoing, if a Bankruptcy Event of Default shall have occurred and be continuing, the Collateral Agent shall not be required to give the notice referred to above in order to exercise the rights described above. Each Grantor will use commercially reasonable efforts to take any and all actions reasonably requested by the Collateral Agent to facilitate compliance with this Section.

(a) Voting Rights; Dividends and Interest. Unless and until an Event of Default shall have occurred and be continuing and the Collateral Agent shall have notified the Borrower in writing 5 Business Days prior thereto that the rights of the Grantors under this Section 2.06 are being suspended:

(i) Each Grantor shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Securities or any part thereof for any purpose consistent with the terms of this Agreement, the Credit 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 Securities or the rights and remedies of any of the Collateral Agent or the other Secured Parties under this Agreement, the Credit Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same.

(ii) The Collateral Agent shall promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request in writing for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (i) above, in each case as shall be specified in such request and be in form reasonably satisfactory to the Collateral Agent

and the Required Lenders.

(iii) Each Grantor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Securities, 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 the Credit Agreement, the other Loan Documents and applicable Laws; provided that any noncash dividends, interest, principal or other distributions that would constitute Pledged Equity or Pledged Debt, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities or received in exchange for Pledged Securities 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 any Grantor, shall not be commingled by such Grantor with any of its other funds or property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Collateral Agent and the applicable Secured Parties and shall be forthwith delivered to the Collateral Agent in the same form as so received (with any necessary endorsement reasonably requested by the Collateral Agent). So long as no Event of Default has occurred and is continuing, the Collateral Agent shall promptly deliver to each Grantor any Pledged Securities in its possession if requested to be delivered to the issuer thereof in connection with any exchange or redemption of such Pledged Securities.

(b) Upon the occurrence and during the continuance of an Event of Default, after the Collateral Agent shall have notified the Borrower in writing and within 5 Business Days of the suspension of the rights of the Grantors under Section 2.06(a)(iii), then all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to Section 2.06(a)(iii) shall cease, and all such rights shall thereupon become vested in the Collateral 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 Grantor contrary to the provisions of this Section 2.06 shall be held in trust for the benefit of the Collateral Agent, shall be segregated from other property or funds of such Grantor and shall be forthwith delivered to the Collateral Agent upon demand in the same form as so received (with any necessary endorsement reasonably requested by the Collateral Agent). Any and all Money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (b) shall be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such Money or other property and shall be applied in accordance with the provisions of Section 5.02. After all Events of Default have been cured or waived and the Borrower has delivered to the Collateral Agent a certificate to such effect, the Collateral Agent shall promptly repay to each Grantor

(without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of Section 2.06(a)(iii) in the absence of an Event of Default and that remain in such account.

(c) Upon the occurrence and during the continuance of an Event of Default, after the Collateral Agent shall have notified the Borrower in writing and within 5 Business Days of the suspension of the rights of the Grantors under Section 2.06(a)(i), then all rights of any Grantor to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to Section 2.06(a)(i), and the obligations of the Collateral Agent under Section 2.06(a)(ii), shall cease, and all such rights shall thereupon become, subject to the rights of the ABL Agent under the ABL Intercreditor Agreement, vested in the Collateral Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers; provided that, unless otherwise directed by the Required Lenders, the Collateral Agent shall have the right from time to time following and during the continuance of an Event of Default to permit the Grantors to exercise such rights. After all Events of Default have been cured or waived and the Borrower has delivered to the Collateral Agent a certificate to such effect, each Grantor shall have the exclusive right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of Section 2.06(a)(i), and the obligations of the Collateral Agent under Section 2.06(a)(ii) shall be reinstated.

(d) Any notice given by the Collateral Agent to the Borrower suspending the rights of the Grantors under Section 2.06(a)(i) (i) shall be given in writing, (ii) may be given with respect to one or more of the Grantors at the same or different times and (iii) may suspend the rights of the Grantors under Section 2.06(a)(i) or (iii) in part without suspending all such rights (as specified by the Collateral Agent in its sole and absolute discretion) and without waiving or otherwise affecting the Collateral Agent's rights to give additional notices from time to time suspending other rights so long as an Event of Default has occurred and is continuing. Notwithstanding anything to the contrary contained in Section 2.06(a), (b) or (c), if a Bankruptcy Event of Default shall have occurred and be continuing, the Collateral Agent shall not be required to give any notice referred to in said Section in order to exercise any of its rights described in such Section, and the suspension of the rights of each of the Grantors under each such Section shall be automatic upon the occurrence of such Bankruptcy Event of Default.

Section 15.04. Collateral Agent Not a Partner or Limited Liability Company Member. Nothing contained in this Agreement shall be construed to make the Collateral Agent or any

other Secured Party liable as a member of any limited liability company or as a partner of any partnership and neither the Collateral Agent nor any other Secured Party by virtue of this Agreement or otherwise (except as referred to in the following sentence) shall have any of the duties, obligations or liabilities of a member of any limited liability company or as a partner in any partnership. The parties hereto expressly agree that, unless the Collateral Agent shall become the absolute owner of Pledged Equity consisting of a limited liability company interest or a partnership interest pursuant hereto, this Agreement shall not be construed as creating a partnership or joint venture among the Collateral Agent, any other Secured Party, any Grantor and/or any other Person.

## ARTICLE 16

### Security Interests in Personal Property

(a) Security Interest. As security for the payment or performance, as the case may be, in full of the Secured Obligations, each Grantor hereby collaterally assigns and pledges to the Collateral Agent, its permitted successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its permitted successors and assigns, for the benefit of the Secured Parties, a security interest (the "Security Interest") in, all right, title or interest in, to or under any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "Article 9 Collateral");

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) all Documents;
- (iv) all Equipment (including, without limitation, all Tractor Trailers and Rolling Stock);
- (v) all General Intangibles;
- (vi) all Instruments;
- (vii) all Inventory;
- (viii) all Investment Property;
- (ix) all books and records pertaining to the Article 9 Collateral;
- (x) all Goods and Fixtures;
- (xi) all Money, cash, Cash Equivalents and Deposit Accounts;
- (xii) all Letter-of-Credit Rights;

- (xiii) all Commercial Tort Claims described on Schedule II from time to time;
- (xiv) each Collateral Account, and all cash, Money, Securities and other investments deposited therein;
- (xv) all Supporting Obligations;
- (xvi) all Security Entitlements in any or all of the foregoing;
- (xvii) all Intellectual Property; and
- (xviii) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing (including proceeds of all insurance policies) and all collateral security and guarantees given by any Person with respect to any of the foregoing;

provided that (i) with respect to any Trademarks, applications in the United States Patent and Trademark Office to register Trademarks or service marks on the basis of any Grantor's "intent to use" such Trademarks or service marks will not be deemed to be Collateral unless and until a "Statement of Use" or "Amendment to Allege Use" has been filed and accepted in the United States Patent and Trademark Office, whereupon such application shall be automatically subject to the security interest granted herein and deemed to be included in the Collateral and (ii) notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a grant of a security interest in or a pledge of (A) any specifically identified asset with respect to which (1) the grant of a security interest in such asset could result in adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent (provided that the Borrower shall give notice of such determination to the Required Lenders and, at the request of the Required Lenders, shall consult with the Required Lenders) or is otherwise listed on Schedule I on the Restatement Effective Date or (2) the burden or cost of obtaining or perfecting a security interest in such asset exceeds the practical benefit to the Lenders afforded thereby as reasonably determined by the Administrative Agent in consultation with the Required Lenders and the Borrower and as to which the Collateral Agent shall have confirmed such determination by written notice to the Borrower or is otherwise listed on Schedule I on the Restatement Effective Date; provided such asset is not specifically included in the Collateral, (B) any particular asset, if the pledge thereof or the security interest therein is prohibited or restricted by applicable Law (including, without limitation, any requirement to obtain the consent of any governmental authority or third party, which consent has not been obtained), (C) Margin Stock and Equity Interests in a bona fide joint venture formed after the Restatement Effective Date with any Person that is not an Affiliate of any Loan Party, other than Proceeds thereof, and only to the extent that the creation of a security interest in such Equity Interests is prohibited or restricted by the Organizational Documents of such Subsidiary or by any contractual restriction contained in any agreement with third party holders of the other Equity Interests in such Subsidiary (which holders are not Affiliates of the Borrower) without the consent of such holders (except to the extent any such prohibition or restriction is unenforceable under the UCC or other applicable Law and such consent has not been obtained), (D) Equity Interests of (or held as assets by) Immaterial Subsidiaries or captive insurance Subsidiaries, (E) any lease, license or agreement or any property to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or create a right of termination in favor of any other party thereto after giving effect

to the applicable anti-assignment provisions of the UCC or other applicable Law, other than proceeds and receivables thereof, the assignment of which is deemed effective under the UCC or other applicable Law notwithstanding such prohibition or restriction, (F) any assets or rights subject to a purchase money security interest, Capitalized Lease or similar arrangement, other than in each case, the UST Tranche B Priority Collateral and UST Tranche B Joint Collateral (G) any governmental licenses or state or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby (except to the extent such prohibition or restriction is rendered ineffective under the UCC), (except that cash Proceeds of dispositions thereof in accordance with applicable Law (including, without limitation, rules and regulations of any Governmental Authority) shall constitute Collateral), provided that Collateral shall include to the maximum extent permitted by applicable Law all rights incident or appurtenant to such licenses, property and assets (except to the extent any Lien on such asset in favor of the Collateral Agent requires consent, approval or authorization from any Governmental Authority) and the right to receive all Proceeds realized from the sale, assignment or transfer of such licenses, property and assets, (H) any fee owned Real Property that is not Material Real Property (other than Pension Property Mortgages solely to the extent required to be delivered pursuant to clause (b)(iv) of the definition of "Collateral and Guarantee Requirement" under the Credit Agreement) and any Leasehold Property (it being understood that there shall be no requirement to obtain any landlord waivers, estoppels or collateral access letters), (I) motor vehicles (other than Tractor Trailers and other Rolling Stock) consisting of an employee or light vehicle and other assets subject to certificates of title with an individual fair market value of less than \$40,000, provided that the aggregate fair market value of all assets excluded from the Collateral pursuant to this sub-clause (I), together with the aggregate net book value of all assets excluded from the Collateral pursuant to sub-clause (L), shall not exceed \$5,000,000 in the aggregate at any time outstanding, (J) Letter-of-Credit Rights (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a UCC financing statement) of an amount less than \$5,000,000, (K) any Commercial Tort Claim where the amount of damages claimed by the applicable Loan Party is less than \$5,000,000, (L) any equipment or other collateral with a net book value in an aggregate amount not to exceed \$5,000,000 for all such equipment or other collateral (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a UCC financing statement); provided that the aggregate fair market value of all assets excluded from the Collateral pursuant to this sub-clause (L), together with the aggregate net book value of all assets excluded from the Collateral pursuant to sub-clause (I) shall not exceed \$5,000,000 in the aggregate at any time outstanding, (M) [reserved], (N) any other property excluded from the definition of Collateral and Guarantee Requirement in the Credit Agreement, (O) any UST Tranche B Only Collateral and (P) any UST Tranche A Only Collateral. The property referenced in each of the foregoing clauses (i)-(ii) is collectively referred to herein as the "Excluded Property".

(b) Each Grantor hereby irrevocably authorizes the Collateral Agent for the benefit of the Secured Parties at any time and from time to time to (i) file in any relevant jurisdiction any financing statements or continuation statements (including fixture filings on the premises of Material Real Property) with respect to the Article 9 Collateral or any part thereof and amendments thereto that (A) indicate the Collateral as "all assets" or "all personal property" of such Grantor or words of similar effect and (B) contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment, including (1) whether such Grantor is an organization, the type of organization and

any organizational identification number issued to such Grantor and (2) in the case of a financing statement filed as a fixture filing, a sufficient description of the real property to which such Article 9 Collateral relates and (ii) notate its lien on certificates of title with respect to Collateral covered by a certificate of title, including all Tractor Trailers and Rolling Stock, and hold or file such certificates of title (or take any other action) as may be necessary to perfect its security interest in such Collateral. Each Grantor agrees to provide such information to the Collateral Agent promptly upon request.

(c) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.

(d) Each Grantor hereby further authorizes the Collateral Agent to file a Grant of Security Interest substantially in the form of Exhibit III, IV or V, as applicable, covering Intellectual Property Collateral with the United States Patent and Trademark Office or United States Copyright Office (or any successor office), as applicable, and such other documents as may be necessary or advisable for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest granted by such Grantor hereunder, without the signature of such Grantor, and naming such Grantor, as debtor, and the Collateral Agent, as secured party.

Representations and Warranties Each Grantor represents and warrants, as to itself and the other Grantors, to the Collateral Agent and the Secured Parties that as of the

Restatement Effective Date:

(e) Each Grantor has good and valid rights (not subject to any Liens other than Liens permitted by Section 7.01 of the Credit Agreement) and/or good and marketable title in the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder (which rights and/or title, are in any event, sufficient under Section 9-203 of the UCC), and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained.

(f) A Perfection Certificate has been duly executed and delivered to the Collateral Agent and the information set forth therein, including the exact legal name of each Grantor and its jurisdiction of organization, is correct and complete in all material respects as of the Restatement Effective Date. The UCC financing statements (including fixture filings, as applicable) prepared by the Collateral Agent based upon the information provided to the Collateral Agent in the Perfection Certificate (or specified by notice from the applicable Grantor to the Collateral Agent after the Restatement Effective Date in the case of filings, recordings or registrations required by Section 6.11 of the Credit Agreement), are all the filings, recordings and registrations (other than any filings required to be made in the United States Patent and Trademark Office, the United States Copyright Office in order to perfect the Security Interest in Article 9 Collateral consisting of Intellectual Property and any filing required to be made by notating a lien on any certificate of title) that are necessary to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing.

recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, refiling, recording, rerecording, registration or reregistration with respect to such Article 9 Collateral is necessary in any such jurisdiction, except as provided under applicable Law with respect to the filing of continuation statements. Each Grantor represents and warrants that, as of the Restatement Effective Date, fully executed Grants of Security Interest in the form attached as Exhibit III, IV or V, as applicable, containing a description of all Intellectual Property Collateral consisting of Patents (other than any Patents that are not material to the operation of the business of the Grantors taken as a whole or do not otherwise have significant value), registered Trademarks (and Trademarks for which registration applications are pending) (other than any Trademarks or Trademark registrations that are not material to the operation of the business of the Grantors, taken as a whole or do not otherwise have significant value) or registered Copyrights (and Copyrights for which registration applications are pending) (other than with respect to any Copyright that is not material to the operation of the business of the Grantors, taken as a whole or do not otherwise have significant value), as applicable, have been delivered to the Collateral Agent for recording by the United States Patent and Trademark Office or the United States Copyright Office, as applicable, pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder.

(g) The Security Interest constitutes (i) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Secured Obligations, (ii) subject to the filings described in Section 3.02(b), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the UCC, (iii) a security interest that shall be perfected in all Article 9 Collateral (other than with respect to any Copyright that is not material to the business of the Grantors, taken as a whole) in which a security interest may be perfected upon the receipt and recording of the relevant Grants of Security Interest with the United States Patent and Trademark Office and the United States Copyright Office, as applicable, within the three month period (commencing as of the date hereof) pursuant to 35 U.S.C. § 261 or 15 U.S.C. § 1060 or the one month period (commencing as of the date hereof) pursuant to 17 U.S.C. § 205 and (iv) subject to the notations of lien described in Section 3.02(b), a perfected security interest in all Article 9 Collateral covered by a certificate of title. The Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral, other than Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement (other than Liens securing Permitted Second Priority Additional Debt or any Permitted Refinancing thereof).

(h) None of the Grantors has filed or consented to the filing of (i) any financing statement or analogous document under the UCC or any other applicable Laws covering any Article 9 Collateral, (ii) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office, or (iii) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement.

(i) All Commercial Tort Claims of each Grantor where the amount of damages claimed by such Grantor is equal to or in excess of \$5,000,000 in existence on the Amendment No. 2 Effective Date (or on the date upon which such Grantor becomes a party to this Agreement) are described on Schedule II hereto.

(f) All Collateral Accounts, Deposit Accounts and Securities Accounts of each Grantor on the date hereof (other than Excluded Accounts) are set forth on Schedule IV hereto.

(j) CovenantsThe Borrower agrees to promptly (and in any event within 30 calendar days thereafter) notify the Collateral Agent of any change (i) in the legal name of any Grantor, (ii) in the identity or type of organization or corporate structure of any Grantor, (iii) in the jurisdiction of organization of any Grantor, (iv) in the Location of any Grantor or (v) in the organizational identification number of any Grantor. The Grantors agree not to effect or permit any change referred to in the preceding sentence unless all filings, publications and registrations have been made (or will be made in a timely fashion) under the UCC or any other applicable Law that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and first-priority (subject only to (i) any nonconsensual Lien that is expressly permitted pursuant to Section 7.01 of the Credit Agreement and has priority as a matter of law and (ii) Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement (other than Liens securing Permitted Second Priority Additional Debt or any Permitted Refinancing thereof)) perfected security interest in all Article 9 Collateral. In addition, if any Grantor does not have an organizational identification number on the Restatement Effective Date (or the date such Grantor becomes a party to this Agreement) and later obtains one, the Borrower shall promptly thereafter notify the Collateral Agent of such organizational identification number and shall take all actions reasonably satisfactory to the Collateral Agent to the extent necessary to maintain the security interests (and the priority thereof) of the Collateral Agent in the Collateral intended to be granted hereby fully perfected and in full force and effect.

(k) Subject to Section 3.03(h), each Grantor shall, at its own expense, take any and all commercially reasonable actions necessary to defend title to the Article 9 Collateral against all Persons and to defend the Security Interest of the Collateral Agent in the Article 9 Collateral and the priority thereof against any known Lien not expressly permitted pursuant to Section 7.01 of the Credit Agreement.

(l) Each year, at the time of delivery of annual financial statements with respect to the preceding fiscal year pursuant to Section 6.01 of the Credit Agreement, the Borrower shall deliver to the Collateral Agent a certificate executed by a Responsible Officer of the Borrower setting forth the information required pursuant to Sections 1(a), 1(e), 2(a), 2(b), 2(c), 2(d), 2(e), 2(g), 5, 6, 7, 8 and 12 of the Perfection Certificate or confirming that there has been no change in such information since the date of such certificate or the date of the most recent certificate delivered pursuant to this Section 3.03(c).

(m) Subject to Section 3.03(h) and any other limitations on creation, perfection or protection of the Collateral Agent's security interest set forth herein or in any other Loan Document, each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents with respect to Collateral and take all such actions as the Collateral Agent may from time to time reasonably request to better assure,

preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith. Each Grantor will, at its own expense, promptly make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such lists, descriptions and designations of its then owned Tractor Trailers and Rolling Stock (including certificate of title numbers and jurisdictions of registration of each such Tractor Trailer and Rolling Stock), documents of title, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments and take such further steps and actions relating to such Tractor Trailers, Rolling Stock and other property or rights covered by the security interest hereby granted necessary to perfect, preserve or protect its security interest in such Tractor Trailers, Rolling Stock and other property or rights. Each Grantor agrees to execute all documentation reasonably required to effect such recordings and to cause the notation of lien and filing of relevant certificates of title with the appropriate state governmental agency. If any amount payable under or in connection with any of the Article 9 Collateral (other than by a Loan Party) that equals or exceeds \$5,000,000 shall be or become evidenced by any Promissory Note or Instrument, such Promissory Note or Instrument shall be, concurrently with the first Compliance Certificate required to be delivered pursuant to Section 6.02(a) of the Credit Agreement thereafter, pledged and, subject to the ABL Intercreditor Agreement, delivered to the Collateral Agent, for the benefit of the Secured Parties, duly endorsed in a manner reasonably satisfactory to the Required Lenders.

(n) At its option, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not permitted pursuant to Section 7.01 of the Credit Agreement, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent any Grantor fails to do so as required by the Credit Agreement or this Agreement and within a reasonable period of time after the Collateral Agent has requested that it do so, and each Grantor jointly and severally agrees to reimburse the Collateral Agent within 10 days after written demand for any payment made or any reasonable out-of-pocket expense incurred by the Collateral Agent pursuant to the written foregoing authorization. Nothing in this paragraph shall be interpreted as excusing any Grantor from the performance of, or imposing any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.

(o) If at any time any Grantor shall take a security interest in any property of an Account Debtor or any other Person the value of which equals or exceeds \$5,000,000 to secure payment and performance of an Account, such Grantor shall, concurrently with the first Compliance Certificate required to be delivered pursuant to Section 6.02(a) of the Credit Agreement thereafter, collaterally assign such security interest to the Collateral Agent for the benefit of the applicable Secured Parties. Such assignment need not be filed of public record unless necessary to continue the perfected status of the security interest against creditors of and transferees from the Account Debtor or other Person granting the security interest.

(p) Each Grantor (rather than the Collateral Agent or any Secured Party) shall

remain liable (as between itself and any relevant counterparty) to observe and perform all the conditions and obligations to be observed and performed by it under each contract agreement or instrument relating to the Article 9 Collateral, all in accordance with the terms and conditions thereof, and each Grantor jointly and severally agrees to indemnify and hold harmless the Collateral Agent and the Secured Parties from and against any and all liability for such performance, to the extent of, and subject to the terms, conditions and limitations set forth in, Section 7.03(b) below.

(q) Notwithstanding anything herein to the contrary, none of the Grantors shall be required to perfect Collateral by any means or manner or take any action not otherwise required by the Collateral and Guarantee Requirement (as defined in the Credit Agreement) or this Agreement.

Section 16.02. Other Actions. In order to further insure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, the Security Interest, each Grantor agrees, in each case at such Grantor's own expense and subject to the ABL Intercreditor Agreement, to take the following actions with respect to the following Article 9 Collateral:

(a) Instruments. If any Grantor shall at any time hold or acquire any Instruments constituting Collateral and evidencing a face principal amount equal to or in excess of \$5,000,000 such Grantor shall, concurrently with the first Compliance Certificate required to be delivered pursuant to Section 6.02(a) of the Credit Agreement thereafter, endorse, assign and deliver the same to the Collateral Agent for the benefit of the applicable Secured Parties, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably request.

(b) Investment Property. Except to the extent otherwise provided in Article II or in Section 3.03(h), if any Grantor shall at any time hold or acquire any Certificated Securities that constitutes Collateral, such Grantor shall, concurrently with the first Compliance Certificate required to be delivered pursuant to Section 6.02(a) of the Credit Agreement thereafter, endorse, assign and deliver the same to the Collateral Agent for the benefit of the applicable Secured Parties, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably request.

(c) Commercial Tort Claims. If any Grantor shall at any time after the date of this Agreement acquire a Commercial Tort Claim in an amount (taking the greater of the aggregate claimed damages thereunder or the reasonably estimated value thereof) of \$5,000,000 or more, the Borrower (on behalf of such Grantor) will provide, concurrently with the first Compliance Certificate required to be delivered pursuant to Section 6.02(a) of the Credit Agreement thereafter, supplements to Schedule II describing the details thereof

and shall grant to the Collateral Agent a security interest therein and in the proceeds thereof, all upon the terms of this Agreement.

(d) Collateral Accounts, Deposit Accounts and Securities Accounts. If any Grantor shall at any time hold or acquire any Collateral Account, Deposit Account or Securities Account that is not an Excluded Account, within 30 days of acquisition or possession thereof (or, with respect to any such accounts existing on the Restatement Effective Date, within 60 days after the Restatement Effective Date) (or such longer period as the Collateral Agent (after notice to the Required Lenders) may agree in writing in its reasonable discretion), such Grantor shall promptly enter into such Control Agreements, each in form and substance reasonably acceptable to the Required Lenders and the Collateral Agent, as may be required to perfect the security interest created therein by this Security Agreement and will promptly furnish to the Required Lenders and Collateral Agent true copies thereof.

#### ARTICLE 17

##### Special Provisions Concerning Intellectual Property Collateral

###### Grant of License to Use Intellectual Property

Without limiting the provisions of Section 3.01 hereof or any other rights of the Collateral Agent as the holder of a Security Interest in any Intellectual Property Collateral, for the purpose of enabling the Collateral Agent to exercise rights and remedies under this Agreement at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent an irrevocable, nonexclusive license (exercisable without payment of rent, royalty or other compensation to the Grantors) to use, license or sublicense any of the Intellectual Property Collateral now owned or hereafter acquired by such Grantor, and wherever the same may be located (whether or not any license agreement by and between any Grantor and any other Person relating to the use of such Intellectual Property Collateral may be terminated hereafter), and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof, provided, however, that any license granted by the Collateral Agent to a third party shall include reasonable and customary terms necessary to preserve the existence, validity, and value of the affected Intellectual Property Collateral, including, without limitation, provisions requiring the continuing confidential handling of trade secrets, requiring the use of appropriate notices and prohibiting the use of false notices, protecting Trademarks in the manner set forth below (it being understood and agreed that, without limiting any other rights and remedies of the Collateral Agent under this Agreement, any other Loan Document or applicable Law, nothing in the foregoing license grant shall be construed as granting the Collateral Agent rights in and to such Intellectual Property Collateral above and beyond (x) the rights to such Intellectual Property Collateral that each Grantor has reserved for itself and (y) in the case of Intellectual Property Collateral that is licensed to any such Grantor by

a third party, the extent to which such Grantor has the right to grant a sublicense to such Intellectual Property Collateral hereunder). The use of such license by the Collateral Agent may only be exercised, at the option of the Collateral Agent, during the continuation of an Event of Default; provided that any license, sublicense or other transaction entered into by the Collateral Agent in accordance herewith shall be binding upon the Grantors notwithstanding any subsequent cure of an Event of Default. In the event the license set forth in this Section 4.01 is exercised with regard to any Trademarks, then the following shall apply: (i) all goodwill arising from any licensed or sublicensed use of any Trademark shall inure to the benefit of the Grantor; (ii) the licensed or sublicensed Trademarks shall only be used in association with goods or services of a quality and nature consistent with the quality and reputation with which such Trademarks were associated when used by Grantor prior to the exercise of the license rights set forth herein; and (iii) at the Grantor's request and expense, licensees and sublicensees shall provide reasonable cooperation in any effort by the Grantor to maintain the registration or otherwise secure the ongoing validity and effectiveness of such licensed Trademarks, including, without limitation the actions and conduct described in Section 4.02 below. The license granted to the Collateral Agent herein shall be inapplicable to any Commercial Software License that constitutes Intellectual Property Collateral to the extent the applicable Grantor is prohibited by written agreement from granting a license in such Commercial Software License to the Collateral Agent, except to the extent such prohibition is ineffective (or deemed ineffective) under the UCC or other applicable Law.

#### Protection of Collateral Agent's Security

(a) Except to the extent permitted by subsection 4.02(f) below, or to the extent that failure to act could not reasonably be expected to have a Material Adverse Effect, with respect to registration or pending application of each item of its Intellectual Property Collateral for which such Grantor has standing to do so, each Grantor agrees to take, at its expense, all steps, including, without limitation, in the U.S. Patent and Trademark Office, the U.S. Copyright Office and any other governmental authority located in the United States to (i) maintain the validity and enforceability of any registered Intellectual Property Collateral and maintain such Intellectual Property Collateral in full force and effect, and (ii) pursue the registration and maintenance of each Patent, Trademark, or Copyright registration or application, now or hereafter included in such Intellectual Property Collateral of such Grantor, including, without limitation, the payment of required fees and taxes, the filing of responses to office actions issued by the U.S. Patent and Trademark Office, the U.S. Copyright Office or other governmental authorities, the filing of applications for renewal or extension, the filing of affidavits under Sections 8 and 15 of the U.S. Trademark Act, the filing of divisional, continuation, continuation-in-part, reissue and renewal applications or extensions, the payment of maintenance fees and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings.

(b) Except to the extent permitted by subsection 4.02(f) below, or to the extent that failure to act could not reasonably be expected to have a Material Adverse Effect, no Grantor shall do or permit any act or knowingly omit to do any act whereby any of its Intellectual Property Collateral may lapse, be terminated, or become invalid or unenforceable or placed in the public domain (or in case of a trade secret, lose its competitive value).

(c) Except to the extent permitted by subsection 4.02(f) below, or to the extent

that failure to act could not reasonably be expected to have a Material Adverse Effect, each Grantor shall take all steps to preserve and protect each item of its Intellectual Property Collateral, including, without limitation, maintaining the quality of any and all products or services used or provided in connection with any of the Trademarks, consistent with the quality of the products and services as of the date hereof, and taking all steps necessary to ensure that all licensed users of any of the Trademarks abide by the applicable license's terms with respect to the standards of quality.

(d) Each Grantor agrees that, should it obtain an ownership or other interest in any Intellectual Property Collateral after the Restatement Effective Date (the "After-Acquired Intellectual Property") (i) the provisions of this Agreement shall automatically apply thereto, and (ii) any such After-Acquired Intellectual Property and, in the case of Trademarks, the goodwill symbolized thereby, shall automatically become part of the Intellectual Property Collateral subject to the terms and conditions of this Agreement with respect thereto.

(e) Concurrently with the delivery of a Compliance Certificate for each fiscal quarter, each Grantor shall sign and deliver to the Collateral Agent an appropriate Security Agreement Supplement and related Grant of Security Interest with respect to applications for registration or registrations of Intellectual Property Collateral (other than with respect to any Copyright that is not material to the business of the Grantors, taken as a whole) owned or exclusively licensed by it as of the last day of such fiscal quarter, to the extent that such Intellectual Property Collateral is not covered by any previous Security Agreement Supplement (and Grant of Security Interests) so signed and delivered by it. In each case, it will promptly cooperate as reasonably necessary to enable the Collateral Agent to make any necessary or reasonably desirable recordings with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as appropriate

(f) Notwithstanding the foregoing provisions of this Section 4.02 or elsewhere in this Agreement, nothing in this Agreement shall prevent any Grantor from discontinuing the use or maintenance of any or its Intellectual Property Collateral, the enforcement of license agreements or the pursuit of actions against infringers, to the extent permitted by the Credit Agreement if such Grantor determines in its reasonable business judgment that such discontinuance is desirable in the conduct of its business.

(g) Upon and during the continuance of an Event of Default, each Grantor shall, if requested by the Collateral Agent, use its commercially reasonable efforts to obtain all requisite consents or approvals by the licensor of each License to effect the assignment of all such Grantor's right, title and interest thereunder to the Collateral Agent or its designee.

## ARTICLE 18

### Remedies

Section 18.01. Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, subject to the ABL Intercreditor Agreement in all respects, it is agreed that the Collateral Agent shall have the right to exercise any and all rights afforded to a secured party under this Agreement, the UCC or other applicable Law, and, subject to the ABL

Intercreditor Agreement, also may (i) require each Grantor to, and each Grantor agrees that it will at its expense and upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place and time to be designated by the Collateral Agent that is reasonably convenient to both parties; (ii) occupy any premises owned or, to the extent lawful and permitted, leased by any of the Grantors where the Collateral or any part thereof is assembled or located for a reasonable period in order to effectuate its rights and remedies hereunder or under law, without obligation to such Grantor in respect of such occupation; provided that the Collateral Agent shall provide the applicable Grantor with notice thereof prior to or promptly after such occupancy; (iii) exercise any and all rights and remedies of any of the Grantors under or in connection with the Collateral, or otherwise in respect of the Collateral; provided that subject to any additional notification requirements in Section 2.06 the Collateral Agent shall provide the applicable Grantor with notice thereof prior to or promptly after such exercise; (iv) withdraw any and all cash or other Collateral from any Deposit Account, Securities Account or Collateral Account subject to a Control Agreement and apply such cash and other Collateral to the payment of any and all Secured Obligations in the manner provided in Section 5.02 of this Agreement; (v) subject to the mandatory requirements of applicable Law and the notice requirements described below, sell or otherwise dispose of all or any part of the Collateral securing the Secured Obligations at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate and (vi) with respect to any Intellectual Property Collateral, on demand, cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Intellectual Property Collateral by the applicable Grantors to the Collateral Agent, or license or sublicense, whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any such Intellectual Property Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine, provided, however, that such terms shall include all terms and restrictions that customarily required to ensure the continuing validity and effectiveness of the Intellectual Property Collateral at issue, such as, without limitation, notice, quality control and inurement provisions with regard to Trademarks, patent designation provisions with regard to patents, and copyright notices and restrictions or decompilation and reverse engineering of copyrighted software, and confidentiality protections for trade secrets. Each Grantor acknowledges and recognizes that (a) the Collateral Agent may be unable to effect a public sale of all or a part of the Collateral consisting of securities by reason of certain prohibitions contained in the Securities Act of 1933, 15 U.S.C. §77, (as amended and in effect, the "Securities Act") or the securities laws of various states (the "Blue Sky Laws"), but may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such securities for their own account, for investment and not with a view to the distribution or resale thereof, (b) private sales so made may be at prices and upon other terms less favorable to the seller than if such securities were sold at public sales, (c) neither the Collateral Agent nor any other Secured Party has any obligation to delay sale of any of the Collateral for the period of time necessary to permit such securities to be registered for public sale under the Securities Act or the Blue Sky Laws, and (d) private sales made under the foregoing circumstances shall be deemed to have been made in a commercially reasonable manner. To the maximum extent permitted by Law, each Grantor hereby waives any claim against any Secured Party arising because the price at which any Collateral may have been sold at a private sale was less than the price that might have been obtained at a public sale, even if the

Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree. Upon consummation of any such sale the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any sale of Collateral shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable Law) all rights of redemption, stay and appraisal which such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Collateral Agent shall give the applicable Grantors 10 days' prior written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. The Collateral Agent may conduct one or more going out of business sales, in the Collateral Agent's own right or by one or more agents and contractors. Such sale(s) may be conducted upon any premises owned, leased, or occupied by any Grantor. The Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor). Any amounts realized from the sale of such goods which constitute augmentations to the Inventory (net of an allocable share of the costs and expenses incurred in their disposition) shall be the sole property of the Collateral Agent or such agent or contractor and neither any Grantor nor any Person claiming under or in right of any Grantor shall have any interest therein. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by applicable Law, private) sale made pursuant to this Agreement, any Secured Party may bid for or purchase, free (to the extent permitted by applicable Law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all said rights being also hereby waived and released to the extent permitted by applicable Law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. For purposes of determining the Grantors' rights in the Collateral, a written

agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full, provided, however, that such terms shall include all terms and restrictions that are customarily required to ensure the continuing validity and effectiveness of the Intellectual Property Collateral at issue, such as, without limitation, quality control and inurement provisions with regard to Trademarks, patent designation provisions with regard to patents, and copyright notices and restrictions or decompilation and reverse engineering of copyrighted software, and protecting the confidentiality of trade secrets. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court appointed receiver. Any sale pursuant to the provisions of this Section 5.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.

Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent) as such Grantor's true and lawful agent (and attorney-in-fact) during the continuance of an Event of Default and after notice to the Borrower of its intent to exercise such rights (except in the case of a Bankruptcy Event of Default, in which case no such notice shall be required), for the purpose of, subject to the ABL Intercreditor Agreement, (i) making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance, (ii) making all determinations and decisions with respect thereto and (iii) obtaining or maintaining the policies of insurance required by Section 6.07 of the Credit Agreement or to pay any premium in whole or in part relating thereto. All sums disbursed by the Collateral Agent in connection with this paragraph, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, within 10 days of demand, by the Grantors to the Collateral Agent and shall be additional Secured Obligations secured hereby.

By accepting the benefits of this Agreement and each other Collateral Document, the Secured Parties expressly acknowledge and agree that this Agreement and each other Collateral Document may be enforced only by the action of the Collateral Agent and that no other Secured Party shall have any right individually to seek to enforce or to enforce this Agreement or to realize upon the security to be granted hereby, it being understood and agreed that such rights and remedies may be exercised by the Collateral Agent for the benefit of the Secured Parties upon the terms of this Agreement and the other Collateral Documents.

Section 18.02. Application of Proceeds. Subject to the ABL Intercreditor Agreement, the Collateral Agent shall apply the proceeds of any collection or sale of Collateral, including any Collateral consisting of cash, in accordance with the provisions of Section 8.04 of the Credit Agreement. The Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or

under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof. It is understood and agreed that, to the extent expressly assumed under the Loan Documents, the Grantors shall remain jointly and severally liable to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations.

#### ARTICLE 19

##### Indemnity, Subrogation and Subordination

Upon payment by any Grantor of any Secured Obligations, all rights of such Grantor against the Borrower or any other Grantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior payment in full in cash of all the Secured Obligations (other than contingent indemnity obligations for then unasserted claims). If any amount shall erroneously be paid to any Grantor on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Grantor, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Collateral Agent to be credited against the payment of the Secured Obligations, whether matured or unmatured, in accordance with the terms of the Credit Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Grantor (other than the Borrower) shall, under this Agreement or the Credit Agreement as a joint and several obligor, repay any of the Secured Obligations (an "Accommodation Payment"), then the Grantor making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Grantors in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Grantor's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Grantors. As of any date of determination, the "Allocable Amount" of each Grantor shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Grantor hereunder and under the Credit Agreement without (a) rendering such Grantor "insolvent" within the meaning of Section 101 (31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Grantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Grantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

#### ARTICLE 20

##### Miscellaneous

Section 20.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 10.01 of the Credit Agreement. All communications and notices hereunder to a Grantor other than the

Borrower shall be given to it in care of the Borrower.

Waivers; Amendment. (a) No failure or delay by the Collateral Agent in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Collateral Agent hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have under applicable Law. No waiver of any provision of this Agreement or consent to any departure by any Grantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 7.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Collateral Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Grantor or Grantors with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 10.08 of the Credit Agreement.

(a) Collateral Agent's Fees and Expenses; Indemnification. The parties hereto agree that the Collateral Agent shall be entitled to reimbursement of its expenses incurred hereunder to the extent of, and as expressly provided in, Section 10.05 of the Credit Agreement.

(b) The parties agree that Section 10.05(b) of the Credit Agreement shall apply, *mutatis mutandis*, to this Agreement.

(c) Any such amounts payable as provided hereunder shall be additional Secured Obligations secured hereby and by the other Collateral Documents. The provisions of this Section 7.03 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Loan Document, the consummation of the transactions contemplated hereby, the repayment of any of the Secured Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Collateral Agent or any other Secured Party. All amounts due under this Section 7.03 shall be payable within 10 Business Days of written demand therefor.

Section 20.02. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns. No Grantor or Grantors may assign any of its or their rights or obligations hereunder without the written consent of the Collateral Agent.

Section 20.03. Survival of Agreement. All covenants, agreements, representations and

warranties made by the Grantors in the Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any Lender or on its behalf and notwithstanding that the Collateral Agent or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended under the Credit Agreement, and shall continue in full force and effect until this Agreement is terminated as provided in Section 7.12 hereof or, with respect to the covenants, agreements, representations and warranties of any individual Grantor, until such Grantor is otherwise released from its obligations under this Agreement in accordance with Section 7.12(b).

Section 20.04. Counterparts; Effectiveness; Several Agreement. This Agreement may be executed by facsimile and in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile or other electronic imaging transmission shall be as effective as delivery of a manually signed counterpart of this Agreement. This Agreement shall become effective as to any Grantor when a counterpart hereof executed on behalf of such Grantor shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon such Grantor and the Collateral Agent and their respective permitted successors and assigns, and shall inure to the benefit of such Grantor, the Collateral Agent and the other Secured Parties and their respective permitted successors and assigns, except that no Grantor shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to each Grantor and may be amended, modified, supplemented, waived or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

Section 20.05. Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

GOVERNING LAW. THIS AGREEMENT AND THE OTHER COLLATERAL DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER COLLATERAL DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK; EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE COURT OR FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE

BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER COLLATERAL DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS IN ANY NEW YORK STATE OR FEDERAL COURT. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 7.01. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 20.06. WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER COLLATERAL DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER COLLATERAL DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.09.

Section 20.07. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 20.08. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest, the grant of a security interest in the Pledged Collateral and all obligations of each Grantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to

any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations or (d) subject only to termination of a Guarantor's obligations hereunder in accordance with the terms of Section 11.10 of the Credit Agreement, but without prejudice to reinstatement rights under Section 11.04 of the Credit Agreement, any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement.

(a) Termination or Release. This Agreement, the Security Interest and all other security interests granted hereby shall terminate automatically (without further action required) with respect to all Secured Obligations when all the outstanding Secured Obligations (other than contingent indemnification and reimbursement obligations not yet accrued and payable) have been paid in full and the Lenders have no further commitment to lend under the Credit Agreement.

(b) A Subsidiary Guarantor shall automatically be released from its obligations hereunder and the Security Interest in the Collateral of such Subsidiary Guarantor shall be automatically released in the circumstances set forth in Section 11.10 of the Credit Agreement.

(c) The Security Interest in any Collateral shall be automatically released or subordinated, as applicable, in the circumstances set forth in the last paragraph of Section 7.05 of the Credit Agreement or Section 10.19 of the Credit Agreement.

(d) In connection with any termination or release pursuant to paragraph (a), (b), or (c), the Collateral Agent shall promptly execute and deliver to any Grantor, at such Grantor's expense, all documents that such Grantor shall reasonably request to evidence such termination or release or subordination. Any execution and delivery of documents pursuant to this Section 7.12 shall be without recourse to or warranty by the Collateral Agent.

(e) At any time that the respective Grantor desires that the Collateral Agent take any action described in immediately preceding clause (d), it shall, upon request of the Collateral Agent, deliver to the Collateral Agent an officer's certificate certifying that the release of the respective Collateral is permitted pursuant to paragraph (a), (b) or (c). The Collateral Agent shall have no liability whatsoever to any Secured Party as the result of any release of Collateral by it as permitted (or which the Collateral Agent in good faith believes to be permitted) by this Section 7.12.

Section 20.09. Additional Restricted Subsidiaries. Pursuant to Section 6.11 of the Credit Agreement, certain Restricted Subsidiaries of the Borrower that were not in existence on the date of the Credit Agreement are required to enter in this Agreement as Grantors upon becoming Restricted Subsidiaries. Upon execution and delivery by the Collateral Agent and a Restricted Subsidiary of a Security Agreement Supplement, such Restricted Subsidiary shall become a Grantor hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of any such instrument shall not require the consent of any other Grantor hereunder. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Agreement.

Section 20.10. Collateral Agent Appointed Attorney-in-Fact. Each Grantor hereby appoints the Collateral Agent the true and lawful attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent, in consultation with the Required Lenders, may deem necessary or advisable to accomplish the purposes hereof at any time after and during the continuance of an Event of Default, which appointment is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, the Collateral Agent shall have the right, subject to the ABL Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default and upon and after delivery of notice by the Collateral Agent to the Borrower of its intent to exercise such rights (unless a Bankruptcy Event of Default has occurred and is continuing in which case no such notice shall be required), with full power of substitution either in the Collateral Agent's name or in the name of such Grantor (a) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral; (c) to sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral; (d) to send verifications of Accounts to any Account Debtor; (e) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral; (f) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; (g) to notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent or to a Collateral Account and adjust, settle or compromise the amount of payment of any Account; (h) to make, settle and adjust claims in respect of Collateral under policies of insurance and to endorse the name of such Grantor on any check, draft, instrument or any other item of payment with respect to the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto; and (i) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes; provided that nothing herein contained shall be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be

responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct or that of any of their Affiliates, directors, officers, employees, counsel, agents or attorneys-in-fact (as determined in a final non-appealable judgment by a court of competent jurisdiction).

Section 20.11. General Authority of the Collateral Agent. By acceptance of the benefits of this Agreement and any other Collateral Documents, each Secured Party (whether or not a signatory hereto) shall be deemed irrevocably (a) to consent to the appointment of the Collateral Agent as its agent hereunder and under such other Collateral Documents, (b) to confirm that the Collateral Agent shall have the authority to act as the exclusive agent of such Secured Party for the enforcement of any provisions of this Agreement and such other Collateral Documents against any Grantor, the exercise of remedies hereunder or thereunder and the giving or withholding of any consent or approval hereunder or thereunder relating to any Collateral or any Grantor's obligations with respect thereto, (c) to agree that it shall not take any action to enforce any provisions of this Agreement or any other Collateral Document against any Grantor, to exercise any remedy hereunder or thereunder or to give any consents or approvals hereunder or thereunder except as expressly provided in this Agreement or any other Collateral Document and (d) to agree to be bound by the terms of this Agreement and any other Collateral Documents.

Section 20.12. Recourse; Limited Obligations. This Agreement is made with full recourse to each Grantor and pursuant to and upon all the warranties, representations, covenants and agreements on the part of such Grantor contained herein, in the Credit Agreement and the other Secured Credit Documents and otherwise in writing in connection herewith or therewith, with respect to the Secured Obligations of each applicable Secured Party. It is the desire and intent of each Grantor and each applicable Secured Party that this Agreement shall be enforced against each Grantor to the fullest extent permissible under the Laws applied in each jurisdiction in which enforcement is sought. Notwithstanding anything to the contrary contained herein, and in furtherance of the foregoing, it is noted that if the obligations of any Guarantor under Section 11.01 of the Credit Agreement have been limited as expressly provided in Section 1.14 or 11.09 of the Credit Agreement, then such obligations shall be limited hereunder as and to the same extent provided therein.

#### Mortgages

. In the event that any of the Collateral hereunder is also subject to a valid and enforceable Lien under the terms of a Mortgage and the terms thereof are inconsistent with the terms of this Agreement, then with respect to such Collateral, the terms of such Mortgage shall control in the case of Fixtures and Real Estate leases, letting and licenses of, and contracts, and agreements relating to the lease of, Real Estate, and the terms of this Agreement shall control in the case of all other Collateral.

#### ABL Intercreditor Agreement; Possession and Control of Priority Collateral

(a) Notwithstanding anything herein to the contrary, the Liens granted to the Collateral Agent under this Agreement and the exercise of the rights and remedies of the Collateral Agent hereunder and under any other Collateral Document are subject to the provisions of the ABL Intercreditor Agreement. In the event of any conflict

between the terms of the ABL Intercreditor Agreement and this Agreement or any other Collateral Document, the terms of the ABL Intercreditor Agreement shall govern and control. Notwithstanding anything to the contrary herein, the Collateral Agent acknowledges and agrees that no Grantor shall be required to take or refrain from taking any action at the request of the Collateral Agent with respect to the ABL Priority Collateral if such action or inaction would be inconsistent with the terms of the ABL Intercreditor Agreement.

(b) Subject to (but without limiting) the foregoing,

(i) at any time prior to the Discharge of ABL Obligations, any provision hereof (i) requiring Grantors to deliver possession of any ABL Priority Collateral to the Collateral Agent or its representatives, or to cause the Collateral Agent or its representatives to control any ABL Priority Collateral, shall be deemed to have been complied with if and for so long as the ABL Agent shall have such possession or control for the benefit of the Secured Parties and as bailee or sub-agent of the Collateral Agent as provided in the ABL Intercreditor Agreement or (ii) requiring Grantors to name the Collateral Agent as an additional insured or a loss payee under any insurance policy or a beneficiary of any letter of credit, such requirement shall have been complied with notwithstanding that any such insurance policy or letter of credit also names the ABL Agent as an additional insured, loss payee or beneficiary, as the case may be, in each case pursuant to the terms of the ABL Intercreditor Agreement.

(ii) at any time prior to the Discharge of UST Tranche B Obligations, any provision hereof (1) requiring Grantors to deliver possession of any UST Tranche B Priority Collateral to the Collateral Agent or its representatives, or to cause the Collateral Agent or its representatives to control any UST Tranche B Priority Collateral, shall be deemed to have been complied with if and for so long as the UST Tranche B Term Agent shall have such possession or control for the benefit of the Secured Parties and as bailee or sub-agent of the Collateral Agent as provided in the ABL Intercreditor Agreement or (2) requiring Grantors to name the Collateral Agent as an additional insured or a loss payee under any insurance policy or a beneficiary of any letter of credit, such requirement shall have been complied with notwithstanding that any such insurance policy or letter of credit also names the UST Tranche B Term Agent as an additional insured, loss payee or beneficiary, as the case may be, in each case pursuant to the terms of the ABL Intercreditor Agreement.

(c) Furthermore,

(i) at all times prior to the Discharge of ABL Obligations, the Collateral Agent is authorized by the parties hereto to effect transfers of ABL Priority Collateral at any time in its possession (and any "control" or similar agreements with respect to ABL Priority Collateral) to the ABL Agent.

(ii) at all times prior to the Discharge of UST Tranche B Obligations, the Collateral Agent is authorized by the parties hereto to effect transfers of UST Tranche B

Priority Collateral at any time in its possession (and any “control” or similar agreements with respect to UST Tranche B Priority Collateral) to the UST Tranche B Term Agent.

(d) Notwithstanding anything to the contrary herein but subject to the ABL Intercreditor Agreement, (i) in the event the ABL Facility Documentation provides for the grant of a security interest or pledge over the assets of any Grantor and such assets do not otherwise constitute Collateral under this Agreement or any other Loan Document, such Grantor shall (A) promptly grant a security interest in or pledge such assets to secure the Secured Obligations, (B) promptly take any actions necessary to perfect such security interest or pledge to the extent set forth in the ABL Facility Documentation, (ii) in the event the UST Tranche B Term Loan Facility Documentation provides for the grant of a security interest or pledge over the assets (other than UST Tranche B Only Collateral) of any Grantor and such assets do not otherwise constitute Collateral under this Agreement or any other Loan Document, such Grantor shall (A) promptly grant a security interest in or pledge such assets to secure the Secured Obligations, (B) promptly take any actions necessary to perfect such security interest or pledge to the extent set forth in the UST Tranche B Term Loan Facility Documentation, (iii) in the event the UST Tranche A Term Loan Facility Documentation provides for the grant of a security interest or pledge over the assets (other than UST Tranche A Only Collateral) of any Grantor and such assets do not otherwise constitute Collateral under this Agreement or any other Loan Document, such Grantor shall (A) promptly grant a security interest in or pledge such assets to secure the Secured Obligations, (B) promptly take any actions necessary to perfect such security interest or pledge to the extent set forth in the UST Tranche A Term Loan Facility Documentation and (iv) take all other steps reasonably requested by the Collateral Agent in connection with the foregoing.

(e) Nothing contained in the ABL Intercreditor Agreement shall be deemed to modify any of the provisions of this Agreement, which, as among the Grantors and the Collateral Agent shall remain in full force and effect in accordance with its terms.

Section 20.15. Confirmation of Existing Obligations; No Novation or Mutual Departure. The Grantors hereby (i) reaffirm their obligations under the Existing Security Agreement and the Restated Security Agreement, (ii) confirm that they shall continue to be bound by such obligations under the Security Agreement and (iii) confirm that the security interests created under the Existing Security Agreement and the Restated Security Agreement remain in full force and effect, and shall continue to secure the Obligations under the Security Agreement. The Grantors expressly acknowledge and agree that there has not been, and this Security Agreement does not constitute or establish, a novation with respect to the Existing Security Agreement and the Restated Security Agreement, or a mutual departure from the strict terms, provisions, and

conditions thereof, other than with respect to the amendments contained herein.



[FORM OF] SUPPLEMENT NO. \_\_\_ dated as of [●], to the Amended and Restated Security Agreement dated as of July 7, 2020, among YRC WORLDWIDE INC., a Delaware corporation (the "Borrower"), the other Grantors party hereto from time to time and ALTER DOMUS PRODUCTS CORP. (formerly known as Cortland Products Corp.), as Collateral Agent for the Secured Parties.

(a) Reference is made to the Amended and Restated Credit Agreement, dated as of July 7, 2020 (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the other Guarantors party thereto from time to time, the Lenders party thereto from time to time and Alter Domus Products Corp., as Administrative Agent and Collateral Agent.

(b) Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement and the Security Agreement referred to therein.

(c) The Grantors have entered into the Security Agreement in order to induce the Lenders to make Loans. Section 7.13 of the Security Agreement provides that additional Restricted Subsidiaries of the Borrower may become Grantors under the Security Agreement by execution and delivery of an instrument substantially in the form of this Supplement. The undersigned Restricted Subsidiary (the "New Subsidiary") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Grantor under the Security Agreement in order to induce the Lenders to make additional Loans and as consideration for Loans previously made.

Accordingly, the Collateral Agent and the New Subsidiary agree as follows:

(i) In accordance with Section 7.13 of the Security Agreement, the New Subsidiary by its signature below becomes a Grantor (and accordingly, becomes a Grantor) and Grantor under the Security Agreement with the same force and effect as if originally named therein as a Grantor and the New Subsidiary hereby (a) agrees to all the terms and provisions of the Security Agreement applicable to it as a Grantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Grantor thereunder are true and correct in all material respects on and as of the date hereof; provided that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date. In furtherance of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Secured Obligations does hereby create and grant to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, their successors and assigns, a security interest in and lien on all of the New Subsidiary's right, title and interest in and to the Collateral (as defined in the Security Agreement) of the New Subsidiary. Each reference to a "Grantor" in the Security Agreement shall be deemed to include the New Subsidiary. The Security Agreement is hereby incorporated herein by reference.

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(ii) The New Subsidiary represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity.

(iii) This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Agent shall have received a counterpart of this Supplement that bears the signature of the New Subsidiary and the Collateral Agent has executed a counterpart hereof. Delivery of an executed signature page to this Supplement by facsimile or electronic (including .pdf file) transmission shall be as effective as delivery of a manually signed counterpart of this Supplement.

(iv) The New Subsidiary hereby represents and warrants that (a) set forth on Schedule I attached hereto is a true and correct schedule of the location of any and all Collateral of the New Subsidiary and (b) set forth under its signature hereto is the true and correct legal name of the New Subsidiary, its jurisdiction of formation and the location of its chief executive office (or if different, its "location" as determined in accordance with Section 9-307 of the Uniform Commercial Code).

(v) Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect.

(vi) **THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

(vii) In case any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in the Security Agreement shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

(viii) All communications and notices hereunder shall be in writing and given as provided in Section 7.01 of the Security Agreement.

(ix) To the extent required by Section 10.05 of the Credit Agreement, the New Subsidiary agrees to reimburse the Collateral Agent for its reasonable out-

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of-pocket expenses in connection with this Supplement, including all Attorney Costs of counsel for the Collateral Agent.

above written. IN WITNESS WHEREOF, the New Subsidiary and the Collateral Agent have duly executed this Supplement to the Security Agreement as of the day and year first

[NAME OF NEW SUBSIDIARY],

By:

Name:  
Title:

Legal Name:  
Jurisdiction of Formation:  
Location of Chief Executive office:

ALTER DOMUS PRODUCTS CORP., as Collateral Agent

By:

Name:  
Title:

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Schedule I

LOCATION OF COLLATERAL

Description

Location

EQUITY INTERESTS

<u>Issuer</u>	<u>Number of Certificate</u>	<u>Registered Owner</u>	<u>Number and Class of Equity Interest</u>	<u>Percentage of Equity Interests</u>
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PROMISSORY NOTES

<u>Issuer</u>	<u>Principal Amount as of the date of issuance (or delivery)</u>	<u>Date of Note/Instrument</u>	<u>Maturity Date</u>
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Schedule II

COMMERCIAL TORT CLAIMS

Schedule III

INTELLECTUAL PROPERTY

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Form of Perfection Certificate

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[FORM OF] GRANT OF SECURITY INTEREST  
IN UNITED STATES TRADEMARKS

FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, [Name of Grantor], a \_\_\_\_\_ (the "Grantor") with principal offices at \_\_\_\_\_, hereby grants to Alter Domus Products Corp. (formerly known as Cortland Products Corp.), as Collateral Agent, with principal offices at 225 W. Washington St., 9th Floor, Chicago, IL 60606 (the "Grantee"), a continuing security interest in (i) all of the Grantor's rights, title and interest in, to and under the United States Trademarks (as defined in the Security Agreement referred to below), Trademark registrations and Trademark applications (collectively, the "Marks") set forth on Schedule A attached hereto, in each case together with (ii) all Proceeds (as such term is defined in the Security Agreement referred to below) and products thereof, (iii) the goodwill of the businesses with which the Marks are associated and (iv) all causes of action arising on, prior to or after the date hereof for infringement, or dilution of, or other injury to, any of the Marks or unfair competition regarding the same (collectively, the "Trademark Collateral").

THIS GRANT is made to secure the payment or performance, as the case may be, in full of the Secured Obligations, as such term is defined in the Amended and Restated Security Agreement among the Grantor, the other assignors from time to time party thereto and the Grantee, dated as of July 7, 2020 (as amended, modified, restated and/or supplemented from time to time, the "Security Agreement").

This Grant has been granted in conjunction with the security interest granted to the Grantee under the Security Agreement. The rights and remedies of the Grantee with respect to the security interest in the Trademark Collateral granted herein are as set forth in the Security Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Grant are deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

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IN WITNESS WHEREOF, the undersigned have executed this Grant as of the \_\_\_\_ day of \_\_\_\_\_.

[NAME OF GRANTOR], Grantor

By \_\_\_\_\_  
Name:  
Title:

ALTER DOMUS PRODUCTS CORP., as Collateral Agent and Grantee

By \_\_\_\_\_  
Name:  
Title:

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MARKSERIAL/REG. NO.APP./REG. DATE

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[FORM OF] GRANT OF SECURITY INTEREST  
IN UNITED STATES PATENTS

FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, [Name of Grantor], a \_\_\_\_\_ (the "Grantor") with principal offices at \_\_\_\_\_, hereby grants to Alter Domus Products Corp., as Collateral Agent, with principal offices at 225 W. Washington St., 9th Floor, Chicago, IL 60606 (the "Grantee"), a continuing security interest in (i) all of the Grantor's rights, title and interest in, to and under the United States Patents (as defined in the Security Agreement referred to below) and Patent applications set forth on Schedule A attached hereto, in each case together with (ii) all Proceeds (as such term is defined in the Security Agreement referred to below) and products thereof, (iii) the goodwill of the businesses with which such Patents are associated and (iv) all causes of action arising on, prior to or after the date hereof for infringement or dilution of, or other injury to, such Patents or unfair competition regarding the same (collectively, the "Patent Collateral").

THIS GRANT is made to secure the payment or performance, as the case may be, in full of the Secured Obligations, as such term is defined in the Amended and Restated Security Agreement among the Grantor, the other assignors from time to time party thereto and the Grantee, dated as of July 7, 2020 (as amended, modified, restated and/or supplemented from time to time, the "Security Agreement").

This Grant has been granted in conjunction with the security interest in the Patent Collateral granted to the Grantee under the Security Agreement. The rights and remedies of the Grantee with respect to the security interest granted herein are as set forth in the Security Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Grant are deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

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IN WITNESS WHEREOF, the undersigned have executed this Grant as of the \_\_\_\_ day of \_\_\_\_\_.

[NAME OF GRANTOR], Grantor

By \_\_\_\_\_

Name:

Title:

ALTER DOMUS PRODUCTS CORP., as Collateral Agent and Grantee

By \_\_\_\_\_

Name:

Title:

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PATENT

PATENT NO.

FILING/ISSUE DATE

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[FORM OF] GRANT OF SECURITY INTEREST  
IN UNITED STATES COPYRIGHTS

WHEREAS, [Name of Grantor], a \_\_\_\_\_ (the "Grantor"), having its chief executive office at \_\_\_\_\_, is the owner of all right, title and interest in and to the United States Copyrights (as defined in the Security Agreement referred to below) and associated United States Copyright registrations and applications for registration set forth in Schedule A attached hereto) and is an exclusive licensee of registered copyrights pursuant to each Copyright License (as such term is defined in the Security Agreement referred to below) set forth in Schedule A;

WHEREAS, Alter Domus Products Corp., as Collateral Agent, with principal offices at 225 W. Washington St., 9th Floor, Chicago, IL 60606 (the "Grantee"), desires to acquire a security interest in said Copyrights and Copyright Licenses; and

WHEREAS, the Grantor is willing to grant to the Grantee a security interest in and lien upon the Copyrights and Copyright Licenses described above.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and subject to the terms and conditions of the Amended and Restated Security Agreement, dated as of July 7, 2020, made by the Grantor, the other assignors from time to time party thereto and the Grantee (as amended, modified, restated and/or supplemented from time to time, the "Security Agreement"), the Grantor hereby assigns to the Grantee as collateral security, and grants to the Grantee a continuing security interest in, to and under (i) all of the Grantor's right, title and interest in, to and under the Copyrights and exclusive Copyright Licenses set forth in Schedule A attached hereto, in each case together with, (ii) all Proceeds (as such term is defined in the Security Agreement) and products of the foregoing, (iii) all causes of action arising on, prior to or after the date hereof for infringement of any of the Copyrights, and (iv) all rights and benefits of the Grantor under the exclusive Copyright Licenses set forth in Schedule A (collectively, the "Copyright Collateral"). The assignment and security interest granted herein with respect to the Copyright Collateral is made to secure the payment or performance, as the case may be, in full of the Secured Obligations, as such term is defined in the Security Agreement.

This Grant has been granted in conjunction with the security interest granted to the Grantee under the Security Agreement. The rights and remedies of the Grantee with respect to the security interest granted herein are as set forth in the Security Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Grant are deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

**[Remainder of this page intentionally left blank; signature page follows]**

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IN WITNESS WHEREOF, the undersigned have executed this Grant as of the \_\_\_\_ day of [date].

[NAME OF GRANTOR], Grantor

By \_\_\_\_\_

Name:

Title:

ALTER DOMUS PRODUCTS CORP., as Collateral Agent and Grantee

By \_\_\_\_\_

Name:

Title:

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COPYRIGHTS

COPYRIGHT

COPYRIGHT NO.

APP./REG. DATE

COPYRIGHT LICENSES

AGREEMENT

PARTIES

DATE

SUBJECT MATTER

CERTIFICATION PURSUANT TO  
EXCHANGE ACT RULES 13a-14 AND 15d-14,  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Darren D. Hawkins, certify that:

- (1) I have reviewed this quarterly report on Form 10-Q of YRC Worldwide 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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- (5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2020

/s/ Darren D. Hawkins

\_\_\_\_\_  
Darren D. Hawkins  
Chief Executive Officer

CERTIFICATION PURSUANT TO  
EXCHANGE ACT RULES 13a-14 AND 15d-14,  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jamie G. Pierson, certify that:

- (1) I have reviewed this quarterly report on Form 10-Q of YRC Worldwide 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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- (5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2020

/s/ Jamie G. Pierson  
\_\_\_\_\_  
Jamie G. Pierson  
Chief 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 YRC Worldwide Inc. on Form 10-Q for the period ended June 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Darren D. Hawkins, Chief Executive Officer of YRC Worldwide Inc., certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of YRC Worldwide Inc.

Date: August 3, 2020

/s/ Darren D. Hawkins  
Darren D. Hawkins  
Chief Executive Officer

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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 YRC Worldwide Inc. on Form 10-Q for the period ended June 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jamie G. Pierson, Chief Financial Officer of YRC Worldwide Inc., certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of YRC Worldwide Inc.

Date: August 3, 2020

/s/ Jamie G. Pierson  
Jamie G. Pierson  
Chief Financial Officer

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